



**AGENDA NOTE - HRPDC QUARTERLY COMMISSION MEETING**

**Item #13: New Business Item**

A. SOLID WASTE CONSULTANT CONTRACT

At the March 18, 2009 Executive Committee Meeting, the HRPDC authorized the Executive Director to enter a contract with SCS Engineers, on behalf of the eight Southside localities to complete a valuation of the SPSA facilities. This work is to support the eight localities and SPSA in their evaluation of proposals for the purchase of the waste-to-energy facility and other SPSA assets. In pursuing this work, the HRPDC staff and consultant have been advised that SPSA's consultant, HDR, requires payment for certain materials that are essential to the asset valuation effort. It is estimated that the additional cost for the SCS Engineers' work resulting from this will be less than \$500.

To facilitate this effort, the HRPDC staff recommends that the additional costs be allocated to this project from the HRPDC Unallocated Funds reserve.

**RECOMMENDED ACTION:**

Concur with staff recommendation to appropriate an amount not to exceed \$500 from the HRPDC Unallocated Funds reserve to support the SCS Engineers' study.

B. STORMWATER LEGAL CONSULTANT

The Regional Stormwater Management Committee, Phase I Subcommittee, has identified the need for expert legal assistance in addressing continuing state and federal concerns with the proposed Phase I Stormwater Permits (MS4 – Municipal Separate Storm Sewer System Permits). The affected localities are the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth and Virginia Beach. Over the past several years, the Committee and the HRPDC staff have been receiving legal assistance from Mr. David Evans, McGuire Woods, on stormwater permit issues. This work has been funded by the Cities of Hampton and Portsmouth, who have Mr. Evans under retainer for this work.

After an extended period of MS4 Permit and Program development and negotiation with the Virginia Department of Conservation and Recreation (DCR), staff from the HRPDC and the six affected localities understood in late February that permits were ready to be noticed for public review and issuance. Changes, which pose significant compliance issues for the localities, were made to the draft permits at the last minute at the request of the U.S. Environmental Protection Agency (EPA). A series of meetings among the Hampton Roads localities – technical and legal staff – are being held in preparation for a May 6, 2009 meeting with EPA and DCR staff. Mr. Evans is assisting the region in developing options for addressing the noted change and related issues as well as in preparing for the upcoming meeting.

The Committee has determined that substantial additional assistance from Mr. Evans will be required over the next several months in negotiating with DCR and

EPA on the six localities' MS4 permits. Based on this need and the issue of equity among the six localities with respect to these costs, the Stormwater Committee believes that Mr. Evans should be retained through the HRPDC to provide assistance to all six localities. Funding would be provided by the affected localities. The HRPDC staff would manage the contract and facilitate/coordinate the legal and technical work with the local government technical and legal staffs. The HRPDC staff is working with Mr. Evans to develop an appropriate scope of services and engagement letter. The HRPDC staff is also working with the localities on an appropriate funding allocation to support this effort.

As of April 14, 2009, the concept has been reviewed and concurred with by the City Attorneys in Chesapeake, Hampton, Norfolk, Portsmouth and Virginia Beach as well as by the technical stormwater staffs from the six localities. It is still being reviewed by the Newport News City Attorney. All recognize Mr. Evans' credentials and qualifications to provide these services.

The HRPDC staff with concurrence from the locality attorneys has determined that a competitive procurement for these services is not required, because:

1. The Virginia Procurement Act (Chapter 43, Section 2.2-4344.A.2 of the Code of Virginia) provides an exemption from competition for procurement of legal services in conjunction with regulatory matters.
2. Mr. Evans' credentials in Clean Water Act regulatory matters and litigation and his long period of supporting the Committee's efforts, while working for Hampton and Portsmouth, qualify this as a sole source procurement.

**RECOMMENDED ACTION:**

1. Concur with recommendations of the Regional Stormwater Management Committee, Phase I Subcommittee to procure legal services to support the MS4 Permit negotiations on behalf of the six localities.
2. Authorize the Executive Director to execute a contract with Mr. David Evans, McGuire Woods, to provide legal services to the HRPDC, on behalf of the region's six Phase I localities in support of their MS4 Permit Programs.

**C. HRPDC MEETING SCHEDULE**

The MPO Committee of the Hampton Roads Metropolitan Planning Organization is recommending that the HRPDC consider changing its meeting time to 1:00 p.m., third Wednesday of each month. This matter is on the agenda for the HRMPO at its meeting on April 15, 2009. Depending on HRMPO action, the HRPDC may be requested to consider this modification to its regular meeting schedule. The change is designed to address the issue of compressed and overlapping meetings. If the HRPDC agrees to this modification, the change would become effective after amending the HRPDC Bylaws.

**RECOMMENDED ACTION:**

According to discussion.