

Policies & Procurement Committee
March 10, 2005 Meeting

Draft Minutes

Members Present: Benson Cohn, Committee Chairman
Michael Pace, Board Chairman
Theodore Martland, Committee Vice-Chairman
Mark Cooper
Raymond O'Brien (Present by telephone)

CRRA Staff Present: Tom Kirk, President
Peter Egan, Director of Environmental Affairs
Laurie Hunt, Esq., Director of Legal Affairs
Jim Ruel, Purchasing Manager
Kristen Greig, Secretary to the Board/Paralegal

Chairman Cohn called the meeting to order at 9:30 a.m. and noted that a quorum was present.

Chairman Sullivan requested that everyone stand for the Pledge of Allegiance whereupon the Pledge was recited.

1. Approval of Minutes of the November 4, 2004 Policies & Procurement Committee Meeting

Chairman Cohn requested a motion to accept the minutes of the November 4, 2004 Policies & Procurement Committee meeting. The motion was made by Vice-Chairman Martland and seconded by Director Cooper.

Mr. Kirk stated, in reference to the second paragraph on page 5, that the sentence, "Mr. Kirk joined the Executive Session at 10:00 a.m." should be eliminated as that was stated earlier in the paragraph.

The minutes as amended were approved. Chairman Cohn abstained as he was not present at the meeting.

2. Discuss and Recommend for Board Approval a Resolution Approving an Amendment to Section 307 of the Amended and Restated Bylaws

Chairman Cohn requested a motion on the above-referenced item. Director Cooper made the following motion:

RESOLVED: That the Board hereby approves the following revision to the Amended and Restated Bylaws, amending and restating in its entirety Article III, Section 307, thereof:

Any appointed Director who fails to attend three (3) consecutive regular meetings of the Board or who fails to attend fifty percent (50%) of all regular meetings of the Board held during any calendar year shall be deemed to have resigned from the Board. Any director may resign at any time by delivering notice to the Authority. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the Authority accepts the future effective date, the Board may fill the pending vacancy before the effective date, provided, that the successor is not permitted to take office until the effective date. The appointing authority for such Director may remove any such Director for inefficiency, neglect of duty or misconduct in office in the manner provided by Section 22a-261(1) of the Act.

Deleted: For the purposes of this Section, Board meetings shall be deemed to include regular and special meetings.

The motion was seconded by Vice-Chairman Martland.

Director Martland asked for clarification of what the proposed changes were. Mr. Kirk responded that the word “regular” was being added and the section shown in the box on the right-hand side was being deleted.

Chairman Cohn stated that when he was away on a trip, a regular Board meeting was held, as well as two special meetings, which prompted some research into whether he was meeting the statutory attendance requirements. Chairman Cohn explained that the research turned up an Attorney General’s Opinion that stated that only regular meetings count towards attendance requirements. Since the Bylaws are inconsistent with that opinion, the proposed changes to the Bylaws were being recommended.

Vice-Chairman Martland asked what constitutes a regular meeting. Mr. Kirk responded that, in this context, a regular meeting was the monthly meeting required by statute.

Chairman Pace asked if sub-committees were subject to the same attendance requirements. Mr. Kirk stated that the research indicated that attendance was only required at regular Board meetings, not Committee meetings.

Chairman Pace asked for background on the three consecutive meeting/50% attendance requirements. Mr. Kirk responded that those requirements came directly from the statute.

The motion previously made and seconded was approved unanimously.

3. Discuss General Assembly Proposed Bill #6088 that would Require CRRA to Re-Bid Certain Contracts

Mr. Kirk stated that this information was being provided for the Committee’s information since there was some attention paid to contracting procedures. Mr. Kirk

explained that the proposed bill would restrict CRRA in some ways. It would enact, as law, the policies and procedures that the Committee and Board had put into place, but would complicate some of the exceptions to the competitive process identified by the Board.

Mr. Kirk stated that there was no action required by the Committee, but management wanted the Committee to know that CRRA was providing the Legislative Committee with all of the requested information and additional information, as well. Mr. Kirk added that it was important that the Legislature understand that CRRA's bidding procedure has been thoroughly reviewed, debated, and determined such that CRRA's procedure is a model of how a quasi-public should operate.

Director O'Brien stated that his concern was that the title of the proposed bill does not conform to the language of the bill. Director O'Brien said that the title of the bill specifically referenced "certain contracts" but there was no specification as to which contracts would require re-bidding. Chairman Pace stated that he heard from the proponents of the proposed bill that it was referencing the MDC contract.

Director O'Brien asked why the proposed bill specifically targeted CRRA when MDC was overcharging its ratepayers. Director O'Brien stated that MDC should be held to the same standard of re-bidding contracts as CRRA. Chairman Cohn noted that one of the sponsors of the Bill is a former Board member of CHFA.

Director O'Brien stated that the proposed bill seemed to insinuate that all contracts should be re-bid. Chairman Pace said that it appears that the bill was being proposed by those that have an interest against the success of CRRA and for the distinct benefit of another organization.

Director O'Brien suggested that this item be addressed at the next Board meeting if it is still an active item in the Legislature. Chairman Pace stated that he would likely be able to address the matter later that afternoon in his reappointment hearing before the Executive and Legislative Nominations Committee.

Vice-Chairman Martland stated that he spent most of his life in public service and noted that he is always in favor of bidding. Vice-Chairman Martland added that there were, however, subtleties where it was not possible to bid for certain services. Mr. Kirk stated that CRRA's complaint with the way this bill was proposed was that the careful attention that the Committee and Board paid to ensure competitive bidding took place whenever possible, while still recognizing that there were inevitable exceptions to the competitive process, was disregarded.

Chairman Pace pointed out that the purpose of the proposed bill was "to reduce tipping fees and protect the public interest by encouraging competitive bidding and prevent unending contract extensions." Chairman Pace stated that the purpose seemed to counter what he thought the real intent of the bill was which was to extend the contract with a certain contractor.

Vice-Chairman Martland stated that there were certain situations that required the services of a specific vendor because they were the only vendor with the necessary expertise to perform the work. Mr. Kirk agreed and stated that CRRA's current policy allowed exceptions for special capability bidders, vendors with patents, and other situations that would allow CRRA to procure services without a Request for Proposals. Mr. Kirk emphasized that if the work could be bid, it always is.

Mr. Kirk stated that the full Board would be informed of the status of proposed bills at the next meeting. Mr. Kirk informed the Committee that management has identified any bills that would be counter to CRRA's mission and effectiveness and has been in contact with the leadership at the Legislature with the hopes that they will make the necessary changes.

Chairman Pace stated that, for the purposes of transparency and "good government," when Legislators present a bill, they should disclose who they see as the primary beneficiary or initiator of the bill. That kind of disclosure brings a real transparency to the public. Chairman Pace said this proposed bill seemed to meet the test of why that transparency ought to be available. Chairman Pace stated that, while ethics are a focus of both local and state government, it might be an appropriate time to begin such a discussion.

Chairman Pace said that the keyword of the bill was "certain" and stated that it was not clear which contracts were included in that language, who would receive the benefit of those contracts, and if those contracts be in the public interest. Mr. Kirk stated that one of the drafts of the actual legislation tried to identify "certain contracts" as contracts with a value exceeding \$50,000, but noted that other drafts did not include that language.

Chairman Pace asked if the individuals sponsoring the bills were sponsoring any other bills that would be of interest to CRRA. Mr. Kirk responded in the affirmative and stated that Representatives McCluskey and O'Rourke were sponsoring a number of bills, including the bill prohibiting the quasi-public agencies from voting via telephone.

Chairman Pace said he was surprised that none of the sponsors had contacted him as Chairman if they had significant interest in how CRRA operates. Mr. Kirk pointed out that Representative O'Rourke is on the Committee that would be hearing the reappointment of the Directors to the CRRA Board and the reappointment of Michael Pace as Chairman.

Mr. Kirk noted that CRRA had participated in all of the public hearings regarding proposed bills that could affect the organization. Chairman Cohn suggested that management request an appointment to speak with the Co-Chairs of the Committees that would be hearing the bills. Mr. Kirk stated that he had not yet met with the Co-Chairs, but said that he did meet with the sponsors of the bills and several other legislators.

Chairman Pace stated that his reappointment hearing later that afternoon would give him the opportunity to testify on CRRA's behalf and handed out a letter of recommendation from Attorney General Blumenthal. Chairman Pace said that the letter

was not only representative of himself, but of everyone on the CRRA Board. Chairman Pace requested that the letter be read into the record.

The letter was addressed to the Honorable Martin Looney and the Honorable Claire Janowski, Co-Chairs of the Executive and Legislative Nominations Committee and read as follows:

“Dear Senator Looney and Representative Janowski:

I write to strongly support the confirmation of Michael Pace as Chairman of the Connecticut Resources Recovery Authority. Mike Pace is a tireless public servant who has devoted countless hours and incalculable energy to restoring the CRRA’s financial viability and credibility among its member municipalities and their taxpayers.

I have known Mike since his appointment as Chairman of the Authority in the dark hours following the former CRRA Board’s loss of \$220 million in a failed, illegal deal with the Enron Corporation. Mike’s mission was the same as mine – to recover as much of the lost money as possible and spare CRRA’s member towns and their taxpayers increased tipping fees and a financially crippled waste collection agency. Working together, the CRRA and my office have recovered \$111 million from our Enron bankruptcy court action. This recovery, and the ongoing litigation we are pursuing, would never have been possible without the wise counsel, leadership and support that Mike Pace has lent to our legal efforts.

Michael Pace’s goals for CRRA have been larger than improving its financial health. He has worked relentlessly to restore the public’s confidence in CRRA as a cost-effective, consumer friendly governmental institution. He has streamlined the agency and made its decision making process open and transparent. He has been inclusive, not divisive, assuring that CRRA strives to serve the public interest.

Michael Pace is a man of impeccable integrity and the highest ethical standards. I recommend him for reappointment as Chairman of the CRRA without hesitation and with the highest personal regard and admiration.

Very truly yours,

Richard Blumenthal”

Chairman Cohn stated that it was a very strong letter. Mr. Kirk asked for copies of the letter to be distributed to the members of the Executive and Legislative Nominations Committee.

4. Discuss Bond Counsel and Legal Services Request for Qualifications

Chairman Cohn noted that Bond Counsel was chosen by the Finance Committee during the last legal services RFQ and asked if the process would be different this time. Mr. Kirk responded that CRRA procedures allow the Policies and Procurement Committee to assign evaluation to another Committee if it so desires. Mr. Kirk added that the Bond Counsel category was unique in that its services only dealt with issues that were under the purview of the Finance Committee, so the Policies & Procurement Committee might want to consider having the Finance Committee involved.

Vice-Chairman Martland asked if Bond Counsel was the only legal service being re-bid. Chairman Cohn responded in the negative and stated that proposals were being accepted for all legal services. Vice-Chairman Martland stated that there were numerous law firms that spent a significant amount of time and money submitting proposals and attending interviews whose services had never been utilized. Vice-Chairman Martland said it was not fair that CRRA would expect these firms to bid again when they have never been given the opportunity to show CRRA what their abilities are. Mr. Kirk said that he understands the problem with that and said when CRRA needed to utilize legal services, it was imperative that CRRA utilize the firm best suited to perform to work at the lowest possible cost. Mr. Kirk stated that quite often that meant using a firm that was already familiar with the situation to avoid having to spend money on a learning curve, which was a strong argument for keeping the same legal team on a matter and any matters that arise out of that specific matter. Mr. Kirk said that management did not have a preference for any particular firm, but did not think it was prudent to pay the costs associated with having a new attorney become accustomed with a matter when there was already a firm familiar with that matter. Vice-Chairman Martland suggested that other firms be offered the work with the condition that the learning curve be done on their time.

Director Martland stated that if all of the firms on the list were not going to be utilized, then the list of approved firms should only include firms that would be used. Mr. Kirk agreed that it was difficult for a firm to re-bid when they had not received work over the last three years. Attorney Hunt noted that CRRA needed to be certain there were enough firms on the list to avoid a conflict situation. Attorney Hunt said CRRA could be in a sticky situation if there were only two firms on a list and they both had conflicts. Attorney Hunt stated that five firms may be excessive, but in some cases two might not be enough.

Mr. Kirk noted that since the new Board and management team came on board, it has been the general practice to utilize the General Counsel whenever possible. Mr. Kirk noted that there were sometimes conflict issues or specialization issues that required the use of other firms, but the General Counsel was used whenever they could perform the work effectively and competently.

Chairman Cohn stated that Vice-Chairman Martland was making a good point and that should be kept in mind as the list was developed and interviews were scheduled. Chairman Cohn said the Committee should avoid qualifying more firms than there was a possibility of using. Chairman Cohn stated that the Committee should also consider that

some underutilized firms' may have a desire to stay on the list in case there is work for them.

Vice-Chairman Martland stated that he would encourage keeping a smaller firm on the list and offering them work occasionally to keep the larger firms' prices down. Vice-Chairman Martland pointed out that there were often very capable attorneys in small firms.

Mr. Kirk stated that he has charged Attorney Hunt with the task of reducing legal expenditures, which has been done very effectively and Mr. Kirk stated that he anticipated a further decline in legal expenses.

Chairman Cohn stated that he did not intend to take away the Finance Committee's authority to make the selection of Bond Counsel and suggested that the decision could either be delegated to the Finance Committee or made jointly with the Policies & Procurement Committee. Vice-Chairman Martland stated that he would prefer to select the Bond Counsel in conjunction with the Finance Committee. Chairman Cohn agreed stating that working in conjunction with the Finance Committee would include the Chairman of the Finance Committee and other members in the decision process.

Chairman Cohn stated that he would prefer that the interviews for Bond Counsel be done on a different date than the other legal service interviews.

Chairman Cohn stated that the dates for the short listing and the interviews needed to be determined. It was decided that the short listing would be done by telephone on April 14th at the Policies & Procurement Committee Meeting. Chairman Cohn suggested checking with the Chairman of the Finance Committee to see if he would be available for Bond Counsel interviews on April 21st following the Finance Committee meeting at 211 Murphy Road. Chairman Cohn suggested that interviews for the other legal services be held at the May 12, 2005 Policies & Procurement Committee meeting and the Committee would decide which firms to recommend to the Board on that date.

Chairman Cohn asked if the RFQ would be substantially in the same form as the previous RFQ. Attorney Hunt responded in the affirmative and stated that the RFQ had already been issued.

5. Review of Informational Material

Chairman Cohn asked the Committee if there were any questions on the informational material provided.

Vice-Chairman Martland asked what type of service Malcolm Pirnie provided. Mr. Egan explained that Malcolm Pirnie was an environmental engineering consulting firm.

Vice-Chairman Martland asked how those services were bid. Mr. Egan explained that Malcolm Pirnie was working on the \$144,000 landfill siting investigation, of which

CRRA was spending \$120,000 during this fiscal year. Mr. Egan stated that CRRA got bids from and interviewed seven different companies under the 3-year engineering services agreements. Mr. Egan noted since the Board already approved the contract with Malcolm Pirnie in May of 2004, this item would no longer appear on the report of contracts over \$50,000 once the purchasing system was fully electronic. The intent of the report was to notice the Committee of expenditures under \$50,000, which cumulatively amount to more than \$50,000 over the course of a fiscal year. Mr. Egan noted that the E-Procurement system would be launched soon.

Vice-Chairman Martland asked if it was difficult to determine the actual costs involved with a project such as the landfill siting investigation. Mr. Kirk responded that CRRA relied on its environmental expertise and the bidders' collective insight to identify the scope of the work. Mr. Egan added that when CRRA issued a Request for Services for engineering services, an upfront price was negotiated and that price could not be exceeded without written permission from CRRA. Mr. Egan stated that the proposed prices were essentially very solid. Mr. Kirk said that sometimes the scope of a project will grow requiring a "change order."

Mr. Egan reviewed other contracts on the Report of Contracts over \$50,000 that were Board approved and would not be reported with the E-Procurement system. Director O'Brien asked if the contracts that would no longer show on the list of contracts over \$50,000 once the procurement system went fully electronic would show on the list of Board-approved contracts for over \$50,000. Mr. Egan responded in the affirmative.

Mr. Kirk stated that each winter the Mid-Connecticut project runs short on garbage and CRRA brings in spot waste to continue generating power. Mr. Kirk stated that CRRA typically utilized the same vendors for spot waste because there are very few options available. Mr. Kirk added that CRRA requires substantial financial guarantees, including a guaranty of payment, of all of its spot waste vendors. Mr. Kirk said that in the past week, waste had been accepted from two operators, EAC and RESCO, without a guaranty of payment to enable CRRA to move the waste in a more expeditious fashion. Mr. Kirk stated that management was comfortable with that arrangement for two reasons: the size of companies and the business relationship that CRRA has with the vendors. Mr. Kirk noted that both vendors have very good payment records and added that an offset arrangement was made with EAC. Mr. Kirk explained that CRRA owes EAC money for another matter and the money was being withheld until payment was received. Mr. Kirk stated that he wanted to inform the Committee of the situation since it was a variation on the typical process, which was to insist on a guaranty of payment. Mr. Kirk stated that management would be bringing a proposed change to the Committee allowing a variation on the criteria for bringing in spot waste.

Chairman Pace asked what the risk would be if the spot waste had not been brought in. Mr. Kirk responded that less electricity would be generated and added that as long as the waste could be brought in at a price higher than the marginal cost of operation, it was effective to do so because of the high price received for power in January. Mr. Kirk said that a financial evaluation was done almost on a daily basis to weigh the various factors and make good business decisions.

Chairman Pace informed the Committee that he and Director Jim Francis would be meeting with the Governor's office and other quasi-public agencies regarding policies and procedures. Chairman Pace said that four policies would be discussed at that meeting and noted that CRRA intends to address all of the Governor's concerns.

6. Adjournment

Chairman Cohn requested a motion to adjourn the meeting. The motion made by Director Cooper and seconded by Director Martland was approved unanimously.

The meeting was adjourned at 10:25 a.m.

Respectfully submitted,

Kristen B. Greig