

GARRISON DIVERSION CONSERVANCY DISTRICT**Contract Review Committee
Carrington, North Dakota
November 30, 2017**

A meeting of the Contract Review Committee of the Garrison Diversion Conservancy District was held at the Garrison Diversion Conservancy District, Carrington, North Dakota, on November 30, 2017. The meeting was called to order by Committee Chairman Walter at 10:30 a.m.

MEMBERS PRESENT

Ken Royse, Board Chairman, Garrison Diversion Conservancy District
Alan Walter, Committee Chairman, Garrison Diversion Conservancy District
Ken Vein, Second Vice Chairman, Garrison Diversion Conservancy District
Jay Anderson, Director, Garrison Diversion Conservancy District
Roger Fenstad, Director, Garrison Diversion Conservancy District (by conference phone)
Geneva Kaiser, Director, Garrison Diversion Conservancy District
Bruce Grubb, City Administrator, City of Fargo
Todd Feland, City Administrator, City of Grand Forks
Duane DeKrey, Secretary

OTHERS PRESENT

Staff members of the Garrison Diversion Conservancy District were present along with others. A copy of the registration sheet is attached to these minutes as Annex I.

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

COMMITTEE INTENT

Ken Royse, Board Chairman, Garrison Diversion Conservancy District, explained the purpose of the Contract Review Committee is to review the existing engineering contract between Garrison Diversion and Black & Veatch, which is ten years old. The committee is charged with making sure that Garrison Diversion is receiving the best possible service at the best price, as well as making sure state laws and procedures are being followed.

POTENTIAL CONFLICT OF INTEREST

Chairman Royse brought up the issue of conflict of interest, and informed the committee that he has retired from Bartlett & West and in the future, should the company pursue work with Garrison Diversion, he would not provide support or assistance in any way.

He added also, in regard to a conflict of interest, since Black & Veatch works for Garrison Diversion, Black & Veatch cannot represent the interest of the systems. The systems should have their own engineering firm to represent their interests. Black & Veatch should only represent Garrison Diversion and the Lake Agassiz Water Authority (LAWA).

Alan Walter, Committee Chairman, disclosed that he is employed by Ackerman Estvold. He stated that the engineering firm would like to remain in the Minot area and the northwest area of the state. If they were to express interest in Garrison Diversion projects, he would discourage it.

Director Fenstad added that he is fully retired from Moore Engineering but does sit on the board of directors.

Director Vein stated that he has no financial interests in Advanced Engineering and Environmental Services, which is his brother's engineering firm.

Bruce Grubb, City of Fargo, mentioned that many of the regional engineering firms are under contract with Fargo in regard to flood protection and water supply. He has participated on selection committees where Black & Veatch has been selected and is under contract on several projects.

CURRENT CONTRACT DISCUSSION

Liability

Chairman Royse referred to Section 6.11, Allocation of Risks, Indemnification, stating that it appears the engineer is agreeing to hold the owner harmless under applicable engineering standards. He has no particular issue with the language but pointed out the contract states the owner does their own construction inspection and takes liability for that. Before going down that road, Garrison Diversion needs to be sure of what its liability would be for those types of activities.

Director Fenstad said it is important, as a group, to decide what the owner's liability and the engineer's liability should be and understand that you're going to have to pay for it one way or the other. It depends on how much risk the owner wants to accept.

Director Vein suggested having legal counsel attend the next meeting to discuss the legal aspects.

Merri Mooridian, Administrative Officer, Garrison Diversion, commented that Tami Norgard, Legal Counsel, Vogel Law Firm, was part of negotiating the current contract with Black & Veatch and will provide answers to any questions regarding its content. As far as participating on this committee and providing any type of review, there may be a conflict of interest due to the fact that she and a subcontractor, Advanced Engineering, have several mutual clients. Ms. Norgard has recommended names of other attorneys that could be obtained, and she would reclude herself as the attorney for this committee.

Todd Feland, City of Grand Forks, stated the committee can always decide later to hire a third party attorney, but it would be helpful to have the attorney of record explain the current contract.

Ownership of Work Product

Chairman Royse referred to Section 6.04, Use of Documents. He would like to have Part A interpreted for the committee because he is not certain whether Garrison Diversion or the engineer owns the documents. If Garrison Diversion is paying for the documents, they should own them.

Scope of Work

Discussion was held regarding what the scope of work consists of. It was the consensus that each task order should lay out the scope of work because the contract itself is general.

The current contract is directed at Black & Veatch, and they select the subcontractors. Advanced Engineering, through the request for proposal process, came in as a team with Black & Veatch.

The committee is questioning whether a task order could be issued requesting proposals for certain work, such as engineering, design and services for the water treatment plant, intake, well fields or an outlet.

Further discussion took place regarding the fact that Black & Veatch performs all forms of engineering for Garrison Diversion projects and whether that was how the contract was intended.

Chairman Royse questioned what areas the contract covers. How was Black & Veatch hired to perform the irrigation work?

Ms. Mooridian read the language from the first page of the agreement, which states the engineer will serve as the owner's consulting engineer for all work involving Garrison Diversion. The owner intends to implement the Dakota Water Resources Act (DWRA) of 2000, as well as other Garrison Diversion Conservancy District projects. The owner operates three major programs that will require professional services of an engineer. They include the RRWSP, O&M of principal supply works and the MR&I program.

Kip Kovar, District Engineer, Garrison Diversion, said irrigation is included in the DWRA because of the authorized irrigation along the McClusky Canal.

Director Fenstad commented that Black & Veatch was selected to be Garrison Diversion's engineer for whatever project it has according to the way the Act reads; however, it is our prerogative to modify or change the contract. The way the contract reads today they are Garrison Diversion's engineer indefinitely.

Director Fenstad added that most agencies that have a contract similar to what Garrison Diversion has with Black & Veatch have a term limit, such as five years, and then a selection process is gone through again. If there is a situation similar to ours where there is a variety of project types, there is usually a term. Even if you have an indefinite delivery contract with the government, there is a time limit on it. This committee needs to decide if there should be a time limit and what needs to be done or not done. It does not mean Black & Veatch will not be selected for the next term. It just means that Garrison Diversion should do its due diligence and set the contract up for a certain period of time.

Chairman Royse believes the contract should be restructured allowing Garrison Diversion more flexibility. The intent would be to use the primary engineer to its fullest extent without being challenged or, at Garrison Diversion's discretion, seek a more qualified firm for a specific, specialized need.

Mr. Kovar stated that other engineering firms have been used in the past for other projects, such as the Mile Marker 7.5 Irrigation Project.

Committee Chairman Walter said his idea was not to rewrite the contract. His idea was to open it up and allow other engineering firms to be involved with the water treatment plant, intake and the outfall. Black & Veatch would still be the primary engineer.

Mr. Feland said what you are asking for is a more formal scope and subconsultants on each of these major tasks.

Allowable Markup

Mr. Kovar stated there is a section in the contract that addresses the markup on subcontractors, which is five percent. Typically, the markup is 15 percent.

Chairman Royse questioned whether Garrison Diversion is paying for services twice. His point is on these large contracts where multiple subcontractors are being managed, why is there any markup.

The committee would like more explanation on reimbursable costs and markups in Appendix 1 to Exhibit C.

The question was asked whether the engineering consultant(s) is reimbursed for their time as well as mileage when attending Garrison Diversion or LAWA meetings. It was felt that was something that could be negotiable, and it was suggested that reimbursement for mileage be at the government rate.

Ms. Mooridian stated that the engineers are paid to attend meetings if they are expected to participate or present at the meeting. They are not reimbursed for attending Garrison Diversion board or committee meetings.

Discussion also took place regarding the standard hourly rate schedule and the annual adjustment. How is it negotiated?

Mr. Kovar said the contract states that the standard hourly rate will be adjusted annually to reflect the equitable changes in the compensation payable to the engineer. The percent change in the United States Department of Labor (DOL), Table 9 Employment Cost Index, professional and related for the prior year time period as reported by the DOL will serve as the multiplier for annual billing rate adjustments.

Chairman Royse said he would also like to know what the engineering firm's multiplier is compared to what other local/national firms use.

Director Fenstad suggested this be compared with the PSMJ document, which shows acceptable hourly rate schedules for regional firms, when negotiating the annual hourly rate.

Mr. Kovar stated, in the past, he has looked at other national firms and compared rates with Black & Veatch.

ACEC also puts together a report on comparable wage and overhead information/rates of engineering firms in the state.

Mr. Kovar was asked to review similar engineering firms and bring back information on rates at the next meeting.

SUBCONTRACTOR PROCESS

Chairman Royse said he is concerned with the process used and how the price is decided upon for subcontractors.

Mr. Kovar commented that there is not a process laid out in the contract. He explained how it has been handled in the past.

Chairman Royse said he would like to see a process developed that assures that we are getting the best price and quality of work.

Mr. Kovar was instructed to engage with Black & Veatch and come back with a more formal process addressing the concerns that were brought up today.

ACCEPTABLE AND ALLOWABLE PROFIT MARGIN

USDA Allowable Costs

A chart was distributed showing average costs for engineering services, which is intended to only be used as a guide.

DOT Model for Payment

Chairman Royse explained how the DOT model for payment uses audited overhead to control the profit margin.

Director Fenstad said the committee needs to decide what type of contract Garrison Diversion wants. The contract that was signed in 2008 is partly a lump sum contract and partly an hourly rate contract. Either can be used.

Director Fenstad added that we could go with a cost overhead type contract that exists with EJCDC documents. It is totally different. He does not see any benefit one way or the other. The most important thing is to have an idea of the scope of work desired, a ballpark idea of where that is going to be and a fair cost to do it. If we want a different model, we have to be specific about what we want.

Director Vein stated the model currently being used is probably the easiest to administer, rather than tracking overhead and profit.

CONFORMANCE WITH STATE LAW

Committee Chairman Walter said he wanted everyone to be aware that Garrison Diversion is conforming to state law. A RFP and selection process is not needed if engineering costs are \$35,000 or less.

Ms. Mooridian stated that a portion of the Century Code was distributed, Chapter 54-44.7, regarding professional services. This states that all state agencies need to negotiate the contracts and have a selection committee. Garrison Diversion followed this process in 2008.

FEASIBILITY OF MULTIPLE CONTRACTORS

Committee Chairman Walter asked if anyone has concerns with the feasibility of multiple contractors. He added if Garrison Diversion were to do this, it can be discussed at a later date.

Director Vein said this should be taken into consideration and brought up at another meeting.

SCHEDULE AND DELIVERABLES

Committee Chairman Walter said, at this point, there are several items that the committee would like addressed by legal counsel. Mr. Kovar has also been assigned a few tasks, including checking with Black & Veatch for clarification on some contract issues and looking into rates charged by other engineering firms.

Ms. Norgard and Paul Boersma, Black & Veatch, will be asked to attend the next committee meeting, which will be held on the same date of the next LAWA Board and Red River Valley Committee meetings.

There being no other business to come before the committee, the meeting adjourned at 12:20 p.m.

(SEAL)

Alan Walter, Chairman

Duane DeKrey, Secretary

REGISTRATION

CONTRACT REVIEW COMMITTEE MEETING
Garrison Diversion Conservancy District
Carrington, North Dakota
November 30, 2017

NAME	ADDRESS
Keneeth Kaiser	Jamestown
Jay Paul Anderson	Lisbon N.Dak.
Lisa Schaper	GDCD
Duane DeKrey	GDCD
Ken Rorse	Buckhorn Co. -
Ken Vein	GDCD
Todd Feland	City of GF
Bynd Grunby	City of Fargo
Humbly Cook	GDCD
Marti Myrland	GDCD
Kip Kovar	GDCD