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Office of the Inspector General
Miami-Dade County

Memorandum

To: Honorable Alex Penelas, Mayor

Honorable Chairperson, Barbara Carey-Shuler, Ed.D
and Members, Board of County Commissioners

From: Christopher Mazzella
Inspector General

Date: December 10, 2003

Re: Updated Review of Prepaid Phone Card Vending Permits at Miami International Airport (MIA) and Review of the Current Invitation to Bid for Non-exclusive Prepaid Phone Card Vending Machines at Miami International Airport

By way of background, on July 8, 2003, Agenda Item 7A1E¹, a recommendation to award the above-captioned contract, was presented to the Board of County Commissioners (BCC) for approval. A bid protest of the presented recommendation for award was pending, and thus, the agenda item also contained a clause seeking approval to waive further bid protest procedures by a two-thirds vote of the commissioners present.

By way of Supplemental Agenda Item 7A1E, the BCC was also presented with copies of the OIG's previous final report, dated August 15, 2001, regarding the limited test permits for prepaid phone card vending, the Miami-Dade Aviation Department's response to the draft version of that same report and the OIG's supplemental report, dated January 28, 2002, on the same matter. The cover memo for the Supplemental Agenda Item contained a breakdown of the gross reported revenues of the three current permittees. The three current permittees are also the first, second and third ranked bidders by price in the invitation to bid for the contract destined to replace the current permits.

¹ The agenda item sought BCC approval, in essence, to award the prepaid phone card contract to the highest bidder (first ranked as it is a revenue generating contract to the County) and set forth a three working day deadline for that vendor to execute the contract. Should the highest bidder fail to execute the contract within the established time period, the contract would then be presented to the next vendor in line with the same time deadlines for contract execution.

The BCC did not pass by two-thirds vote the portion of the resolution seeking to set aside the current bid protest process, and thus the recommendation to award was not deliberated upon. There was, however, a brief discussion of the OIG's previous findings and recommendations, and it was asked that the OIG provide the BCC with an updated review of this matter. This memorandum seeks to provide such an update.

Attached, as Schedule A, is a spreadsheet containing the OIG's findings and recommendations from its previous two reports and MDAD's responses. In the far right column of the spreadsheet are comments as to the current state of affairs and how the current proposed contract provisions further address the issue.

The remainder of this memorandum identifies several areas that may be of interest to this Board.

CALLS FOR AUDITS

In its draft phone card report dated August 2, 2001, provided to MDAD for comment, the OIG recommended that MDAD conduct an audit of the three phone card vendors providing prepaid phone cards at MIA. MDAD disagreed with this recommendation stating:

“As a matter of procedure, and within the Terms and Conditions of the existing Permit document, the year-end audit will continue to be performed. The firms have submitted annual audits to the Department in accordance with the requirements of the Permit.”

In light of the Department's response that stressed its need for flexibility in the execution and performance under the test permits, the OIG's final report dated August 15, 2001 reiterated the audit recommendation. The OIG was concerned over the lack of documentation regarding the number and placement of the machines and overall controls regulating the introduction of machines on the airport premises.²

² A MDAD letter to one of the permittees, dated July 9, 2001, states: “The Department's records do not reflect authorization to increase the total number of devices from 22 in 1999 to 31 in 2001. Kindly provide this office with documentation to that effect or [indicate] which 9 devices you will eliminate...” A MDAD internal hand written note clipped to the letter acknowledges this ongoing dilemma regarding the department's management, or lack of management, over the prepaid phone cards. It reads: “In response to your question about how many [devices] are authorized? For the 2 years that I have been with this group, we have been reluctant to determine exactly what # of prepaid phone cards should be at MIA. This reluctance is what has caused the exponential growth of the devices. I am preparing less locations with the help of facilities to be approved by A.G. and incorporated into their permit. Even before they requested permission from Angela, Communitel increase[d] the number of machines, disregarding Department approval. We should consider reducing the uncontrollable amount of these devices that today clutter our building.”

At the BCC hearing of July 8, 2003, it was suggested that the OIG conduct an audit of the fees reported by the vendors to MDAD under the terms of their permits. It was also questioned why the company that had generated the most revenue in the last few years was not being recommended for award of this contract, thus reinforcing the call to conduct an audit. The OIG has thoroughly reviewed this proposed task and respectfully disagrees with the suggestion to conduct an audit of the present permittees for the reasons discussed below.

First, the original recommendation for an audit was primarily based on the lack of documentation governing the number and placement of the machines at MIA. The original report noted no correlation to the number of machines scattered throughout the terminal to documentation in the file authorizing their placement. The accurate reporting of gross revenues is tied to actual number of devices in operation at any given time. **To conduct this audit, as a baseline, one would need to know the actual number of machines (as opposed to reported number of machines) in operation at a given time. Given the history of poor record keeping by the Department and the unauthorized increase of machines by the permittees, an audit by the OIG to provide assurances of correct gross revenues exceeding those certified by the Certified Public Accountant would be an impracticable task.**

The OIG does note that since its original report, the documentation in the file has significantly improved, and under the current permits the number and placement of the machines is better regulated by the Department. Additionally, gross revenues are directly tied to the number of cards dispensed by each vendor, and the dollar value of the phone card itself, e.g. \$10 or \$20 prepaid phone card. The OIG's review of the vendors' monthly revenue reports reveals that there is no uniformity in the manner in which the vendors report their grossly monthly revenues. For example, one vendor's report breaks down the number of phone cards dispensed by each machine for each day of the month and by the face dollar value of the phone card. The two other vendors only state the gross revenue collected by each machine for the entire month, without specificity to the value of the cards dispensed, e.g., X number of \$10 cards and X number of \$20 cards. This type of information is extremely beneficial for reporting purposes, but was not required as part of the monthly report under the permits. The Department should consider requiring the reporting of this type of specific information.

In line with this type of reporting, the OIG also included in its original set of recommendations that MDAD require each device to be equipped with an activity register, which would record the amount of services rendered by each machine. This type of activity register could then be produced for inspection to spot check the reported amount of services rendered by each machine to the reported amount by the vendor in its monthly gross revenue report. An activity register would significantly facilitate the ease of conducting random spot revenue audits to ensure accurate reporting. MDAD responded positively to

this recommendation and a review of the currently proposed contract provisions does contain this requirement.³

As for the actual reporting of monthly gross revenues and the required submission of an annual audit under the current permits, the OIG notes the requirement of a certification by a Certified Public Accountant as to the correct gross revenues per month and for the year under audit. Each of the vendor's annual audits submitted to the County contained a certification stating:

“We conducted an audit in accordance with generally acceptable auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Schedule of Gross Revenues and Percentage Fees Paid to the County is free of material misstatement. *An audit includes examining on a test basis, evidence supporting the amounts and disclosures in the schedule.* An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.” (Emphasis added.)

The OIG recognizes that the testing conducted under these audits may only be of a sample of all transactions. However, under the auditing standards, the sample being tested must be of quantity and quality sufficient for the Certified Public Accountant to render a professional opinion that the Schedule of Gross Revenues presents fairly, in all material respects, the gross revenues of the vendor. While the Department could have conducted its own audit, or may have reviewed the work papers of the Certified Public Account in lieu of conducting its own audit, it did not.

The OIG's recommendation is from over two years and two permits ago.⁴ After a thorough assessment of the matter, the OIG does not feel that the same imperative need for an

³ See Article 3.14 Additional Reports of the proposed agreement, which states in full: “The Successful Bidder will be required to provide electronic record of all transactions by location, by machine, for accounting and auditing purposes. The Prepaid Phone Card Vending Machines must generate printed revenue reports as requested by the Department. The manufacturer of the vending machines must provide a certificate verifying that the revenue mechanism creating the reports is tamperproof. Any evidence of tampering may lead to termination of the Agreement. Only a certified company technician may have access to the accounting system and must notify the Department before servicing or repairing any part of the machine that produces access to the accounting system. *A copy of the transaction report or similar information will need to be submitted with the concessionaires' monthly payment for verification.* The Department will have the right to inspect the prepaid phone card vending system and to audit the concessionaire at any time.” (Emphasis added.)

independent audit exists today against the backdrop of an impending recommended contract award. Absent any credible allegation of underreporting of revenues or identified lack of internal control, which may directly affect the accuracy of reported gross revenues, the time and expense to conduct such a historical audit is outweighed by the lack of beneficial information that it could produce. At best, it could provide insight of better management practices to be implemented in the future. However, the current proposed Agreement incorporates practically all of the OIG's previous recommendations from the first report and addresses the findings made in our supplemental report of January 2002. (See attached Schedule A.) For example, the machines under the new Agreement are required to have printable activity registers, as discussed above. Furthermore, the new Certified Public Accountant's annual audit must also contain two additional certifications not required under the current permits. These two additional certifications relate to material weaknesses of the internal control structure⁵ and compliance with the term of the Lease and Concession Agreement.⁶ The OIG believes these two additional annual certification requirements combined with required submission of the printed monthly activity register with the monthly schedule of gross revenues, provide heightened assurances to the County that the vendor's operations are in compliance with the terms of the Agreement.

⁴ The permits under review in the OIG's original report were, PX 500, PX 506 and PX 507. They have since been replaced with permits PXs 828, 829 and 830, which were again replaced with the current set of permits PXs 889, 890 and 891.

⁵ See Exhibit G, page 1 of 4 of the Form of Lease & Concession Agreement for the Prepaid Phone Card Vending Machines, which states in part: "We considered its internal control structure in order to determine our auditing procedures for the purpose of expressing an opinion on the Schedule of Gross Revenues and Percentage Fees Paid to the County and not to provide assurance on the internal control structure. A material weakness is a condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level of risk that errors or irregularities in amounts that would be material in relation to the Schedule of Gross Revenues and Percentage Fees Paid to the County being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. However, we noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defined above." See also Article 3.11 of the Agreement, which requires in part: "The report shall also be accompanied by a management letter, which will contain the findings discovered during the course of the examination, such as recommendations to improve accounting procedures, revenue and internal controls, as well as significant matters under the Agreement."

⁶ See Exhibit G, page 3 of 4 of the Form of Lease & Concession Agreement for the Prepaid Phone Card Vending Machines, which states in part: "In connection with our audit, nothing came to our attention that caused us to believe that XYZ Corporation failed to comply with the term of the Lease and Concession Agreement with Miami-Dade County, Florida, insofar as they relate to the Company's books of accounts and reports. However, our audit was not directed primarily toward obtaining knowledge of such non-compliance."

Most importantly, the suggestion to audit the current permittees does not advance the current recommendation to award this contract. The revenues to the County to be generated by the new Agreement are based on the tendered minimum annual guaranteed fees proposed by each bidding vendor in response to the County's Invitation to Bid (ITB) in addition to a percentage of gross revenues exceeding the minimum guaranteed amount. The ITB process also sets objective standards of minimum qualifications, which must be met by each bidder prior to the revealing of that bidder's bid amount. The ITB also lends itself to maximize the County's potential for revenue generation by, in effect, declaring that the highest bid wins. Past performance, gauged by earnings and revenues generated under the previous or current MIA permits or under operation at any airport of other venue, is not a factor under the ITB, nor should it be. How well a vendor performed under a different set of circumstances, e.g. number and placement of machines, direct competition among other prepaid phone card machine vendors and operational venue, such an airport, seaport or shopping mall, should not be used as barometer to measure the vendor's potential gross revenues under the terms of the new Agreement.

ANNUAL AUDITS SUBMITTED BY THE THREE CURRENT PERMITTEES

The OIG reviewed the annual audits submitted by the three permittees in accordance with their permits. For WTN, the OIG reviewed reports covering 38 consecutive months of operation from September 1999 to October 2002. No exceptions were noted by the Certified Public Accountant, and for all 38 months the Certified Public Accountant opined that the schedule of gross revenue presented fairly, in all material respects, the gross revenue of WTN for the period being audited.

For Communitel, the OIG reviewed reports covering 48 consecutive months of operation from September 1998 to August 2002. No exceptions were noted by the Certified Public Accountant, and for all 48 months the Certified Public Accountant opined that the schedule of gross revenue presented fairly, in all material respects, the gross revenue of Communitel for the period being audited.⁷

For Latin American Enterprise, Inc. (LAE), the OIG reviewed reports covering 62 consecutive months of operation from July 1998 to April 21, 2003.⁸ No exceptions were noted by the Certified Public Accountant, and for all 62 months the Certified Public Accountant opined that the schedule of gross revenue presented fairly, in all material respects, the gross revenue of LAE for the period being audited.

For both Communitel and LAE, the OIG found that both had been delinquent in submitting their annual audits to MDAD. On August 4, 2003, MDAD sent two letters to both

⁷ Communitel's CPA did note an overpayment of \$1,044 for the period ending August 2002.

⁸ Last date of permit. A new permit including a minimum annual guarantee became effective April 22, 2003.

Communitel and LAE advising them that they had failed to submit their last year's audit for the year ending October 31, 2002, and an audit for the period November 2002 through April 21, 2003. MDAD received Communitel's delinquent report for the year ending August 13, 2002 on September 12, 2003. Communitel advised that it would provide the next full year's audit (September 2002 through August 2003) to MDAD by November 15, 2003. At present, the OIG has not been able to confirm the receipt of this pending annual audit. MDAD received LAE's delinquent report on September 19, 2003.

PHYSICAL INVENTORIES OF PHONE CARD VENDING MACHINES

The OIG's first report on this subject stressed that there were no controls regarding the actual number and placement of machines scattered throughout the airport. A significant portion of the OIG's review included conducting an actual inventory of the number of machines and their location at the airport. As of July 2001, the OIG count showed that Communitel had 25 machines; LAE had 29 machines; and WTN had 23 machines.

As of January 2002, as part of the OIG's supplemental report, we counted LAE having 27 machines, WTN having 27 machines, and Communitel having 26 machines (20 phone card and 6 ATM/phone card combination devices). As a procedure to curb the proliferation of unauthorized machines and the unauthorized moving of machines, the OIG recommended a policy to affix MDAD decals on each device. This would assist in tracking the number and placement of machines.

MDAD, in its response dated February 14, 2002, stated that it would implement the decal identification for the machines. In a follow-up response dated July 18, 2002, MDAD stated that the decals were to be affixed shortly and that "a complete inventory of machines and their occupational license decals [would be] conducted on July 25 and 26, 2002."

As part of our update for this memorandum, the OIG reviewed MDAD operations to ensure that the department-initiated inventories were conducted. The OIG requested documentation for all inventories conducted by MDAD including checklists, work papers and notes evidencing compliance. According to MDAD documentation, inventories were performed in June 2002, May 2003, July 2003 and October 2003.

The objective of the July 2003 inventory was to physically inspect all prepaid phone card machines and ATM machines (ATM machines under Communitel's permit PX 890), verify that the machines had their MDAD ID# and occupational licenses, verify the location of each machine, and examine the condition of the machine.

The OIG's examination of the July 2003 inventory tabulations revealed that there were a total of 75 devices counted.

WTN - 26 LAE - 25 Communitel - 24 (22 phone cards and 2 ATMs)

These are less than the number of machines allowed under the permit, which may suggest that not all of the machines were located and/or the permittees have less than the authorized number of devices on the premises. Inventory results of the 75 machines located show that seven (7) devices had no occupational licenses and one machine's license had expired. Additionally, nine (9) machines did not have the proper MDAD decal affixed to the machine.

The OIG was advised that as of October 2003, MDAD conducted a new physical inventory complete with photographs of the machines and their licenses, decals and other identifying insignia.

In assessing whether the number of devices exceeds the allowable number under the permit, it is imperative that all the machines are actually counted. Operating more devices than authorized may result in the under reporting of revenues to the County.

OIG representatives met with MDAD's new manager of its Commercial Operations Division. We were advised that new measures have been recently implemented to facilitate a better flow of communication between the Department and its airport tenants. These tenant meetings take place both with groups of tenants and with individual tenants, one-on-one, to address any issues or exceptions specific to that tenant's contract/lease.

We were also provided with a new form to be utilized by MDAD staff for future phone card inventories. This standard form entitled *Telephone Prepaid Cards Compliance Inspection Program* prescribes four (4) inventory objectives and several steps to complete the inventory. These four objectives are: (1) Compliance with County policy, (2) Propriety of billings, compliance with permit terms and County and Aviation policy, (3) Documentation of exceptions and (4) Timely reporting and review.

The OIG believes that the implementation of this new standardized form will greatly improve the Department's management of the Agreement through routine inventories.

ATM MACHINES PIGGY-BACKED ON THE PREPAID PHONE CARD PERMITS

As noted in its original report, the OIG found that one of the three vendors was authorized to install several ATM/prepaid phone card combo devices as part of its permit. This authority was granted only⁹ to Communitel and was considered a modification to its original permit PX 506. Subsequently, the ATM authorization was incorporated into Communitel's

⁹ Neither WTN nor LAE have authorization for ATM units under their permits. The OIG did find a letter from WTN, dated April 29, 2003, in the MDAD files requesting authorization to install ATMs under similar conditions to Communitel's permit. While a response by MDAD to this request was not found, it appears that the request was denied as WTN does not have ATMs.

permit PX 830, effective November 1, 2002 through April 21, 2003, for the installation of five (5) ATM/phone card machines.¹⁰ Under the current permit, PX 890, the number of ATM/phone card devices was increased to a total of six (6) machines in addition to the 22 prepaid phone card machines authorized under the permit.

While the original documentation in the file depicts the authorization for ATM/phone card combination devices as part of the testing environment under the test permits, MDAD's own documentation from 1999, as previously reported by the OIG, questioned whether these devices were operating as combination devices. The OIG recently examined several of the Communitel ATM devices and observed that they are not combination devices but stand-alone ATM machines. In any event, upon execution of the new Agreement, MDAD should require the removal of the six ATM permits authorized under PX 890. To allow continued placement of these ATMs would "circumvent the bidding process for ATM services."¹¹

ALLEGATIONS OF IMPROPER FINANCIAL TRANSACTIONS ARE UNFOUNDED

During the course of this review, the OIG was informed of certain allegations, that on its face suggested improper financial transactions between the principal of one of the bidders, Mr. Juan Jose Pino, President of Latin American Enterprises, and a certain individual named Juan Mario Junco del Pino, Minister of Construction, Cuba.¹² This information appeared within Merrill Lynch Payment History Detail documents of Mr. Pino's, and was reviewed by the OIG in light of this serious accusation. The history details, five in total, seem to indicate possible wire transfers of funds from the LAE account to Juan Mario Junco del Pino. OIG Special Agents met with Mr. Juan Jose Pino and asked him about these documents. Mr. Pino said that he had contacted Merrill Lynch about these same concerns. A Ms. Katy Ross of Merrill Lynch explained to Mr. Pino that the information contained on the Payment History Detail pertaining to the named individual Juan Mario del Pino, Minister of Construction, Cuba, was a Merrill Lynch internal security warning that appears on the document due to the name similarities. The security warning appears because Merrill Lynch does not allow wire transfers to certain prohibited persons.

¹⁰ While only five (5) machines were authorized, correspondence in MDAD Commercial Operation's file for Communitel acknowledges that even under PX 830, Communitel had six (6) ATM machines in operation.

¹¹ MDAD letter dated September 23, 1999 regarding Communitel's ATM/phone card combination devices where it is discussed that since the phone card component had not been added to the ATM equipment, it would appear to have been a means to circumvent the bidding process for ATM services. The letter was previously referenced in the OIG's original report of August 15, 2001.

¹² This information was independently obtained by the OIG. Subsequently, the OIG was provided with the same allegation by another bidder for the prepaid phone card contract. The documents provided to the OIG are copies of the same documents obtained by the OIG.

During the OIG's meeting, Mr. Pino produced two letters confirming the above explanation. The letters were signed by Ms. Katy Ross, Assistant Vice President, Administrative Manager. The letters confirm that the wire transfers did not go to the Cuban official, but instead went to Mr. Pino's account at Nations Bank of Florida. The letter also advised that "Merrill Lynch's system identifies similar names of individuals with whom we are prohibited from doing business." In the presence of the OIG's Special Agents, Mr. Pino placed a call to the Merrill Lynch offices. Ms. Ross was put on speakerphone and the OIG Special Agents confirmed with her that the name appearing on the Payment History Detail was simply a security warning. No improper transactions took place. The allegations are unfounded.

FINAL RECOMMENDATION OF THE HEARING EXAMINER

During the course of this procurement process, certain allegations relating to the bidders of this contract have been raised to the OIG. On several separate issues the OIG has been presented with information, perhaps in the hope that this office would further investigate the allegations. Regarding two issues, in particular, the same allegation was raised in the pleadings of a filed bid protest. These were an allegation regarding the Disadvantaged Business Enterprise (DBE) certification of Blackstar LLC and an allegation regarding the weak financial condition of LAE. Both of these allegations were flushed out during the bid protest hearings and the OIG does not find any credible need to further investigate this matter.

Regarding LAE's financial condition, this was addressed in both bid protest hearings. The second hearing examiner acknowledged the previous finding of the first hearing examiner concluding that there was no evidence to find that LAE is not financially responsible or is on the verge of bankruptcy. The second hearing examiner concludes that: "because the issue was fully litigated before Judge Feiler [first hearing examiner], and based on the findings made by Judge Feiler, Communitel is estopped from maintaining a protest on these grounds based on the doctrine of Res Judicata and Collateral Estoppel, absent evidence of fraud, arbitrary acts, illegality or dishonesty." (Findings of Fact, Conclusions of Law and Recommendations of Hearing Examiner, filed with the Clerk of the Board, October 5, 2003, pages 18-19, hereinafter "Second Recommendation of the Hearing Examiner.")

Within the Second Recommendation of the Hearing Examiner are two references to the OIG. The first directly follows from the passage cited above. "Thus it is my expectation in upholding this award to LAE that the Manager and County Commission will balance this decision against the findings of the currently in progress Inspector General's audit of the respective permit holders."

A representative of the OIG was present during the hearing. No evidence or testimony was tendered suggesting that an audit was in progress. Only the video footage of the July 8,

2003 agenda hearing was made part of the record. Additionally, the above passage seems to suggest that the OIG's audit of the respective permit holders would include an examination of the companies' financial condition as it relates to their responsibility. Even if the OIG had chosen to conduct an audit, it would not have been a financial audit of companies.

In this conclusion, the hearing examiner states: "Therefore, it is the recommendation of the undersigned that the County Manager's recommendation of award to LAE be upheld, and accepted by the County Commission, **provided that there is no evidence to the contrary in the Inspector Generals audit / report.**" (Second Recommendation of the Hearing Examiner, p. 20. Emphasis in original.)

This OIG memorandum is not intended to validate or provide arguments against the County Manager's recommendation for award. Its sole purpose is to provide this Board with an update of previously reported issues regarding prepaid phone card vending machines at Miami International Airport.

The OIG's number one recommendation was that the expired test permits be replaced by a competitively bid contract. The Department concurred and an Invitation to Bid on a new prepaid phone card vending machines agreement was advertised on June 6, 2002. As synthesized in the accompanying Schedule A, the OIG is quite satisfied with MDAD's redress of our findings, recommendations and concerns. As the mechanisms to implement many of these new procedures is contained in the new Agreement, the OIG assures this Commission, that once executed, the OIG will continue to monitor the Agreement and compliance with its terms.

Finally, I want to emphasize that my office is satisfied with the process undertaken by the airport and the county manager in recommending the award of this contract to the highest bidder. Unfortunately, a process that has been transparent, fair and comprehensive is being undermined by questionable tactics that have included the circulation of divisive and misleading allegations of impropriety directed at the highest bidder. These tactics have caused an unnecessary delay in awarding this contract, not to mention the resultant costly burden placed on county staff. Consequently, it is my hope that the Commission will move swiftly in awarding this contract according to the Manager's recommendation to the highest bidder.

CC: Robert A. Ginsburg, County Attorney
George Burgess, County Manager
Bill Johnson, Assistant County Manager
Angela Gittens, Director, Miami-Dade Aviation Department

Clerk of the Board (copy filed)