

Dawn Bartel

From: Brian Helminger <brian.helminger@hvmsd.org>
Sent: Monday, June 5, 2017 2:40 PM
To: 'Dawn Bartel'
Subject: FW: Legal opinion- Detention pond - Heart of the Valley MSD

From: William S. Cole [mailto:WCole@axley.com]
Sent: Friday, June 2, 2017 3:39 PM
To: 'Brian Helminger' <brian.helminger@hvmsd.org>
Cc: 'David Casper' <DCasper@Badgerlabs.com>; John Sundelius <sundelius@kaukauna-wi.org>; 'Kevin Skogman' <kevin.skogman@hvmsd.org>
Subject: RE: Legal opinion- Detention pond - Heart of the Valley MSD

Brian,

HOV is not required to comply with the public bidding requirements for the work it is reimbursing the County. However, the county may very well need to do so. That would be a decision for the county to make with its corporation counsel.

Bill

William S. Cole

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Axley Brynelson, LLP

From: Brian Helminger [mailto:brian.helminger@hvmsd.org]
Sent: Wednesday, May 31, 2017 8:47 AM
To: William S. Cole
Cc: 'David Casper'; John Sundelius; 'Kevin Skogman'
Subject: Legal opinion- Detention pond - Heart of the Valley MSD

Bill:

Heart of the Valley is in the process of a project in working in conjunction with Outagamie county and the Fox Wolf Watershed Alliance, that when completed will allow for credits for HOV to apply to our permitted discharge to the Fox river.

The project involves the construction of a sedimentation basin to capture suspended solids (soil/organic matter) and settle them out in a purpose designed and constructed wetland (on property that is already owned by Heart of the Valley). This is one of the first projects of this type in the State. We (being HOV) are the owner and we have a crop management agreement with the local farmer whose cropland drains into this basin which ultimately drains to the Fox River.

The HOV commission has gone on record as supporting the detention/sedimentation pond regardless of whether HOV sees credits generated for suspended solids in permit compliance. The agreement was that if the site is not approved for NPDES permit compliance credits that the sedimentation basin would be paid for in grant monies by Outagamie county.

As of now, it appears it will in fact be approved and then Heart of the Valley is going to reimburse Outagamie county for the construction activities and vegetative cover used to construct and create the detention basin.

Here are the players and roles and my lead in for a legal opinion:

The Fox-Wolf Watershed Alliance is providing technical assistance, preparing application documents for the DNR to consider, and is working along with staff from Outagamie county on this and other projects. Fox-Wolf is connected to the decision makers in Madison @ DNR and they have worked together before on other detention/sedimentation ponds in the past couple years. Those were grant funded and not for NPDES permit compliance.

Outagamie County has the surveying and technical professionals that run a SNAP model used to calculate the tonnage of sediment that the basin will capture. The SNAP model requires much information from soil types to the cropping practices on nearby ag land to determine the amount of soil loss in the basin. It is a predictive model that takes into account many variables and is accepted and used by DNR as well.

Prior to yesterday I believed the total cost of the project to construct the basin was to be under \$25,000 and a non-issue with respect to bidding requirements. From what I understand now Outagamie county has gotten quotes for the excavation work and the detention pond is projected over the \$25,000 to construct. Time is of the essence but I want to make certain that we are not circumventing the legal competitive bidding requirements for a project of this nature. Since Outagamie county is who we would reimburse for the construction, is HOV in good standing to use the Intergovernmental Purchase Exemption described in the attachment? Or do we need to utilize a consultant and put together a bidding package, advertise as required, and award the work to the low qualified and responsive bidder?

We are meeting later this morning and I may have more information if you have further questions.

Brian Helminger

District Director

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