



Diversion Authority Finance Committee
Meeting Minutes
4:02 P.M. - Wednesday, January 29, 2020
City of Fargo Commission Chambers
Fargo, North Dakota

Permanent, Reliable Flood Protection

1. MEETING TO ORDER

The Diversion Authority Finance Committee met Wednesday, January 29, 2020, at 4:02 PM in the City of Fargo Commission Chambers. The following committee members were present: Fargo Finance Director Kent Costin; Fargo City Commissioner Tony Gehrig; Fargo City Commissioner Tony Grindberg; Moorhead City Councilman Chuck Hendrickson; Cass County Joint Water Resource District Chairman Dan Jacobson; Clay County Auditor/Treasurer Lori Johnson; Fargo City Mayor Tim Mahoney; Moorhead Finance Director Karla McCall; Cass County Auditor Michael Montplaisir; Cass County Commissioner Chad Peterson; Fargo City Assistant Administrator Michael Redlinger; and Cass County Commissioner Rick Steen.

Diversion Authority Executive Director Joel Paulsen; John Shockley of Ohnstad Twichell; Quin MacKenzie of Luceo Consulting; and Eric Dodds of AE2S were also present.

2. APPROVAL OF MINUTES FROM PREVIOUS MEETING

MOTION, passed

Mr. Peterson moved and Mr. Hendrickson seconded to approve the minutes from the December 18, 2019, meeting as presented.

Motion carried.

3. APPROVAL OF BILLS

Mr. Montplaisir reviewed the bills for the month, which include reimbursement to Cass County Joint Water Resource District (CCJWRD) for diversion-related bills; legal services; reimbursement to Cass County for miscellaneous expenses for the Executive Director; and general liability insurance.

MOTION, passed

Mr. Montplaisir moved and Ms. McCall seconded to approve the bills in the amount of \$930,218.14, and to forward them to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

4. FINANCIAL REPORT

Mr. Montplaisir reviewed the financial report for December. About \$72.3 million has been expended from the FY 2019 budget, and the total disbursed for the project to date is \$525,990,697. The net position is \$86.0 million.

MOTION, passed

Mr. Steen moved and Mr. Jacobson seconded to receive and file the Financial Report for December as presented. On roll call vote, the motion carried unanimously.

Dr. Mahoney said tax revenues have gone up over the past year. He asked if estimated revenues for the year should also increase or if it will increase cash on hand. Mr. Montplaisir said the financial projections will continue to use an estimated 1.5% tax revenue increase, and additional tax revenues may create a cushion in the budget at times.

5. EXECUTIVE DIRECTOR REPORT

Diversion Authority Executive Director Joel Paulsen reviewed the Executive Director Report, including the overall program status. Mr. Paulsen said the FY 2019 costs to date are significantly under budget due to project slow down as a result of the federal injunction.

Mr. Costin arrived to the meeting.

6. CONTRACTING ACTIONS

Mr. Paulsen reviewed the following contracting actions:

Master Services Agreement

- CH2M Hill Engineers, Inc. (Jacobs – Amended Master Services Agreement for Program Management Services).

Task Orders

- Houston Moore Group, LLC (Task Order 23, Amendment 3 – Services during construction for WP43)—add WP-43D5 and WP-43G SDB, SDC, and PM scope and budget, and extend period of performance, in the amount of \$252,945.
- Houston Moore Group, LLC (Task Order 26, Amendment 3 – Work-in-Kind)—add scope and budget for SEAI local drainage updates, transportation updates, utilities updates, hydraulic modeling support, and extend period of performance, in the amount of \$570,074.

Mr. Costin noted that the Master Services Agreement (MSA) with CH2M Hill allows access to accounting records for one year after the final invoice. Mr. Costin said one year does not seem like a substantial amount of time, depending on the scope and window in which previous audits are performed.

Dr. Mahoney asked what an adequate amount of time would be. Mr. Costin said there is no established audit schedule for this project, and he questions closing up a project so soon with no recourse.

Attorney John Shockley said the audit stipulation is in effect for one year after the final invoice at the close of the project. The timeframe can be extended, but there will also be ongoing auditing requirements as the project is ongoing.

MOTION, passed

Mr. Steen moved and Mr. Costin seconded to approve the Master Services Agreement with CH2M Hill Engineers, Inc. with the amendment that accounting records be available for audit for a period of two years after CH2M's final invoice, and to forward the

recommendation to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

MOTION, passed

Dr. Mahoney moved and Mr. Hendrickson seconded to approve Task Order 23, Amendment 3 and Task Order 26, Amendment 3 with Houston Moore Group, LLC, and to forward the recommendation to the Metro Flood Diversion Authority. On roll call vote, the motion carried unanimously.

Mr. Paulsen reviewed the Cass County Joint Water Resource District contracting actions. There were no Executive Director or Minnesota Clay County Joint Powers Authority (MCCJPA) approved contracting actions.

7. WIFIA AUDIT REQUIREMENTS

Mr. Shockley said a requirement for the Water Infrastructure Finance and Innovation Act (WIFIA) loan application is three years' worth of audited financials for the Diversion Authority and associated entities. An independent auditor will need to be engaged to audit the Diversion Authority in the very near future to keep the application process moving.

Mr. Peterson asked if a request for proposal (RFP) is needed to secure services or if there is a specific auditing firm already in mind for the task. Mr. Shockley said under North Dakota law, auditing is a professional service and an RFP is not a requirement. With the intent of keeping the process moving quickly, an auditing firm could be chosen to provide an audit for the last three years' of financials; if desired, a different firm could be chosen for the next two years.

Mr. Peterson asked what firm is capable of performing the audit. Mr. Costin said Eide Bailly is the lead company that comes to mind as they provide auditing services for the City of Fargo, which is the fiscal agent for the Diversion Authority. They are familiar with Fargo operations and they may provide the most expeditious services if time is of the essence.

Mr. Peterson asked if any other firms are capable of providing the same services. Mr. Steen said there are many firms in the twin cities area that would be capable, but they may be recreating much of the work that Eide Bailly has already completed and they would most likely be more expensive.

Ms. McCall said it appears that Eide Bailly has a large market share for this type of work in the area, and perhaps the Diversion Authority should check out other firms to ensure the most economical cost for services.

Mr. Grindberg asked if Eide Bailly could be used for the first audit and an RFP could be issued for auditing services going forward. Mr. Shockley said yes, and it is also a common approach for some entities to switch between firms for every audit. An audit policy should also be put into place going forward.

Mr. Gehrig asked where the harm is in reaching out to three to four firms for quotes without going into a full RFP process. He asked why the process feels so rushed and how long it was known that audited financials would be required for the WIFIA loan application.

Mr. Shockley said it was flagged at the last meeting that audited financials would be needed.

Mr. Gehrig said he understands that Eide Bailly may be the best firm for the task at hand, but he thinks the Diversion Authority should reach out to some other firms.

Mr. Peterson asked if the requirements for quotes could be put together quickly so that the firms could be compared equitably.

Mr. Steen said the audit in question is a governmental audit for financial records in excess of \$500 million. It is not realistic that auditing firms would know what to expect when submitting quotes, and if this is the route that is taken max bids should be required so the price does not go up once a firm begins the process and tries to adjust the scope.

Ms. McCall asked how the scope would be presented to Eide Bailly to ensure their fee does not go up also. Mr. Steen said Eide Bailly is already familiar with the internal controls of the fiscal agent.

Dr. Mahoney said bids can be received for this work the next time an audit is needed, but Eide Bailly should be engaged immediately to address current auditing needs. Eide Bailly has intrinsic value, and the process to secure the WIFIA funding takes precedence as it has a \$500 million value to the project.

MOTION, passed

Dr. Mahoney moved and Ms. McCall seconded to engage Eide Bailly for auditing services to complete the WIFIA loan application process, and to issue a Request for Proposals when needed for future auditing services, and to forward the recommendation to the Metro Flood Diversion Authority. Discussion: Mr. Steen said he believes this is a good approach to expedite the auditing process at this time.

Mr. Gehrig said it often feels as if processes are rushed and certain firms and companies are used to expedite services as they are the companies that have been used in the past. New and different options are not considered at the outset and once the process has begun, there is no desire to change firms.

Mr. Peterson said he feels that this is the only fair option to keep the process moving at this time, and he has no issue with changing firms at a later time if that is the best option.

Mr. Steen said he agrees that the process feels rushed and he has been requesting an audit for the past two years.

Mr. Costin asked if Mr. Shockley is familiar with the audit

requirements for WIFIA. Mr. Shockley said yes; they are looking for what municipalities would typically have in yearly audited financials and nothing more. It is simply a requirement for the application process.

Dr. Mahoney asked how much the audit is expected to cost. Mr. Costin anticipates it will be under \$100,000, which is what was added to the budget for the service.

On roll call vote, the motion carried with Mr. Montplaisir, Mr. Peterson, Mr. Costin, Ms. Johnson, Ms. McCall, Mr. Jacobson, Mr. Hendrickson, Mr. Steen, Mr. Redlinger, Dr. Mahoney, and Mr. Grindberg voting “Yes”; Mr. Gehrig voting “No”.

Mr. Shockley said the first draft of the WIFIA loan application has been completed and it is on track to be submitted by the end of March.

8. **PMC FY2019 EXPENDITURES**

Mr. Paulsen said in the past there has been a request for periodic updates on actual PMC expenditures in relation to budgeted expenditures. Mr. Paulsen provided information on actual PMC expenditures for property acquisition management services, program management services, and P3 procurement support and design and construction contract monitoring activities. All services are currently under budget.

Dr. Mahoney asked if all services are expected to come in under budget, providing a cost savings to the project, or if not as much work has been performed to date as previously anticipated. Mr. Paulsen said budget figures are down as work had to be slowed due to the federal injunction.

9. **ENVISION RESILIENCE AND SUSTAINABILITY PROGRAM OVERVIEW**

Mr. Paulsen said he has been working and negotiating with the PMC to adjust their scope to provide savings that can be used to engage an additional consultant, at zero cost to the budget.

Mr. Paulsen introduced Quin MacKenzie from Luceo Consulting, which is a consulting firm providing the Envision Framework for Sustainable Infrastructure.

Mr. Paulsen said the Envision framework has been adopted by many large projects nationwide and will provide resiliency to the Diversion project. It may also open up the possibility of additional federal funding revenue sources through the resiliency added to the program.

Ms. MacKenzie provided a presentation on Envision and its potential value to the Diversion project.

Mr. Grindberg asked how the framework is implemented. Ms. MacKenzie said it can be implemented as soon as the developer is on board and can encompass the hand-off to the developer as well.

Dr. Mahoney said the PMC was hired to do the work described by Ms. MacKenzie, and he asked what value Envision would add to the project. Mr. Paulsen said the duties performed by Luceo would be transferred from the PMC and put into the Envision framework.

Mr. Paulsen said Envision would bring transparency to the project, and there are extreme benefits in the tracking and quantifying aspects of the framework.

Dr. Mahoney asked if the potential federal resilience funding could be used anywhere in the project. Mr. Paulsen said the agreement for \$750 million in federal funding can come from any source. Funding due to utilizing Envision would lessen reliance on the Corps work plan.

Mr. Steen said he was surprised that there was no change in the PMC contract. Mr. Steen said the services of Luceo must have an associated cost but he cannot identify it in the information provided. Mr. Paulsen said the services will cost approximately \$400,000 by the end of July.

Mr. Steen said Martin Nicholson's role was eliminated with Jacobs and he has now been engaged as a separate consultant. As the Jacobs contract has not changed to reflect the loss of Mr. Nicholson, the additional consulting fees now total over \$600,000.

Mr. Paulsen said scope is still being refined for the PMC, but a net savings will be realized in the long-term.

Mr. Costin asked what effect the utilization of the Envision framework might have on the P3 bidding process and if it will create more requirements for the proposers to stay within the framework. Mr. Paulsen said the framework will save money in the long-term and the developers will most likely be familiar with the process; the matter can be discussed during the one-on-one meetings with the proposers.

Mr. Steen asked if additional information can be provided at the next meeting as he is still not clear on what Envision will do for the project, and a prudent decision cannot be made at this time. He said he also believes the PMC contract was approved for \$600,000 more than it should have been.

Mr. Paulsen said the cost savings of Mr. Nicholson leaving Jacobs and providing his own consulting services have not been realized yet, and current PMC tasks would transfer to Luceo.

Mr. Grindberg said moving budget dollars around and calling it a cost savings does not have any effect on the project's bottom line. He would like to see black and white figures on how Envision will save the project money, and a lot more information is needed before moving forward.

10. **PROPERTY STATUS REPORT**

Mr. Grindberg said there has been some discussion as to whether or not the Property Status Report provides value to this committee and if committee members would like to continue to receive it.

Mr. Costin said he has requested this report in the past as he believes the Finance Committee needs to stay in tune with all parts and pieces of the project where funds are being expended.

Eric Dodds of AE2S discussed the Property Status Report, which shows the continued progress of property acquisitions for the project. Approximately six more parcels were acquired in the last month and progress continues to be made. Acquisitions are on schedule for the P3 process and southern embankment.

11. NEXT MEETING

The next meeting is scheduled for February 26th at 4:00 PM.

12. ADJOURNMENT

MOTION, passed

On motion by Mr. Peterson, seconded by Mr. Steen and all in favor, the meeting was adjourned at 5:18 PM.

Minutes prepared by Brielle Edwards, HR Assistant