



Memo to: Board of Directors

From: Les Sterman

Subject: Program Status Report for July, 2013

Date: July 15, 2013

We are continuing to work with the Corps of Engineers to complete the Sec. 408 review of all construction bid packages. That process seems like it nearing an end, which will allow construction to proceed.

Bids were opened for the first two major construction packages on July 2. We received six responsive bids for package 2a, a pump station in the Fish Lake district, and three bids for package 6, berms, relief wells, clay caps and piping systems in the Prairie DuPont and Fish Lake districts. AMEC is reviewing the bids and a recommendation will be made at the upcoming Board meeting. The bids reflected a high level of competition and aggressive pricing, so the first impression is that the bid process is successful and costs will fall well within our budget.

The Corps has issued its decision on the use of a project labor agreement for bid packages 7a/7b, the shallow and deep cutoff walls in the Wood River district. While there are no details available, their contract officer has concluded that requiring or encouraging the use of a PLA would be inconsistent with the Federal Acquisition Regulation (FAR), since it would restrict competition and increase cost, thereby offering no benefit to the federal government. We vigorously dispute that contention and I am seeking a written statement describing the basis for such a legal conclusion. The Corps also stated that PLAs have never been encouraged or required by any federal agency. To the contrary, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration, in issuing an amendment to the FAR in 2010, noted that PLAs have been used by a number of federal agencies and described PLAs being used as far back as 1938 in the construction of the Grand Coulee Dam. Our bipartisan congressional delegation supports our policy to use a PLA on the project and they contacted the Corps on our behalf. Finally, our own bids on the first two construction packages showed that we can maintain strong competition and aggressive pricing while requiring a PLA.

My concern about the PLA is motivated not by affording any advantage or benefit to organized labor, but out of concern for our regional economy. In the absence of a PLA, the Corps has demonstrated a pattern of hiring firms from out of state who import labor for the work. When that happens, we lose the multiplier effect of worker's expenditures in our area. Our policy is to invest our local tax dollars in the local economy by supporting our local workforce. At a time

when unemployment among the building trades in our area approaches 35%, that policy becomes even more important. Use of a PLA encourages firms, whether or not they are local, to hire local workers. Unless otherwise instructed, I plan to pursue this issue further, since it could affect our decision to assign further construction work on the project to the Corps of Engineers.

Before construction can start on the projects that are currently out for bid, we will need to complete any required property acquisition and make progress in completing our final wetland mitigation plan. The process of assembling required property descriptions and appraisals has moved more slowly than expected, so negotiations with property owners have only begun in the last few weeks. On July 10, the Monroe County FPD sponsored a workshop with affected property owners, who were invited to attend and meet with the design and property acquisition teams. This meeting was productive and I think it will accelerate the pace of the acquisition process for bid package 6. Unfortunately, we have postponed putting two other construction packages out for bid because of delays in contacting owners about affected property. We are taking steps to bring the bidding and acquisition processes back in sync.

Another precursor to construction will be to finalize a wetland mitigation plan and put implementation of that plan into motion. We now have an executed agreement with Republic Services and their contractor, SCI Engineering, is now completing the design and cost estimate necessary to allow the mitigation plan to proceed.

Six submittals were received on June 28 in response to our solicitation for quality control and materials testing services for the project (one proposal was determined to be unresponsive). The proposals were evaluated by me and staff from AMEC and Marks Associates. I will recommend a selection at the July Board meeting.

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. Discussions have also take place to determine if there is a similar cost-effective and timely approach to the Corps using expected federal appropriations on portions of the project in the MESD area. Given the Corps' response on the PLA issue, however, we may want to consider other ways to utilize the federal money.

The Corps has started to provide AMEC with information that may be useful for certification of the Chain-of-Rocks levee and the Mel Price deficiency correction. Given the legal and functional limitations on those data, the Council will likely have to spend more than expected to certify these levee reaches. Further, given the nature of the Corps' interim plan for the Mel Price reach, there may be other significant obstacles to certification.

I was in Washington D.C. for meetings arranged by our government relations consultant on June 20 and 21 with committee staff responsible for water resources matters in the House and Senate. I also met with legislative staff of the members of our delegation. We presented a list of four "asks" for their consideration.

- Provide the Corps with flexibility to shift appropriations between projects in the same levee system and having the same sponsor.

- Allow the value of locally sponsored levee improvements that comprise elements of the federal project to be credited against future cost-share requirements for the federal project.
- Allowing FEMA to assign the A99 flood map designation to areas protected by levees that are being improved with local funds.
- Eliminate the requirement for independent external peer review for projects that correct design deficiencies and do not result in any changes in the geometry of a levee system.

We got a very positive reception and, since the House is currently writing its version of the reauthorization of the Water Resource Development Act, members agreed to forward our request to the committee staff.

Lastly, in response to the discussion at the June Board meeting, I have undertaken a budgeting exercise that will be presented to the Board at the July meeting. Based on this budget review, which considered updated construction cost estimates and the current project schedule, I believe that the Council has the financial capacity to meet our goal of completing the project and achieving FEMA certification by the end of 2015.