



**SPECIAL MEETING
PROFESSIONAL SERVICES CONTRACTS
MAR. 15, 2011**

1. Meeting was called to order by Chairman Dator at 7:00 p.m.
2. The Chairman read the statement in compliance with C.231, PL 1975.
3. Roll Call: The following Commissioners were present: Chewcaskie, Dachnowicz, Kasparian, Kelaher, Plumley, Rotonda, Shafron and Dator.
4. Salute to the Flag was led by Chairman Dator.
5. Chairman's remarks. Thanked everyone for coming.
6. Resolution to go into Closed Session. The Chairman felt there was no need to go into Closed Session. Commissioner Chewcaskie agreed with the Chairman because he believed we weren't discussing any particular individual or contract and did not see the necessity for it. It was determined that there was no need to go into Closed Session for this meeting and proceeded to the discussion of professional services.
7. Discussion on Professional Services Contracts. The Chairman reported that he met with the County Executive and Mr. Trawinsky, the County Administrator in regards to their veto of our minutes which applied to the RFQ's we had received for professional services. It was pointed out to them that we used the same RFQ that the Freeholders used. The Chairman reported that their desire is to have any professional service contract agreements be on a per job basis. They do not want to see any retainers but do want to see hourly rates for professionals, which would be \$150 per hour for attorneys. Their suggestion was that we go out and advertise for RFQ's again for attorneys and that we specify that we will qualify several. The goal is to get as many firms as we can, review the RFQ's, approve or disapprove them at a meeting and determine which firms would be qualified to do certain jobs. The Chairman pointed out that we need an attorney right now for the Franklin Lakes Project we are involved in and our desire was to continue with the firm that has

been doing the work to this point, which is Kaufman, Bern & Deutsch. The Chairman had asked for input in handling this situation. They thought that this was fine but need to have an understanding with his firm that their fees would be \$150.00 per hour and we needed a not to exceed dollar amount. The Chairman spoke to Mr. Bern and relayed this information and we have a proposed resolution tonight that would set the fee at \$150.00 per hour with a not to exceed amount of \$60,000 for this project. The package that we sent into the State for funding for the Franklin Lakes project provided approximately \$129,000 for professional fees which includes Bond Counsel but not engineering. They will have to submit invoices and billing records every month in order to get paid. There will be a significant amount of work to be done by the attorney.

The Chairman's recommendation was to go ahead and re-advertise for RFQ's for legal services right away. Should be able to accomplish this and have a list of attorney's to be qualified by the April meeting. The Executive Director felt that by law we have to have a General Counsel, Consulting Engineer and an Auditor. They don't have to receive all of the work but we need to have these professionals on board.

Commissioner Chewcaskie has an issue with the process concerning General Counsel. He agrees we should do RFQ's and qualify a number of individuals or firms to provide service on an as needed basis. He hasn't done the research nor does he believe he should give an opinion on this but by law are we required to have a General Counsel. It seems that the County Executive's position is that you do not need a general counsel; you could assign specific projects. His initial reaction is disagreement. He agrees that if we have an air permit, incinerator permit issue, Franklin Lakes, litigation, certainly we can qualify four or five firms and ask for proposals and upset costs and qualify them either to do specific work or we qualify them that they can do all sorts of work for the Authority. Just like engineers there may be specialized attorneys.

The Chairman agreed that we have to have a general counsel to answer the day to day problems. Executive Director feels that in dealing with outside entities we have to be able to refer them to someone if they have a legal question. We could just designate someone without using the term general counsel for day to day and meetings and designate them to handle these duties on a time and material basis. Commissioner Chewcaskie feels if you look at it you want to try and control the costs by having a cap. You could easily say I need my routine attorney to respond to the day-to-day issues that come up at \$150.00 an hour but don't know what an appropriate cap would be. He feels general counsel is necessary and after thinking about it and looking at everything that has happened between this Authority and the BCUA, is the County Counsel willing to give us an opinion that says, you don't need a general counsel and the reasons for not needing one under the statute. The Vice-Chairman also feels we need a general counsel and can see

having someone on staff full time. Commissioner Chewcaskie has no issue with that but what do we do between now and that point in time. When you have an actual employee in lieu of a county counsel you have your Authority counsel here to deal with daily problems. It was felt the County Executive's office is of the opinion that some of that legal work can be done by the county counsel. It is felt that the County will find out that we have to have a general counsel and once we receive the RFQ's we can then address that issue. There is no problem with qualifying a series of individuals or firms to provide legal services to the Authority. All we are doing is to say they have submitted it and they have gone through the process and we have determined that they are qualified to render services, either in a specialized field or general services that would be required. We need a general counsel but they should not have a retainer. They can be retained at a rate of \$150 an hour to provide as needed services with a not to exceed amount. When you get to the next step, since we only had a limited response, there should be a new RFQ.

A DRAFT RFQ was distributed for legal services for 2011 which lists a number of legal services including but not limited to general counsel, litigation, environmental, all types. We would like to advertise on Friday. The hardest question is if anyone has an issue to go out again for RFQ for legal services because this seems to be the sticking point with the County Executive. Commissioner Shafron recollection was that she vetoed all professional services and the reason in the veto was we didn't include the cost of what these professionals were going to charge. She didn't reject our appointment of professionals, she rejected the fact that we appointed them without saying a not to exceed price. Commissioner Shafron did not think that our appointment of auditor or appointment of an engineer is an issue. Everyone agreed he is right about the issue. There are nine engineers that responded to our RFQ, all should be considered by resolution qualified to perform engineer services to the Authority. Once we get that out of the way we can select engineers. Commissioner Chewcaskie doesn't disagree but should focus on the question at hand; is there any question to going out for a new RFQ for attorneys.

The Chairman stated we have two problems, one is we are concerned about Franklin Lakes because if we don't get in within the firsts two weeks of April we will lose another year on this project. Second, he went down and asked the County what they are looking for in regards to the veto of our minutes and what can we do to correct it. If we do something other than what they require they can veto the minutes again. The Chairman noted we have always had a general counsel but before Doug Bern's time if there was a special problem we would go out and get special attorney. Under Doug's term we had questions with federal regulations and we went and got John Hall Associates who is a special advisor. When Commissioner Kasparian was chairman he felt our attorney bills were running too high and he put our attorney on a retainer, which was a good move. Unfortunately to the outside world it wasn't a good move and they are now focusing on the \$30,000 a month retainer. Commissioner Rotonda feels cutting is good and

the times say we have to cut. The Chairman feels that the County Executive doesn't care how much we spend on legal fees if we have it all documented. Outside Counsel for the County is \$150 an hour.

We are presently fulfilling a request for the County of an accounting of the past five years in professional fees paid. We received a letter on Feb. 14th requesting copies of all agreements with all professionals within the last five years and also asked for copies of all vouchers and all payments for the past five years. We are going to provide them with a listing of all payments that have been approved for each professional for the past five years. Going back to find all the vouchers for all of these is beyond our capability. If they wish they can send someone up here and we will bring up all the files and they can look through them. It is felt the issue is they want to see the entire backup for all of the invoices. The attorney is the only professional on a retainer.

Commissioner Shafron noted we approved that method of billing because we agreed that the attorney bills prior to this counsel were so high was because they were billed on an hourly basis and they were billed on an extensive amount of litigation and other items. When he came in as a Commissioner and other commissioners came on they said the bills were too high and what we ought to do is we have a retainer agreement that cuts the bills in half and cut out a lot of litigation that had been going on before. We will have a retainer agreement on a monthly basis which will cover all of the standard work that his firm does and we will have uncertain outside litigation that were billed outside of the retainer which is typically done in almost every town in Bergen County. There is a general counsel who has either hourly or retainer and bills outside of that for litigation or a separate firm does the litigation work. Felt it was an excellent idea at the time by Commissioner Kasparian to reduce the substantial legal fees that we had prior to the new chairman taking over. He still believes it was the right thing to do but what has changed is the public perception that a net result in over \$400,000 in legal fees is too high. He believes the county executive is saying that our submission of proposals for professionals which doesn't include the amounts was reasonable. Now we are going to go back to the hourly rate with the idea that we are going to keep it.

There was an agreement drawn based on the monthly retainer with the attorney. The agreement which was drawn up by the legal firm had in a list of all the items that they would provide and an exception list which was supposed to be in Appendix A which no one could find. Later when it was brought to the Chairman's attention we were paying about 10% more in fees than the retainer. We went back and modified appendix A and in the last year or so there haven't been more than \$15,000 billed above the retainer.

The Chairman's issue is not to go back to what was done in the past but to move forward. Commissioner Chewcaskie agrees that we need to go out for new RFQ's for a qualified pool of attorneys that we could select for projects and we understand the way the compensation is supposed to work.

The new RFQ would be for legal services for 2011 with a compensation for legal services, except for those requiring litigation, will be limited to \$150 per hour. It was decided to take out the "except for litigation" out of the sentence and if specialized litigation is needed we could go out for qualifications for a specialized attorney.

Section II – stipulates the anticipated legal services required.

We want to go out for the RFQ's and encourage law firms to submit their qualifications. Our original RFQ's for attorneys had a limited response and for the other professionals we had numerous responses to the RFQ's. We would like to see at least half a dozen responses to this RFQ so we could qualify three or four firms to have a choice. We will be selectively assigning projects to an attorney or group of attorneys to move forward. Hopefully this will resolve the problem of general counsel. The Vice-Chairman wanted to know if he understands the process that is being suggested than is whoever applies than it is than up to the vote of this body as to who is going to be general counsel and who is going to be getting whatever other work there is.

Commissioner Shafron noted that this procedure is now going to be two steps. First is the Operating Committee is going to make a suggestion to the Commissioners the firms who are qualified that have submitted RFQ's. Then the whole commission will vote as to who is qualified and then as we decide we need an attorney, then we vote on what attorney we are going to appoint. The first would be a general counsel if that is what we decide we need.

A Motion was made by Commissioner Chewcaskie that the Authority seek Requests for Qualifications for Legal Services for 2011 pursuant to the document as prepared by the Executive Director.

Commissioner Shafron made a request to go into Closed Session to have a discussion since it is being presented to him for the first time and we are voting on doing this procedure, he wanted to discuss it in closed session.

The Chairman noted that we cannot just go into Closed Session without good reason. If you have issues they should be voiced. You can voice yes, no or voice your comments if you are against the process. We cannot discuss the award of a specific contract or a specific individual in open session.

There was no Closed Session.

Commissioner Kelaher seconded Commissioner Chewcaskie's motion. All Commissioners present voted in favor of the Motion to go out for RFQ's for Legal Services for 2011.

The Chairman introduced a Resolution to engage the services of T&M Associates to provide the engineering professional services required for the Franklin Lakes Sewer Project.

We are going to take all the RFQ's from engineering, Auditor and Bond Counsel and we are going to review them and at the next meeting we will qualify them. The problem was and the reason the resolutions were vetoed was the resolutions prepared by our counsel were improper. There was no advertisement that suggested we were going to award a contract. All this RFQ stated was that on the date of our Feb. 1st meeting we were going to designate the qualified respondents. But because for the last six years when we designated the qualified respondent what we really meant is the firm we are going to hire for our consulting engineer. The attorney lumped everything into one and that is why everything got vetoed.

Commissioner Shafron thought that the Exec.Dir. looked into the way at which we appointed our Auditor, Engineer and Attorney and it was done properly but that the County Exec.was not pleased with the fact that the amount of the contracts were not included in the resolution therefore she vetoed it. Now we are saying the way we conducted our solicitation wasn't proper. The Executive Director reiterated that once you have completed the first task of qualifying respondents, than you are free to hire a consulting engineer and the attorney lumped everything into one. That is why this was vetoed.

The board determined that T&M was qualified and said we are awarding the contract and didn't have a specified amount. What the board hasn't done is they have 9 responses for engineers but those 9 engineers have not been qualified yet. Only T&M was qualified. The first process is to see if we are satisfied with the nine responses that we received and believe that that is sufficient to select engineers for the service. The second is that someone has to look at them and say these are all qualified, which was done by the Operating Committee. Then they will be deemed qualified at the next meeting by Resolution. Then as we proceed through the year, we need to designate a firm to be our consulting engineer. The Authority can only have one Auditor and we will negotiate a fee from them. Bond Counsel we have two RFQ's for Bond Counsel. We stayed with Gibbons because they have been with us before but we might just as well find the other firm qualified also, which is Hawkins, Delafield & Wood. If we are doing any bonding next year we will ask for a proposal from one of them to be bond counsel. For Franklin Lakes we should stay with Gibbons as Bond Counsel because they have already started the work and appointed them in August 2010.

After a long discussion on procedure it was pointed out that the contract for T&M which is before the Commissioners tonight is the contract that was approved by the DEP and the Environmental Infrastructure Trust as a draft.

Commissioner Chewcaskie feels T&M should be retained as engineers for the Franklin Lakes Project. The attachment to the contract is a 2011 schedule of hourly billing rates; he wanted to know if there is a difference between what they were billing the Authority in 2010 as opposed to 2011 and what the difference is. We approved the project for them in 2010. The contract states the estimated amount of \$430,000 and will not be exceeded without prior written approval of the owner. The Resolution does not indicate a not to exceed amount. The Resolution should indicate that if the contract is awarded in accordance with the attached schedule of not to exceed \$430,000 provided it doesn't exceed the 2010 rates there is no problem with them continuing.

Resolution 27-2011, as amended, was offered by Commissioner Kasparian, seconded by Commissioner Plumley to retain T&M as the engineers on the Franklin Lakes Project. The amendments are not to exceed and that the hourly rates are the same as 2010. All Commissioners present voted in favor of the Resolution, except Commissioner Rotonda who recused himself from voting.

Resolution 28-2011 Engaging the services of Douglas Bern, Esq. Of Kaufman, Bern, Deutsch & Leibman, LLP to provide the legal professional services required for the Franklin Lakes Sanitary Sewer Project. The resolution was distributed to the Commissioners. The Vice-Chairman asked that in light of the conversation that just took place with regard to legal services, why are we considering this resolution. Chairman noted we are required to submit to the NJEIT an attorney by the first week in April for the Franklin Lakes Project. Commissioner Chewcaskie noted the resolution relates back to the RFQ. Recommends striking the second thru sixth Whereas provisions, which on the first page would leave the first and last Whereas provision and there is no problem with the balance of the resolution. This is not an RFQ award. Kaufman firm was deemed qualified pursuant to the RFQ process but now we are reopening that process. Leave the process that was done before out and basically appoint him to do the project. Next time he would be qualified if he submits an RFQ. The point is he is being appointed for a specific project outside of the sphere of the RFQ. We feel he is qualified for this particular project. Suggestion was made by the Executive Director to take Resolution 27-2011 which doesn't mention qualifications and make resolution 28-2011 conform to it. Doug Bern was originally authorized to provide all professional services up until this point. We authorized him to go out and get the easement information and we did authorize our staff, T&M and Doug Bern up until this point. Now the contract is ready to be awarded and there are additional legal services which you probably do not want to change attorneys in mid stream for.

Commissioner Chewcaskie commented that if in response to the RFQ, you happen to like other attorneys you could terminate him. There is a necessity to be in continuity but as an example it doesn't necessarily have to continue with the same firm.

The Chairman reported that these actions were already discussed with the County Executive and she has no problem with them.

Commissioner Chewcaskie agrees with everything the Executive Director has said is necessary, that we need to proceed with the trust. He is just telling the board his opinion is we do not need to continue with this attorney. It may not be a good idea not to but we don't need to. Basically, Doug Bern is being appointed for the specific process similar to the T&M Resolution at \$150 an hour not to exceed \$60,000. Shafron – with Brian's suggestion are we switching the language? This would be for Franklin Lakes only.

Resolution was moved by Commissioner Rotonda, seconded by Commissioner Dachnowicz. All Commissioners present voted in favor of the Resolution as amended.

The RFQ's that we received in the past response except for legal services are supposed to be reviewed by the Oper.Comm.on 3/30/11 in order that recommendations as to a pool of respondents will be qualified and appropriate resolutions issued. Howard will re-issue the memo (copy attached) on the firms that responded for the Commissioners to review and to pose any questions or opinions to the Operating Committee by Mar.30th. Any Commissioner wishing to come to the Authority to review the RFQ's is welcome to do so.

Commissioner Plumley stated that at one point in the meeting it was mentioned that maybe we should ask the county counsel if indeed it is their opinion that we need General Counsel. Are we still going to ask that question?

Chairman Dator noted it was pretty much agreed by the Commissioners that we need a general counsel. Nobody at the county said we don't need one; the suggestion was maybe some people in the county assist us. They were going to check with the county counsel's office as well to see if there is any chance that they could provide many services to us. Sure they are going to come back and find that we need a general counsel and we will go from there.

Commissioner Chewcaskie feels we do need a general counsel. At the Operating Committee it will be discussed and we will find out, on a monthly basis, approximately how many hours we need routine general counsel services. When we come up with a number we can appoint a general counsel at \$150 an hour with a not to exceed amount for the year. Typically, the general counsel should assist in preparing the resolutions which Howard and Maddy are now preparing and the routine resolutions can be prepared by the staff.

If anybody has any suggestions on Public Relations people, let the board know. Don't know if we need RFQ's for this or not. We don't have a

lobbyist and have issues that we need taken care of. We may need lobbyists on an as needed basis but would not want to appoint one.

Need to look into any type of shared services we can provide with BCUA or any other county agency. We are urged to get together with the BCUA and see what areas we may have in common to share. Howard is going to check on the lab part of shared service. The County is going to review all of the paper work from 2005 that was done on a possible merger, which was made available to them yesterday. The local mayors are very concerned about any type of merger. Concern with shared services with BCUA is their operation is not similar to our operation. Lab work is basically the same standards. We can't have a shared labor pool but the only way we can share things is by the economies of scale. Are they buying the same goods we are buying and if we buy it together can we get it cheaper. Howard stated that we do have agreements not only with BCUA but with other entities.

Howard has the web-site under control.

8. There was no public present.
9. Adjournment. Motion to adjourn was made by Commissioner Kasparian, seconded by Commissioner Chewcaskie. All Commissioners present voted to adjourn at 8:30 p.m.


Madeline Thumudo, Secretary