

May 21, 2013

**MEMORANDUM TO THE TRUSTEES**

**FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER**

**SUBJECT: Procurement (Construction) Contract –  
Niagara Power Project Relicensing, Compliance  
and Implementation of the Frog Island Wetland  
Restoration Habitat Improvement Project –  
Dredging and Excavation Work – Contract Award**

**SUMMARY**

The Trustees are requested to approve the award of a procurement contract to L.D. C. Construction Co., Inc., (“LDC”) for the Frog Island Wetland Restoration Habitat Improvement Project (“HIP”) dredging and excavation work as part of the implementation of the Niagara Power Project (“NIA”) new license and settlement commitments. The term of the contract will be from May 2013 through the end of 2014. The amount for which authorization is requested is \$4,167,735.

**BACKGROUND**

Section 2879 of the Public Authorities Law and the Authority’s Guidelines for Procurement Contracts require the Trustees’ approval for procurement contracts involving services to be rendered in excess of one year. The Authority’s Guidelines for Procurement Contracts also require the Trustees’ approval for procurement contracts in excess of \$3 million.

The Federal Energy Regulatory Commission (“FERC”) issued the New License for the Project on March 15, 2007. The new license and associated Settlement Agreement and Section 401 Water Quality Certification (“WQC”) from the New York State Department of Environmental Conservation require implementing the provisions of the Comprehensive Settlement Offer and the new License Terms and Conditions. Article 9A of the WQC requires the New York Power Authority (“the Authority”) to establish a fund for the design, construction, operation, maintenance, and monitoring of eight specified HIPs; Frog Island is one of these HIPs.

The area once known as Frog Island is presently a submerged area within the upper Niagara River in Erie County, NY. This shallow underwater area is owned by the People of the State of New York, under the jurisdiction of the Authority. The dredging and excavation at this location is one of two major elements of the Frog Island Wetland HIP, the goal of which is to re-establish approximately 3.9 acres of historic fish and wildlife habitat in an area of the river that is presently barren of useful habitat. This will be accomplished through reconfiguration of the river bottom by dredging to create channels and contours of varying depths, installing appropriate substrate materials to support growth of desirable submerged and emergent aquatic plants,

installing logs and other features to attract a variety of aquatic and terrestrial species, and protecting these features from erosion by installing new stone berms. The second element of the Frog Island HIP (to be addressed through a separate contract) will involve cultivation and installation of wetland and upland plants within the dredged and excavated area. The Authority agreed to execute a project to restore this historic wetland during the relicensing of NIA.

## DISCUSSION

On March 1, 2013, the Authority issued a Request for Quotation (“RFQ”) for the dredging and excavation work at Frog Island, including a notice in the New York State *Contract Reporter*. Three proposals were received on March 29, 2013, from BIDCO Marine Group of Buffalo, NY; Severson Environmental Services of Niagara Falls, NY; and L.D.C. Construction Co, Inc. of Grand Island, NY. The RFQ requested pricing for dredging and excavation work using three different disposal scenarios for excess dredged material. For the primary disposal scenario, one proposal price was within the Authority’s estimate for the project, while the other two were above the Authority’s estimate. For the alternate disposal scenarios, all prices were within the Authority’s estimate.

Staff from the Authority’s Relicensing and Implementation (“R&I”) Division, the Environmental Health and Safety Division, and the Procurement Division evaluated the proposals for technical qualifications and pricing. The Authority’s review team was assisted in the technical evaluation by staff from Kleinschmidt Associates, who was responsible for the biological design and engineered elements of the HIP, and the Authority’s Niagara Compliance Implementation Consultant, Gomez and Sullivan Engineers, who assist the Authority with project management of Niagara Project relicensing implementation projects.

LDC was the lowest qualified bidder. LDC’s proposal offers the lowest cost under each disposal scenario specified in the RFQ and the company has proposed a technically sound and more cost-effective alternate along with its base bid submittal. LDC’s overall marine construction experience and successful performance on two river projects for NIA relicensing implementation supports the selection of that firm and its proposed alternate method for accomplishing the Frog Island dredging and excavation. The company’s recent successful completion of the Little Beaver Island wetland restoration HIP and the Motor Island Shoreline Restoration HIP for the Authority amply demonstrated its capability to execute large earthwork projects in a marine environment. In addition to operating safely and with appropriate quality control, LDC demonstrated considerable resourcefulness on the Beaver Island project in overcoming challenges that were not of its making, and worked very well in coordinating overlapping work with a planting contractor, similar to what is planned for the Frog Island HIP. The company’s successful experience on two other non-Authority marine projects at the nearby East River Marsh and Strawberry Island in the upper Niagara River is further indicative of its capabilities. LDC proposed no unacceptable deviations or exceptions for the Frog Island HIP dredging and excavation.

Therefore, it is recommended that the contract be awarded to LDC. The contract term will be from May 2013 through the end of 2014, and the contract amount will be a lump-sum of

\$3,788,850. In addition, it is recommended that an additional amount of \$378,885 be included in the Trustee authorization for potential field adjustments to address unanticipated subsurface conditions, effects of river level variation, or other factors using LDC's proposed contract unit prices. Including this additional amount, the total recommended authorization is \$4,167,735.

#### FISCAL INFORMATION

Since these expenditures are related to implementing new project commitments in the New License and the Section 401 Water Quality Certificate issued by the New York State Department of Environmental Conservation, payments will be made from the Capital Fund.

#### RECOMMENDATION

The Vice President – Licensing, Project Development and Compliance, the Vice President – Procurement and the Director – Relicensing and Implementation recommend that the Trustees authorize the award of a construction contract to L. D. C. Construction Co, Inc. for the Frog Island Wetland Restoration Habitat Improvement Project dredging and excavation work at the Niagara Power Project.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Gil C. Quiniones  
President and Chief Executive Officer

Att.  
NIA – Frog Island Dredging - Award

**RESOLUTION**

RESOLVED, That pursuant to the Guidelines for Procurement Contracts adopted by the Authority, approval is hereby granted to award a contract to L. D. C. Construction Co, Inc. from May 2013 through the end of 2014, in the amount of \$4,167,735, for construction services for the Frog Island Wetland Restoration Habitat Improvement Project dredging and excavation work at the Niagara Power Project, as recommended in the attached memorandum of the President and Chief Executive Officer;

Contractor

Contract Approval

L. D. C. Construction Co., Inc.

\$4,167,735

AND BE IT FURTHER RESOLVED, That the Chairman, the Vice Chairman, the President and Chief Executive Officer, the Chief Operating Officer and all other officers of the Authority are, and each of them hereby is, authorized on behalf of the Authority to do any and all things and take any and all actions and execute and deliver any and all agreements, certificates and other documents to effectuate the foregoing resolution, subject to the approval of the form thereof by the Executive Vice President and General Counsel.