

AGENDA

Wednesday

July 8, 2015

**TOWN OF EASTHAM
BOARD OF SELECTMEN
WORK SESSION AGENDA
Wednesday, July 8, 2015
2:30 PM (Special Time)**

Location: Timothy Smith Room

2:30 p.m.	Clean-up at Nauset Rod & Gun Club - George Price, Cape Cod National Seashore
3:00 p.m.	53A Gift Fund for Diamondback Terrapin Habitat Land Acquisition – ATM 2015, Article 23
3:05 p.m.	Timothy Smith Loan Applications – Renewal and New
3:15 p.m.	Discussion of Phase II Water Project – Procurement of Horizontal Construction, OPM, Role of CPC Committee – John Giorgio, Kopelman & Paige
	Other Business

EXECUTIVE SESSION – To discuss strategy with respect to litigation strategy when an open meeting may have a detrimental effect on the bargaining and litigating position of the public body and the chair is so declaring

Upcoming Meetings

<i>Monday, July 20, 2015</i>	<i>5:00 p.m.</i>	<i>Regular Session: Water/Waste Water Update</i>
<i>Monday August 3, 2015</i>	<i>5:00 p.m.</i>	<i>Regular Session</i>
<i>Wednesday, August 5, 2015</i>	<i>3:00 p.m.</i>	<i>Work Session</i>
<i>Monday, August 17, 2015</i>	<i>5:00 p.m.</i>	<i>Regular Session</i>

**Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting.*

**If you are deaf or hard of hearing or are a person with a disability who requires an accommodation, contact Laurie Gillespie-Lee, 5900 x207*



TOWN OF EASTHAM

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TO: Board of Selectmen
FROM: Jacqui Beebe, Assistant Town Administrator
DATE: July 6, 2015

History of Nauset Rod & Gun Club & Town of Eastham

Nauset Rod & Gun Club began as a private corporation. The club consists of a rifle range, pistol range, and skeet shooting area. In 1971, the Club deeded over (sold) the property for the price of one dollar to the Town of Eastham. The deed transferring the parcel had the following conditions:

- That the parcel would continue to be used by the Rod & Gun Club for all the purposes authorized under their Articles of Incorporation; and
- The Corporation would have the right to “continue to use, maintain, and improve the property, including constructing buildings and additions to the property.”

In 2005, it was discovered that lead shot from one of the firing ranges had landed beyond the border of the property into the land owned by the National Park Service (NPS). The contamination was caused by a type of lead ammunition that was discontinued around 2000, and has not been used in many years.

In 2006, the Department of Environmental Protection (DEP) issued a Notice of Responsibility (NOR) naming the National Park Service as a Potentially Responsible Party (PRP) for the release of the lead. After extensions, on June 26, 2012, DEP issued a Notice of Non-Compliance (NNC) to the NPS setting October 1, 2012 as the deadline for the NPS’s submission of a Response Action Outcome Statement (RAO).

DEP met with all the parties involved: the town, the NPS, and the Rod & Gun Club to develop a plan to remove the lead shot and contaminated soil from the NPS site. As of 2013, the NPS had used \$250,000 in federal funds to pay for the cost of the remediation, and the Nauset Rod & Gun Club had contributed \$150,000.

Superintendent Price is scheduled for the meeting of Wednesday July 8, 2015 at 2:20 pm to give the Board an update on the clean-up.

Special Gift Fund – Diamondback Terrapin Habitat Area (ATM 2015, Article 23)

Vote to establish a gift fund for the purpose of creating & managing a Diamondback Terrapin Habitat Area under MGL C.44 § 53A. Monies shall be deposited with the Treasurer and held in a separate account and may be expended for this purpose without further appropriation.

July 8, 2015

To: Board of Selectmen

From: Sheila Vanderhoef, Town Administrator

RE: Agenda Item

This memo is an attempt to provide the Board with the data and a basic framework to evaluate an issue being discussed; discontinuing the services of Environmental Partners Group (EPG) services after Phase I, pending a full RFP/bidding process.

I have 23 years experience in procurement and project management in the municipal arena. The way we have chosen to contract with our engineer, designer, and project manager is consistent with the manner in which all municipalities throughout the Commonwealth procure these types of services. We contacted the Inspector General's office to get a list of other towns which had recently undertaken large water or sewer projects, (horizontal construction); to see if any had changed engineering firms when engineering concepts were moving to engineering design. We also asked about the use of an OPM on these projects. The information which Neil Andres, DPW superintendent gathered is attached to this report. In summary no towns changed firms when there were no problems with the firm they had. In most projects, the DPW superintendent, who is an engineer served in a limited OPM capacity. The engineer oversees the construction, permitting and design all of which are heavily regulated by the requirements of DEP and the SRF funding source. No project had an independent Clerk of the Works or OPM that was not town staff. I do recommend that we continue the additional services and value engineering that Weston & Sampson provide.

There is no legal requirement or practical reason to procure on-going services at this time. Chapter 30B, which governs procurement along with 39M and C149, does not require that engineering, design, or construction management services are procured in this manner. The part of the statute specifically states that, "this chapter (30B) shall not apply to (32A) contracts with architects, engineers, and related professionals".

Few towns procure these services as they are not required to do so, and the only reason a town would have for changing vendors for these types of services would be if there were problems or weaknesses identified, or a lack of capacity of the consultants to continue the work. In this case, not only have there been no complaints regarding the work of Environmental Partners, but they have done an exemplary job, from the beginning of the long process of public water and into the permitting, final design and construction phases. In fact, for the past nine years, since hired in 2004, EPG has:

- Never missed a scheduled deadline;

- Consistently set design and construction budgets at 11% or less of project costs, where 20% is the norm in the trade;
- Overcome the most challenging and complex permitting challenges ever undertaken on Cape Cod at the District H site with National Park Service lands, wetlands, historic requirements, and complicated easements with other government entities, in the shortest time frame on record with a positive result;
- Always completed any task requested of them, with the principals of the company in attendance and working on this project daily.

Their work in general is characterized by attention to detail, a high level of service and responsiveness to the town, superior quality in design, permitting, and implementation; and the current project is on time, despite a very optimistic project schedule, and on budget. Is anyone suggesting that they are not doing excellent work on behalf of the Town of Eastham?

I can see no benefits to conducting this type of bidding process at this, most critical time in the implementation of this long anticipated public water system, but I can see many detriments, three of which are as follows:

- The pursuit of a full procurement (RFP/bidding process) will take a minimum of 4 months, and take time and attention away from the implementation and management of what is now phase I at a time when we are beginning construction of the first 6 contracts, (September of 2015), for a total of over 30 million dollars worth of construction. Is this the time to take our eyes off the ball?
- The procurement would result in time delays and potentially increased costs, as we would be unable to continue the permitting process for the larger system, and would be unable to take advantage of cost and time savings associated with integrating the larger system when advisable with already occurring phase I construction activities.
- The deadline for the submission of request for funding for the SRF program for next year is August 2015. If we are unable to submit for anticipated construction activities, it could result in a one year gap in funding, which would certainly slow down the continuation of the project.
- With the approval of the entire system at town meeting, the BOS will require all of EPG's programmatic knowledge and insight on the community to assist and guide them in making the correct decisions on timing and sequence of system expansion beyond Phase 1.

For example, consider that the concept plan or map of phase I left out several streets, one of which is Cedar Lane in South Eastham near the rotary. This street begins at route 6 and is a dead end with 6 residential lots. If we have to strictly abide by phase I limits, we would leave this area without service and have to return to it later in the total project. Since the town-wide system has been approved, the organic growth of the system would favor providing Cedar Lane service as a part of contract 6 in phase I. If we do this, it will save us the time and money of coming back to

do this work later. This is just one of many examples that would support a detailed Board of Selectmen review of the timing of service to these and other similarly situated lots, with the engineers who have designed this system, developed all the plans, and understand the construction process the best.

EPG has a unique and total understanding of the entire public water system project, and has demonstrated the ability to strategically integrate all of the diverse technical and social elements of the project into a clear master plan, complete with schedule and budget. One year into the design/construction program, they are on schedule and under budget his familiarity and integration with the Town staff and elected officials has taken years to develop and fine tune, disrupting it, for no legitimate reason, is irresponsible.

History of Procurement for Eastham Water System

The genesis of this issue, whether to formally re-procure services at this time, is unclear to me. I have heard discussion that the services were never procured, and this is a false statement. In 1969, the Town of Eastham hired the engineering firm of Whitman and Howard to prepare a report on the necessity for town water and a concept plan. That report, although presented at Town Meeting did not result in a positive Town Meeting vote and so the water was not installed. In 1997, at the request of the Board of Selectman, after closing the landfill, a limited municipal water system concept plan was prepared. That plan was not approved by town meeting. Over the next ten years, several plans were presented to town meeting from partial or limited systems, to town wide systems. In May of 2014, Town Meeting authorizing the installation of a partial (Phase 1) municipal water system. In May of 2015, the Town Meeting vote authorized the installation of municipal water town wide; therefore, the distinction of limitations imposed in the Phase 1 concept plan should be dissolved in favor of installation efficiency, and cost effectiveness of the entire system. This is what the voters and residents expect.

In 2004, as we embarked on a comprehensive landfill response we recognized that it needed to include the exploration of a permanent solution, specifically, municipal water to the area down gradient of the landfill, where DEP was requiring extensive testing of private and public monitoring wells. In December at a Special Town Meeting an expenditure of \$100K was authorized to prepare a report for the May 2005 Annual Town Meeting on municipal water and the landfill plume. I prepared and circulated an RFP for engineering services related to the above funding. That RFP yielded seven (7) responses, and of those, four were interviewed. The interview team consisted of representatives from the Board of Health, Water Resources Advisory Committee, one Selectman and myself. The group of six then ranked the firms on several discreet characteristics:

Team Quality, Accessibility

Proposed Plan for the Water System

Experience with Similar Projects

Construction/Operating Experience with Municipal Water Systems

Permitting (DEP) Record of Success/Time

Success with Funding Grants.

Project Costs Estimates, Vs Project Actual Cost Vs Bid Price

In general we had a preference for firms who had worked on the Cape or were currently working with other cape towns. We wanted a consultant who understood the cape landscape, environmental limits and opportunities. Further, it was important that they understood and respected a more multivariate decision making process that included all members of the Board of Selectmen at many points. It was also important that the selected firm be prepared to attend as many public meetings as necessary to ensure that the Board of Selectmen, staff, and the public fully understood all aspects of the project.

We evaluated the proposals based in general on the above factors and developed an interview format for the short list candidates. We allowed 45 minutes for each firm.

Team Quality, Accessibility:

We requested that the actual team members attend the interview so we could meet and speak directly with them. We wanted the team leader and our principal contact person.

Proposed Plan for the Water System

We asked about approach to design and engineering and relied in part of examples of approaches used in other towns.

Experience with Similar Projects

We asked whether and to what extent the firm and the specific team members have experience with new municipal systems which required source identification, engineering design of the actual piping and construction management of the installation.

Construction/Operating Experience with Municipal Water Systems

This was to determine whether and to what extent a firm had designed and managed installation of a water system in another town to serve previously unserved areas.

Permitting (DEP) Record of Success/Time

We were aware of the complexity of the permitting process with DEP for new water systems and the limitations on the life of such permits. We wanted a team that had

engaged in and completed the permit process and wanted to understand their approach to permitting.

Success with Funding Grants.

USDA and SRF were potential funding sources. We wanted grant writing experience and success.

Project Costs Estimates, Vs Project Actual Cost Vs Bid Price

This for me is a most critical measure of a firms' success. I wanted an engineering firm that was adept at estimating the cost of projects with the confirmation that bids had come in within that estimate, and further that the actual project costs were not out of line with the estimate. Often the cost of projects is driven beyond the estimate by two critical factors: failure of the engineering firm to fully design the project resulting in numerous change orders and poor cost estimating. We examined the references and projects of the selected firms in this regard.

That formal procurement process resulted in the choice of Environmental Partners. The principals who we met at that time are still involved with the town and are accessible at all times, and have made themselves available for all public meetings.

Having procured the services of Environmental Partners in this way, and having no specific deficit of service, efficiency and cost, would suggest that it would be appropriate to maintain their services. The Board of Selectmen however, alone makes the decision. It is the recommendation as Chief Procurement Officer that we continue with Environmental Partners. I have given data in support of that recommendation, and I am available to answer any questions you may have.

Town of Eastham

Department of Public Works
555 Old Orchard Road
Eastham, MA. 02642



508 240-5973
Fax 508 240-6687

To: Sheila Vanderhoef, Town Administrator
From: Neil Andres, Superintendent DPW
Date: July 1, 2015
RE: Water System Construction Administration

I have reviewed the Inspector General's Procurement Manual and found that:

Eastham procured engineering design services as suggested

There is no statutory requirement for an Owner's Project Manager (OPM)

The Attorney General's Office confirmed that an OPM is not required under 30,39M

In order to investigate best project management practices, I contacted a representative from the State Revolving Loan program and asked for a list of small towns which have constructed large projects. My notes from contacting them are attached. In all cases, the same engineering firm was used for the entire process from design and permitting through construction administration. Daily oversight by the engineering firm's project manager, engineering staff, and clerk of the works were key to successful project implementation.

The most important task identified for the town was the monthly progress meeting at which payment and reimbursement matters were acted upon. Town staff had to hear requests from the contractor, advice from their construction administration team, consider items, make decisions, and submit timely reports and reimbursement requests.

I have worked closely with our design engineer on this project and note that having the designer approve the contract submissions, shop drawings, construction sequences and procedures, as-built field cards, etc. has been valuable and expeditious. In my opinion, having another firm take over these responsibilities would slow the project down and increase costs as the independent OPM would have to come up to speed on the project design and permits. Eastham is a small town without the staff resources of the MWRA, MassDOT, or large cities. Adopting the standard model of having the Engineer manage construction is a safe and practical means of building a successful project.

ProjectID	Company Name	Project Stage	PRANumber	PRAIssued	EligibleCost	Population
3327	DANVERS	C	DW-10-02	9/1/2011	\$20,378,227.00	23810
1980	NORTHAMPTON	C	DW-05-18	6/1/2006	\$14,158,018.00	29300
2873	Mattapoissett River Valley Water District	C	DW-05-14	5/1/2006	\$13,512,800.00	27988
3652	ACTON WATER SUPPLY DISTRICT	C	DW-12-19	10/1/2013	\$13,470,767.00	21349
2787	LEE	C	CW-05-35	6/1/2006	\$21,427,844.00	5985
3198	STURBRIDGE	C	CWS-09-09	1/4/2010	\$16,989,000.00	7837
2816	NANTUCKET	C	CW-05-21	11/6/2006	\$44,635,228.00	9520

Danvers - \$20,378,277 – Sewer plant upgrade – Chap 149 - 2011

Comments from Rick Rogers, Danvers Town Engineer, 978-774-005 ext 637
Project on time and budget. Considered a success.

Engineering firm was Klienfelder. They were happy with their work. They started with a capacity improvement study and moved on to a design contract. They used the same firm for construction services/resident engineer. The Town Engineer represented town- no outside OPM needed.

Why did you stay with original firm?

- There is a lot of time spent coming up to speed on a project. Sticking with same firm kept costs down and project on schedule. No real economy from bringing on another firm. The all have similar markup on salary.
- Another firm was hired to do a “Sanity Check/alternatives analysis”. This cost \$20K - \$30 K. This analysis did not find any issues.
- Keep it as simple as possible for SRF. One construction contract, one construction services contract per phase. No submission for overhead, etc. SRF process provides a level of additional scrutiny and time.

Acton Water supply district - \$13,470,767.00 – project under construction

They are a district with three elected water commissioners and a volunteer finance committee
Comments from Chris Allen, District Manager, 978-263-9107

Wright Pierce is their engineering firm. They did entire project from permitting to design to construction administration. They served as OPM. No outside review

Monthly project meeting were held. Invoices were reviewed and submission made to SRF at the end of the meeting. SRF sent checks a week later. A few change orders but most denied. Contractor “left some money on the table” and tried to make it up in change orders for unforeseen conditions but town had boring every 100 feet so denied.

Be mindful of deadlines and be open and forthcoming with SRF. They were originally awarded 6 million but were able to get additional “liberated funds” from projects that fell out. They went to the SRF office and met with them and found that helpful.

Why did you stay with the original firm?

- Project going fine.
- Did not want extra costs/time

Lee Mass - \$21,427,844 – Waste Water Treatment plant- Chap 149- 2006

Comments from Town Administrator Bob Nason – 413-242-5500

Used AECOM for study, design and construction administration. OPM was Director of Public Works.

Had an oversight committee of 5-7 which included retired engineer. The committee reviewed all change orders, contracts, submittals, etc. They were helpful – use local talent

Why did you stay with original firm?

- When you change firms, next firm typically wants to redo work the first firm did because they don't trust/can't verify.
- AECOM was doing good work for the town.

Sturbridge - \$16,989,000.00 Waste water treatment plant Chap 149 and 16 million sewer 2010

Comments from Greg Morse, DPW Director- 508-347-2516

Town goes out for initial RFP but uses the same firm for study, design, construction administration. Used Tighe and Bond (T&B) for this job and they did good job, but has also used other firms successfully.

DPW director served as OPM. Has a construction background and grew up in the town.

No outside review of engineering work or oversight committee.

Emphasized the importance of monthly progress meetings including contractor, Engineering firm project manager and clerk of works, DPW Director, and town administrator. Each month the contractor or subs would submit change orders for consideration. Many of them were without merit and some bordered on laughable but they had to be received, considered, and response

produced. DPW director said Town administrator was sharp and helpful as was the representatives of T&B.

Why did you stay with original firm?

- Project going well, no need to replace engineers/construction administration

Nantucket- \$44,635,228.00- Sewer Treatment Plant upgrade - Chap 149

Comments from Diane Holdgate- DPW Administrative Assistant

Used AECOM – formerly Earth Tec- Town has used same Engineering firm for years. They did a great job on Engineering and also did construction oversight/resident engineer. The Town Engineer also supervised project. No independent review.

Why did you stay with original firm?

- Having same firm avoided having to bring another firm up to speed.
- Firm has done good work so why change?

Jacqueline Beebe

From: Anderson, Deborah (AGO) [deborah.anderson@state.ma.us]
Sent: Wednesday, July 01, 2015 9:31 AM
To: Neil Andres
Subject: RE: Eastham

there's no requirement for an OPM, but you can certainly hire one.

Deborah A. Anderson
Assistant Attorney General
Construction Bid Unit
617-963-2371

From: Neil Andres [nandres@eastham-ma.gov]
Sent: Wednesday, July 01, 2015 9:29 AM
To: Anderson, Deborah (AGO)
Subject: FW: Eastham

Deborah - I am working on a town wide water system project. The current construction phase is 48 Million dollars. Phase two, which is authorized by town meeting but with no work including design started, will be \$85 million.

We used the RFP process to select our Engineering Consultant for phase one.

I spoke to the State Revolving Fund (SRF) and asked for the names of other small towns (around 5,000 population) who have done big projects under the SRF program. I interviewed several and found they all used the same firm for design and permitting as well as for construction inspection and project management for their 30 39M water/sewer project.

I like the idea that there is one entity to point a finger at if the water system does not work as planned.

I have been asked to investigate the possibility of using an independent Owners Project Manager instead of the Engineering consultant for construction inspection and project management. I have not found any examples of this arrangement for water projects. Any advice?

As I read the procurement manuals, I find no requirement for a separate Owners Project Manager for a water system project. Is this correct?

Neil Andres
Eastham DPW
508-240-5973