



Memo to: Board of Directors

From: Les Sterman

Subject: Program Status Report for October, 2013

Date: October 14, 2013

Bids were opened on October 2 for Bid Package #2b, which includes five pump stations. We received three bids, with Korte & Luitjohan Contractors being the apparent low bidder. AMEC is currently reviewing the bids and I expect to make a selection recommendation at the Board meeting. Contracts have now been signed on Bid Packages #2a and #6, so work should be starting shortly.

The process of property acquisition is moving slowly, and the process remains on the critical path for the project. Several property owners have offers from us and we are awaiting responses from them; our property acquisition consultants maintain continuous contact with these owners to remind them of the urgency of the situation. On October 7 we hosted a meeting for remaining affected property owners in St. Clair and Madison counties to provide an opportunity for them to meet with the engineering team and the property acquisition specialists. Turnout for the meeting was limited, but we will now make individual contact with affected property owners.

The Corps is proceeding on design work for the Wood River cutoff wall as we agreed. AMEC is monitoring progress and will be able to report further at the Board meeting. The federal government shutdown has not significantly affected this work since it is being funded with a FY2013 appropriation. I met with the Corps on October 7 to discuss the requirements for a Sec. 408 review of the project should the Council assume the responsibility for construction. It was a productive meeting, but there are still some unanswered questions that need to be resolved. While the review appears to be a limited one, it will need to be approved by Corps Division and Headquarters, which will likely add time to the schedule. Best guess is that the review might take four months, assuming that there are no significant changes to the Corps design or construction process.

On October 3 the Corps hosted a meeting to provide additional information regarding the decision reached in early July that denied our request to encourage or require the use of a project labor agreement for the Wood River cutoff wall. In addition to me and Jim Pennekamp from the Council, the meeting was attended by representatives of the Leadership Council, Sen. Durbin's staff, representatives from IDOT, Governor Quinn's office, and the Director of IDNR. Dale Stewart, representing the labor community, also attended. The Corps was represented by their legal counsel, contracting staff, Col. Hall, and a number of planning, design and construction

staff. The end result of the meeting was that we are no more clear on the basis for the decision than we were in July. What did result from the meeting was our strong belief that the Corps made its decision based on an erroneous understanding of how a PLA functions. Handouts provided at the meeting indicated that the Corps believed that a PLA would preclude (or put at a great competitive disadvantage) firms that are not based in the region, and would otherwise make the job more costly. Those conclusions are factually inaccurate or demonstrably false. I followed up on the meeting with a letter to the Corps asking to reopen the decision-making process (copy attached).

On October 3 I signed the Sec. 404 permit, which cleared a significant regulatory hurdle for the project. We are now finalizing the final details of our contract with Republic Services to begin construction on the wetland mitigation.

The House version of the Water Resources Development Act has been drafted, but it has stalled because of federal budget issues that are consuming all time for floor debate. At this point, it does not seem that any of our legislative priorities have been addressed in the House bill, but we are still pressing the case with our delegation and congressional staff. Because several of our issues were addressed in the Senate version of this bill, it appears that our best opportunity for success will be in a conference committee once the House bill is approved.

The Council receives refundable credits for certain interest payments that we make on Build America Bonds. These credits provided by the U.S. Treasury amount to more than \$910,000 annually. We have been notified by the IRS that our credits will be reduced by 8.7% as the result of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (the "sequester"). This will result in a loss of previously anticipated revenue of more than \$79,000 a year.

At the direction of the Search Committee, I placed advertisements in the Post-Dispatch, Belleville News-Democrat, Illinois Business Journal and a number of online services for the Chief Supervisor position opening. I have also been networking to try to encourage qualified people to apply for the job. The closing date for applications is October 21. We have a large number of applications, although only a few appear to be from qualified candidates.



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Les Sterman
Chief Supervisor of
Construction and the Works

October 4, 2013

Col. Christopher G. Hall, Commander
St. Louis District
U.S. Army Corps of Engineers
1222 Spruce Street
St. Louis, MO 63103-2833

Dear Col. Hall:

Thank you for meeting with our delegation from Southwestern Illinois last week to discuss the USACE decision regarding the use of a Project Labor Agreement for the proposed Wood River cutoff wall project. We appreciate the effort by you and your staff to explain the decision, although we remain very disappointed by it. Unfortunately, we came away from the meeting very troubled by the apparently misinformed and inaccurate understanding of PLAs by your staff, and what can best be described as an incomplete, and potentially biased “market research” effort that contributed to the decision.

While the primary justification offered by your staff for the decision was that “we followed the process” (i.e. Procurement Instruction Letter 2011-01), any such process only works if the underlying information used is accurate. Information that you provided us at the meeting clearly indicates that it was not. For example, the following points were offered by your staff as a basis for the decision on the use of PLAs on the project:

- *The region lacks the technical skills and equipment required to perform the seepage cutoff wall work.*
- *A PLA would limit competition amongst qualified contractors.*
- *Local prime contractors would subcontract the majority of the specialized work; thus driving up the costs of doing business.*

These points illustrate a complete lack of understanding of the manner in which a PLA functions. First, the implication that a PLA restricts in any way a firm from outside the region from competing for the subject work is simply false. In fact, one of the FPD Council’s first large projects was awarded to a firm from outside the area that outbid two local bidders – a firm that will

a regional partnership to rebuild Mississippi River flood protection

meet our requirement to use a PLA. Second, there is no basis for any claim that a PLA would limit competition. In fact, the July 10, 2009 memo from the Office of Management and the Budget (enclosure 3 to the PIL), specifically states that requiring the use of a PLA does not reduce competition and in some instances might actually increase the pool of potential bidders. Third, nothing in the PLA prevents a firm from outside the area from bringing in its own specialized workforce. So the above justifications presented by the USACE as a basis for the PLA decision are either completely irrelevant or inaccurate. We have similar observations about a number of other aspects of the USACE presentation.

A PLA simply assures that contractors will pay wages, provide benefits, and ensure working conditions consistent with local collective bargaining agreements. All contractors bidding on a project, whether using local labor or not, whether using union or non-union labor, will be operating under the same labor terms and conditions. If anything, as indicated in the OMB memo, this increases the pool of potential bidders.

While it is apparent that the USACE staff reached beyond the information received in response to the market survey solicitation to groups like the Deep Foundation Institute, the information presented at the meeting suggests that inquiries to these groups may have been based on a mistaken understanding of the function and operation of a PLA. What is more troubling is that the USACE, as part of its "market research," did not follow up with experienced users of PLAs on large heavy construction projects such as the Illinois Department of Transportation, or the many other public and private owners and contractors in our area, to better understand the impact on the competitive process or construction pricing here in Southwestern Illinois. Instead, you reached out to groups for information that is unrelated to the actual function and outcome of a PLA and does not reflect local practice and experience. In my view, this selective use of information leads to a biased and unreasonable conclusion.

Given this questionable and curious decision-making process, assurances from the USACE that the outcome might be different on future projects are simply not credible. Your staff left us with no reason whatsoever to believe that any of the facts, circumstances, or logic behind any PLA decision in the St. Louis Districtg will ever change. Representations made in the meeting that the Corps' views on the subject are "evolving" cannot be taken seriously until there is some evidence to support this assertion.

In view of the concerns described above, we are renewing our objections to the USACE decision. Accordingly, we are requesting that:

Col. Christopher G. Hall

October 4, 2013

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1. The decision-making process for the use of a PLA on the Wood River cutoff wall project be immediately reopened, and that the market research be completed in a competent, thorough, unbiased, and transparent manner. At the discretion of the USACE, the Council will assist in providing information to fill gaps in understanding or knowledge about the proper functioning of a PLA.
2. The USACE provide the Council with copies of all responses to the Project Labor Agreement Inquiry Solicitation Number W912P913RPLA1, and responses to any other inquiry made by the agency to support the market research and decision.

Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Les Sterman', with a stylized flourish at the end.

Les Sterman

Chief Supervisor of Construction and the Works

cc: Tom Kotarac (Sen. Durbin)
Bill Houlihan (Sen. Durbin)
Randy Pollard (Sen. Kirk)
Bobby Frederick (Rep. Davis)
Philip Lasseigne (Rep. Davis)
Willie Lyles III (Rep. Enyart)
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Greg Andrews (SD&A)