

GARRISON DIVERSION CONSERVANCY DISTRICT

RED RIVER VALLEY COMMITTEE

**Garrison Diversion Conservancy District
Carrington, North Dakota**

October 19, 2023

A meeting of Garrison Diversion's Red River Valley (RRV) Committee was held on October 19, 2023, at the Garrison Diversion Conservancy District, Carrington, North Dakota. The meeting was called to order by Chair Ken Vein at 9:30 a.m.

MEMBERS PRESENT

Board Chairman Alan Walter
Committee Chairman Ken Vein
Director Jay Anderson
Director Greg Bischoff
Director Jason Siegert
Secretary Duane DeKrey

Garrison Diversion staff members and others were also present. A copy of the registration sheet is attached to the minutes as Annex I.

The meeting was recorded to assist with compilation of the minutes.

CONSIDERATION OF MINUTES

Motion by Director Bischoff to dispense with a reading of the June 26, 2023, Red River Valley Committee minutes and approve them as distributed. Second by Director Walter. Upon voice vote, motion carried.

Motion by Director Anderson to dispense with a reading of the July 13, 2023, Red River Valley Committee minutes and approve them as distributed. Second by Director Bischoff. Upon voice vote, motion carried.

RED RIVER VALLEY WATER SUPPLY PROJECT (RRVWSP)

Work Plan and Construction Update

Kip Kovar, Secretary, referred to the September 8, 2023, RRVWSP Work Plan Update. A copy of the update is attached to these minutes as Annex II.

Transmission Pipeline East, Contract 5B**Work Change Directive No. 4**

Mr. Kovar referred to Work Change Directive No. 4 included with the meeting materials. This work change directive was issued by Garrison Diversion for winter preparation at the Contract 5B pipeline construction site. The work includes grading topsoil stockpiles and installing erosion control blankets over the stockpiles to prevent loss of topsoil during the winter months. A copy of the work change directive is attached to these minutes as Annex III.

Mr. Kovar said the estimated maximum cost of the work change directive is \$123,363. The cost could be less if more of the topsoil stockpiles can be restored over the next couple of weeks. There is language included in the work change directive that will allow negotiations with Garney as to who ultimately pays in the end. He believes this situation would not have occurred if Garney had not fallen behind on the construction schedule; therefore, Garney may be responsible for this cost.

Motion by Director Bischoff to approve Work Change Directive No. 4 on Owner's Task Order 5532, Contract 5B, RRVWSP Transmission Pipeline East, in the amount of \$123,363.85. Second by Director Siegert. Upon roll call vote, the following directors voted aye: Anderson, Bischoff, Siegert, Vein and Walter. Those voting nay: none. Motion carried.

Transmission Pipeline East, Contract 5D**Bid Award**

Paul Boersma, Black & Veatch, reviewed the prequalification process completed for general contractors. This step was important to achieve good bidding on all of the pipeline segments.

Mr. Boersma next provided a summary of the bidders for Contract 5D. Black and Veatch recommended Contract 5D be awarded to Carstensen Contracting, Inc. at the base bid of \$61,677,275.

Transmission Pipeline East, Contract 5C**Bid Tabulation Summary, Engineer's Recommendation and Award**

Mr. Boersma reviewed the bid tabulation summary for Contract 5C, stating SJ Louis had the lowest base bid at \$69,135,254 and Oscar Renda was the second lowest at \$76,663,355. A copy of the bid tab summary is attached to these minutes as Annex IV.

Mr. Boersma reported SJ Louis chose not to complete the prequalification process so all their qualifications were submitted with the bid documents; whereas, the other three bidders were already prequalified. This includes minimum requirements, which are things the contractor needed to demonstrate, such as technical competence, project experience, license and security, etc. Other considerations consist of legal, environmental compliance, and safety.

Mr. Boersma reviewed the evaluation of contractor qualifications completed for SJ Louis, reporting SJ Louis met the minimum technical requirements. Under other considerations that reflect upon whether SJ Louis is a “responsible bidder”, Black & Veatch reported on its review of a number of claims made against SJ Louis or claims SJ Louis made against project owners concerning work on a project or payment for a contract in amounts greater than \$500,000.

Three significant claims were found either by or against SJ Louis for three owners that had not been disclosed by SJ Louis in its bid package responses.

Mr. Boersma commented, by itself, asserting or defending claims would not be a disqualifier. The issue for the RRV Committee and the full board’s consideration is with the submittal from SJ Louis being an inaccurate representation of its company. He reviewed the claims discovered by Black & Veatch and Vogel Law Firm when researching claims.

Mr. Boersma stated Black & Veatch’s recommended decision was not considered lightly. There was a lot of consideration and discussion with Garrison Diversion staff and input from Vogel Law Firm. The bid forms contain fairly clear language indicating that misrepresentation of bid form information is a clear cause for dismissal or rejection of a bid.

As a result, based on the misrepresentations included in SJ Louis’ submitted qualifications, SJ Louis is deemed nonresponsive; therefore, Black & Veatch recommends against awarding Contract 5C to SJ Louis and, instead, to consider the second lowest bidder.

Director Bischoff asked if the language in the bid form is relatively clear or is it very clear.

Mr. Boersma said part of the qualifications to the bidders read “the bidder shall attest that all information supplied on the qualification forms by the bidder is true and correct under penalty of perjury. Any false statements or inaccurate information within the qualification forms may deem the bidder to be nonresponsive.”

Director Bischoff said that is quite clear.

Tami Norgard, Vogel Law Firm, stated a lot of research was conducted, finding the cases and pulling the complaints, to assure the complaints were over the \$500,000 threshold and related specifically to the questions in the bid package responses. The bid package contract language makes it clear to be truthful, or the contractor can be deemed nonresponsive. She referred to North Dakota case law supporting that a bidder’s dishonesty or misrepresentation of facts are factors that go toward integrity. Those facts can be used when considering if the contractor is a responsible bidder, and the board can consider integrity as part of its analysis and a variety of other factors.

Ms. Norgard added that Lake Agassiz Water Authority (LAWA) is a partner in the RRVWSP, who pays the 25 percent local cost share. She suggested that any recommendation made by the RRV Committee and motion passed by the Garrison Diversion Board be subject to concurrence by the LAWA board and contingent upon approval of Series D bond funding.

Director Walter commented the LAWA board, at its last meeting, deferred the decision on awarding Contract 5C to Garrison Diversion.

Ms. Norgard said LAWA did defer the decision to Garrison Diversion based on the information available to them at the time. Since that time, discussions have been held with LAWA leadership and legal counsel. It was, thus, agreed the LAWA board should be a part of the decision. She said the Garrison Diversion staff would feel more comfortable if the LAWA board or leadership had the ability to take a second look at this situation. At the time of the LAWA board meeting, research was still being conducted on SJ Louis' qualifications.

Mr. Boersma reported the second lowest bid was received from Oscar Renda. They were prequalified as a contractor so their qualifications as a contractor were not in dispute; however, as a tunneling subcontractor, they were asked for the tunneling subcontractor to show one project in glacial till. The significance with glacial till is often times there are cobbles and boulders, so adequate demonstration of their tunneling qualifications is being requested for one successfully completed tunnel in glacial geology. None of Oscar Renda's submitted tunneling qualifications provided that information. One tunneling project was submitted for a project Oscar Renda did in Canada, and Black & Veatch has been waiting to hear from them as a reference.

Mr. Boersma said Black & Veatch is recommending the award of Contract 5C to Oscar Renda, subject to three contingencies: 1) Garrison Diversion rejects Oscar Renda's proposed tunneling subcontractor, Southland, as not meeting the qualifications. Pursuant to the bidding documents, Article 12.01, Garrison Diversion is providing notice to Oscar Renda they have the ability to replace the subcontractor with a qualifying contractor prior to the notice of award or demonstrate the existing subcontractor can meet the qualifications, 2) Garrison Diversion obtain the approval of the LAWA board with this notice of award and 3) approval of Series D bond bunding.

Mr. Boersma suggested if the contingencies are not met, the RRV Committee recommend Contract 5C to Thalle Construction, who is the third lowest bidder.

Steve Kuechle, SJ Louis, addressed the committee, stating SJ Louis has been the low bidder on two of the pipeline contracts. They were disqualified both times due to tunneling qualifications. He expressed his concerns on behalf of SJ Louis regarding the issue of a tunneling subcontractor.

Director Bischoff asked if the Department of Water Resources is aware of the issue with the contract award.

Duane DeKrey, Secretary, said he and Mr. Kovar had a discussion with the director at the Department of Water Resources, and informed her of the difficulty taking place with the low bid. She asked to be notified before any contract is awarded.

Chairman Vein stated it is critically important for the longevity of the RRVWSP that we have the utmost integrity in the process used to award contracts. Garrison Diversion must be consistent, and the rules must be abided by.

Director Walter added the committee relies on the engineering consultant to make the best recommendation.

Motion by Director Walter to recommend to the full board the award of RRVWSP Transmission Pipeline East, Contract 5C, to Oscar Renda subject to three contingencies:

- 1. Garrison Diversion rejects Oscar Renda's proposed tunneling subcontractor, Southland, as not meeting the qualifications. Pursuant to Article 12.01, Owner is providing notice to Oscar Renda they have the ability to replace the subcontractor with a qualifying contractor prior to the Notice of Award or demonstrate the existing subcontractor can meet the qualifications,**
- 2. Garrison Diversion shall obtain the approval of the LAWA board with this Notice of Award, and**
- 3. Approval of Series D Bond Funding**

If the three contingencies are not met, the Red River Valley Committee recommends awarding Contract 5C to Thalle Construction, the third lowest bidder. Second by Director Anderson. Upon roll call vote, the following directors voted aye: Anderson, Bischoff, Siegert, Vein and Walter. Those voting nay: none. Motion carried.

System Hydraulic Update

Mr. Boersma provided a system hydraulic update for the new break tank locations. Since the preliminary design report (PDR) in 2017, there has been a revised alignment and revised flow takeoffs from the pipe by the system users. Because of this, the break tanks have moved west approximately six and a half miles.

The revised alignment is the Eastern North Dakota Alternate Water Supply (ENDAWS). ENDAWS is a significant costs savings, but relocation of hydraulic break tanks is less hydraulically efficient and requires some larger pipes in segments two and three to meet current design requirements.

Mr. Boersma reviewed a map showing the position of the original break tank location as well as the current break tank location. Another map was presented showing an alignment and profile comparison.

Mr. Boersma stated, in effect, the updated hydraulic modeling is taking into account two things: 1) revised break tank locations and 2) revised flow distributions from the users along the pipeline.

Kurt Ronnekamp, Black & Veatch, summarized the work done in 2017 on the PDR and most recently with hydraulic modeling. The idea was to take more flow to the Sheyenne River than originally anticipated.

Mr. Boersma commented because the water will flow through another six and a half miles of pipe, a few pipe segments will need to be increased. This means approximately 22 miles of pipeline will need to be upsized from 72 inches to 84 inches to preserve the head and be more efficient. The cost to increase pipe size is estimated at \$20 million.

Five flow scenarios showing different pipe size requirements were presented.

Mr. Boersma reported there are discussions being held with the Corps of Engineers regarding the operations of Lake Ashtabula, and questions are still being addressed. If a smaller volume of water is available from Lake Ashtabula either physically or because of operating rights, we may be in a position of having to pump more water to Lake Ashtabula, resulting in more upsizing to other segments.

Mr. Kovar stated the hydraulic presentation will be shared at the next LAWA Technical Advisory Committee meeting and then to the full board.

INSURANCE ADVISOR SERVICES

Merri Mooridian, Administrative Officer, Garrison Diversion, provided an update on the insurance advisory services, reporting the contract with Aon has been renewed. They will continue to be our insurance advisor for the RRVWSP on a per hour basis. The owner's wrap insurance coverage is still being looked into with another company.

Mr. Boersma said currently Black & Veatch and all contractors working on the RRVWSP have their own insurance. The amount of insurance coverage provided is set by the insurance advisors with advice from legal counsel.

An owner's control program tells contractors and engineering consultants, or anyone working on the project, you do not need to provide your own insurance, the owner will have a wraparound insurance policy covering all things related to safety, damage and liability, etc. When entities take on big programs, they ask if the owner would like to provide insurance for everyone or does everyone bring their own insurance to the table that meets the qualifications.

Mr. Boersma said there are mixed reviews regarding a wrap policy. The motivation for using wrap is to increase accessibility to smaller contractors who do not have this type of insurance. The other motivation is safety control. The insurance company basically takes over safety control of a job site.

OTHER BUSINESS

There being no further business to come before the committee, the meeting adjourned at 10:55 a.m.

Ken Vein, Chairman

Duane DeKrey, Secretary

REGISTRATION

RED RIVER VALLEY COMMITTEE MEETING
Garrison Diversion Conservancy District
Carrington, North Dakota

October 19, 2023

| NAME | ADDRESS |
|-----------------|--------------------------|
| Steve L. Burion | Burion + Associates, LLC |
| Jason Siegrist | GCD |
| Bill Oystad | GDCP |
| Mike Tweed | GDCP |
| BRANT FRAZLSON | AELS |
| Scott Mehroy | GDCD |
| VANCE MILLER | B+V |
| Steve Kuechle | ST ways Construction |
| Paul Biersma | B+V |
| Dennis Merrill | GDCD |
| Amy Kay | Vogel Law Firm |
| [Signature] | GDCD |
| Lisa Schaper | GDCD |
| Kimberly Cook | GDCD |
| Greg Bischoff | GDCD |
| Steve Metzger | GDCD-Foster Co. |
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**RRVWSP Work Plan Update
September 8, 2023**

CONSTRUCTION

Wet Well Construction Contract 1

The project is closed, original contract price \$4,989,405.88 with change order 1 and 2 making the final contract price \$4,721,446.47.

Pipeline Construction

Contract 5A

The project is closed, original contract price \$8,366,201.00, with change order 1 and 2 making the final contract price of \$8,393,395.44.

Reclaimed Property



Typical Air Release Manhole



Contract 5B

The original pipe delivery of June 15, 2021, was delayed due to a surface blemish in the steel coil. To date, 6,741 feet have been installed out of the nine miles. High groundwater slowed the pipe installation progress.

For year 2023, contractor has been mobilizing, stripping topsoil, performing a significant amount of dewatering and prepping site for tunneling crew. The first pipe is expected to be installed on June 9.

To date, \$14,972,231.08 has been paid on the original contract amount of \$45,961,700.00. Change Order No. 1, 2 and 3 has been approved, leaving the current contract price at \$44,932,678.24.



Discharge Structure Construction

Final payment has been made. Original contract amount was \$1,516,955 plus Change Order No. 1 for \$4,929 for a final contract price of \$1,521,884.

Missouri River Intake Tunnel and Screen Final Design Contract 2

As the apparent low bidder at \$18,896,900, Michels was issued notice of award on June 9, 2021. A subcontractor is currently restoring the property, with seeding occurring this week. To date, \$18,198,634.82 has been paid on the original contract amount of \$18,896,000.00. Five change orders have been approved for a current contract price \$20,910,615.60.



Site Under Construction



Completed Missouri River Intake

DESIGN

The design team is also working with Reclamation and USFWS routing the ENDAWS pipeline through wetland and other various existing easements.

Contract 5D bid opening was held September 7, Contract 5C bid opening September 21 and Contract 6A will be scheduled for 2024.

WORK CHANGE DIRECTIVE NO. 4

DATE OF ISSUANCE: 10/20/2023 EFFECTIVE DATE: 10/13/2023

Owner: Garrison Diversion Conservancy District
Contractor: Garney Construction
Contract: Transmission Pipeline East, Contract 5B
Project: Red River Valley Water Supply Project
Owner's Task Order No.: 5532

The Contractor is directed to proceed promptly with the following:

Description: Grade topsoil stockpiles on all disturbed areas of the easement. Install erosion control blankets over topsoil stockpiles to prevent loss of topsoil from wind and water erosion over the winter months when no construction work is underway. Blanks shall provide complete coverage of the stockpiles from base to crown to the opposite base. Blankets shall be staked to secure in place. The approximate area requiring coverage is a minimum of 55,000 square yards.

Owner reserves the right to negotiate the final pricing of this work change directive as it may not have been necessary but for Garney not meeting the contractual completion dates set forth in its Agreement with Garrison Diversion.

Attachments: *Garney Change Order Request sheet titled Topsoil Stabilization – Erosion Control Blankets dated October 17, 2023*

Purpose for Work Change Directive:

Directive to proceed promptly with the Work described herein, prior to agreeing to changes in Contract Price and Contract Times and other stipulations as so included herein, is issued due to:

- X Non-Agreement on pricing of proposed change.
- X Necessity to proceed for schedule or other Project reasons.

Estimated Change in Contract Price and Contract Times (non-binding, preliminary):

| | |
|--|---|
| Estimated increase in Contract Price: <u>\$123,363.85</u> | Estimated increase (decrease) in Contract Times: Substantial Completion: <u>0</u> days; Ready for final payment: <u>0</u> days. |
|--|---|

If the change involves an increase above the amount noted above, the estimated amount is not to be exceeded without further authorization.

Basis of estimated change in Contract Price:

- Unit Price
- Lump Sum
- Cost of the Work
- Other

AUTHORIZED BY:

Duane DeKrey, GDCD
Title: General Manager
Date: October 20, 2023



RRVWSP TPE Contract 5B
Change Order Request
Topsoil Stabilization - Erosion Control Blankets

23-27
 Date: 10/17/2023
 Change Order Request #: COR 3
 Revision #:

| LABOR | | | | | | | | | |
|------------------|----------|---|-------------------|---------------------------|-----------------------|--------------------------|-----------------------|---------------|------------------|
| Role | Quantity | Total Crew Average Unburdened Labor Costs | Total Burden Rate | Total Regular Labor Costs | Total Over Time Costs | Total Regular Time Hours | Total Over Time Hours | Total Hours | EXTENDED COST |
| Project Engineer | 1 | 47.13 | 57.95% | \$ 74.44 | | 4.00 | | 4.00 | \$ 297.76 |
| | | | | | | | | TOTALS | \$ 297.76 |

| EQUIPMENT | | | | | | | | | | | |
|--|-------------|------------|-------------|--------------|-------------------|---------------|--------------|---------------|----------------|-----------------|---------------|
| To correctly quantify the cost of equipment on the time and materials works, you must determine the duration of the extra work (Hours, Days, Weeks or Months). Then enter the appropriate quantity in its associated column. Enter the actual Operating Hours the equipment was utilized during the works. The sum of the time the equipment is on site plus the actual utilization time will net in the total cost per equipment. (RATES FROM RENTAL RATE BLUE BOOK FOR CONSTRUCTION EQUIPMENT) | | | | | | | | | | | |
| Description | Hourly Rate | Daily Rate | Weekly Rate | Monthly Rate | Operating Cost/Hr | Hours On Site | Days On Site | Weeks On Site | Months On Site | Operating Hours | EXTENDED COST |
| | | | | | | | | | | TOTALS | \$ - |

| MATERIALS | | | | | | | | |
|-----------|-----------|-------------|----------|------|-----------|-------|---------------|-------------|
| Vendor | Reference | Description | Quantity | Unit | Unit Cost | Total | | |
| | | | | | | | TOTALS | \$ - |

| SERVICES | | | | | | | |
|---------------------|---------------|-----------------|----------|------|-------------|---------------|----------------------|
| Vendor | Reference | Description | Quantity | Unit | Unit Cost | Total | |
| Pro Landscapers LLC | ECB Quote Pro | Mobilization | 2 | EA | \$ 3,000.00 | \$ 6,000.00 | |
| Pro Landscapers LLC | ECB Quote Pro | ECB NDDOT Cat 2 | 55000 | SY | \$ 2.00 | \$ 110,000.00 | |
| | | | | | | TOTALS | \$ 116,000.00 |

| SUMMARY | TOTALS |
|---|----------------------|
| Direct Cost of Labor: | \$ 297.76 |
| Direct Cost of Equipment: | \$ - |
| Direct Cost of Material: | \$ - |
| Direct Cost of Subcontractors: | \$ 116,000.00 |
| Tax on Materials 5%: | \$ - |
| Subcontractor Markup 5%: | \$ 5,800.00 |
| Contractors Fee on Labor & Materials 15%: | \$ 44.66 |
| Contractors Fee on Equipment 0%: | \$ - |
| Subtotal: | \$ 122,142.42 |
| Direct Cost of Bond Premium: | \$ 1,221.42 |
| TOTAL TIME & MATERIALS COST: | \$ 123,363.85 |



BID TABULATION SUMMARY

Red River Valley Water Supply Project
 Transmisson Pipeline East
 Bordulac to James River, Foster County, ND
 Contract 5C, Task Order 5533

Bid Opening 2:00 p.m. CST, Thursday, September 21, 2023

| No. | Bidder | Env 1 | | | | | | | | Env 2 | | | Base Bid | Additive Bid Alternate No. 1 | Total of Base Bid and Alternate No. 1 |
|-----|---------------------|---|---|--|--|---|---|--|-----------------------------|-----------------------------|-----------------------------|---|-----------------|------------------------------|---------------------------------------|
| | | Bid Bond Included in the Amount of 5 percent of Bid | Contractor's License or Certificate of Renewal Included | Non-Collusion Affidavit Included and Completed | E/CDC C-451 Qualifications Statement Completed | Meets General Contractor Qualification Requirements | Meets Tunneling Contractor Qualification Requirements | Proposed Subcontractors, Suppliers, and Manufacturers Questionnaire Included and Completed | Acknowledged Addendum No. 1 | Acknowledged Addendum No. 2 | Acknowledged Addendum No. 3 | | | | |
| 1 | Thalle Construction | X | X | X | X | X | X | X | X | X | X | X | \$78,308,327.00 | \$3,740,043.00 | \$82,048,370.00 |
| 2 | Oscar Renda | X | X | X | X | X | X | X | X | X | X | X | \$76,663,355.00 | \$3,009,230.00 | \$79,672,585.00 |
| 3 | Harper Brothers | X | X | X | X | X | X | X | X | X | X | X | \$79,086,646.00 | \$3,310,153.00 | \$82,396,799.00 |
| 4 | SJ Louis | X | X | X | X | X | X | X | X | X | X | X | \$69,135,254.00 | \$2,020,483.00 | \$71,155,737.00 |
| 5 | | | | | | | | | | | | | | | |
| 6 | | | | | | | | | | | | | | | |
| 7 | | | | | | | | | | | | | | | |
| | Engineer's Estimate | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | \$80,002,065.00 | \$4,298,900.00 | \$84,300,965.00 |

Garrison Diversion Conservancy District
 PO Box 140
 Carrington, ND 58421
 701-652-3194

District Engineer / Deputy Director of RRVWSP for Engineering
 Kip Kovar, PE
 September 21, 2023