



New Orleans' Effort To Privatize Its Water And Sewer Systems: An Analysis

September 2001

Last year, the city of New Orleans began the process of privatizing its water and wastewater systems after a financial advisor recommended hiring a private company to operate, maintain and manage the systems.

The advisor believed that only privatization could avert rate increases as high as 45 percent for water and 39 percent for wastewater over the four years when the city will spend \$1.3 billion on capital improvements to the systems.¹

In February 2001, the New Orleans Sewerage & Water Board (S&WB) released a draft of the documents calling for private bids – the “request for qualifications/request for proposals” (RFQ/RFP). The original time schedule gave the public only 10 days to comment on a very long and cumbersome document. In the wake of public protest, the S&WB agreed to extend the period by four months and pledged to review all public comments.

The Criticism: Swift and Sweeping

Several civic organizations, though not necessarily opposed to privatization, did, however, offer negative assessments of the RFQ/RFP. Among them was the New Orleans Bureau of Governmental Research (BGR), whose report, partially funded by the New Orleans Chamber of Commerce, was instrumental in modifying the proposal.

The BGR outlined several challenges facing

the S&WB, namely those dealing with operations, finances and governance.

According to the BGR, the operational challenges involved maintaining and repairing a system of pipes and pumps situated in unstable soil, and implementing upgrades necessary to comply with increasingly stringent environmental standards.

Financial challenges involved shrinking grant funds, lack of sufficient rate increases and a 1998 agreement with the U.S. Environmental Protection Agency to do nearly a half-billion dollars worth of sewer repairs over 10 years.

Finally, governance challenges involved the Board's lack of independence; all of its members were either elected officials or appointed by the mayor.²

Additionally, the BGR offered the following criticisms:

- ◆ The RFQ/RFP had ambiguous selection criteria, and the document lacked certain protocols and adequate selection guidelines.
- ◆ The RFQ/RFP had no fewer than 18 different bidding scenarios, a complication that the BGR said would discourage bidders from coming forward. The BGR also asked for an extended time period for prospective bidders to review S&WB records and visit facilities.
- ◆ The BGR recommended that bidders not only demonstrate that none of their officers or affiliates had ever been convicted of fraud in the U.S., but also in other countries. The Bureau

also noted that the RFQ/RFP did not require the disclosure of arrangements among bidders and people capable of influencing the process. And, the draft did not require disclosure of payments, gifts or contributions to local politicians.

◆ The Bureau criticized several contract provisions that had the potential to undermine cost savings by facilitating patronage and providing an opportunity for ambiguities in the division of responsibility.³

Despite the criticisms, the Bureau found that managed competition – inviting private firms and the city employees to bid on the contract – would produce better results than would restructuring within the S&WB.

The Sewage & Water Board met in June and July to evaluate the public comments. On July 25 it amended the RFQ/RFP to address some of the criticisms, such as reducing the number of bidding scenarios.⁴ And, the new RFQ/RFP more clearly outlined the criteria by which bidders would be evaluated, and established a detailed point system to grade bidders on their cost effectiveness, technical approach, employee compensation and commitment to hire minority- and women-owned contractors.⁵ The new RFQ/RFP also made clearer the board's intent to comply with state public bidding law.

A 13-member Special Evaluation Committee (SEC) will rank the proposals and direct the best bids to the S&WB, which will in turn create its own ranking.⁶

The Timetable: What's the Hurry?

Still, the proposal comes with a fast-paced timetable – a sure reason for concern. Bids are due by December 21; the SEC will complete its rankings by January 4 and submit them to the S&WB on January 8; the Board will make its decision by January 23 and sign the contract on January 30.^{6a} The speed of a process of such extraordinary complexity that requires intense attention to detail has raised questions about the ability of review panels to devote the time needed to do a thorough job.

Moreover, the Board's signature is due to come just three days before the mayoral election. And the contract would become effective on March 1, the day before the mayoral runoff election. In order to meet these deadlines, the

SEC will have to work through the Christmas holidays.⁷

The timing of this fast-track privatization process vis-a-vis the mayoral election has raised eyebrows in a city that's has more than its share of political intrigue. One of the candidates, City Council member James Singleton, criticized the original RFQ/RFP.

Singleton says he doesn't oppose privatization *per se*, but that he's afraid that the bidding and selection processes don't necessarily promote the public good. Singleton suggested, in fact, that some city officials may be pursuing a process that would favor only one company.⁸

Mayor Marc Morial, who is seeking to change the City Charter to allow him to run for a third term, has been the key force behind the privatization initiative. As mayor, Morial automatically chairs the Sewage & Water Board, obviously giving him the position and the power to influence the privatization process.

The Issues: More than What the City Bargained For?

According to a source within the S&WB, the process is marred by numerous problems.

First, the accelerated schedule may well result in a foregone conclusion. It is not feasible, the source said, to address all the relevant issues in such a short period of time.

Second, the New Orleans Civil Service Commission may seek another injunction to block the S&WB from entering into a contract with a private company without its approval. Under current law, all city privatization proposals must go before the Commission. If the Commission goes to court, the legal proceedings may stall the process.⁹

The commission tried to get an injunction in the spring, but the request was rejected because the RFQ/RFP had not yet been issued. However, when Mayor Morial hired a private company to run the city's Morris F.X. Jeff Municipal Auditorium and the Manila Jackson Theatre of the Performing Arts last year, the Commission successfully sued – claiming that the city could not privatize jobs previously performed by city employees without its

authorization.¹⁰

New rules, implemented in the last two years, have made the task of obtaining the Commission's blessing much more difficult. For example, proof must be shown that the job could not be performed at a lower cost in-house. The Commission has approved privatization efforts in the past, but the water and sewer proposal is by far the largest and the most plagued by unanswered questions.

For example, what about terminal leave, such as severance pay and sick leave? According to the S&WB source, terminal leave is a "property right," just like pension leave, and employees can expect severance pay if their employment is terminated. If the privatization goes through, about 800 employees could be transferred to the private sector and thus cut from S&WB's payroll. The first RFQ/RFP did not make specific provisions for this transfer.

The question of pension plans also remains unanswered. If these questions and other personnel issues are not fully addressed in the final RFQ/RFP or in the contract, lawsuits – messy ones – would likely ensue.

It also appears that the contract would not prohibit the new company to export city water to other areas. This would set up a scenario in which the company – not the city and its residents – could earn extra profits on the sale of a public resource.

The Past: Lessons to Learn?

If implemented, the water and sewer privatization would be the largest public works privatization in the United States, worth about \$1 billion over a 20-year period.¹¹ However, it will not be the first public works privatization for the city.

New Orleans has contracted out its sewage treatment operations and maintenance since 1992. The original contractor, Professional Services Group (PSG), was bought out by U.S. Filter, which was in turn acquired by the French conglomerate Vivendi.

The initial contract was for five years with subsequent one-year extensions that had to be considered by the city. The company lobbied and even bribed one of the S&WB members to

extend the contract for another five years. When the effort failed, the company's performance went into decline.¹²

Then, on July 26, 2001 – the day after the S&WB voted to proceed with the privatization – an electrical fire shut down the East Bank Sewage Treatment Plant, which serves 440,000 people, for two and a half hours.¹³ Raw sewage backed up, covered surrounding land and made its way into some of the plant's offices. Plant operators diverted untreated sewage into the Mississippi River for two hours until the plant was returned to operation.

A spokesperson for S&WB, Joe Puglia, claimed it was not possible to even estimate the amount of sewage diverted into the river.¹⁴ This begs the question: Because sewage systems generally have flow meters, and because flow estimates are generally not difficult to calculate, why didn't the S&WB know how much sewage went into the Mississippi? Interestingly, Puglia works for a private firm – the Public Relations Group – not for the public S&WB.¹⁵

According to City Council member Jim Singleton, S&WB officials told him that U.S. Filter for several weeks was aware of equipment problems that could lead to such dangers, but failed to address them.¹⁶

The fire came only a few months after two broken incinerators led U.S. Filter to truck out excess, untreated sewage sludge. The residents of the neighboring Arabi Park and Carolyn Park subdivisions of St. Bernard Parish were exposed to the fetid odor for more than two months.¹⁷

Private wastewater operations brought not only environmental violations to the city, but also corruption and bribery.

In May 2001, former S&WB member Katherine Maraldo and three former PSG executives were charged with bribery. According to the indictment, PSG paid more than \$70,000 to Maraldo, who in turn recommended that the city renew its sewage contract with PSG for five years. The company allegedly falsified some of its records to cover up the bribes. PSG's former president, vice president and a consultant (a former PSG vice president) were also charged with conspiracy, interstate travel in aid of bribery, and mail fraud – charges that could yield up to 50 years in prison. Aqua Alliance, PSG's

parent company at the time, has agreed to plead guilty to bribery and pay a \$3 million fine.¹⁸

U.S. Filter, which has since bought out the water and sewage operations from PSG, is among several companies that have expressed interest in taking over the city's water and sewer systems. Mayor Morial's firm commitment to privatization – so near the end of his term – has led many local pundits to wonder whether there is more to the proposal than meets the eye.

The City's Reputation: Is it The Big Sleazy?

New Orleans city officials have a history of rewarding government contracts to return favors to their friends and campaign contributors.

According to the *Times-Picayune*, for example, minority- and women-owned firms (called "disadvantaged business enterprises," or DBEs) that made campaign contributions to local politicians were three times as likely to receive public works contracts.¹⁹

In 1995, shortly after becoming mayor, Morial relaxed the certification rules for DBEs, dropping the revenue limits on personal worth, net income and corporate revenues. As a result, larger – and, at least, theoretically, less disadvantaged – companies that did not qualify under the old rules gained preferential access to city contracts.

In a city that's practically synonymous with public corruption, the poorly handled water and sewer privatization proposal has sown doubt as to the true intentions of the city officials involved. In its April 2000 report, the Bureau of Governmental Research flat-out questioned the validity of assumptions that privatization would result in cost savings, pointing out that the city's financial advisor did not provide any actual data on which these assumptions were based.²⁰

Simply put, no solid evidence has come to light that suggests privatizing the city's water and sewer systems would be in the public's best interest. Until such evidence is brought forth, only a person naive in the ways of New Orleans politics would expect this proposal to pass the sniff test.

Notes

¹ Bureau of Governmental Research. "Privatization of Water and Wastewater Systems in New Orleans. BGR Analysis of Sewerage & Water Board of New Orleans Proposal." 15 June 2001.

² Ibid, p.8.

³ Ibid, p. 10-15.

⁴ Grace, Stephanie. "S&WB decides to ask for privatization bids." *The Times-Picayune*, 26 July 2001.

⁵ Request for Qualifications/Request for Proposals for Management, Operation and Maintenance of Water and Wastewater Systems. New Orleans Sewerage & Water Board, August 2001.

⁶ Ibid.

^{6a} Ibid, Section 4-1.

⁷ Grace, Stephanie. "Water Board seeks bids. Deadlines coincide with election dates." *The Times-Picayune*, 16 August 2001.

⁸ Personal communication with James Singleton, 21 August 2001.

⁹ Personal communication with S&WB staff member, 16 August 2001.

¹⁰ Grace, Stephanie. "Civil service agency sues S&WB again." *The Times-Picayune*, 10 May 2001.

¹¹ Grace, Stephanie. "S&WB decides to ask for privatization bids." *The Times-Picayune*, 26 July 2001.

¹² Personal communication with S&WB staff member, 16 August 2001.

¹³ "Fire temporarily closes sewage plant." *The Times-Picayune*, 27 July 2001.

¹⁴ Finch, Susan. "Untreated waste diverted to river." *The Times-Picayune*, 27 July 2001.

¹⁵ Office of Intergovernmental Relations, Sewer & Water Board, phone, 13 August 2001.

¹⁶ Finch, Susan. "Untreated waste diverted to river." *The Times-Picayune*, 27 July 2001.

¹⁷ "Sewer plant blamed for Arabi odors. Broken incinerators to be repaired soon." *The Times-Picayune*, 30 May 2001.

¹⁸ Grace, Stephanie. "Five face charges of cash for favors. Former legislator, S&WB official named." *The Times-Picayune*, 1 June 2001.

¹⁹ Schleifstein, Mark et al. "Money Talks. Some minority and women business owners say they can't afford to play politics. Others say they can't afford not to." *The Times-Picayune*, 28 April 2001.

²⁰ The Bureau of Governmental Research. "Privatization of Sewerage and Water Board operations." April 2000. www.bgr.org/Outlooks/Orleans/Privatization/S&WBoard.htm

 Critical Mass Energy and Environment Program	For more information, contact us at: (202) 546-4996 cmep@citizen.org www.citizen.org/cmep
---	---