

**Policies & Procurement Committee
May 14, 2009, Meeting**

Draft Minutes

Members Present: Raymond O'Brien, Committee Chairman
Theodore Martland, Vice-Chairman
Dave Damer
James Miron (Present by telephone)

CRRA Staff Present: Tom Kirk, President
Dave Bodendorf, Senior Environmental Engineer
Peter Egan, Director of Environmental Affairs
Tom Gaffey, Director of Enforcement/Recycling
(Present beginning 10:00 a.m.)
Laurie Hunt, Director of Legal Services
Moira Kenney, Secretary to the Board/Paralegal

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

Chairman O'Brien requested that everyone stand for the Pledge of Allegiance whereupon the Pledge was recited. Noting that there were no members of the public present for comment, Chairman O'Brien stated that the regular meeting would commence.

1. **APPROVAL OF MINUTES OF THE APRIL 9, 2009, POLICIES & PROCUREMENT COMMITTEE MEETING**

Chairman O'Brien requested a motion to accept the minutes of the April 9, 2009, Policies & Procurement Committee meeting. The motion was made by Director Damer and seconded by Vice-Chairman Martland.

The minutes were approved unanimously by roll call.

2. **REVIEW AND RECOMMEND FOR BOARD APPROVAL RESOLUTION REGARDING CONSTRUCTION QUALITY ASSURANCE SERVICES TO SUPPORT COMPLETION OF CLOSURE OF THE PHASE 1 ASH AREA OF THE HARTFORD LANDFILL**

Chairman O'Brien requested a motion on the above-referenced item. Vice-Chairman Martland made the motion, which was seconded by Director Damer.

RESOLVED: That the President is hereby authorized to enter into a contract with TRC Environmental Corporation to perform Construction Quality Assurance (CQA) services associated with the capping of the remaining un-capped portion of the Phase 1 Ash Area of the CRRA Hartford Landfill, substantially as discussed and presented at this meeting.

Mr. Bodendorf said that the resolution is to employ TRC to provide construction quality assurance services. He noted that the fourth line incorrectly notes that the Hartford Landfill ash area stopped receiving waste on “December 31, 2009”. Mr. Bodendorf said the correct date is December 31, 2008, a change which will be reflected for the Board meeting.

Mr. Bodendorf said that he put out a request for proposals for these services to four of the engineers in CRRA’s stable. He said that management also received responses from Fuss & O’Neil, TRC and SCS Engineers. Mr. Bodendorf said that Fuss & O’Neil’s quote may have been extremely high because it did not want the work. He said that SCS’s response proposed to use a local subcontractor for 770 of the 950 estimated field hours. He said that management was recommending TRC based on the review of the proposal, that fact that TRC was the designer and its quick and cost effective response to a problem within the first phase of this area. Mr. Bodendorf noted that TRC’s proposal cost is about \$12,000 higher than the SCS proposal.

Chairman O’Brien said that he agrees with management’s recommendation based on the write-up and would support it for Board recommendation. He said it is important to use the best team possible.

Vice-Chairman Martland said that he typically supports the low bidder; however the rationale in this case supports TRC.

Director Damer said that he was fine with the evaluation.

Mr. Egan said that management has recently bid out the construction of the landfill closure and those recommendations would be coming to the full Board in June. Mr. Egan noted that out of the 16 responses received there has been a substantial drop in prices from two summers ago, most likely as a result of the economy.

Director Damer asked if the bid responses to this write-up were close to management’s estimated \$3 million closure costs. Mr. Bodendorf said that the three low bids came in at around the \$2.5 million range and were all within about \$120,000 of each other.

Vice-Chairman Martland asked if CRRA is experiencing anything similar to fraud in big construction outfits which have had instances where attorneys are hired to review the specs, bid low, and then submit multiple and costly change-orders.

Mr. Bodendorf said that the first phase of the ash area would have come in under budget except for the fact that more ash than anticipated had to be moved in addition to material failure. He explained the 44 acre project is ongoing and is on budget so far.

The motion previously made and seconded was approved unanimously by roll call.

3. **REVIEW AND RECOMMEND FOR BOARD APPROVAL RESOLUTION REGARDING THE AMENDMENT TO SECTION 4.6 OF THE PROCUREMENT POLICIES AND PROCEDURES**

Chairman O'Brien requested a motion on the above-referenced item. Director Damer made the motion, which was seconded by Vice-Chairman Martland.

RESOLVED: That the Board hereby approves the following revision to the Procurement Policies and Procedures, amending and restating in its entirety Section 4.6 thereof:

Mr. Kirk said that he and Ms. Hunt developed these revisions in recognition and response to an issue which was initially raised many years ago. He explained the situation occurred when there was public knowledge of ethical issues for successful bidders for some of CRRA's projects. He said at the time the Board elected not to accept the otherwise low-qualified low bidder. He said management is concerned that CRRA's specific procedures may allow this but do not speak to this issue. Mr. Kirk said that these revisions will also make this situation clear to future bidders as well.

Chairman O'Brien said that he agrees but is concerned with the way this revision is worded. He said that fact that there is one strike does not necessarily mean that a bidder is out and stated that he would like the revision worded clearly.

Ms. Hunt said that she should have worded the memo to say that this is the exact language under which bidders have to be excluded by State agencies. She said she would review the required language.

Director Miron said that he wouldn't list the specific crimes and suggested perhaps including a catch all instead.

After substantial discussion the Committee agreed that these revisions will be changed for clarity and brought back to the Policies & Procedures Committee for approval.

MOTION TO TABLE THE RESOLUTION REGARDING THE AMENDMENT TO SECTION 4.6 OF THE PROCUREMENT POLICIES AND PROCEDURES

Chairman O'Brien requested a motion to table the above-referenced item.

The motion to table was made by Director Miron and seconded by Vice-Chairman Martland.

The motion to table was approved unanimously by roll call.

4. REVIEW AND RECOMMEND FOR BOARD APPROVAL RESOLUTION REGARDING FY 2010 PROJECTED LEGAL EXPENDITURES

Chairman O'Brien requested a motion on the above-referenced item. Vice-Chairman Martland made the motion, which was seconded by Director Damer.

WHEREAS, CRRA has negotiated three-year Legal Service Agreements with various law firms for the provision of legal services from July 1, 2008, through June 30, 2011; and

WHEREAS, CRRA now seeks Board authorization for projected legal expenditures during the second year of the term of said Agreements;

NOW THEREFORE it is RESOLVED: That the following amounts be authorized for projected legal fee incurred during fiscal year 2010:

Firm:	Amount:
Berchem Moses & Devlin	\$25,000
Brown Rudnick	835,000
Cohn Birnbaum & Shea	40,000
Halloran & Sage	1,340,000
Heneghan Kennedy & Doyle	49,000
Kainen, Escalera & McHale	300,000
McCarter & English	75,000
Perakos & Zitser	40,000
Pepe & Hazard	600,000
Pullman & Comley	150,000
Sidley Austin	150,000
Hinckley, Allen & Snyder	50,000

FURTHER RESOLVED: That the President be authorized up to \$500,000 from the Landfill Development Reserves Account for payment for legal fee incurred in fiscal year 2010 in connection with the Authority's development of a new ash landfill in the State of Connecticut; and

FURTHER RESOLVED: That the President be authorized to expend up to \$450,000 from the Post Litigation reserve Account for payment of legal expenses incurred in fiscal year 2010 in connection with the Enron Global litigation continuing under the aegis of the Attorney General; and

FURTHER RESOLVED: That the President be authorized to expend up to \$25,000 from the Bridgeport Risk Fund Reserve Account for payment for legal fees incurred in fiscal year 2010 in connection with continuing Bridgeport Project matters.

Director Miron said for the record that Berchem, Moses & Devlin serves as the town attorney for the Town of Stratford. He asked Ms. Hunt if he should recuse himself. Ms. Hunt said that she did

not think is necessary as the issue is not personal to Director Miron. Director Miron said that was correct as he had no business relationship with the firm.

Chairman O'Brien asked why the projected legal expenses for Pepe & Hazard are \$600,000. Ms. Hunt explained the second resolve details \$450,000 which is from the post-litigation reserve involving the continuing Enron banks cases.

Vice-Chairman Martland asked why that hasn't been terminated. Ms. Hunt said that it was suggested but had not been decided on. She said that the money may not actually be spent. Vice-Chairman Martland asked what banks would make a deal to CRRA's advantage in the current economy.

Mr. Kirk said that Ms. Hunt and he had suggested approaching the lawyers and the AG to see what can be gained through a flat fee.

Vice-Chairman Martland said that he wanted to terminate the continuing bank cases. Chairman O'Brien asked that an update be provided on the bank cases. Mr. Kirk said that Mr. Goldstein will be asked to provide the Board with an update on the bank cases.

Ms. Hunt said that Pepe & Hazard has offered to reduce the monthly storage costs associated with the Enron global case by 1/3 to about \$6,400 on a monthly basis. Mr. Kirk said that the storage costs are for millions of electronic documents associated with the case. Mr. Kirk said this was a service which was bid out and is necessary in order to provide access to the documents to the plaintiffs. He said access is not required for a few months because the case is on hold and management is exploring the option of temporarily shutting down the site or hosting it through CRRA for a cost savings of around \$9,000 a month. Mr. Kirk said the lawyers will need access to those documents eventually and that access will need to be reinstated at some point.

Director Miron asked that the total lines for all legal services be totaled for the Board meeting.

Director Damer asked Ms. Hunt for background information on how the legal numbers are obtained. Ms. Hunt said that the services are obtained using an RFQ, a bidding process similar to that used by the other CRRA departments. She said they are not project specific and the responses to each bid are interviewed by the Committees.

Chairman O'Brien asked how current the bills are. Ms. Hunt said that the reports reflect up to March 2009 for bills.

Director Miron asked whether some of the firms have sporadic billing practices and whether management monitors those bills. Ms. Hunt said the bills are closely monitored by Ms. Kenney and that the firms are instructed to submit bills in a timely manner in order to receive payment.

Mr. Egan said that CRRA contracts contain specific language stating that bills must be received within a certain time period.

Ms. Hunt said that with regard to the Pepe & Hazard expenses for the Enron related cases that CRRA only pays out-of-pocket expenses and not legal fees because Pepe is on a contingency. Ms. Hunt said that most of what has been invoiced to date is in connection with the New Hartford matter.

Director Miron said it may my good to put these costs in perspective as they are a fraction of the CRRA and Project budgets. He suggested that when the budget is brought to the Board for approval that the legal costs be put in perspective next to the overall budget on a project or overall basis.

Chairman O'Brien said that he is surprised that Sidley Austin's estimated legal costs have been reduced even though it hasn't done some of the bonding work that management has assumed it would be doing in 2009. Ms. Hunt explained that due to the \$544,000 reduction of the legal budget by the CRRA Board she had to cut the estimated costs of all of the firms for FY'10.

Chairman O'Brien asked whether it would be possible to reserve some of unused funds allotted for those costs in FY'09 for FY'10. Mr. Kirk said any surplus goes into 2011. Chairman O'Brien asked that the possibility be explored. He said it is not necessarily surplus if Sidley is being used specifically for planned bonding. Mr. Kirk said a reserve can be created for that purpose and that he would discuss the possibility with Mr. Bolduc.

The motion previously made and seconded was approved unanimously by roll call.

5. **REVIEW AND RECOMMEND FOR BOARD APPROVAL RESOLUTION REGARDING THE FOURTH AMENDMENT TO THE STRATFORD REGIONAL RECYCLING FACILITY OPERATING AGREEMENT AND SECOND AMENDMENT TO THE LEASE AGREEMENT**

Chairman O'Brien requested a motion on the above-referenced item. Vice-Chairman Martland made the motion, which was seconded by Director Damer.

WHEREAS: The current Operating & Lease Agreement with FCR, LLC to Operate the Southwest Regional Recycling Center expires July 1, 2009 and;

WHEREAS: The Operating Agreement between CRRA, SWEROC and FCR, LLC provides for extension options and;

WHEREAS: SWEROC approved a two-year extension of the Operating and Lease Agreements with modifications included in the Amendments to said Agreements and the related Fiscal Year 2010 budget at its meeting held on April 22, 2009 and:

WHEREAS: Approval of said extension and Amendments enables the continuation of recycling services to the SWEROC member towns pursuant to state recycling goals and;

WHEREAS: CRRA and SWEROC during the two-year period may work with FCR on retrofitting the facility to accommodate single stream recycling to increase recycling rates for SWEROC towns similar to the experience at CRRA's Mid-Connecticut Regional Recycling Center ;

RESOLVED: That the President is hereby authorized to execute a fourth amendment to the Operating Agreement and second amendment to the Lease Agreement with FCR, LLC to

provide for a two-year extension for the operation of the Southwest Regional Recycling Facility.

Chairman O'Brien said that he is glad to see that recycling will continue as it is important to the State.

Director Miron asked if this resolution will affect the Stratford Garbage Museum. Mr. Kirk said this will not affect the museum and that currently the museum is scheduled to close on July 1, 2009. He said management is cautiously optimistic that they will be able to keep the museum open for at least a few months.

Mr. Kirk said Covanta's Wallingford operation had a Wallingford emissions violation which resulted in a consent order with an accompanying \$550,000 payment. He said the CT DEP can order participants to use the supplemental environmental program (hereinafter referred to as "SEP") which allows the offending party to pay money towards a community environmental benefit in lieu of sending a check to the general fund. Mr. Kirk said that CRRA is hoping to direct Covanta to spend that money on the museum as the SEP. Mr. Kirk said if this was possible the museum would be funded for two more years.

Director Miron asked what would happen to the museum if it closed. Mr. Kirk said it would be winterized and kept insured and locked up. Mr. Kirk said that the FCR contract contains a clause which allows for FCR to have access to two offices in the museum. He explained that clause will only be appropriate to the extent that the building is open. He explained FCR is working with CRRA cooperatively concerning this issue.

Director Miron asked if the CT DEP has given any word on whether it will approve the SEP. Mr. Egan said management hasn't heard from the CT DEP as this request has not been elevated to the Commissioner level. He explained the reason for this is that Covanta is still trying to reach an agreement with the Air Bureau. Mr. Egan said that Covanta understands the time sensitivity and it is ultimately up to the Commissioner to agree to the SEP. He said a violator has some leverage and can simply pay the fine. He said that the CT DEP would rather have the money go to a project with some environmental meaning.

Director Miron said that he would like to be able to organize some lobbying effort from both the Board and from Stratford to get to the Commissioner. He said he feels it is an appropriate action. Mr. Kirk said that is welcome news and that there are other folks interested in helping.

The motion previously made and seconded was approved unanimously by roll call.

7. INFORMATIONAL

Chairman O'Brien said that there were no comments on the informational section of the package and noted that the Committee had thoroughly reviewed the material.

8. EXECUTIVE SESSION

Chairman O'Brien requested a motion to enter into Executive Session to discuss pending litigation, real estate acquisition matters, and RFP responses. The motion made by Director Damer and

seconded by Vice-Chairman Martland was approved unanimously. Chairman O'Brien requested that the following people remain for the Executive Session, in addition to the Committee members:

Tom Kirk
Laurie Hunt, Esq.

The Executive Session commenced at 10:32 a.m. and concluded at 11:02 a.m. Chairman O'Brien noted that no votes were taken.

The meeting was reconvened at 11:02 a.m., the door was opened, and the Board secretary and all members of the public were invited back in for the continuation of public session.

ADJOURNMENT

Chairman O'Brien requested a motion to adjourn the meeting. The motion made by Vice-Chairman Martland and seconded by Director Damer was approved unanimously by roll call.

The meeting was adjourned at 11:02 a.m.

Respectfully submitted,

Moira Kenney
Secretary to the Board/Paralegal