

Money to Burn?

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Due Diligence: Maximize Your Negotiating Position

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Legal Perspective: Eric Petersen, Hawkins, Delafield
& Wood

Financial Issues: Jessalynn Moro, Fitch Ratings

Competitive Negotiations: John Shortsleeve,
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Moderator's Comments

Due Diligence:

Maximize your Negotiating Position

- Disposal Options
- Contract Options
- Negotiating Issues
- Negotiation Approaches

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Disposal Options

- Continue to go to existing disposal location; e.g., Millbury
- Dispose at existing facilities elsewhere in state
- Dispose at existing facilities out of state
- Dispose at new facility to be constructed in state

Contract Options

- Private Service Model
 - Private Ownership; Private Design, Construction, Operation (may or may not have option for renewal, public purchase at end of contract)
- Public Model
 - Public Ownership; Private Design, Construction, Operation
 - Public Ownership; Public Design, Construction, Operation

Negotiation Issues

- Service
- Term
- Business Deal
 - Payment Terms
 - Tonnage Commitment
 - Shortfall Penalties
 - Energy or Product Sales Share
 - Residuals Disposal
 - Capital Modifications and Related Debt

Negotiation Issues (continued)

■ Risks Transferred

- Completion Risk – New Facility
- Permitting Risk – New Facility
- Performance Guarantees –
 - Private Model: take wastes, environmental compliance
 - Public Model: waste throughput, availability, energy output, residual generation, product output, environmental compliance
- Price Risk – Construction, Operations
- Asset Management

Negotiation Issues (continued)

- Risks Not Transferred
 - Uncontrollable Circumstances, Change-in-Law
 - Inflation
- Contract Termination Provisions
 - Cause, Convenience
- Rights at End of Contract
 - Renewal, Facility Ownership
- Dispute Resolution
- Security for Performance

Possible Approaches to Negotiations

- | | |
|--|--------------|
| 1) Renegotiation with Benchmark Market Survey | 6-12 Months |
| 2) Procurement/Negotiation – all parties considered on equal playing field | 24-36 Months |
| 3) Phased Combination of 1) and 2) | 30-48 Months |
| ■ Stage 1: Renegotiation with Time Limit | |
| ■ Stage 2: Procurement/Negotiation | |

Good News: All exempt from 30B