IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA IN AND FOR THE COUNTY OF MIAMI-DADE

FINAL REPORT
OF THE
MIAMI-DADE COUNTY GRAND JURY

INQUIRY REGARDING

THE MIAMI-DADE COUNTY CONTRACT PROCESS:

A CALL FOR THE RESTORATION OF FISCAL TRUST AND CONFIDENCE

SPRING TERM A.D. 1999

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INDEX

Pages

INQUIRY REGARDING THE MIAMI-DADE COUNTY CONTRACT PROCESS: A CALL FOR THE RESTORATIONOF FISCAL TRUST AND CONFIDENCE.....1 - 45

I. NTRODUCTION……..……..……..…..…… 1

II. ACTIONS BY ELECTED OFFICIALS RELATING TO CONTRACTS..... 3
- a. Lack of Contractual Common Sense..... 6
- b. Social Engineering vs. Sound Business Practices..... 8
- c. Politics vs. Sound Business Practices..... 9
- d. A Part-Time Job With Full-Time Responsibilities 10
- e. Single Member Voting Districts..... 11
- f. Politics And Contracts Make Poor Bedfellows..... 12

III. ACTIONS ON CONTRACTS WITHIN GOVERNMENT AGENCIES...… 13
- a. The Bid Specifications Development Process For W-755..... 14
- b. A Factual Omission In The Commission Presentation..... 18
- c. The Lack of Proper Administration and Oversight of W-755..... 19
- d. Environmental Clean-up Becomes a Car Wash..... 23
- e. Telecommunications Leasing at the Miami International Airport..... 24
- f. Changes Are Already Underway..... 24

IV. LOBBYISTS..... 25
- a. The Lobbyist Controversy..... 27
- b. An Attempt at Statistical Analysis..... 28
- c. Responsibility For Fixing The Problem..... 29
- d. The Need For Campaign Fund-Raising Reform..... 30

V. ACTIONS ON CONTRACTS TAKEN BY THE PRIVATE SECTOR...…. 31

VI. THE NEED FOR CONTRACTUAL LEGAL ASSISTANCE……..……. 32

VII. THE RESPONSIBILITIES OF THE VOTING PUBLIC..... 34

VIII. RECOMMENDATIONS TO ELECTED COUNTY OFFICIALS..... 36

IX. RECOMMENDATIONS TO THE COUNTY MANAGER AND COUNTY DEPARTMENTS..... 40

X. RECOMMENDATIONS TO THE COUNTY ATTORNEY'S OFFICE..... 42

XI. RECOMMENDATIONS RELATING TO LOBBYISTS..... 42

XII. RECOMMENDATIONS RELATING TO PRIVATE COMPANIES AND GROUPS..... 44

XIII. RECOMMENDATIONS RELATING TO THE ISSUE OF A MIAMI INTERNATIONAL AIRPORT "AUTHORITY"..... 44

INDICTMENTS…….……..... 46 - 48

ACKNOWLEDGEMENTS…….……..……. 49

INQUIRY REGARDING THE MIAMI-DADE COUNTY CONTRACT PROCESS: A CALL FOR THE RESTORATION OF FISCAL TRUST AND CONFIDENCE

I. INTRODUCTION

The people of Miami-Dade County are currently enduring a crisis of confidence in our elected officials and our government in general. This crisis pulls each of us in two, self-contradictory directions. For instance, we all perceive the need for more governmental services, yet we vehemently oppose any more taxes. We all see the need to improve our public transportation systems, yet we crushingly defeat the very bond issues needed to fund these improvements. The entire electorate seems to be waiting for an epiphany that will resolve such contradictions and restore our lost confidence. So, instead of improving and advancing our community, an emotional gridlock prevails, damning social needs to a governmental purgatory until some vague future date when the public trust can be restored.

At the request of our State Attorney, Katherine Fernandez Rundle, our grand jury chose to complete the inquiry begun by our predecessor, the Fall Term 1998 Miami-Dade County Grand Jury, into the manner by which our local county government awards and administers contracts with private businesses. Accordingly, we have spent the full period of our term listening to witnesses, examining videotapes of public hearings and reviewing several contracts, bidding documentation and procedures. This undertaking has left us with a feeling of anger at the uncaring way that our public money was handled. It has also left us with the impression that, while many steps are currently being undertaken to address and remedy the abuses and excesses we have found, the paradigm shift needed to restore our confidence in county government has simply not occurred. No matter how justifiable the cause nor how urgent the need, not a single dollar of public money will be willingly entrusted to a public official or government department that the public perceives is unwilling to manage that dollar as if it was their own personal funds. Our inquiry began with the intent of examining various contracts and procedures and recommending change. However, as our term progressed, we soon realized that the proper mission of our grand jury would not be to simply rehash the mismanagement and lack of oversight that had become well known. We decided instead to use what we have found to form the underpinnings for the more difficult task of examining why financial trust and confidence

in our government has been lost and recommend the methods we think are needed for it to be restored.

Distilled to its essence, our examination of government contracts has led us to reach certain conclusions that we believe to be true and that provide the foundation for the solutions we have recommended in this report. First, the various efforts currently underway within Miami-Dade County government to address many of the problems we will detail in this report serve to highlight the fact that the quality of the *people* running our government provides the best protection from corruption and misuse. Also, the willingness of those within the agencies of our government to expose wrongdoing, both negligent and malevolent, lies at the very heart of our ability to trust the government itself. Without this important core of ethical and responsible people we truly believe that no system of government, no matter how well organized and no matter how structured, will ever be truly safe from manipulation by unscrupulous, unethical persons operating within or overseeing that government.

We have also reached the conclusion that the strongest ally in our fight against public corruption is public exposure. Many times during our term we have watched questionable actions taken by elected officials or government employees called into question in the court of public opinion. Once exposed to this harsh spotlight, we have also watched the resulting reversal of many of these actions. The greater the chance of this public exposure, the less likelihood there is that corruption will take root. It is therefore an unfortunate fact that many voters simply do not have the time in their daily lives to regularly attend commission meetings or workshops or watch these events unfold on television. In fact, many of us on this grand jury found ourselves watching the meetings of the Miami-Dade County Board of County Commissioners for the first time simply as a result of our selection for grand jury service. This experience has altered many of the conceptions we had of our county government process. It has been an eye opening experience for us all. We find ourselves today ending our grand jury service more educated as citizens and more learned as voters. We also realize the unfortunate fact that, without the kinds of personal experience we have been privileged to acquire through our grand jury service, too many of us are forced to rely upon our perceptions, rather than actual experiences, when judging the moral nature and effectiveness of our government.

It is much harder to restore confidence in government than it is to destroy it. Public credibility is a thin sheet of ice upon which every governmental official must cautiously tread. Once lost, confidence in government can not be restored by any single elected official, no matter how popular or ethical. Only a concerted and consistent effort undertaken by all elected officials will have a true chance to succeed. The public's belief and trust in its government is the single most important asset upon which our community's future relies. It is our sincere hope that our report will provide the catalyst needed to restore that trust.

II. ACTIONS BY ELECTED COUNTY OFFICIALS RELATING TO CONTRACTS

Within the structure of our local governments, the power and authority to award a contract currently rests within the purview of the elected officials within that government. For instance, in Miami-Dade County, decisions to offer a contract to the public sector begin with the majority approval by the 13 members of the Board of County Commissioners, to determine the method of solicitation for that contract. The solicitation can be in the form of the issuance of a Request for Proposals (RFP), a Request for Qualifications (RFQ), an Invitation to Bid or a decision to enter into a sole source contract through a Waiver of Bid. For RFP's and RFQ's, this approval also triggers the beginning of an extensive evaluation and negotiation procedure ostensibly designed to obtain the best goods or the most efficient services for the lowest price. If the RFP or RFQ is for a revenue producing contract, the goal is to produce the highest revenues from the bidder who also has the greatest chance of business success. Regardless, the entire mission of the process is to present to that same Board of County Commissioners a proposal recommended by the County Manager indicating to whom that contract should be awarded. This recommendation is then put to a vote and awarded, if at least seven of the thirteen county commissioners agree.

The opportunity to do business with our county government is a privilege. In most instances, enormous benefits can result. In 1998, for example, more than *one billion dollars* in contracts were approved by the Miami-Dade County Board of County Commissioners. Considering the vast wealth that can be awarded, it is not surprising that a huge potential for abuses of the system to award government contracts exists. At its best, this system aims to fairly direct the usage of public funds in the best fashion, while

awarding the contract to the most highly qualified business entity. At its worst, it can be used as a bottomless money pit through which to "pay back" past political support by pinpointing specific vendors, suppliers or other entities to be awarded a county contract or by crafting a contract solicitation to favor a particular individual or company. It is clear from their testimony that our local elected officials certainly realize this concern. They also clearly recognize that a perception of corruption will continue to hang over the entire contract award process until public confidence in government is restored. More importantly, this will be true regardless of the actual motivation behind the actions involved in the awarding of contracts. Once the integrity of the process has been questioned, as it has been in recent times, our county officials must expend every effort to ensure that the public has every reason to believe that county government contracts are awarded not *rewarded*.

Sadly, we have observed a number of instances that give rise to exactly the opposite perception. During our term we have watched, somewhat bewildered, while a number of contracts were considered, debated and, sometimes awarded. Consider the following actions we have observed among many undertaken by our elected Miami-Dade County officials during our investigation and our grand jury term:

- A recommended entity far more experienced in the particular subject of a contract than the others competing for the contract, also offers a far higher revenue return to our community than the other bidders. Despite these facts, we watched the awarding of the contract be subjected to a vigorous debate by the Miami-Dade County Commissioners, to the obvious amazement of the department staff present who were involved in the evaluation of this recommendation. The contract is finally awarded to the recommended bidder by a simple majority.
- In another contract, the Miami-Dade County Manager's recommendation is protested by one of the losing entities. Pursuant to county ordinance, this meant that the entire evaluation process was subjected to scrutiny in an evidentiary hearing before a retired Circuit Court judge, acting as a hearings officer. After hearing from all sides, including the protesting entity, a decision is rendered that upholds the manager's recommendation. The matter is then brought before the commission for the first time. An attempt was made to override the manager's recommendation and hearings officer's decision. It failed due to the lack of a two-thirds majority vote in favor of the motion. A majority thereafter votes to throw out the entire bid. As a result, the entire RFP process, its advertisement, the submission and evaluation of proposals and (potentially) another evidentiary hearing if a bid protest is filed, has to occur once again. We could discern no debate about the extra time, costs or lost revenue this will cause while the contract evaluation period began anew. The vendor of the expired

contract (who had not been the winning bidder) is granted a month-to-month contract extension and thus "wins" the right to receive county payments under the contract while this entire process takes place once again.

- In a third contract, the evaluation of the bids submitted for a new contact intended to replace it had almost been completed. It becomes obvious that more time is needed to complete this process than remained in the original contract's term. The matter is placed before the commission *solely* for the purpose of obtaining permission to extend the existing contract on a month to month basis until the bid evaluation process could be completed. Somehow, the process is converted into an examination of the bid process itself. This occurs despite the fact that it is not yet complete and any debate of that issue by the commission is premature. Nevertheless, a decision is reached to interrupt the almost completed bidding process by deciding to "restudy" the bidding method. This delay allows the current contract holder, whose contract was about to expire, to retain the contract during the delay. It was clear that this company was not going to be the entity recommended for the new contract. The commission reversed some of these actions after these facts were brought to light by the local media.

Viewed by a suspicious, untrusting public, all of these instances appear tainted. Various unsavory and nefarious suggestions can be made to easily fit. For instance, how could any elected official vote against awarding a contract to the entity found to be the most qualified and offering the greatest financial revenues to the county? How could they take actions that they had to know were going to cause the county to lose time and money by requiring a process to begin yet again? If the actions they were taking were correct, then why reverse them after publicity ensues? Perhaps there were lobbyists, hired by the objecting party, who used past campaign fund-raising to sway a commissioner's vote. Perhaps this was an attempt to award the contract to friends, or business associates or even to a relative of a commissioner's staff member. Perhaps the discussion being played out from the dais was only the outward portrayal of a behind the scenes tug of war between various moneyed interests and their respective commissioners? Last, but certainly <u>not</u> least, perhaps all of these actions were completely innocent in nature and taken for all the best reasons and concerns. When questioned, all of the participants in these and other similar events have assured us they had only the best intentions of the public at heart. Some explain their actions by pointing to their responsibility to serve as the last check and balance on the contract award process. Others allude to a lack of trust for the fairness of the selection process itself. Still others raise concerns that certain

firms may have been unfairly removed from selection because of overly technical requirements.

We as grand jurors can not prove what the exact motivations were for the actions we saw being taken. But we feel it to be highly important that we comment upon their *effect*. We are unable to shake our strong perception that the politics that permeated these proceedings completely overwhelmed whatever public interests were involved. We are also left with many unanswered questions concerning the true nature of the conduct we observed. This is an important lesson for our elected officials to learn: without the perception of ethical behavior, it is extremely difficult for us to believe in ethical behavior. If we are to trust in the actions taken by any government, we must not be left with reason to ponder the motivations behind their actions.

a. Lack of Contractual Common Sense

Sometimes the simple characteristics of the contract awarded raised similar doubts in our minds. What could possibly have caused officials at the Miami International Airport (MIA), and a previous County Manager to recommend, with the result that the Miami-Dade County Board of County Commissioners approved on November 7, 1995, the sole source purchase of 625 toilet seats with a three year cost of over $8,000 *each* for the Miami International Airport? Was this toilet seat purchase so important and so necessary to the operation of the airport that it required a specialty item only available (at that time) from one supplier and therefore not subject to a competitive bid? Was this the only method available to ensure the sanitary condition of these public toilets? Where was the analysis that compared these costs with other less expensive solutions? What would it cost for more janitors to clean the toilets on a more frequent basis? What would it cost to provide disposable paper covers for the existing toilet seats? Incredibly, none of these issues had been fully investigated before this contract was recommended by MIA officials and the County Manager to the county commission. Would they buy these expensive toilet seats for their own homes or businesses with their own money without even these most rudimentary evaluations? We suspect not. Regardless of the legitimate sanitary issues involved, our county government should not be recklessly spending money in this

fashion.[1] Again, everyone involved has assured us their motivations were either to improve sanitation in the restrooms or to promote the image of the airport for the traveling public and that nothing improper had occurred. To be fair, the agenda item was so innocuous that, without the detailed knowledge we now have, not one eyebrow would have been raised. Nevertheless, even this fact can look like deliberate deception if the truth is left to speculation. Did a political insider reap a windfall profit that will be repaid in future campaign fund-raisers? Was the award of this contract a pay back for past campaign assistance or some future quid-pro-quo? Was the Miami-Dade County Commission "tricked" into approving this contract by the way it lay buried in the agenda? Our elected officials and government agencies must remember that the public's speculation on this contract will be flavored by the apparent lack of common sense behind its approval. It will also reinforce the proposition that our county government simply can not be trusted with more of our money.

As we neared the end of our term, we watched with great interest the ongoing debate by the Miami-Dade County Commission over the course of two separate meetings concerning this contract. The original contract period had come to an end. Now the commission was faced with the decision of whether or not to continue to use these toilet seats (the 625 having been purchased by the County under the contract) and attempt to buy the plastic covering through a competitive bid process. To us, the embarrassment of many of the commissioners (some of whom had not been a part of the commission at the time the original contract was approved) and the current county manager (who also was not in office at the time the contract was approved) was readily apparent. Without saying it, they were all actually debating whether to now throw good money after bad.

In the first meeting, the manager's recommendation was to support a new competitive bid contract for the plastic covers. The commission needed more evaluations of this recommendation and tabled the decision for a later meeting. At the second public meeting, both the manager's recommendation and the commission's decision was to

[1] We were amazed at the number of witnesses who appeared before us this term and tried to make a distinction between tax dollars and the money collected from rents, landing fees or port fees at MIA or the Port of Miami as if that somehow provided justification for a different standard. Whatever their source, these are clearly *publicly managed* moneys and, as such, should be subject to the same scrutiny in their use, management and oversight as if these funds came directly from our pockets. In the final analysis, it is still the same Board of County Commissioners, or County Manager's Office, that is deciding the ultimate

"flush" the contract down the drain. The expensive toilet seats would be removed and "normal" toilet seats would be installed. Paper covers would be used to provide needed sanitation. While we applaud this decision as reasonable and appropriate, the simple difference in costs was so huge ($101,692 per year for the paper covers against $500,000 per year *plus* maintenance and other expenses for the plastic) we are left to again wonder exactly why it took so many years for this simple fact to be brought to light. As the manager's memorandum accurately stated: "…this [paper] option will increase the amount of service (748 locations versus 625 locations) with an annual savings of $1,220,108 compared to the current system." This simple fiscal evaluation was all that was needed four years ago to avoid this costly mistake.

The market situation for these toilet seats has changed in a number of ways since 1995. Since there is now a competitive marketplace for these toilet seats, firms offer the type of toilet seats that the county purchased under this contract for free as an inducement for the purchase of the plastic covers. As a result, the decision to end this contract has necessitated throwing away the seats themselves (perhaps, as noted in the commission's debate, to be dumped into the ocean and used to create a new artificial reef). We think this contract is a perfect example of a total disregard for the simple value of money beginning with the complete lack of evaluation of different solutions to the apparent indifference to the obscene cost of the seats themselves. Everyone associated with this contract should be ashamed of what has occurred here. Our county government officials have flushed over $ 5,000,000 down the proverbial drain.

b. <u>Social Engineering vs. Sound Business Practices</u>

Many times in our review of the process by which government contracts are awarded, we observed a conflict arise between the desire to accomplish social goals and the need to follow sound business practices. We all recognize that, unlike private businesses, governments will sometimes award a contract based purely upon social needs. One example would be the desire to support the growth of small, local businesses. Another would be giving preference in awarding the contract to a business with a local nexus. In some of these instances, the contract awarded may not always be the absolute best financial deal for the county. The responsible use of government largess in this

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disposition of these funds.

fashion is a legitimate and expected exercise of the authority of our elected officials to make policy decisions. However, based upon our evaluation of several contracts and the public debates relating thereto, there seems to be a lack of understanding on the part of many elected officials of the correct time, place and manner in which to engage in this conduct. For instance, an attempt to social engineer a contract after the RFP/RFQ has been publicly approved and advertised, after the firms have submitted their proposals, after a selection/evaluation committee has met, examined them, ranked them and submitted their findings to the manager and after the manager selects a recommended entity, will do nothing less than ensure that an aura of politics will permeate the entire process that follows. Whatever good that may have been originally intended by this debate will be lost. Such perceptions will give credibility to the possibility of favoritism or corruption; even if none in fact exists. Should the RFP favor smaller business or large? Should the contract be divided into different geographical regions of our community or not? Should there be an exemption to a particular legal requirement due to the nature of the services to be provided or the industry itself? These may be legitimate questions to be answered at the point when the solicitation of the contract is decided. These are clearly not legitimate questions to revisit after the entire evaluation process has been completed. Additionally, even when raised at the point when contract solicitations or specifications are being developed, great care must be taken to prevent that process from being converted into the "designing" of a contract to favor a particular company in any way. To accomplish this, our elected officials should engage in this social engineering only through resolutions or ordinances. This will help support the integrity of the process itself, by applying decisions such as this to all similar situations and not on an individual contract basis.

c. Politics vs. Sound Business Practices

Sometimes a public debate over a contract can turn into an opera of political intrigue. Armed with the knowledge we have gained from our grand jury service, we found ourselves to be interested spectators this term as the Miami-Dade County Commission debated circumstances surrounding the awarding of a telecommunications contract. On its face, the bid that had received the manager's recommendation would apparently result in a huge increase in revenue from the contract that was about to expire.

To us the monetary differences between the "winning" bid and the others were so great that it would seem a decision (from a simple dollars and cents point of view) would not be difficult to make. We were surprised to observe that this factor did not seem to carry as much weight in the debate as we thought it would. In fact, we watched what we believed to be totally unnecessary debates and discussions in two different commission meetings about this contract. First, when the contract had not yet received the recommendation of the manager (and therefore was not properly before the commission for approval or rejection) and then, in a second meeting, when the contract been approved by the manager but was in the process of a bid protest (and was therefore also not properly before the commission for approval or rejection).

In the final meeting we reviewed concerning this contract, the *sole* issue before the commission was a decision of whether or not to pay the hearings officer that was to hear the bid protest more than the usual amount of money to conduct what promised to be a lengthy and involved hearing. Surely this, being such a simple issue, would be quickly decided. Nevertheless we were treated to over two hours of commission debate about the terms of this contract solicitation, including the specter of watching two lobbyists on behalf of two different companies trying to argue their case before a commission that was (at that time) unable to vote on any of the issues they addressed. Despite a motion by one commissioner, made at the very beginning of this proceeding, to pay the extra money and get the process underway, it was not until these other issues were debated that the motion was finally approved unanimously. We wish to stress that we do not take great issue with some of the items brought out by the various commissioners in this debate; most concerning the fairness of the solicitation process on this contract. Clearly, the propriety of a change in certain requirements after bids had been received and thus the exclusion of some firms from bidding that might have otherwise been eligible, is a legitimate issue. But the time to debate these issues (as was pointed out by one of the lobbyists) is in the bid protest hearing and not before a commission that at the time and place had no legitimate authority to take action. The original contract this was to have replaced would have expired in January of 1999 but had to be extended so that services could continue to be provided while this Greek tragedy progressed. Now, almost one full year later, it is still being debated and the hearing over the bid protest has still not occurred. Because of

the differences between the new bid and the existing contract, we are apparently losing additional revenues in the amount of $14,000 per month while this process grinds slowly on. Based upon our observations of these meetings and our new found understanding of the government contract award process we, sadly, have little faith that the actual award of this contract will occur anytime soon. We certainly hope we will be proven wrong. Nevertheless, the difficulty and undesirability of "doing business with the government" is, by this instance, made abundantly clear. Before seeking a contract that would be subjected to these debates or disputes, a company would certainly want to make sure that they had sufficiently deep pockets to financially survive undergoing the sheer length of the process itself.

d. <u>A Part-Time Job With Full-Time Responsibilities</u>

A side result of our term spent reviewing many of the meetings of our Board of County Commissioners was a realization of the tremendous amount of time each of these elected officials spend doing what is required by our Home Rule Charter to be a part-time, $6,000 per year job. Because of this requirement, many commissioners are forced to engage in other professions as a means to acquire sufficient income to support their families and maintain their standard of living. This requirement also has the effect of narrowing the field of otherwise qualified individuals who would choose to seek election to this body. Many of the commissioners who appeared before us this term detailed the personal sacrifices, both financial and familial, they have made simply to perform the duties of their office. Obviously, the necessity of dual employment also reduces the time they can spend overseeing our county. In the current climate of suspicion, it can also be the source of speculation that private business interests are spilling over into public decisions. In 1957, when voters approved this charter our county government was much smaller and as a result this arrangement might have made sense. But today our County Commission oversees a budget in excess of three billion dollars. In fiscal terms, county contracts can rival those administered by Fortune 500 companies in both size and complexity. The many public issues our community has in addition to contracts deserve their full-time attention as well. We can no longer continue to retain the unrealistic expectation that part-time commissioners can perform the many roles we expect them to fulfill. The Board of County Commissioners should be composed of full-time,

adequately remunerated individuals with appropriate limitations placed upon outside employment.

e. Single Member Voting Districts

Last among our observations concerning actions taken by our elected county officials, relating to contracts, is an unintended effect that the otherwise hugely successful switch to single member voting districts has had. Required as a result of a Federal Court decision in 1992, our county was split up into 13 different districts, each individually electing a commissioner to represent their interests before the Board of County Commissioners. The intent of this decision was to increase minority participation in the local political process and government. By drawing the districts with a eye toward the composition of our population, minorities within the county as a whole could constitute majorities within their district and thus elect candidates more similar to themselves. This was, and is, a truly noble concept and it has worked beyond expectations. One has only to look at the current composition of the County Commission and compare it with what previously existed, to view that truth. However, since the entire commission does not have a single member that represents the entire community, we have observed a number of instances where their political vision seems to be similarly limited. For instance, many of the seemingly unnecessary debates we witnessed may have been directed, not to us, but solely to those residing within a particular commissioner's district. We suppose political pontificating has its place within the needs of the election process. We also know the political importance of making sure the message "I am representing your interests" gets through loudly and clearly to those whose votes really count when the election occurs. But we can't help but feel neglected and slighted when we see such bifurcation of purpose in *our* county's political governing body. This is especially so when decisions concerning *our* money are being made. We certainly do not wish to return to the way things were before single member districts. Unanimously, we believe the improvements in minority participation more than justify this unintended side effect. We merely wish to point out that, in addition to everything else we have described, this is just one more reason that trust in government is so low. We also wish to point out that this is a type of behavior that our elected officials have the power to individually correct.

f. Politics And Contracts Make Poor Bedfellows

Through our exhaustive review of contracts and the public debates about them, we have reached the inescapable conclusion that politics have no legitimate place in the development, solicitation or awarding of government contracts. At best, its inclusion seems to cloud the ability of elected officials to exercise due diligence and common business sense or results in further delays of an already too lengthy process. At worst, its inclusion will paint the entire process with a broad brush of corruption and support the currently easy to draw assumption that government is simply not to be trusted with our money or our property. We believe that finding a method to remove politics from the contract approval process could be the single most important change we could recommend to restore public confidence in the way our county government awards contracts. We also believe that providing reasonable limitations on the social engineering of contracts to be highly necessary as well. But, as we illustrate in the following section, if we decide instead to delegate these powers in some fashion to the county's administration, we must also ensure adequate safeguards over the use of that authority are put into place and strictly enforced.

III. ACTIONS ON CONTRACTS WITHIN COUNTY DEPARTMENTS

As we have previously described, the decision to award a county government contract is currently the sole province of our elected officials. However, once that contract is awarded, the role of managing and administrating that contract shifts to the particular department responsible for the subject matter of the contract itself. Our inquiry this term has led us to the examination of the administration of a large number of contracts within the agencies responsible for the operation of the Port of Miami, Miami International Airport (MIA) and the Water and Sewer Department. The examination of some of these contracts has been particularly horrific. Some of the contracts we reviewed are still under criminal investigation and have not yet been made public. For that reason, while we will draw general conclusions from them, we will not specifically describe them here. However, if there is a single "motherlode" of a contract still under investigation that exemplifies total misuse, exorbitant cost overruns, complete mismanagement and an extraordinary lack of concern by government officials for the value of our public funds, it is the Water and Sewer Department's Pavement and Sidewalk Repair contract number W-755. Accordingly, we devoted the greatest amount of our limited time this term to an

examination of the many issues and problems we found concerning this contract. As will be seen, this analysis will also highlight the absolute necessity that the current investigations of this contract, both civil and criminal, continue unabated.

In Miami-Dade County, the Public Works Department is the entity primarily responsible for the repair and paving of roadways throughout the county. For that purpose, the department uses contractors obtained through a series of competitively bid contracts. However, when areas of roadways or sidewalks are damaged as a result of repairs to the county's water and sewer lines, it is the responsibility of the Water and Sewer Department (WASD) and not the Public Works Department to patch those areas. Accordingly, WASD also uses a contractor obtained through a competitively bid contract to be on call when needed to provide these patchwork repairs. The most recent of these contracts, W-755, is simply a list of per unit costs for the commodities that would need to be supplied upon a work order being issued. For instance, if WASD issues a work order for a sidewalk repair, the amount of concrete used would be multiplied by the unit cost to determine the amount the county would pay. Included within these prices are the personnel and equipment costs associated with the job itself. Thus, one very important factor with these types of contracts is the recognition that, due to the costs associated with mobilization[2], the price of the particular commodity needed is controlled by the volume of that need. If a large volume is needed, the cost of mobilization will have a lesser effect upon the entire job and the per unit cost will be less. If a smaller volume is needed, the mobilization cost will constitute a greater part of the overall cost and will therefore cause the price per unit to be higher. These factors are well known within both WASD and the industry and are crucial to a company's bid since it will control the nature and size of any profit.

a. <u>The Bid Specifications Development Process For W-755</u>

To develop the specifications for W-755, WASD first determined the type of work they wanted to include in the contract as a "line item" and then estimated the quantity or volume that would be needed for each one. These specifications were then

[2] The costs of 'mobilization" refers to the fact that a minimum amount of equipment and personnel is needed regardless of the size of the repair. Therefore, to bring the crew and equipment to the job site to pour concrete costs essentially the same regardless of the amount of concrete that will be poured. To cover these costs, it is standard in the industry to charge more per unit for smaller jobs then for larger ones.

advertised. The contractor's bid on the contract would thus simply list the amounts they intended to charge per unit for each line item. These costs per unit would then be multiplied by the number of units estimated to be used and, when totaled, would represent the final bid figure submitted for the company. Obviously, the key factor to avoid cost overruns in this contract was for WASD to make sure the estimates of usage were as accurate as possible. If they underestimated the volume of a particular item, they would receive higher per unit prices than necessary. Since W-755 was evaluated by WASD as intended for smaller "patchwork" jobs and never for the greater volume needed for the repaving of entire streets or neighborhoods, it was considered reasonable to expect that bids would involve a higher price per unit than contracts such as those used, for example, by Public Works. As we will see, it was the failure of WASD, whether deliberate or otherwise, to correctly estimate the usage needed in this contract that directly caused the huge cost overruns that resulted.

Obviously, the patchwork needs represented by W-755 did not originate when that contract was awarded by the Board of County Commissioners in 1996. We found that three predecessor contracts, dating back to 1992, had been awarded for the same purpose. When we analyzed all of these contracts from a historical perspective, the increase in usage was not only breathtaking but would also be clearly apparent to anyone who had bothered to examine these details:

CONTRACT	AMOUNT PAID	% CHANGE FROM PREVIOUS CONTRACT
W-683	$ 3,970,370	
W-710	$ 7,527,522	+ 189 %
W-741	$ 19,166,130	+ 254 %
W-755	$ 37,171,665*	+ 95 %

*date the contract was suspended, amount is total paid as of that date

We are certainly not experts in the areas of paving and sidewalk repair contracts, but we think it should have been obvious, sometime between 1992 and 1997, that the work needed under these contracts were no longer "patchwork" in nature. In fact, from 1992 through its forced stoppage in 1997, the amount of money WASD spent for these "patchwork" repairs increased by more than 936%! Clearly someone inside WASD should have realized this when the estimates for these contracts were being developed.

Nevertheless, we have found that each new contract continued to be estimated and then bid out as if the nature of the volume was unchanged and as if, somehow, the extraordinary increases in previous years would simply never happen again. In fact, our examination of the manner by which the bid process for W-755 was structured has revealed a level of negligence within WASD that we find repulsive in its breadth. It also reveals a total disregard for the value of the public's money. In developing the estimates for private companies to use in structuring their bids, WASD completely ignored the prior history of use, under the contracts, for the exact same work that had preceeded W-755. Remembering that this was intended for small, patchwork jobs with larger per unit costs needed to cover the cost of mobilization, we find it to be either incredibly stupid or highly suspicious that past usage was so totally ignored.

By comparing W-755 with its immediate predecessor (W-741), we found a pattern where WASD grossly *overestimated* the items that had the least amount of prior usage. Even worse, it grossly *underestimated* the items that had the greatest amount of prior usage. This practice virtually guaranteed that the citizens of Miami-Dade County paid higher prices for the most often used items in W-755. For instance, if the actual usage during W-741 for "Asphalt Leveling" was 71,085 tons then why did WASD use an estimate of 13,440 tons in W-755 for the same time period? [3] If the actual usage in W-741 for "Thermoplastic Marking" (striping) was 306,896 linear feet, then why did WASD use an estimate of 88,000 linear feet? The extent of this failure is highlighted when a comparison is made between the original bid estimates for W-755 and the usage that was billed and paid over the exact same sixteen-month period:

ITEM	ORIGINAL BID ESTIMATE	ACTUAL AMOUNT OR COST	% OF DIFFERENCE
Thermoplastic Marking	117,333 feet	1,397,647 feet	+ 1,191%
Asphalt Leveling	10,667 tons	126,847 tons	+ 1,189%
Road Milling	$1,066,666	$4,546,933	+ 426%
Special Finishes	$ 746,666	$2,494,838	+ 334%

The differences between the estimates and the billed usage or costs are staggering.

[3] The estimates and actual usage of W-755 and W-741 encompassed different periods of time. To enable this comparison to be made, we adjusted the figures for both contracts to accurately represent a twelve

In W-755, the usage of Asphalt Leveling and Thermoplastic Marking (striping) were each underestimated by more than 1,100 percent. The cost overruns on *these two items alone* resulted in our community paying an additional $12,784,468 under this contract. Our individual analysis of the estimates used by WASD in the bid solicitation for W-755 reveals a total failure to exercise even a minimal level of common sense.

The cost to our community of the failure to correctly estimate the volume of work needed under W-755 is further exemplified when compared with prices for similar work under competitively bid contracts obtained by the Miami-Dade Public Works Department (Public Works). For example, the price obtained based upon the underestimation of asphalt leveling in W-755 was $88.00 per ton of asphalt. Existing at the same time as W-755 was a contract in Public Works for this same item, at a much greater volume, which was only $28.00 per ton. If WASD had simply chosen to use the existing Public Works contract, that single action would have saved the people of Miami-Dade County a total of $7,610,820 on this one item alone. When these potential savings are extrapolated to include the *entire* contract, the amount of money wasted in this fashion is almost beyond belief. In fact, when we took the bids submitted by all five companies on each line item in W-755 and multiplied these prices by the actual billings rather than the estimates used by WASD, it resulted in a complete reversal of the bid results. Incredibly, applying the actual billings under W-755 resulted in the bidder who had won the contract having the *highest* bid of all applicants instead of the lowest bid, as was originally submitted!

It is axiomatic that the main purpose of using competitively bid contracts is to obtain lower costs through the competition for the contract. For this to work, it is therefore necessary that the solicitation for the contract be structured in a fashion that enhances this competition. As if the failures of common sense we found in the estimates weren't enough, we also found substantial evidence suggesting that the contract solicitation was structured in a fashion that effectively discouraged competition. For instance, W-755 "bundled" a large number of different types of repair work into one contract. These included such varied areas as concrete pavement repair, repair and installation of the rock base for the asphalt surface, concrete curb and gutter repairs, reinforced concrete sidewalk and driveway repairs, fire hydrant slab repairs, asphalt and

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month period of time.

concrete resurfacing and leveling, thermoplastic road striping and contingency funds for the cold milling of the asphalt and repairs to pavers, chattahoochee and other special concrete finishes. The inclusion of so many different items in one "patchwork" contract might have had the effect of discouraging or eliminating bidders. For instance, contractors specializing in only some of these items might not bid since they had to provide all of these services if requested under the contract. The inclusion of these items also had the effect of tremendously increasing the size of the contract thus discouraging smaller contractors who perhaps did not have the staffing or logistical ability to fulfill these demands. The size of this contract also became a further obstruction to bidders since a 100 percent performance bond was required from the winning contractor. The inability of some firms to qualify for such a substantial bond operated as a restriction of the number of contractors who could submit bids. In light of this, it was greatly interesting to us to find that our concerns had apparently been shared by several members of WASD's staff at the time this contract solicitation was developed. Suggestions were made to split the contract by placing large asphalt overlays in a separate contract from small patches. This would have the effect of gaining lower costs through increased bid competition since companies that are more limited in the scope of the product they offer would be more likely to bid on this more limited contract. Nevertheless, this was rejected by WASD officials. A second suggestion to increase competition was to reduce the size of the bonding requirement. Since there was never expected to be more than one million dollars in outstanding work orders at any one time, there was no apparent need to require a bond in the amount of 100 percent of the entire contract price. This recommendation was actually included in the original draft of the contract but was changed back to the 100 percent bond requirement after one of the expected bidders complained.

b. <u>A Factual Omission In The Commission Presentation</u>

Turning our attention away from the total abandonment of fiscal responsibility in the bid estimation process, we next analyzed the process by which officials within WASD and a previous County Manager presented W-755 for the approval of the Board of County Commissioners. As we have previously described in this report, once the lowest bidder is determined and the County Manager selects the entity to which this contract should be awarded, a recommendation is made to the Board of County Commissioners for the

approval of the contract. Prior to this recommendation being presented we have learned that, not only had the amount of money appropriated under the preceding contract W-741 been completely used up, but additional work had been authorized and already performed by the holder of W-741. A portion of the funds recommended for authorization under W-755 was therefore intended by WASD to be used to pay for work already done under the predecessor contract. According to the testimony of witnesses, it is clear that this fact was never made known to the County Commission, nor does it appear to have been known at that time by the County Manager. This omission was significant. We have determined that at least $6 million worth of work from W-741 remained unpaid to the contractor at the time W-755 was approved by the commission. Incredibly this meant that, at the time it was approved, W-755 was already far short of the funds represented to the commissioners as necessary to do the work for the coming 12 months. This is inexcusable. However, we are sad to say that this farce did not end with that omission.

As could now be clearly predicted, the money designated for W-755 was quickly exhausted. As a result, WASD officials appeared before the commission and requested approval of a change order.[4] The substance of their request was for the commission to exercise an option available under the terms of the contract to extend it for another year at the same bid prices. Effectively, this would allocate the money that was to be used for work done in the second year of the contract to pay the cost overruns already occurring in the first. The explanation given to the Board of County Commissioners when they questioned this need was that there was more work than had been expected when the contract had been originally recommended for their approval. Based upon what we have found, we feel this explanation, as well as the earlier omission, served to hide important and material facts from the commission. The use of W-755 as the mechanism for the payment of work performed under W-741 had another fiscally irresponsible result. Since the unit prices in W-755 had been arrived at in a bid totally separate from W-741, the actual unit prices were higher. For instance, in W-741, Thermoplastic Marking was priced at $1.90 per linear foot; in W-755, it was $2.00. For Asphalt Leveling in W-741, it

[4] We have been astounded by the apparently common use of change orders as a method to increase the funding provided in many of the contracts we examined after they had been awarded. In the context of government contracts we think a request for a change order should be viewed as a red flag and trigger closer examination of the entire contract. For instance, when a contract such as W-755 ran out of money so quickly, the request for a change order should have caused an immediate investigation.

was priced at $80.00 per ton; in W-755, it was $88.00 per ton. As a result, we have been told that the county ended up paying higher prices for this work than was originally bid in W-741.

c. The Lack of Proper Administration and Oversight of W-755

Continuing our analysis, we now had a contract on behalf of the citizens of Miami-Dade County that was based upon totally inaccurate estimates by county staff, was providing for the payment of much higher per unit prices than necessary, and had already used up almost one-third of the funds needed for the first year of its term before any work under the contract itself had been authorized. Amazingly, things then got even worse.

The administration and oversight of this contract was the responsibility of WASD. It was to this department alone that the people of Miami-Dade County and the County Commissioners looked to ensure that no money was released until certain minimum requirements were met. First, the department had the responsibility to ensure that the work requested was necessary and that it was performed properly. Since no work could be done under the contract unless it was specifically requested through a work order (in government jargon called a "Distribution Authorization" or "DA"), the department had the responsibility of ensuring work was done in the order requested. This would assure that all jobs would be completed appropriately and avoid the possibility of a contractor choosing to do only the most lucrative or expensive jobs first. Once work ordered by WASD was represented to have been completed and a bill for the work submitted, the department had the responsibility to make sure these billings were accurate and that the work requested was in fact properly performed.

The contract underlying W-755 incorporated several safeguards intended to assure these goals were met. It required three different layers of inspections: the layout stage inspection; the in-progress inspection and the final inspection. In addition, a Master Sheet listing the work that was authorized would be delivered to the contractor and the work detailed therein had to be done in the order by which the Master Sheet was received by the contractor. To make sure this procedure was followed, no payment was to be authorized until all the work on the particular Master Sheet was completed. We believe, if adhered to, these and other safeguards written into the contract would have been highly effective. Unfortunately, the administration and oversight of this contract proceeded as if

these requirements did not even exist.

Especially in light of current efforts to reconstruct exactly what happened under this contract, our examination of the manner by which WASD discharged its responsibility for the oversight of W-755 revealed a performance so poor that to be described as dysfunctional would be a compliment. We found the internal record keeping to be sloppy, inadequate and sometimes totally nonexistent. We found the documentation necessary for the creation of the work orders upon which any work and payment under the contract was dependent to be almost completely lacking in internal controls. Even the process of generating, assigning and inspecting the work itself was so totally flawed and loosely structured as to almost be an invitation for abuse. Consider the following listing of some of what we found to exist:

- We found numerous instances where one supervisor's name appears on handwritten forms where it is has been determined that he did not write it nor authorize it. In some of these forms we have found a particular inspector who admits to have written the form and claims the supervisor's name was placed there at his direction; a fact that has been denied by the supervisor. In others the author is currently unable to be determined. The net result is a series of documents that provide absolutely no method of reconstruction of actions taken nor provision of any method to enforce accountability under W-755.

- We have determined that, although the work orders and inspections were tracked in a computer system, changes could be made to the computer information from various different locations by various different parties without the need to identify who made the changes, when they were made or under whose authority.

- We have found a number of instances where there have been material modifications or alterations made to the DA's, apparently by a FAX from WASD after the Master Sheets had already been issued. This was accomplished without any documentation as to the reason for these changes nor any record kept as to who was the authorizing party within WASD. Many of these modifications resulted in changes of substantial monetary value on the work orders. Without this needed information, the truth about many of these transactions has become impossible to reconstruct.

- The system used by WASD to initiate "in progress" inspections required the *contractors* to fax to WASD every morning the locations where work was being performed that day. We have determined that it was a common occurrence for WASD to receive this notification late, if at all. It was also common for inspectors to be assigned to inspect a location where a contractor was supposed to be performing work only to find no crews there when they arrived. While clearly a total waste of the inspector's time, the resulting failure to do an "in progress" inspection many times resulted in no inspection occurring while the work was being done. This made it extremely difficult to determine, after the fact, if the work was in fact done and done properly.

- Apparently, it was decided by WASD that they would measure the quantities of asphalt provided by the contractor on the basis of a volumetric formula rather than "load tickets."[5] Witnesses have told us that the volumetric method has numerous pitfalls, the greatest of which is that the process necessitates an "in progress inspection" to obtain an accurate depth measurement. We have determined that these depth measurements were usually not obtained by inspectors during any "in progress" inspections. Thus, there was no true inspection accomplished that could determine the actual amount of asphalt that had been used. Since payment under W-755 was to be made based upon the "units" of asphalt, this lack of meaningful inspection meant that the accuracy of the contractor's, or sub-contractor's, billings could not be verified. Not surprisingly, this has proven to be extremely problematic in the current efforts underway to determine the actual amount of asphalt provided and thus the amount of money that should have been paid. Once WASD decided to use the volumetric method, they were required to ensure the accurate measurement of all three dimensions in the asphalt pour: length, width and depth. WASD inspectors uniformly failed to measure the depth of the asphalt laid. As a result, it is now virtually impossible to accurately reconstruct the amount of tonnage of asphalt provided under this contract.

The total lack of oversight and administration of W-755 included an apparently common practice on the part of a number of WASD supervisors to delegate their responsibilities to subordinates without thereafter bothering to check or confirm the performance of these responsibilities. Incredibly some inspectors, when questioned about their failure to perform their inspection duties, claim they were never told to perform certain functions nor did they receive needed training. Consider the following examples:

- The final inspection is extremely important to ensure that the work billed for had in fact been done correctly, and that the amount of work billed for accurately reflected the amount of work done based on unit pricing. According to the testimony of witnesses and documentation we have examined, we have found more often than not a complete abandonment of even the *minimum* requirements for an accurate inspection. Many inspectors never even measured the linear feet of the work done, even though the unit of measurement upon which payment would be based, such as for thermoplastic marking, was linear feet. This was apparently standard operating procedure, yet we could find no record of any action taken, disciplinary or otherwise, by their supervisors. Many even claimed that they were never even instructed by their supervisors that this was part of their responsibility. In reality, what the inspectors did on final inspections was simply to confirm that striping had been placed on the road, or that new asphalt had been laid. This not only makes the reconstruction of what was or was not provided impossible, but also causes us to wonder just exactly who was in charge of these inspectors?

- Many WASD inspectors failed to maintain accurate and detailed daily logs establishing what they did, where they went and what they saw. Apparently, each

[5] The volumetric method uses measurements in three dimensions, to determine through a mathematical formula the amount of asphalt used. The load ticket method requires a receipt that specifies the amount of asphalt that was transported in each truck to the construction site.

inspector was left to his own devices as to the records kept and the accuracy thereof. If logs or notes were made, they were not kept in a systematic manner nor were they securely maintained.

- We have found a number of instances where payment under W-755 was approved even though we could find no evidence that any inspectors had ever actually inspected the jobs billed. On final inspections, we have found that supervisors regularly assigned jobs to an inspector without considering that a different inspector had been involved with the layout or in progress inspections on that job. To us it would make great sense to assign the final inspection to the inspector who was most familiar with the entire job. Yet, we could find no evidence that this was tracked in any fashion nor even given any consideration in determining the inspection assignments.

- The contract for W-755 provided, for we think obvious reasons, that payments for contingency work (such as Road Milling and Special Surfaces) required pre-approval for the work and the price before the work could begin. Incredibly, we have not yet been able to find a single supervisor within WASD who acknowledges responsibility for approving and pricing this work. Nor have we found anyone who acknowledges confirming that the contingency work that was done was worth the amount paid. The sections of W-755 that provided for contingency items resulted in a total billing of over seven million dollars. Yet we are unable to now determine with any degree of certainty what was approved or not, what was completed or not and what was received or not.

Considering the extremely high cost of asphalt under W-755, we were amazed to learn that this "patchwork" contract had been used to do major road repair and repaving within the City of Miami. We have reviewed documents that indicate extensive asphalt overlays were done even though we could find no direct need for WASD to do this work under W-755. Apparently, the City of Miami was requiring these asphalt overlays as a condition of issuing the needed permit for WASD's sewer-related work on City of Miami land. WASD failed to confirm that the work referred was in fact necessary for the sewer work they were performing and, if the work was necessary, never attempted to use a less expensive contract (the one held by Public Works for instance) to do these overlays. As a result, WASD provided a substantial amount of paving and striping on City of Miami land either unnecessarily or through the most expensive means.

d. Environmental Clean-up Becomes a Car Wash

While our extensive descriptions of what occurred in the administration and oversight of W-755 also detail items we have found repeated to varying degrees with many of the contracts we studied, we have chosen two others to exemplify and illustrate other types of actions that can perpetuate the loss of our confidence in county government and that demand systematic changes to avoid repetition. One is the manner in which a

contract at MIA was somehow metamorphisized from an environmental clean-up contract into a contract to construct a car wash.[6]

This DERM[7] 04 contract was approved by the Board of County Commissioners in 1996. It provided a pool of nine different contractors who would be available on a rotating basis to clean up any environmentally dangerous spills or conditions that might occur in Miami-Dade County and specifically at the airport. MIA, at that time, needed to construct a new car wash facility for the county vehicles at the airport. In normal circumstances, these capital improvements would have to be advertised and awarded after a competitive bid process had been followed. But these were apparently not normal circumstances because what happened next deserves a special place in *Ripley's Believe It Or Not Museum*: MIA decided, without seeking the approval of the County Commission, to use one of the firms listed in this environmental waste cleanup contract to build the car wash it needed. The firm they selected among the nine had never even built a car wash before. In fact, that firm would later need to hire an entirely different company to actually design and build it. Worse yet, the price MIA agreed to pay was approximately $809,000 more than what was estimated to be an appropriate cost. The absurdity of this business deal was not lost on the county staff who worked on it, many of whom were vocal in their frustration. But it seems that, despite all the staff objections, the use of the contract in this manner was approved. We feel this to be an obscene waste of over three-quarters of a million dollars of our money. Once again, this story only serves to reinforce the perception that government simply cannot be trusted with our money.

e. Telecommunications Leasing at the Miami International Airport

The final contract we wish to describe concerns the manner through which telecommunications are currently being provided at MIA. Due to the swiftly changing nature of the telecommunications industry, this contract is basically a leasing agreement wherein the latest technology can be rented then substituted when more advanced or improved equipment becomes available. However, we have learned that there are far too

[6] This contract also was used to construct a Waste Transfer Station at MIA. Since we found the same abuses to exist in that construction as we found in the construction of the car wash, we saw no need to further describe that contract here too. However, its exclusion should not be viewed in any way as to diminish our outrage at what occurred.

[7] DERM stands for Department of Environmental Resources Management, the Miami-Dade County environmental control agency.

few checks and balances upon items leased under this contract. As a result, MIA is currently paying for a number of items that are either incompatible with current systems or for which they have no current need. Examples would include:

- Communications consoles that have been sitting idle for over two years since they can't be made to work with the current systems already in use;
- A messaging system that can not be made to work with the existing messaging equipment Many Needed;
- An emergency disaster vehicle that duplicates an existing vehicle owned by the fire department and can not be used at the airport since it has not been FAA approved;
- Custom office furniture ordered on a expedited basis with no office space yet available for its installation.

f. Changes Are Already Underway

We offered this last example to illustrate that efforts at contract reform must continue unabated. In that light, we would be remiss if we did not recognize the many changes to the current system administering these government contracts that are already underway. In fact, one of the concerns we had when we decided to describe these contracts in our report was that we would not also be describing the many people within our county government that are trustworthy, that are excellent managers and that do have the appropriate respect for the public's money. Nor would we be describing county government contracts which are properly awarded, managed and performed. Within our current county government, we have found a number of dedicated elected officials and department heads that have greatly impressed us with their desire to rid our county government of its tarnished reputation.

We want to especially single out our current County Manager in this regard. It is an unfortunate fact that too many times simply doing a good job will go unnoticed. Even worse, when the public focuses upon detail after detail of negligence, malfeasance or even criminal corruption, it will unfairly seem as if everyone in government is corrupt. We came to our grand jury service convinced of the need to ask our officials why they were doing nothing to help restore our confidence in them. We end our term amazed at how extensively they and many others are working to make the changes needed to do

exactly that. As we recommend later in our report, we feel county government should institute actions designed to get this positive information more forcefully brought to the attention of our community.

Nevertheless, our examples clearly illustrate the abuses of public money that can result when oversight is not vigilant and actions that are taken can remain hidden from the awareness of the public. They also illustrate the fact that simply shifting the authority to develop and approve government contracts from the county commission to the county administration will not provide the "silver bullet" that solves all of the problems we have identified. It is clear to us that the process must be mostly removed from the county commission and mostly given to the county administration. However, it is also clear to us that there must be a separate source of non-political oversight over this entire process or we might simply be going from the frying pan into the fire.

IV. LOBBYISTS

As we progressed this term in our analysis and deliberations about the manner in which our county government awards contracts to the private sector, a recurring issue has been the propriety of, and propensity for, individuals who represent the interests of the companies competing for these contracts to become an integral part of this process. When we began our term, many of us had actually not heard the word "lobbyist" before. Therefore, by necessity, our deliberations on this issue had to start with a determination of exactly what it was we were examining. We have since learned that there are actually two very different missions engaged in by hired lobbyists. One involves speaking, on behalf of a client, to elected officials and government employees on issues of public importance and policy which are, of course, part of the true legislative functions of any government body. The other involves speaking to them, again on behalf of a client, in an effort to convince them that a particular company, bidder or vendor should be awarded a specific government contract. Clearly, it is the latter occupation that directly impacts the subject matter of our report and thus the conduct we have chosen to analyze and evaluate.

We quickly found that, whatever the underlying truth is concerning the impact of lobbyists, the issue itself is highly controversial. When questioned about this subject, many witnesses described lobbyists to us as the root of all that is evil in county

government. They suggested that nothing less than a complete and total ban on their activities must comprise the major component in any successful plan to restore integrity to our local government contracting process. Some witnesses did not go this far and portrayed them as necessary evils; conveying accurate information to elected officials to ensure knowledgeable decisions are being made and helping to bring some degree of order to the chaotic morass that the obtaining of a government contract has become. A few depicted the majority of lobbyists as ethical, high principled individuals who have been unfairly portrayed and branded as harmful due to the misadventures of a few and a desire on the part of the public and the news media to find a scapegoat. For the vast majority of witnesses there was simply no middle ground.

Clearly, lobbyists can be either hated or loved depending upon the eyes through which they are being viewed. Yet, not a single witness, regardless of the side of the argument they were on, could give us a specific example they had witnessed that *proved* that a elected official had voted a certain way *because* a particular lobbyist had been hired. Neither could a single witness give us a specific example they had witnessed that *proved* that an elected official had voted a certain way *despite* the fact that a particular lobbyist had been hired. Instead what was offered to us as proof were numerous instances where, for example, a particular lobbyist had been hired and his or her client won the contract. Or other instances where a particular lobbyist, "linked" through scuttlebutt to a particular commissioner, was hired and therefore that commissioner was blindly voting whichever way would benefit that lobbyist's client. In both instances, substantial amounts of fund-raising by the lobbyists were usually mentioned as proof of these points. However, left unproven was whether or not a commissioner voted the way they did simply because they were voting their conscience. This entire issue has become immersed in a shroud of suspicion, innuendo and speculation. However, as we have described throughout this report, if our *perception* supports a theory of corruption, our confidence in government will suffer as a result. We therefore have devoted a significant amount of our limited time to an examination of the whole issue of lobbyists within the context of the obtaining of county government contracts.

a. <u>The Lobbyist Controversy</u>

Simply by virtue of their election, public officials do not suddenly become knowledgeable experts in the various areas of goods and services for which local governments contract. Therefore, the ability to obtain expert information, or have it presented to them, is a necessity if intelligent decisions concerning these contracts are to be made. We do not think that the use of lobbyists in this fashion is the spark behind the current controversy. Rather, it is the message *presumed* to be delivered along with this information, or in its stead, that lies at the heart of this mistrust. If the lobbyist is a major campaign fund raiser for an elected official, then this message must be for the contract to be awarded to their client as a quid-pro-quo for the funds that were raised in the past or would be raised in the future. If the lobbyist is a personal friend or confidant of an elected official, then this message must be for that friendship to be the overriding consideration when it comes time for a vote. Using simple mathematics, the number of lobbyists one needs to hire would be governed by the number of votes needed to win the contract. Some, wanting even more assurance of victory, would hire many other lobbyists just to make sure the other side could not. The result would be teams of lobbyists swarming the large contracts, adding their fees to the costs the county will pay and tilting the selection process with their hired influence.

Shamefully, a substantial majority of witnesses we have heard from during our term truly believe that what we have just described is exactly what occurs. Each is quick to add, however, a few names of elected officials who they are sure do not participate in this scheme. It is of great concern to us that although the same names are usually repeated in this list, ominously, the same names are usually not. On the one hand, we can easily see where it would be of obvious financial advantage for one who is a lobbyist to represent to a prospective client being a "power behind the scenes." On the other hand, being associated or linked with a lobbyist is also, considering the current negative climate surrounding this issue, an obviously undesirable trait for an elected official to willingly exude.

While we have been extremely careful not to draw conclusions that are based upon conjecture or innuendo, we must confess that there certainly seems to be an awful lot of smoke surrounding this issue. Certainly, the practice of hiring large armies of lobbyists when seeking the award of a county government contract is an established fact.

The costs associated with these hirings are undoubtedly added to their bids or proposals and increase the cost of the contract as a result. If hiring a lobbyist is not based upon the belief that a commissioner's vote is related to that hiring, then why hire so many? Adding to our concerns and our suspicions, a majority of the lobbyists we invited to appear voluntarily before us to help us impartially sift through this issue decided not to attend; many adding that they would do so only if we issued a subpoena requiring their attendance. We briefly considered this alternative but quickly decided that the quality of their testimony would not be worth the potential harm the granting of use immunity[8] from criminal prosecution the subpoena would give. We therefore gave a great deal of consideration to the testimony of those few lobbyists who did voluntarily appear and testify. To a person we were impressed with their presentations and feel they helped us greatly in understanding the important role a professional lobbyist can play in our governmental system. Considering the reluctance of their peers, we wish to commend them for their willingness to assist us this term.

b. <u>An Attempt at Statistical Analysis</u>

Without a "smoking gun" and having decided that immunity was too great a price to pay for the mere *possibility* of obtaining additional meaningful facts, we decided to try to use statistics to answer the following question: "Does the hiring of a particular lobbyist assure or guarantee a client of the favorable vote of a county commissioner when it comes to the award of a contract?" We intended to begin by obtaining information from the County Manager's Office regarding all contracts that had been approved by the Miami-Dade County Commission during the years of 1997 and 1998. We would also obtain from the Clerk of the Commission the list of all lobbyists registered in Miami-Dade County for 1996, 1997 and 1998. Placing all of this information into a computer database, we would next add the names of the county commissioners and their recorded votes (or absences) regarding the award of these contracts. We then intended to conduct a statistical analysis to determine whether there was any correlation between a commissioner's vote and the lobbyists hired by the particular entities.

Considering the controversy surrounding this issue, we were surprised to learn that no one in county government had ever attempted to conduct such an analysis before.

[8] "Use" immunity refers to the inability to *use* the testimony of a witness against them in a court of law.

Perhaps because of this fact, we quickly found that the information we needed did not currently exist in a useable form. Some information was contained in a computer database and some was not. None of the data had been collected with this type of analysis in mind and thus there were no existing cross-references. Another problem was that the data was not entered in a uniform manner. Even worse, most of the data that had been collected was not specific enough to allow a direct correlation to be made. For instance, many of the registrations for lobbyists did not identify the contract for which they were lobbying. In other instances, the registration information itself was incomplete. Still others did not clearly identify the name of the party seeking the contract nor was there any linkage between that contract and the lobbyist registration itself. Despite our best efforts, and the full cooperation of the Miami-Dade County Manager's Office, it became obvious that this study could only be completed if we manually researched every file relating to every contract to extract the needed information. Even worse, if we had somehow been able to accomplish this mammoth task, the lack of the specific linkage needed to correlate a particular contract with a particular registered lobbyist meant that no statistically reliable result could be obtained. There is no question in our mind that this type of study is much needed to try to answer the question we, and many others, have raised. We are truly disappointed that we could not complete this project for our community. We also remain somewhat suspicious of exactly why such an analysis has not yet occurred.

c. <u>Responsibility For Fixing The Problem</u>

Our examination of this issue has resulted in the strong belief that the specter of the *Gatekeeper Lobbyist* is largely responsible for much of the public's current perception that government contracts are being rewarded to a few privileged companies or individuals. We also believe that the primary responsibility for the abatement of this perception must lie, not upon the lobbyists, but rather at the feet of the elected officials who are lobbied by them. Numerous witnesses have described, and many elected county officials readily admit, that they regularly socialize with, and are regularly seen with, a number of persons who also are hired to act as lobbyists regarding county business. While some portray this public association, and the resulting perception of "closeness," as part of the problem, we do not share this opinion. It seems to us that, just because one

becomes an elected official, one should not be expected to immediately abandon their friends. However, by the same token our public officials must realize that the abatement of this perception remains primarily their responsibility and thus should exercise great care to avoid the appearance of professional closeness. A perception supported perhaps by allowing a lobbyist to regularly "camp out" in their government offices, using their office telephones, or even being regularly seen with them during the course of their official business. We realize that this caution may seem to unfairly presume unethical behavior when none in fact exists. But if the crisis of confidence in government is to be overcome, who better to take the extraordinary measures needed than the ones entrusted with our government itself?

d. The Need For Campaign Fund-Raising Reform

While we deplore the necessity of campaign fund-raising for those who seek election to public office, we are forced to recognize that this is unfortunately a necessary evil in the current functioning of our democratic system. However, when one chooses to assume a public office, they also by necessity assume the burden of greater scrutiny of their conduct. As this burden relates to paid lobbyists, to us the reforms needed are clear. First, no elected official should ever allow anyone associated with that elected official to foster the appearance of favoritism or cronyism. Second, regardless of whether or not campaign fund-raising by lobbyists is in fact the source of influence or not, with regard to the award of county government contracts, the *public* clearly perceives it to be. Therefore, it is incumbent upon all of our local elected officials, including mayors, to restore credibility to their respective offices by excluding anyone who would lobby a local government contract from doing any fund-raising beyond a single individual campaign contribution.

V. ACTIONS ON CONTRACTS TAKEN BY THE PRIVATE SECTOR

It is often said that business is war. In the usual business relationships, where both entities are motivated by profit, it is acceptable practice for each side to seek the best deal and the highest profitability possible. While it may sound predatory, each side recognizes that it bears the sole responsibility to protect itself from its own mistakes

in the negotiation process. Sometimes these mistakes can result in an unfair advantage, a smaller profit or even an unexpected loss on a business deal. Companies who do not learn from their mistakes often go out of business. Business, in this sense, truly is the survival of the fittest.

There have been a number of contracts we reviewed where the private companies simply had to know they were getting more money from these contracts than, perhaps, they deserved. As a result, while not the usual area for grand jury scrutiny, we have found ourselves this term questioning the duties, responsibilities and ethical standards of private entities doing business with our county government. Unlike private business, if our government does not "learn from its mistakes" and loses money on bad business decisions, it will not go out of business. To make up the "loss," it will have to either reduce the services it is able to offer its citizens or raise taxes to make up the deficit, or both.

Ironically, sometimes the very people who benefit financially from the government's contracting "mistake" will also be among the people in that community who suffer as a result. For example, two of the contracts we reviewed this term had totally erroneous estimates of items needed as a part of the bid solicitation. This permitted the winning bidders to "unbalance" their bids by putting higher prices on items whose usage was underestimated and lower prices on items whose usage was overestimated. Thus, while these entities ended up with the lowest *total* bids, we ended up paying much higher prices for these items than the true usage would have necessitated. Unbalanced bids such as this can not be arrived at by accident. Detailed knowledge on the part of the private companies, and substantial calculations based upon that knowledge, are needed to arrive at these results. Clearly, the government entity or department that came up with the faulty estimates should bear primary responsibility for the public funds wasted. However, we think private companies should not be able to take advantage of financial windfalls such as these with impunity. When the money lost is public money, we think that private citizens and businesses should be held to the same ethical and moral standards we expect of our government officials.

Fortunately, within our community there are a number of volunteer efforts currently underway by many civic organizations such as the Greater Miami Chamber of

Commerce, the Alliance For Ethical Government and Mesa Redonda (to name just a few) intended to investigate and discuss these very issues. They are intent on developing a system of ethical standards that should be required of private industry doing business with government. We congratulate these organizations on their willingness to tackle this important project. We also believe that their recommendations, when developed, should be given great consideration by our elected officials and other community leaders, perhaps leading to the inclusion of appropriate requirements in the terms of county contracts themselves. However, at the same time, we caution their membership to engage in a debate that goes to the heart of these issues and not simply respond with "feel good" recommendations. To be truly effective, private companies must not only promise to engage in ethical business dealings with government. They must be willing to come forward and complain about unethical actions by government officials and agencies too. We fully appreciate the unspoken concern that this could result in a sacrifice of future government business. The actions we are suggesting will take great courage. Standing up and being counted often does. But we are sure there are many business professionals in our community who possess the credentials and ethical standards needed to take the lead in this matter. Taking a public stand against unethical behavior will become easier and less courageous to undertake when it is the norm rather than the exception.

VI. THE NEED FOR CONTRACTUAL LEGAL ASSISTANCE

There are a multitude of different agencies that exist within county government, each providing a special type of service or a specific type of assistance. We have already detailed the roles played by WASD and Public Works. There are a number of others that also participate or assist in the award of government contracts to private enterprise. The General Services Administration for instance, handles all procurement bids and contracts for the purchase of commodities (such as pencils, paper, and office equipment) for all county agencies including MIA.[9] Considering some of the poor business deals the county has entered into, we wondered what role the Office of the County Attorney played when it comes to the legal issues and oversight of these contracts.

[9] We note MIA separately here because, unlike every other department, MIA does not need to present RFP/RFQs to the County Commission for approval. The County Manager has the authority to approve these advertisements. Nevertheless, as with all other agencies, the award of all contracts must still be approved by the County Commission.

We were surprised to find that the County Attorney does not represent the people of the county. Hired by the Board of County Commissioners, the office is their legal representative and not ours. This apparently is true for every county or municipal government throughout the State of Florida. It would be of obvious benefit for individual county agencies to have legal counsel to assist them, for instance, by advising them that they had not done due diligence when making a decision to purchase toilet seats for over $8,000 each. However, witnesses have told us that this is not the role the County Attorney's Office currently fulfills. Instead, this office views its legal obligations as requiring the review of contracts solely for legal sufficiency and not for substance. No matter how poor the bargain for the public, their contract review will end once it has been determined that the contract is drafted in a manner to ensure the county can successfully sue to enforce that bargain in a court of law. While at first blush this seemed to us somewhat ridiculous, after further explanation it became obvious why this policy was developed. By following its dictates, the office is insulated from becoming embroiled in commission politics. The key element here is that the County Attorney represents the *entire* county commission as well as the Mayor and the County Manager. To become directly involved in whether a particular business deal is a good or bad one for the county might place them into a situation where they had to argue against the position of one or more of their "clients" and in favor of some others.

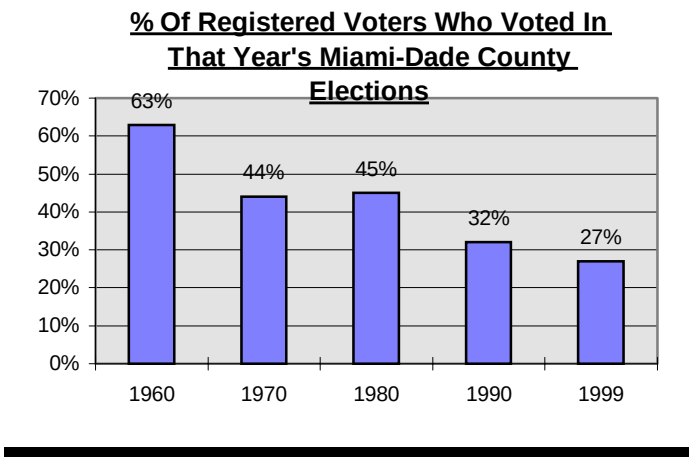
While we understand their position, nevertheless we feel that a change in the structure of this office, or its legal obligations, must be made so that the legal oversight so clearly needed can be provided. This could be accomplished in a number of different ways. Perhaps each county department that enters into contracts with private businesses could be provided with an Assistant County Attorney who is directed to review that contract on behalf of the public. They would also be given the individual legal responsibility of ensuring that the department exercises due diligence and sound business practices in the development of the business deal as well as the drafting of the contracts themselves. Should it be decided that this would present too great a chance for legal conflicts, then perhaps the County Attorney could be directed to employ outside counsel to perform this exact same role, perhaps placing these attorneys on the staff of the Inspector General. Regardless, the legal duty must be owed to the <u>public</u> and not to a

particular department or its director. The intent of this representation should be to ensure laws and rules are followed and not, for example, to provide advice to assist one who is intent upon exploiting legal loopholes. Should this prove too costly then perhaps the County Commission should enact an ordinance providing that the County Attorney's legal obligations should be to both the commission *and* the public (this would certainly provide an interesting legal debate should they turn out not to be the same!). In any event, the representation must also be structured in a manner likely to result in the quick enforcement of all contractual obligations of the contract. This is especially necessary when it relates to obtaining fiscal documentation required to be produced by the contract itself. For example, we have noted a number of instances in the contracts we reviewed where county auditors are still guessing about what actually happened due to a refusal of the contractors to produce the records as required by the contract. Swift legal action in all of these cases must be undertaken, not only to support the efforts to complete necessary audits, but to deter similar unjustified refusals in the future as well.

VII. THE RESPONSIBILITIES OF THE VOTING PUBLIC

It is often said that many citizens choose not to exercise their right to vote out of frustration: frustration with the choice of candidates, frustration with the apparent inability to believe one's vote would make any difference or frustration with government as a whole. Before serving on this grand jury, we could count many of ourselves among this group. But if we were now to list what we believed to be the single most important lesson our grand jury service has taught us, it would be how misplaced this frustration truly is. Spending our entire term watching and analyzing our county government in action has taught us that it is our own *inaction* as voters that is to blame. When bad government exists, our failure to vote reinforces its continuation. Through voter apathy, we delegate to special interest groups and lobbyists what should be our power to shape our government and the conduct of government officials. If we fail to exercise our most basic and precious right to choose who will govern us, how then can we justify complaining about whom it is that we get? As one of our members opined during our term, considering our current voter apathy, perhaps we are getting exactly the government, or government officials, we deserve. This apathy is not merely our perception. We totaled all of the registered voters who could have voted in Miami-Dade

County and compared them, in ten year intervals, with those who actually did. From this comparison, a disturbing and dangerous trend was revealed:



This precipitous decline in the willingness of citizens in our community to vote is tantamount to an abdication of the democratic process by the very people who constitute our democracy. It also illustrates the level to which our confidence and trust in government has been destroyed. In addition to acting as a catalyst for governmental change, we hope that our report can serve as a wake up call to everyone in our community that we are abandoning in large numbers this most basic of our constitutional rights. How can this be happening in a community to which so many have fled to escape dictators? Where we know so many who have left their homes and possessions behind in the pursuit of the exercise of this most basic of human rights? Who among us does not know of others who have lost their lives in their pursuit of what we are determined to so carelessly throw away?

We have detailed in our report many of the excesses and faults of our county government and made many references to the need to counter the public's negative perception. We have called upon our government officials and department heads to make many needed changes. Yet in the final analysis, it is still upon each of us, as voters, that we must rely. We need to relearn what we once knew and what the creation of our great nation was based upon so many years ago. Together, through our vote, we and we alone hold the ultimate power to force the changes we so desperately need. The greatest ally of any corrupt government is the apathy of its people.

VIII. RECOMMENDATIONS TO ELECTED COUNTY OFFICIALS

1. **Create a new process to remove politics from county contracts.** *We recommend that the Miami-Dade County Board of County Commissioners, the Mayor of Miami-Dade County and the Miami-Dade County Manager jointly develop and implement a restructuring of the current contract approval process so that the authority to approve the award of government contracts is removed from the direct involvement of the County Commission and the Mayor. The talents and time of our elected officials should be utilized to provide oversight of actions taken by county agencies and the County Manager relating to contracts and not the substance of the contracts themselves.*

2. **Remove politics and social engineering from the development and evaluation of individual contract specifications:** *We recommend that the Miami-Dade County Mayor and the Miami-Dade County Manager develop, and the Miami-Dade County Commission implement, a series of checks and balances for this new system that will insulate the development of all forms of contract solicitations from the political process as well as ensure truly non-political evaluations of the bids submitted. For example, the Commission and the Mayor should be restricted from any form of "social engineering" of individual contract solicitations. Policy goals should be permitted only in "broad brush" measures through the use of ordinances or resolutions applicable to entire classes of contracts. In addition, we recommend that a pool of qualified individuals, including members of the private sector, be developed for use in selecting participants on contract evaluation committees. This would address the many concerns voiced to us by witnesses that politics internal to previous County Manager's Offices can result in the development of specifications that favor one particular company, individual or vendor. We also recommend that all appointments to these committees be made by random selection to ensure that no person or individual within county government can control the composition of these committees. The entire process should be revamped with the specific intent of creating a system that will maintain public confidence by eradicating both the possibility and the perception that political favoritism within the contract development and evaluation process exists.*

3. **Provide independent oversight over the entire county contract process:** *We have been highly impressed with the City of Miami Oversight Board and the manner*

by which they have provided oversight over the few city contracts that we were able to review during our term. We congratulate the members of this board for their successful efforts to remove the effects of politics from many of these contracts. We are desirous of acquiring this same level of scrutiny over the contracts within Miami-Dade County too. While we are certainly mindful of the totally different scale of contracts entered into by the County and the City of Miami, nevertheless, we truly believe there must be a method wherein an oversight board can be created to perform this same function for county contracts. Perhaps the numbers can be made manageable by limiting their actions to contracts in excess of $500,000. Perhaps their actions can take place on a random selection basis rather than a need to undertake a complete review. Regardless we think the type of checks and balances this can place upon the entire contracting process in Miami-Dade County is necessary if we are to restore the public's confidence in this governmental system. Accordingly, we recommend that the Miami-Dade County Commission, the Mayor of Miami-Dade County, the Miami-Dade County Manager and the Miami-Dade County Attorney together develop and implement a fully funded equivalent of an oversight board for county contracts. The board should work in conjunction with the current audit efforts of Miami-Dade County's Inspector General's Office. For this concept to work, and to ensure that it has the public's confidence, it is imperative that the potential for political interference or influence within this board be limited as much as possible. Accordingly, we further recommend that the Miami-Dade County Commissioners delegate their power to appoint the members of this board to individuals outside of county government. For instance, appointments should be made by offices such as the State Attorney, the Chief Judge for the Eleventh Judicial Circuit, the League of Cities, as well as the various Chambers of Commerce within our community. In addition, even though we are aware that the Commission has no authority to require them to act, we feel that the Governor's Office, the State of Florida Attorney General's Office and the State of Florida's Comptroller's Office should be requested to select one individual to serve on this board as well. An alternate entity should be designated for this purpose should their offices decline this opportunity. Our intent with this suggestion is specifically to formulate an appointment process that includes such a varied group of entities and offices so as to limit the potential for similar political interests to join in providing a breeding ground for political favoritism.

4. **Show individual leadership in the creation of a culture within county departments that discourages unethical or illegal behavior and encourages their report:** *Our county elected officials must take the lead to ensure that no conduct harmful to public confidence in government goes unreported or unaddressed. We therefore recommend that each Miami-Dade County Commissioner and the Mayor of Miami-Dade County be required to personally conduct at least one class per year for county employees during which they stress the importance of reporting unethical or illegal behavior. In addition, the public must be assured that its elected officials are well aware of these requirements. Accordingly, we recommend that all county elected officials be required to participate in at least four hours per year of training in Ethics, Public Records and Florida's Sunshine Law.*

5. **Amend the county's False Claims Ordinance to provide legal and financial encouragement and reduce the fear of reprisal for those who would report illegal or unethical behavior:** *Clearly, the willingness of government employees to report the many excesses and mismanagement we found to exist in contracts such as W-755 is an important and integral part of the restoration of our trust and faith in county government. Too many times, those who would come forward with this information are afraid to do so in fear of retaliation either by lack of promotion or even demotion. We were pleased to observe this term the passage of a new False Claims Ordinance by the Miami-Dade County Commission that creates a civil cause of action for the submission of fraudulent billings to the county as a part of a contract. However, we feel that this law should be strengthened to permit additional remedies and also to help encourage people to come forward with this type of information. Accordingly we recommend the Miami-Dade County Commission amend this ordinance with this additional purpose in mind. For instance, a financial penalty should be added for those who would endeavor or attempt to submit a false or fraudulent claim. The percentage of proceeds that a private (reporting) party could receive should also be increased from the current 10 percent in an effort to provide a greater financial incentive to come forward. We also feel that criminal penalties should be added to punish the most egregious of violators. The intent of these amendments should be to encourage those who know of fraudulent or false claims to report them without fear of reprisal, to deter those who would file false claims*

from doing so and to punish those who actually file false claims to the maximum extent permitted by law.

6. **Show zero tolerance for a failure to comply with ordinances relating to ethics and lobbyist registration:** *We have noticed a certain laxity on the part of some local elected county officials to file the complaints needed to begin the investigation and enforcement of some of the requirements of county ordinances relating to ethical conduct and especially lobbyist registration. In addition to informing others of their responsibilities, our elected officials must themselves be mindful of the need to report and take action against all violations of the rules and ordinances they themselves enact. Accordingly, we recommend that the Miami-Dade County Commission amend the existing county ethics ordinances to provide an affirmative duty upon all elected county officials within Miami-Dade County to report to the appropriate authority any unethical or illegal acts. The knowing failure to so report should itself be punished as a violation of the ethical responsibilities of these officials.*

7. **Make the job of County Commissioner equal with its responsibilities:** *For reasons we have detailed previously, we recommend that the Miami-Dade County Board of County Commissioners pass a resolution to place on the ballot for the next general election the issue of changing the position of County Commissioner from a part-time to a full-time position with a ban on other outside employment and with a salary commensurate thereto. Great consideration should be given to the inclusion of term limits as a part of this reform.*

8. **Use the many examples in existing federal law as guidelines for changing the current legal requirements concerning county contracts:** *Lastly, we recommend that the Miami-Dade County Commission, the Miami-Dade County Mayor and the Miami-Dade County Attorney review the many current restrictions that exist within Federal law relating to contracts and bids. Within these laws and regulations lie many useful ideas that should be incorporated into the language of county contracts or in ordinances relating thereto.*[10]

[10] We are here specifically referring to 48 C.F.R. § 3.104 and 41 U.S.C. § 423 (relating to language required in Federal procurement contracts and providing penalties for violations and the Federal Acquisition Regulations applicable thereto).

IX. RECOMENDATIONS TO THE COUNTY MANAGER AND COUNTY DEPARTMENTS

1. **The failures we have documented within the oversight and administration of W-755 must provide the impetus for a compete review and overhaul of oversight methods used by every county department relating to county contracts:** *We recommend that the Miami-Dade County Manager and the Miami-Dade County Audit and Management Services Department conduct an analysis of all current standards and requirements utilized by each county department as a part of their oversight and administration of county contracts. This analysis should be designed to uncover and remedy failures of the type we found to exist within WASD's oversight of contract W-755 and that we have previously detailed within our report. Particular emphasis should be placed upon lack of adequate follow-up, lack of proper supervision, lack of proper training, lack of appropriate discipline for violations of procedures and lack of documentation. We should never again be placed in a position where we are unable to quickly determine and prove what was performed within a county contract, what was not and why. In addition, this department should also be directed to conduct random audits of the bid estimates used by various county agencies to determine if they have been correctly estimated or not.*

2. **Remove "change orders" as a method of increasing the funding of county contracts after approval except in the most limited of instances:** *We recommend that the Miami-Dade County Manager and the Miami-Dade County Attorney develop specific language in all contracts that limit the use of "change orders" as a mechanism to alter any of the terms of the contract. To protect the public from some of the cost overruns we found in W-755 and other contracts we reviewed, under no circumstances should a change order be permitted to increase the amount of funding under a contract by more than 10 percent of the original contract amount. An excess of this size should be filled by the issuance of a new contract solicitation and not by a change order. Should an increase in excess of 10 percent be needed, we recommend that the County Manager require a detailed determination of the reasons for the cost overruns and require an immediate audit of the contract by the Miami-Dade County Audit and Management Services Department.*

3. **Increase the class of county employees who are required to file Financial Disclosure Forms and amend the forms for all county employees to provide more specific disclosures relating to gratuities or cash received:** *Within county agencies, especially at MIA, we have noticed a level of employees who have been delegated the authority, as a part of their management of an existing contract, to direct purchases to particular vendors that were approved for that contract. Yet many of these employees are not currently included within the class of employees required to submit Financial Disclosure Forms under penalty of law. This loophole in the ability to uncover potential conflicts of interest must be closed. We therefore recommend that the Miami-Dade County Commission enact an ordinance requiring that all county employees whose primary duties include the negotiation, administration or oversight of county contracts file a Financial Disclosure Form annually. In addition, the current form should be expanded to mandate the disclosure of any cash received by an employee, including the specific designation of the source of that cash. The form should also contain a section requiring the employee to affirmatively state that no gratuities or gifts have been received or accepted from any vendor, individual or company that does business with the county within the general area of that employee's duties. Finally, the Disclosure Form itself should be amended to include the language and warnings of Florida's Official Misconduct Statute, placed directly above the employee signature line.*

4. **Increase the public's confidence in government by forcefully and creatively advertising the good news about our county government and employees:** *We were amazed at the sheer number of initiatives that are currently underway to improve our county government and that we were unaware of until our grand jury service. We also feel strongly that, if this information had been known to us, our frustrations with government would not have been so strong. As a community and a nation, it seems that we sometimes dwell far too much on the bad news and are far too disinterested in the good. This leads to the perception that everything about government is bad, a proposition we now know is simply not true. Accordingly, we recommend that the Miami-Dade County Manager develop an expedient and cost effective plan to more adequately and forcefully project into the community awareness, perhaps through a regular newspaper, television or radio advertisement, the many proper, intelligent and*

resourceful things that county agencies and county employees do. We also call upon our local media to support this important initiative, either by being more willing to prominently place these types of items in their particular form of news dissemination, or by donating space or time for this important public good.

X. RECOMMENDATIONS TO THE COUNTY ATTORNEY'S OFFICE

Restructure the office to provide legal oversight regarding both the form and the substance of county contracts: *We recommend that the Miami-Dade County Attorney's Office be restructured to provide legal oversight over county contracts that is designed to address both the form of the contract and the substance of the underlying business deal. This office should take the lead in ensuring that county government and county departments exercise due diligence in all contractual matters. It should also provide the people of Miami-Dade County with swift enforcement, through litigation if necessary, of the contractual obligations of private business. In this regard, emphasis should be placed upon actions to obtain records needed to complete the county's audits of existing contracts.*

XI. RECOMMENDATIONS RELATING TO LOBBYISTS

1. **Remove the ability of anyone registered to lobby contracts before the Miami-Dade County Commission to engage in fund-raising for political campaigns relating to those elected positions and for the position of Miami-Dade County Mayor:** *We recommend that the Miami-Dade County Board of County Commissioners enact an ordinance providing that no individual who is or becomes registered to lobby the Miami-Dade County Commission or the Mayor of Miami-Dade County concerning a government contract, and no group, partnership or firm that is associated with or employs any such individual, may engage in any form of fund-raising for the campaign of any member of, or candidate for, the Miami-Dade County Commission or the Mayor of Miami-Dade County. The sole exception to this prohibition should be an individual contribution to the maximum permitted by law. Our intent with this recommendation is to remove any link, real or perceived, between campaign fund-raising and the manner by which government contracts are developed, solicited and awarded.*

2. **To support the enforcement of this prohibition, all campaigns for election, or re-election, to the Miami-Dade County Commission and the office of Miami-Dade County Mayor should be required to report the identities of all entities or individuals who conduct fund-raising efforts on their behalf:** *We recommend that the Miami-Dade County Commission enact an ordinance requiring any and all candidates for local elected offices, including incumbents seeking re-election, file with the Miami-Dade County Department of Elections a list of any and all individuals who have raised funds for their campaign (other than a personal contribution on behalf of themselves) that clearly identifies the names, amounts and occupations of those from whom these contributions were received.*

3. **Provide the positions and funding needed to permit a statistical analysis, relating to county contracts, to determine if there is any correlation between the votes of commissioners and the hiring of lobbyists:** *Should our recommendations intended to remove the Miami-Dade County Commission and the Mayor of Miami-Dade County from the development, solicitation and approval of contracts not be followed, we recommend that the Miami-Dade County Clerk of the Commission be provided with appropriate funding and personnel to permit a statistical study to be conducted and published bi-annually, with the intent of determining if there is any link or pattern between the voting record of the commissioners and any and all registered lobbyists. Should a pattern be determined to exist, all information relating to this study should be immediately referred to the Miami-Dade County Police Department's Public Corruption Unit, the Miami-Dade County State Attorney's Office and the Miami-Dade County Inspector General's Office for an expedited investigation.*

4. **Provide greater public accountability for the manner by which registered lobbyists appear before the Miami-Dade County Commission:** *We further recommend that the Miami-Dade County Clerk of the Commission utilize a computer database during commission meetings to verify that a particular person who wishes to address the commission as a lobbyist is in fact registered as a lobbyist, has complied with all requirements of that registration, and has paid all applicable fees before they are permitted to speak. In addition, it should be a requirement that every lobbyist clearly announce their name as well as the name of the entity they have been hired to represent.*

XII. RECOMMENDATIONS RELATING TO PRIVATE COMPANIES AND GROUPS

Our civic leaders and our business community must take the lead in self-policing the business ethics of companies that contract with our county government: *We recommend that the Greater Miami Chamber of Commerce, the Miami-Dade Chamber of Commerce, the Latin American Chamber of Commerce, Mesa Redonda and the Alliance For Ethical Government together create a Code of Business Ethics and form a joint Ethics Council to enforce this code. Details of unethical behavior on the part of local businesses should be presented before this Council and a determination made if the action was in violation of the ethical standards developed. If a violation is found to have occurred, a recommendation should be made that the membership take appropriate actions designed to discourage that entity from repeating the behavior. These actions should include public condemnation or even removal from membership.*

XIII. RECOMMENDATIONS RELATING TO THE ISSUE OF A MIAMI INTERNATIONAL AIRPORT "AUTHORITY"

The creation of a separate "authority" to administer the business of MIA should continue to be carefully and thoughtfully considered but must not be looked upon as a "silver bullet" that will somehow solve all of MIA's problems. The method of its structure, and the willingness of elected county officials to divest themselves of authority and oversight, will be instrumental to its success or failure: *During the very end of our term, the concept of creating a separate "Authority" to run Miami International Airport became much debated. We too have attempted to use the little time remaining in our term in an effort to understand this concept. Although we were fortunate to find a study*[11] *that had already canvassed and detailed the various forms of authorities and the methods of their creation, we quickly discovered that this study was not intended to answer the most important question relating to the subject of our report: Would the creation of an Authority to operate MIA truly limit the existence of*

[11] We are referring to the "Final Report: Airport Authority Feasibility Study" completed on September 30, 1996 and presented to the County Manager's Office on that same date.

politics or favoritism concerning the award of contracts for that facility? Clearly, if the members of this authority were to be appointed by the Miami-Dade County Commission (as currently required by our Home Rule Charter), then the same potential for politics we previously described would still exist. Even if the Authority were to be an appointed but completely independent entity, its politics could still be determined by the persons empowered to decide who gets appointed. Once again, depending upon the <u>people</u> involved, questions of politics or favoritism could still remain. Finally, to create a truly independent board would mean amending our Home Rule Charter, requiring the question to be placed upon a ballot and decided in a countywide election. This is certainly not a quick-fix scenario. While we certainly like the concept of a totally autonomous board, we think there still remain far too many questions concerning this issue for a knowledgeable recommendation to be made. Furthermore, if the system to remove politics that we have recommended were successfully implemented, there may be no real need for this Authority at all. Nevertheless, we do feel that this issue should continue to be subjected to serious public evaluation, beginning with an effort to determine if the creation of an Authority has successfully addressed problems in other jurisdictions, including corruption, that are similar to the ones we perceive we have at MIA.

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
JORGE NOLASCO	First Degree Murder Attempted First Degree Murder Attempted First Degree Murder Unlawful Possession of a Firearm While Engaged in a Criminal Offense Discharging a Firearm From a Vehicle	True Bill
ANDREW McWHORTER	First Degree Murder	True Bill
JUANA MARTINEZ	First Degree Murder Child Abuse/Aggravated/Great Bodily Harm	True Bill
CARLOS FERNANDEZ, also known as "YLO CARLOS"	First Degree Murder With a Firearm Unlawful Possession of a Firearm or Weapon by a Convicted Felon	True Bill
ROLAND GEORGE	Robbery Using Deadly Weapon or Firearm	True Bill
ANTHONY GARY FERGUSON	First Degree Murder	True Bill
JUAN CARLOS MANCIAS	First Degree Murder	True Bill
JUANA MARTINEZ	First Degree Murder Child Abuse/Aggravated/Great Bodily Harm	True Bill
TERENCE JOHNSON	First Degree Murder Armed Robbery	True Bill
DUDE WHITESTONE, also known as THOMAS PELLECHIO	First Degree Murder	True Bill
CECIL HART	Armed Kidnapping Armed Robbery Attempted Burglary of a Dwelling Burglary of a Conveyance Grand Theft Auto First Degree Murder	True Bill
RONALD JOHNSON	First Degree Murder Robbery/Carjacking/Armed Armed Burglary Robbery Using Deadly Weapon or Firearm	True Bill
KRISTOFFER HURLSTON	First Degree Murder	True Bill
ANDRES CARRENO (B) and NATALIA VELEZ (A)	First Degree Murder (B) Child Abuse/Aggravated/Great Bodily Harm (B) Child Abuse/Aggravated/Great Bodily Harm (B) Aggravated Manslaughter of a Child (A) Child Neglect/No Great Bodily Harm (A)	True Bill
ANDREW McWHORTER (A) and JAMAL BROWN (B)	First Degree Murder	True Bill

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
CARLOS MIRANDA, also known as EUGENE ADORNO CHEEKS, also known as DANIEL OTILIO ALCANTARA-CERVANTE	First Degree Murder Arson First Degree	True Bill
JERRY NEIL ALFRED	First Degree Murder	True Bill
ROBERT REGINALD WEATHERSPOON	First Degree Murder Attempted First Degree Murder Armed Burglary	True Bill
DANIEL GARNER GRIMMETTE and BETHEL D. GORDON	First Degree Murder Attempted Strong Armed Robbery	True Bill
BEN EDWARD SMITH	First Degree Murder Unlawful Possession of a Firearm or Weapon by a Convicted Felon Unlawful Possession of a Firearm While Engaged in a Criminal Offense Aggravated Assault with a Firearm Aggravated Assault with a Firearm Attempted First Degree Murder	True Bill
ARTHUR JAMES MARTIN	First Degree Murder Robbery Using Deadly Weapon or Firearm Robbery Using Deadly Weapon or Firearm Burglary with Assault or Battery Therein While Armed Unlawful Possession of a Firearm or Weapon by a Convicted Felon	True Bill
STEVENS CELESTIN, also known as STEVENS EMANUELLE CELESTIN	First Degree Murder Aggravated Assault with a Firearm	True Bill
JOHN TAYLOR and MARKO DUKANOVIC	First Degree Murder Burglary with Assault or Battery Therein While Armed	True Bill
TAVARES DANIELS (A) and ANTHONY MONTGOMERY (B)	Attempted Armed Robbery First Degree Murder Unlawful Possession of a Firearm While Engaged in a Criminal Offense Unlawful Possession of a Firearm or Weapon by a Convicted Felon (B Deft only)	True Bill
HAROLD CABRERA, SALVADOR VALDEZ, CHRISTIAN A. ECHEVARRIA, JOHN IGNACIO PERNAS and VICTOR JESUS LOPEZ	First Degree Murder Armed Robbery	True Bill
ENRICO FORTI	First Degree Murder	True Bill

NAME OF DEFENDANT	CHARGE	INDICTMENT RETURNED
TAVARIS E. SNELL and KEVIN BULFOUL ROWE	First Degree Murder Attempted Armed Robbery Unlawful Possession of a Firearm While Engaged in a Criminal Offense (B only)	True Bill
CORLEON LAMONTE THOMPSON	First Degree Murder Burglary with Assault or Battery Therein While Armed	True Bill
CORIAN TENNILLE JONES	First Degree Murder Robbery Using Deadly Weapon or Firearm	True Bill
YVETTE VIVIAN YALLICO	First Degree Murder Child Abuse/Aggravated/Great Bodily Harm/Torture	True Bill
GORDON ST. AUBYN GREEN (A) ROGER BARRINGTON POWELL (B) TORRELL MICHAEL WILSON (C) and EDWARD DEWAYNE MONCRIEFFE (D)	First Degree Murder (B) Murder Third Degree (A,C,D)	True Bill
RONNIE OWENS (A) and BARRY LEONARD MCINTOSH (B)	First Degree Murder Armed Robbery Burglary with Assault or Battery Therein While Armed	True Bill

ACKNOWLEDGEMENTS

"Service is the price we pay for the space we occupy on Earth."

We, the Miami-Dade County Grand Jury for the Spring Term 1999, as humble servants of the community, would like to give acknowledgement where it is due. The people that have nurtured, inspired, guided, and educated this diverse group are deserving of a great deal of thanks.

To the Honorable Judge Judith L. Kreeger and State Attorney Katherine Fernandez Rundle, who remained ever mindful that diversity enriches us all, we say thank you for giving all facets of our community a chance to serve.

We would like to recognize and thank Chief Assistant State Attorney Chet J. Zerlin and, Assistant State Attorneys Fred Kerstein, Joseph Centorino, Gertrude Novicki, Mary Cagle, David Paulus and Howard Pohl for their participation and active involvement, providing necessary information and guidance while insuring the entire group understood the topics.

In addition, our thanks goes out to Rose Anne Dare, Administrative Assistant, Nelido Gil, Jr., Bailiff, Julio Fernandez, Interpreter, and Angela Garcia, Court Clerk, for their dedication and commitment during this Grand Jury's term.

Respectfully submitted,

Dottie D. Wilson
Dade County Grand Jury
Spring Term 1999

ATTEST:

_____
Barbara J. Krause
Clerk

Date: _____