



# Metropolitan Water Reclamation District of Greater Chicago

100 East Erie Street  
Chicago, IL 60611

## Legislation Text

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**File #:** 16-0684, **Version:** 1

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### **TRANSMITTAL LETTER FOR BOARD MEETING OF JULY 7, 2016**

#### **COMMITTEE ON PROCUREMENT**

Mr. David St. Pierre, Executive Director

Authority to increase purchase order and amend agreement with Beveridge & Diamond, P.C. to represent the District in the case of Natural Resources Defense Council, Inc. et al. v. Metropolitan Water Reclamation District of Greater Chicago, Case No. 11-CV-2937, in an amount of \$2,065,000.00 from an amount of \$2,350,000.00, to an amount not to exceed \$4,415,000.00, Account 101-30000-612430, Purchase Order 3069593

Dear Sir:

On June 16, 2011, the Board of Commissioners authorized the Director of Procurement and Materials Management to issue a purchase order and enter into an agreement with Beveridge & Diamond, P.C. for legal services, in an amount not to exceed \$350,000.00.

As of June 22, 2016, the attached list of change orders has been approved. The effect of these change orders resulted in an increase in an amount of \$2,000,000.00 from the original amount awarded of \$350,000.00. The current contract value is \$2,350,000.00.

This case, known as the Citizens Suit, was filed by the Natural Resources Defense Council, Sierra Club, and Prairie Rivers Network against the District in federal court. The complaint alleges in part that phosphorous discharges in the effluent of the Calumet, O'Brien, and Stickney Water Reclamation Plants cause or contribute to unnatural plant and algal growth or reduced dissolved oxygen in the Chicago Area Waterways System.

The reason for the requested change order is that the court has set a trial date of January 17, 2017 for the liability phase of this matter, and the parties must now begin trial preparation in earnest. This trial preparation will include drafting and arguing pre-trial motions, drafting the required pre-trial memorandum, preparation of witnesses, preparation of examinations of witnesses, preparation of exhibits, preparation of opening and closing arguments, and attendance at trial, which is estimated to last 10-12 days. At the conclusion of the trial, post-trial motions, briefs, etc. will likely be required.

Beveridge & Diamond, P.C. has represented the District in all pre-trial matters since the inception of this lawsuit in 2011. Beveridge & Diamond, P.C. has consistently been recognized as one of the premier environmental law and environmental litigation firms in the country, and has extensive experience in defending lawsuits like this Citizens Suit. Richard Davis and Ben Wilson will continue to be members of the District's defense team. Among other members of the Beveridge & Diamond team aiding the District will be principals Mark Turco and Marc Goldstein, both very experienced trial attorneys.

Under the terms of an amended agreement with Beveridge & Diamond, P.C., the District will pay the firm a monthly fee of \$180,000.00, plus certain disbursements. Every nine months, a "true-up" will be conducted. Beveridge & Diamond, P.C. has agreed that their professional services will be billed at the reduced blended rate of \$395.00 per hour for attorney time. If the fees paid by the District for any nine month period exceed the

amount billed by Beveridge & Diamond P.C., the District will receive a credit for the difference. If the amount billed exceeds the amount paid by the District, Beveridge & Diamond P.C. writes off the difference. For the past five years, the District and Beveridge & Diamond, P.C. have operated under a similar arrangement, although at a slightly lower monthly fee. Under that arrangement, as of June 30, 2016, the District amassed a credit of approximately \$295,000.00 that the District will now begin to draw down under the amended agreement as this matter proceeds to trial.

This change order is in compliance with the Illinois Criminal Code because the change is germane to the original agreement as signed, and due to circumstances not reasonably foreseeable at the time the contract was signed, and is in the best interest of the District.

It is hereby recommended that the Board of Commissioners authorize the Director of Procurement and Materials Management to execute a change order to increase the purchase order and amend the agreement in an amount of \$2,065,000.00 (approximately 89.8% of the current contract value) from an amount of \$2,350,000.00 to an amount not to exceed \$4,415,000.00.

Funds for the 2016 expenditures in the amount of \$785,000.00 (\$1,080,000.00 less the applicable approximate \$295,000.00 credit) are available in Account 101-30000-612430. The estimated expenditures for 2017 are \$1,280,000.00. Funds for 2017 in Account 101-30000-612430 are contingent on the Board of Commissioners' approval of the District's budget for that year.

Requested, Ronald M. Hill, General Counsel, RMH:LLD:EMA:TN:crb

Recommended, Darlene A. LoCascio, Director of Procurement and Materials Management

Respectfully Submitted, Barbara McGowan, Chairman Committee on Procurement

Disposition of this agenda item will be documented in the official Regular Board Meeting Minutes of the Board of Commissioners for July 7, 2016

Attachment