

RFP's = Attorney will
provide forms
or can send out
to evaluate the
qualifications of
the consultants

October 12, 2011

VIA EMAIL: bettsjohnww@gmail.com

Ms. Betty Jo Horn
President, Board of Directors
Waterwood Municipal Utility District No. 1
140 Waterwood
Huntsville, Texas 77320

RE: SELECTION OF A GENERAL MANAGER

Dear Ms. Horn:

You have requested that we provide guidance and commentary in connection with the selection of a professional management services provider for the District. You have advised that the Board at its August meeting determined not to renew the current contract for management services with Palmer Management Company ("PMC"). The decision was based on the inability of PMC to accept a price reduction for the upcoming fiscal year. As it stands now, PMC will provide services, under its existing contract, through March, 2012. After that, the District will implement a new management program. The Board has instructed a subcommittee to study and recommend replacement options.

Initially, you should be advised that the Board is afforded great flexibility in the selection of its consultants, including a general manager. The Board, however, should exercise the greatest scrutiny in this endeavor, as a general manager must be a competent and trusted operative, who will become the face of the District. The fiduciary responsibilities alone, in overseeing the handling of District funds and assets, require integrity beyond reproach. What follows are concerns that the Board should be aware of as it undertakes its deliberations, and a proposed schedule for action:

Competitive Bids Not Needed. Section 49.057 of the Texas Water Code, in conjunction with Chapter 2254 of the Texas Government Code (the Professional Services Procurement Act), make it clear that professional service consultants may not be employed based on competitive bids. We feel that a general manager, functioning as an independent contractor, should be treated as a professional consultant and employed in the same manner.

Requests for Proposals ("RFPs"). In government contracting for professional services, the initial focus is on demonstrated competence and qualifications, rather than price. Generally, in the hiring of professional consultants, government entities send RFPs to selected candidates and then analyze and rank the responding candidates according to qualifications. The highest ranking candidate is then interviewed, at which time negotiations regarding cost are undertaken. If no agreement is reached, the next ranked candidate is then interviewed.

Recommendations and Selection. The RFP process may be undertaken by a representative of the Board, a subcommittee, or the Board directly. In the case of a representative or a subcommittee, such entities should develop a recommendation for action by the full Board. The final decision is made by the Board with formal approval of the consulting

contract.

Alternative to General Manager (Consultant Team Approach). Many water districts function without a general manager. In these situations, the District employs a team of consultants, including a service operator, bookkeeper, engineer, financial advisor, attorney, auditor, tax assessor-collector, and delinquent tax collections attorney, that collectively function to operate the District under the direct guidance of the Board. Typically, in the team approach, all of these professionals attend most meetings of the Board. The District, in considering options, may want to re-examine the team approach.

General Manager Approach. The general manager approach, as authorized by Section 49.056 of the Water Code, provides an additional layer of professional administration and coordination between the Board and its consultants. The District's employment of PMC goes further, not only covering general management, but consolidating the roles of service operator and bookkeeper, as well as providing offices and administrative facilities. Because of its expertise and long-time involvement with the District, PMC also has significantly reduced the need for regular involvement by the engineer and attorney. The general manager system has worked well with PMC, and has unquestionably saved the District money. PMC has brought an important continuity, efficiency, and coordination that will be very difficult to replicate.

Another consideration with respect to the team approach is that the water district industry has developed numerous well-known and experienced professionals in all of the working consultant categories (except general managers), giving the Board a broad selection of seasoned and trusted consultants. Because of the lesser use of general managers, the pool of manager candidates is not nearly as well defined nor as easy to access. As such, the Board should exercise great caution in selecting a general manager from scratch. The inherent checks-and-balances of the team approach provide a more secure approach if the District is having difficulty in identifying qualified candidates. Conversely, if the District already has a competent and trusted manager, it should be greatly reluctant to lose such an operative. Nothing, including the Board's August action, prohibits the Board from re-opening negotiations with PMC and extending the contract if an agreement can be reached. Should this be the direction the Board takes, no further action is necessary, other than approving an extension or an amendment to the current contract.

Open Meetings Act. The selection process (as are all actions of the Board) is subject to the Texas Open Meetings Act. As such, all meetings and deliberations regarding the matter must be open to public, and may only be conducted after proper notice and with attendant recordkeeping. There is no exception in this regard for a closed meeting or executive session. Section 551.074 of the Act permitting executive sessions for personal matters is not applicable to independent contractors, such as management consultants. We assume the Board does not wish to become a traditional employer in this regard.

Conflicts of Interest. Just as for all other District contracts, Board members are subject to conflict of interest and other ethical issues and requirements as set forth in the District's Code of Ethics and related Texas Law in the selection of its consultants.

Possible Schedule. Based on the foregoing, if the Board is to continue its search for a new general manager, a proposed schedule would be as follows based on upcoming Board

meetings:

October 18: Instruct the selection subcommittee to send out RFPs, include all candidates that the Board is directly aware of, including PMC.

November 15: Instruct the subcommittee to have a ranked list ready for presentation to the Board for review. The Board would then authorize an interview process with the ranked candidates or instruct the subcommittee to identify additional candidates.

December 20: Receive a final recommendation from the subcommittee. Authorize tentative approval notification to the candidate. Request a draft of a formal contract and submit it to the attorney for review and final negotiation.

January 17: Approve the formal contract and authorize a transition schedule, which may require an overlap in employment.

Hopefully, the foregoing is helpful in the Board's deliberations and actions on this matter. Please do not hesitate to contact us if additional information is needed or if you should require our attendance at a meeting to further assist in the selection process.

Sincerely,

Sanford Kuhl Hagan Kugle Parker Kahn LLP

By: _____
P. John Kuhl, Jr., P.C., Partner

cc: Ms. Susan Demiany [Firm]