



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 11, 2022

Tommie S. Cardin, Esq.
Attorney, Three Rivers Solid Waste Management Authority
Post Office Box 6010
Ridgeland, Mississippi 39158-6010

Re: Amendment of Waste Disposal Contract

Dear Mr. Cardin:

The Office of the Attorney General has received your request for an official opinion.

Background

According to your request, you represent the Three Rivers Solid Waste Management Authority (the “Authority”), a political subdivision organized and existing under the Mississippi Regional Solid Waste Management Authority Act. Miss. Code Ann. § 17-17-301, *et seq.* On September 28, 2018, the Authority entered into an agreement with Waste Connections of Mississippi Disposal Services, LLC (“Waste Connections”) to provide operations and construction services at the Three Rivers Regional Landfill. Prior to entering into the agreement, the Authority issued a request for proposals in accordance with Section 31-7-13(r). The specifications in the request for proposals for the requested landfill operations and construction services included a provision allowing the contractor to request an annual adjustment to the contracted waste disposal rate based on the Consumer Price Index for Urban Wage Earners (Southeastern), subject to a three percent cap. Since entering into the agreement with Waste Connections, the Consumer Price Index has experienced significant and unprecedented increases not seen prior to September 28, 2018. As a result, Waste Connections has requested an annual adjustment to the contracted waste disposal rate in excess of the three percent cap contained in its agreement with the Authority.

Question Presented

May the Authority approve Waste Connections’ request for an annual adjustment to the contracted waste disposal rate that exceeds the three percent cap in the agreement without advertising for a new request for proposals?

Brief Response

No. The proposed annual adjustment that exceeds the three percent cap was not contemplated by the parties when the original request for proposals was issued or when the parties agreed to the contract. Therefore, the Authority must enter into a new contract after going through the proper procurement procedure.

Applicable Law and Discussion

As an initial matter, pursuant to Section 7-5-25, the Office of the Attorney General is authorized to issue official opinions upon questions of state law only. Thus, we cannot by official opinion interpret the terms or provisions of an agreement or contract.

Section 31-7-13(r) requires the governing authority or agency to issue a public request for proposals for solid waste collection and disposal services that involve an expenditure of more than seventy-five thousand dollars (\$75,000.00). Section 31-7-13(r) does not expressly provide for annual adjustment clauses, but it does state: “Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals.” Based on this language in Section 31-7-13, this office opined that a fuel price adjustment clause based on established consumer price indexes is allowable if determined to be appropriate and in the county’s best interest. MS AG Op., *Nowak* at *1 (Jan. 19, 2007). The price adjustment, like all other relevant factors, must be contemplated beforehand and included in the request for proposals. Miss. Code Ann. § 31-7-13(r).

The *Nowak* opinion, while acknowledging a statutory basis for the type of annual adjustment in the agreement between the Authority and Waste Connections, does not speak to renegotiation, amendment, or modification of an annual adjustment that exceeds the contracted-for cap on a waste disposal rate. Section 31-7-13(r), however, is clear that price and all other relevant factors “shall be duly included in the advertisement to elicit proposals.” This office has previously opined that “in instances in which solid waste collection and disposal services were neither contemplated nor included in the present contract, such services are new or additional and must be advertised pursuant to Section 31-7-13(r).” MS AG Op., *Cardin* at *2 (Mar. 30, 2012). Likewise, the increase in the annual adjustment sought by Waste Connections exceeds the contracted-for cap on fuel adjustment, and thus was not contemplated or included in the request for proposals or the contract. For these reasons, the Authority must advertise for a new request for proposals.

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If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Misty Monroe*

Misty Monroe
Assistant Attorney General

OFFICIAL OPINION