REQUEST FOR BOARD ACTION

HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: January 7, 2008

SUBJECT: Rural Center Wastewater Grant Information

ATTACHMENTS: 1. Talking Points for Participants

SUMMARY OF REQUEST:

The North Carolina Rural Communities Assistance Project recently sponsored a workshop entitled "Rural Water and Wastewater Projects: Getting to Success with Your Consulting Engineer". Some of topics discussed were: conflict resolution, contract negotiations, working with consultants, and qualified-based selection for architectural, engineering, surveying and construction services. County Engineer Marcus Jones attended this workshop on behalf of Henderson County, and will discuss the information received with the Board.

BOARD ACTION REQUESTED:

No action is requested. This presentation is being provided for information purposes only.

Suggested Motion:

No motion suggested.

TALKING POINTS FOR PARTICIPANTS
"GETTING TO SUCCESS WITH YOUR CONSULTING ENGINEER"
ASHEVILLE, OCTOBER 10, 2007

1)   "First Aid Kit for Imperfect Moments – Conflict Resolution, Tips and Resources" – Dr. Yolanda Burwell, Senior Fellow, North Carolina Rural Economic Development Center.

Why is conflict resolution important to discuss?
- When it occurs between consultants and local governments, a lot is at stake: credibility, money, time.
- It's easy to get stuck in wanting a particular outcome, without compromise

What is important to remember during conflict?
- Preserve the quality of the working relationship.
- Accountability matters.
- Local governments have an important responsibility for assuring public dollars are well-spent, and that all due processes are followed.

How to Avoid or Minimize Conflict?
- Research the firms you are interested in hiring.
- Make it clear what the local government is required to do, what the consultant needs to do, before hiring a consultant for a project.
- Avoid the appearance of a conflict of interest or a preference prior to selection of a consultant.
- Set communication expectations during the project, how often, in what manner, and how to raise questions about the project .

What if conflict happens anyway?
- Don't let it fester, refer to the contract – it's your guide!
- Make sure to address the concern with the responsible party directly, in a non-personal manner.
- LISTEN. The other side may have a point. There may be underlying issues. There may be areas of agreement to build on.
- Don't make a quick decision, or allow yourself to be rushed or bullied.
- Look for a solution, not for whose fault it is.

- Seek outside expertise if you need to. Establish a timeline for the decision, and come to a mutual agreement – then – amend the contract!
- If informal steps don't work, seek mediation or arbitration, and file a formal complaint.

What if informal conflict resolution measures don't work?
- Formal Conflict resolution: Can go to mediation, where a neutral, third party helps the two parties in conflict listen, communicate and reach a formal decision.
- Use an ombudsperson – the third party is available to investigate complaints and ensure that fairness and due process rights are respected, and can explore several solutions to the problem.
- Arbitration- a third party, knowledgeable in the field, hears both sides of the dispute and makes a binding decision
- Litigation – seek amends in court.

2) "Contract Negotiations 101", - Ben Aldrich, P.E., Aldrich Consulting

Elements of a Valid Contract:
- Must be a real agreement
- Parties must have legal capacity to contract
- Subject of contract must be lawful, and in compliance with statutes

Reaching a Real Agreement:
- Define the scope of work
- Define the schedule
- Identify unknowns
- Balance your risk

Define the scope:
- List services and results desired
- Discuss each item
- Clarify, and revise if needed
- Agree on final results
- Allow for changes

Define the schedule:
- Identify needs
- State and discuss expectations

- Set and agree upon goals
- Allow for changes

Identify Unknowns:
- List possible unknowns
- Set up allowances to deal with unknowns
- Agree on unit prices or method to allow for changes

Balance Risks:
- Identify known risks where possible
- Do not assume a liability that is under the control of the other party
- Be cautious of contract provisions that limit the liability of the other party.
- Agree on how to handle conflicts

Contract Documents:
- Use Standard Industry documents, and amend as necessary
- Don't try to reinvent the wheel

Developing the Fee:
- Firm must make a profit, and the client can justify and afford it
- Have the firm develop the fee based on the scope
- Focus on big items
- Modify the scope, if there is a need to reduce costs for both parties

Justifying the Fee:
- Firms should be able to provide information on fees for similar projects.
- Obtain information from other agencies on similar projects
- Fee must be matched against the needs of your project
- There are NO "standard % fees".

"A good working relationship beats a well-written contract any day."

3) "Working with Consultants on Financial Planning Activities", Jeff Hughes Andrew Westbrook, Environmental Finance Center, UNC-CH; Julie Haigler Cubeta, N.C. Rural Center

Different Kinds of Financial Planning Tools:
- Capital Improvement Plans
- Capital Investment Program

- Capital Investment Budget
- Annual Capital Budget

Capital Planning Steps:
- Project identification
- Project evaluation/validation
- Project scheduling
- Project funding

Capital Improvement Plan Components – refer to the CIP Guidelines in the package, or hand them out to the council/ commission

Rates and Capital Improvement Plans:
- rates provide the means by which the system runs, and should provide enough for repairs, and maintenance

Rehab and Replacement is Important to Plan For:
- Where are the projects
- What percentage of your revenues are used for rehab and replacement?
- What are your system replacement cycles?

Things that Fall through the Cracks:
- Operating increases
- Impacts of non-revenue water
- I&I impacts
- Stability of large customers – factories, mills
- Growth assumptions
- Construction cost increases

Owner's Responsibilities
- Project selection
- Review assumptions
- Communicate the local unit's values
- Use the document!!

4) "Qualification-Based Selection for Architectural, Engineering, Surveying and Construction Manager-at-Risk Services" – G.S. 143-64.31, Ben Aldrich, P.E., Aldrich Consulting

The General Statute governing the selection of design professionals states that "It is public policy to:

- Announce all requirements for architectural, engineering, surveying, and construction management at risk services;
- And to select firms to provide such services on the basis of demonstrated competence and qualification without regard to fee other than unit price information."

Other selection criteria:
- Local governments must make a good faith effort to notify minority-owned firms;
- There may be a preference for resident or local firms;
- There must be a fair and reasonable fee negotiated.

Exempting projects:
- Exemption must be made in writing, for projects where the estimated professional fee is less than $30,000
- Other projects may be exempted at the sole discretion of the local government unit, stating the reasons and circumstances. These may be an emergency, or a critical schedule, a firm's previous experience with a project, or allow bidding.

Bidding Projects:
- Requires a clear scope of services with significant front end work.
- Recommends a pre-proposal conference to clarify unknowns where possible.
- Allow adequate time to prepare bids.
- Use allowances or contingency funds for identified unknowns.
- Consider using the two-envelope process.

Qualification-based Selection: Request For Qualification (RFQ) Development.
- Include desired scope of project as you know it – and identify critical areas or hot buttons
- State the interview schedule, if interviews will be held
- Identify one contact point for questions
- If a scorecard is used, identify criteria, and values.

RFQ Schedule:
- Allow at least three weeks for responses; more time is better
- Set the time bracket in advance for interviews
- Allow sufficient time for scope clarifications and negotiations
- Include schedule expectations or requirements in the RFQ

Pre-Submittal Conference:
- Decide whether one is needed
- Identify what will be gained from the conference
- Encourage open conversation at the conference; learn as much as you can from the applicants

Selection Committee:
- Who do you appoint?
- Remember to train the appointed members
- Protect the members' time
- Confidentiality is important
- Reaching concensus

Shortlisting Applicants:
- Recommend a three to five firm shortlist to interview
- Choose firms on the basis of responses to the Request for Qualifications, then check the backgrounds and references of the shortlisted group
- Notify all of the responding firms immediately of the shortlist

Interviews:
- Recommend conducting them in one day.
- Make a decision at the end of the day if at all possible
- Allow one hour for each interview:
    - 10 minutes for setup
    - 20 minute presentation
    - 20 minute question/answer session
    - 10 minute takedown

Scoring the Applicants:
- Scorecards used are a public record
- Can be difficult fitting a subjective decision into an objective process

Notification of Applicants:
- Should be done _immediately_ after a hiring decision is made
- All firms should be notified by phone
- Do not attempt to justify the selection, just make the notification
- Offer a debriefing session to unsuccessful firms

Debriefing Unsucessful Firms:
- Make it positive
- Focus on why the successful firm was chosen.
- Make all responses available for review by the firm.

Contract Negotiations:
- Once a firm is selected, negotiations are entered to arrive at a fair and reasonable fee.
- If a contract can't be negotiated, move to the next best qualified firm.

Justifying the Fee:
- The firm should be able to provide information on fees from similar projects
- Obtain information from other agencies or local governments on similar projects
- The fee must be matched against the particular needs of the project
- There are no standard % fees