



# **NOTICE OF INTENT (NOI)**

to develop a

**Public-Private Partnership**

to

**Design-Build-Finance-Operate-Maintain**

the

**Diversion Channel and Associated Infrastructure**

of the

**Fargo-Moorhead Area Flood Diversion Project**

**Issued By: Flood Diversion Board of Authority**

**Issue Date: September 2, 2015**

# Flood Diversion Board of Authority

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Approved:

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Darrell Vanyo, Chairman

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Date

# Notice of Intent

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## Introduction

The communities of Fargo, ND and Moorhead, MN, along with Cass County, ND, Clay County, MN, the Cass County Joint Water Resource District, and the Buffalo-Red River Watershed District, have signed a joint powers agreement that forms the Flood Diversion Board of Authority (Diversion Authority). The Diversion Authority, representing the local communities as the non-Federal Sponsors (NFS), and the United States Army Corps of Engineers (USACE), representing the Department of the Army, have, as a team, completed significant work in readying the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the Project) for implementation.

Construction of the Project was authorized by the US Congress as part of the Water Resources Reform and Development Act of 2014, Public Law 113-121. The Diversion Authority and the USACE recognize that advancing the completion of the Project as soon as practicable is critical to reducing flood risk for the Fargo-Moorhead metropolitan area. The estimated \$1.8 billion Project, which is comprised of multiple project features, has been selected by USACE as a demonstration project that will be implemented using a Split Delivery model. Under the Split Delivery model, the multiple Project features will be split into those implemented by the Diversion Authority and those implemented by the USACE. The majority of the Diversion Authority's features will be delivered through a Public-Private Partnership (PPP) project, whereas the USACE intends to use traditional Design-Bid-Build (DBB) and Design-Build (DB) methods.

The portions of the Project that the Diversion Authority will implement through a PPP are collectively referred to as the Diversion Channel and Associated Infrastructure Work Package (DCAI WP). The DCAI WP generally consists of 30 miles of channel, 2 aqueducts, 2 river inlets, various local drainage inlets, the channel outfall, 4 railroad bridges, 4 interstate highway bridges, and 10 county road bridges, as well as associated environmental mitigation and recreational features. Further detail is provided in Attachment A: Diversion Channel and Associated Infrastructure Work Package Scope.

The portions of the Project that the USACE will implement through traditional DBB and DB methods are collectively referred to as the Southern Embankment and Associated Infrastructure (SEAI). The SEAI may include multiple and separate construction packages that are yet to be defined by the USACE in cooperation with the Diversion Authority. In addition, the Diversion Authority and the USACE are currently designing and constructing Mitigation and Associated Infrastructure Work Packages (MAI WP) that will not be part of the PPP and will be delivered through traditional DBB or DB methods.

The Diversion Authority intends to seek competitive PPP proposals through a fair and transparent procurement process, and enter into a single PPP Agreement with a PPP Developer for the design, build, finance, operation, and maintenance (DBFOM) of the DCAI WP as generally described herein. The USACE will not be signatory to the PPP Agreement, and the PPP procurement and DCAI WP implementation will be exclusively within the control of the Diversion Authority. The purpose of this Notice of Intent (NOI) is to increase market interest in, and competition for, the DCAI WP, as well as provide initial information about the intended PPP procurement process.

**NOTE: This is only a Notice of Intent, not a commitment, by the Diversion Authority. The Diversion Authority is anticipating satisfactory resolution of certain enabling outcomes, as identified in the "Current Project Status" section, to occur prior to the procurement process advancing beyond this NOI. The Diversion Authority may modify or cancel this NOI at any time.**

## **Project Goals**

The purpose of the Project is to reduce flood risk, flood damages, and flood protection costs related to flooding in the Fargo-Moorhead area and to accomplish the following goals:

- Reduce flood risk associated with a long history of frequent flooding on local streams, including the Red River of the North, Sheyenne, Wild Rice, Maple, Rush, and Lower Rush Rivers passing through or into the metro area.
- Qualify substantial portions of the metropolitan area for 100-year flood accreditation by Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program, including currently known anticipated future floodplain map revisions.
- Reduce flood risk for floods exceeding the 1% event (100-year flood or greater) by lowering the predicted flood stage at the Fargo gauge to 40 feet during the 0.2% event (500-year flood).

## **PPP Delivery Goals**

The goals of the Diversion Authority in employing a PPP delivery approach include benefitting from: (i) innovative design, construction, and financing that results in cost savings and schedule improvements; and (ii) risk assignment, including long-term operation and maintenance by the PPP Developer. It is expected that the PPP Agreement will provide cost and schedule certainty upon contract execution, and provide a high-quality product that will benefit the Fargo-Moorhead metropolitan area for generations.

## **Current Project Status**

The Project has achieved the following major milestones:

1. Report of the USACE Chief of Engineers submitted to Congress: December 19, 2011
2. Record of Decision (ROD) signed by the Assistant Secretary of the Army (Civil Works): March 3, 2012
3. Congressional Authorization: Water Resources Reform and Development Act of 2014, Public Law 113-121

The Diversion Authority is anticipating successful resolution of the following three (3) enabling outcomes before advancing the PPP procurement process beyond this NOI:

1. Determination of Adequacy on the Minnesota Environmental Impact Statement (MnEIS) from the Minnesota Department of Natural Resources (MnDNR);
2. Lifting of the Preliminary Injunction issued by the US District Court for the District of Minnesota – Civil File No. 0:13-cv-02262-JRT-LIB; and
3. Appropriation of federal funds and designation as a USACE new construction start.

## **Proposed Procurement Process**

Prior to the start of the procurement process, the Diversion Authority intends to have one or more Industry Forums, which will be publicly advertised and open to interested parties. The Diversion Authority will provide updated information regarding the scope and the procurement schedule, and will be available for questions.

The Diversion Authority is going to undertake a fair and transparent procurement, leveraging industry best practice, which is expected to include a two phase procurement with a Request for Qualifications (RFQ) phase followed by a Request for Proposal (RFP) phase.

The RFQ will be publicly advertised, provide additional detail on the DCAI WP and procurement process, and supersede this NOI.

The Diversion Authority intends to evaluate the received Statements of Qualifications and shortlist a limited number of parties to proceed to the RFP phase. Only the shortlisted firms will receive Requests for Proposals (RFP). The proposal process may include confidential meetings with each proposer entity to discuss proprietary concepts. The Diversion Authority intends to select the preferred proposer using a best-value approach. The specifics of the evaluation process and scoring criteria will be included with the RFQ and RFP, as applicable.

## Procurement Schedule

The Diversion Authority may hold Industry Forum(s) as early as the 4<sup>th</sup> quarter of 2015.

Shortly after satisfactory resolution of the three enabling actions, which could occur as early as first quarter 2016, the Diversion Authority intends to proceed with the PPP procurement process. The goal is to begin construction on the DCAI WP in the summer of 2017, and finish as soon as practicable.

## Diversion Authority's and Project's Organizations and Consultants

The Diversion Authority, to date, has engaged two primary firms to assist with the PPP procurement and implementation. These firms will consult with the Diversion Authority's local administrative, financial, and legal representatives regarding all aspects of PPP procurement and implementation. These include:

- Owner's Agent: CH2M HILL Engineers, Inc. (CH2M)
- Financial Advisor: Ernst & Young Infrastructure Advisors, LLC (EYIA)

In addition, the Diversion Authority has engaged firms to provide technical assistance in preparing the procurement documents and evaluating the SOQs and Proposals. These include:

- Houston-Moore Group, LLC (HMG) and sub-consultants:
  - Houston Engineering, Inc (HEI)
  - Moore Engineering, Inc (MEI)
  - Braun Intertec Corporation (Braun)

The Diversion Authority and the USACE have involved and employed many organizations and consultants (and sub-consultants) over the history of the Project. The Diversion Authority has determined that there is no conflict of interest or prohibition on proposing or being part of a proposal team for organizations or firms that have been involved in the Project prior to the issuance of this NOI. However, organizations or firms that have decided to support the Diversion Authority on the DCAI WP moving forward, either by assisting in the procurement process for the PPP Developer or in providing professional services on the DCAI WP during the procurement, are considered to be organizationally conflicted and precluded from participating on a PPP team.

Attachment B provides a list of organizations or firms that have worked on the Project or DCAI WP in the past, but are not assisting in the procurement process for the Diversion Authority or providing professional services on the DCAI WP (Organizationally Eligible Firms) – these firms have been identified as eligible to pursue the PPP procurement as a prime or team member. Attachment B also provides a list of organizations or firms that have worked on the Project or DCAI WP in the past, but are assisting in the PPP procurement process for the Diversion Authority or are providing professional services on the DCAI WP (Organizationally Conflicted Firms) – these firms have been determined by the Diversion Authority to be **precluded from** the PPP procurement as a prime or team member.

## **Project Website**

The Diversion Authority hosts a website, [www.fmdiversion.com](http://www.fmdiversion.com), which contains information about the Project. The Diversion Authority intends to establish a link on that website where information on the PPP Procurement will be posted. This information may include updates to this NOI (which may also be noticed elsewhere), updates to the procurement schedule, and other general information.

Interested parties are advised to visit the website regularly to check for new information or announcements regarding the PPP procurement process. The Diversion Authority shall not be responsible for any failure of any party to note information on the website.

## **Communication Protocols**

Interested parties shall correspond with the Diversion Authority regarding this NOI only through the designated representatives, who must initially be contacted through e-mail at the address identified herein. Follow up meetings and site visits may be scheduled with the Diversion Authority if, in the sole determination of the Diversion Authority, it is beneficial to the Diversion Authority and the development of the PPP procurement process to do so. Interested parties are expected to conduct themselves with professional integrity and to refrain from lobbying activities with respect to this NOI. Potential PPP proposers or team members are advised not to contact or communicate with the USACE regarding this PPP procurement or the DCAI WP.

The Diversion Authority has designated the following individuals to be its authorized representatives and solely authorized contact persons during the NOI phase of the PPP procurement:

Bruce Spiller, P.E., DBIA, Program Manager @ [bruce.spiller@ch2m.com](mailto:bruce.spiller@ch2m.com)  
Martin Nicholson, Senior VP, Program Director @ [martin.nicholson@ch2m.com](mailto:martin.nicholson@ch2m.com)  
CH2M  
520 Main Avenue, Suite 600  
Fargo, ND 58103

The Diversion Authority has met or had discussions with several interested parties prior to the issuance of this NOI. The Diversion Authority and its consultants and advisors will not be responsible for, and interested parties may not rely on, any oral or written exchange or any other information or exchange that is not documented on the website or officially released by the Diversion Authority for the purpose of this procurement.

## **Opportunity for Local Businesses**

The Diversion Authority recognizes that local firms may not possess all of the necessary capacity or technical expertise required for a project of this size and complexity. However, it is the desire of the Diversion Authority that well-qualified local firms are afforded the maximum practical opportunity to participate in all phases of the DCAI WP.

## **Disclaimers**

The procurement of the PPP for the DCAI WP will begin upon publication of official notice as required by the North Dakota Century Code, after authorization for publication of such notice by the Diversion Authority Board. This NOI does not commit the Diversion Authority to enter into an Agreement or to proceed with the procurement as described herein. The Diversion Authority does not assume any liability for any consequences or costs incurred or alleged to have been incurred by interested parties as a result of this NOI.



# Attachment A – Diversion Channel and Associated Infrastructure Work Package (CAI WP) Scope

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Elements that are currently anticipate to be delivered as the Diversion Channel and Associated Infrastructure Work Package under the PPP Agreement are presented below and shown on Figure 1:

Diversion Channel, including Low Flow Channel

Inflow Design Flood (IDF) Levee

Diversion Channel Outlet

Rush River Inlet

Lower Rush River Inlet

Maple River Aqueduct

Sheyenne River Aqueduct

Drain 29 Inlet

Drain 30 Inlet

Drain 14 Inlet

Drain 21C Inlet

Drain 50 Inlet

Drain 47 Inlet

CR 31 Bridge

CR 18 Bridge

CR 32 Bridge

CR 22 Bridge

CR 20 Bridge

CR 10 Bridge

38<sup>th</sup> Street W Bridge

CR 8 Bridge

CR 6 Bridge

CR 14 Bridge

I-29 NB Bridge

I-29 SB Bridge

I-94 EB Bridge

I-94 WB Bridge

BNSF Hillsboro Subdivision RR Bridge

BNSF Prosper Subdivision RR Bridge

BNSF K.O. Subdivision RR Bridge

RRV RR Bridge



# Attachment B – Organizationally Conflicted and Organizationally Eligible Firms

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## Organizationally Conflicted Firms

Diversion Authority and USACE consultants currently working on the PPP procurement or providing professional services on the DCAI WP, and are therefore considered Organizationally Conflicted Firms and are precluded from proposing on the PPP project, being a member of a PPP project team, or discussing the PPP procurements with any PPP proposer or team member, except through the process described in the Communications Protocols section herein:

CH2M

Ernst & Young Infrastructure Advisors, LLC

Gray Pannell & Woodward LLP

AE2S

Erik Johnson and Associates

Ohnstad Twichell

Public Financial Management, Inc.

Houston-Moore Group, LLC

Houston Engineering, Inc.

Moore Engineering, Inc

SRF Consulting Group, Inc.

Braun Intertec

Ultieg Engineering

ProSource Technologies, LLC

Pifers Auction and Realty

## Organizationally Eligible Firms

The consultants or professional service providers listed below are organizations who have provided services in the past on the Diversion Project, either to the Diversion Authority (or one of its member entities) or to the USACE, but did not provide services related to the PPP procurement process by the Diversion Authority. Such organizations are not currently providing services on the DCAI WP or the PPP procurement and will not do so in the future, but may be providing current or future services on the MAI Work Packages or the SEAI.

These organizations have been determined to be Organizationally Eligible Firms by the Diversion Authority solely on the basis of the nature of their past services provided as of the date of the Notice of Intent. However, the Diversion Authority may place such organizations on its list of Organizationally Conflicted Firms as appropriate in the event future work for the Diversion Authority (or one of its member organizations) on the DCAI WP as determined by the Diversion Authority in its sole discretion.

The Diversion Authority's determination that a firm is currently organizationally eligible is based solely on the nature of the services provided by that organization on the Diversion Project to date and is not a representation or assurance that such organization does not have other conflicts or that it will not have such conflicts in the future.

Barr Engineering

HDR, Inc.

KLJ

AECOM/URS

Black & Veach

KGS Group

TKDA

Stanley-INCA JV

Bergmann/Hanson/HDR JV

WEST Consultants, Inc.

Anderson Engineering of MN

Bear Creek Archeology, Inc.

Great Lakes Archaeological Research Center, Inc.

Fugro Geospatial, Inc.

Industrial Builders, Inc.

Interstate Drilling Services, LLP

Midwest Testing Laboratory

SEH/INCA JV

Soil and Environmental Testing Services

Soil Engineering Testing, Inc.

St. Anthony Falls Laboratory

Strategic Value Solutions, Inc.

Texas Transportation Institute

Battelle Memorial Institute