

**Ohio Facilities Construction Commission****July 10, 2014****William McKinley Room****2:30 PM*****MINUTES***

Chairman Keen called the meeting to order at 2:51 PM.

**Roll Call**

Members present: Chairman Timothy Keen, Vice Chair Robert Blair and Mr. Gary Mohr.

**Adoption of the April 24, 2014 Minutes**

Director Mohr moved to approve the April 24, 2014 minutes.

Vice Chair Blair seconded the motion.

Approval: Vote 3-0.

**Construction Reform Summary – Craig Weise**

Craig Weise provided a Construction Reform summary update to the Commission. It reflected calendar years 2012, 2013 and six months of calendar year 2014. The delivery models are: Design Build (DB), Single Prime – general contracting, CM at Risk (CMR), Construction Manager as Advisor (CMA) – Multiple Prime and Multiple Prime. The building projects done by OFCC have used the multiple prime delivery model exclusively prior to 2012 when construction reform became effective. During 2012, CMA and Multiple Prime represented 84% of the projects. In 2013, CMA and Multiple Prime reduced to 39%. Currently for the first six months of 2014, CMA and Multiple Prime are at 29% and estimated to be less by the end of calendar year 2014. The underlying trends show 4 things: there is a strong need for different options; one delivery model does not fit all projects; the trend will continue using more Design Build and CMR.

Vice Chair Blair asked if we have captured the savings on these new delivery models. Mr. Weise responded certainly that is a line of inquiry that we need to answer and we can answer them once we finish the projects.

Director Mohr asked if there were any other trends out there that you are hearing about that may be included in this reform group packet. Mr. Weise responded there is an industry trend to be more collaborative. Some of these models indicate that trend. Instead of having a low bid environment that multiple prime was putting us into an adversarial relationship, design build attempts to build a cooperative team that has everyone on board and one point of responsibility. The industry is moving beyond these models to even more collaboration and so it is referred to

as integrated project delivery that groups everyone, including the owner, into one entity versus an us and them relationship. Director Hickman added that construction reform came about through a collaborative industry panel that supported the movement into the new delivery methods. We meet every three to four months with representatives from AIA, ACEC, as well as builders. When we engage builders, we are bringing small, medium and large contractors, union/non-union and the engagement is how do we work together better, how do we make our projects more successful and more cost effective. It is a forum that gives us good feedback and ideas on how we can work together. We can really cement the partnership that we are trying to engage with the industry, yet bring about quality projects and real savings to our public owners.

### **Cultural Facilities Project Guidelines Approval – Jeff Westhoven**

Jeff Westhoven presented the Cultural Facilities Project Guidelines to the Commission members for approval. Commission staff reviewed and analyzed the Project Approval Guidelines used by the former Cultural Facilities Commission, with three goals: to reconcile with law changes under HB 59; to streamline for efficiency; and to standardize, to the extent possible, with other community project funding agencies. Each process step within the guideline was traced to its original source. Many of the proposed steps are required by one or more sources including: Ohio Revised Code, Ohio Public Facilities Commission Lease, Capital Bill and Internal Revenue Code. The proposed procedures not specifically required by these sources were eliminated, shortened, or retained as a best practice for the proper use of public funds.

#### **Notable Changes:**

| <b><u>Changes to</u></b>                 | <b><u>Old CFC Guidelines</u></b>   | <b><u>New FCC Guidelines</u></b>  |
|--|--|---|
| <b>Law</b>                               | ORC §3383.01 <i>et seq.</i>  | ORC §123.28 <i>et seq.</i>  |
| <b>Financial analysis</b>                | Sponsor submits and CFC reviews business plan, two years’ audited financials, five year operating pro forma, IRS records and other information | No submittal; staff reviews publicly available information, then requests additional information if necessary |
| <b>Real estate</b>                       | Sponsor submits title opinion letter, deed, legal description, liens, agreement if leased  | No submittal; sponsor affirms title is free and clear of any liens or encumbrances                            |
| <b>Location evaluation</b>               | Assessment of impact on Ohio farmland; Phase 1 Environmental Site Assessment often required  | No farmland assessment; Phase 1 ESA for exceptional circumstances only  |
| <b>Scope review</b>                      | CFC assesses suitability of project for community; architectural and functional soundness of project; prioritization of any phasing, etc.      | High level focus on whether the work qualifies as construction, and whether it supports culture               |
| <b>Professional design services</b>      | Not to be included in scope or eligible for reimbursement  | May be included in scope and eligible for reimbursement   |
| <b>Local construction Administration</b> | Detailed analysis of the qualifications of the proposed construction administrator   | Review only if the organization is self-performing construction administration                                |

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| <b>Delegation of authority</b>  | Projects approved by Commission at meetings    | Approval delegated to executive director    |
| <b>Reimbursement procedures</b> | Reimbursement to sponsor on paid invoices only | Reimbursement to sponsor for completed work |

Vice Chair Blair asked what was done for outreach to do these revisions. Jeff Westhoven responded in the capital bill, we have 142 projects that are cultural projects worth \$74 million. Some of those entities are known to us and some of them are not known to us directly. To the extent we know those folks, we have talked to them. We have solicited their opinions and loud and clear what we heard is if you can make this easier that would be much better and that is what we tried to do with these guidelines.

Vice Chair Blair moved to approve Resolution 14-05.  
 Director Mohr seconded the motion.  
 Approval: Vote 3-0.

**Cultural Facilities Cooperative Use Agreement Approval – Jeff Westhoven**

Jeff Westhoven presented a Cultural Facilities Cooperative Use Agreement to the Commission members for approval. Commission staff reviewed and analyzed the Cooperative Use Agreement used by the former Cultural Facilities Commission, with three goals: to reconcile with law changes under HB 59; to streamline for efficiency; and to standardize, to the extent possible, with other community project funding agencies. Each element of the agreement was traced to its original source. Many of the proposed contract elements are required by one or more sources including: Ohio Revised Code, Ohio Public Facilities Commission lease, Capital bill and Internal Revenue Code. The proposed contract elements not specifically required by these sources were eliminated, shortened, or retained as a best practice for the proper use of public funds.

**Notable Changes:**

| <b><u>Changes to</u></b>         | <b><u>Old CFC Agreement</u></b>                                    | <b><u>New FCC Agreement</u></b>  |
|----------------------------------|--|--|
| <b>Law</b>                       | ORC §3383.01 <i>et seq.</i>  | ORC §123.28 <i>et seq.</i>   |
| <b>Recitals and Definitions</b>  | Five pages   | Shortened to one page  |
| <b>Management interests</b>      | Project must be managed in the best interests of CFC               | No such provision  |
| <b>General Building Services</b> | Sponsor shall provide all of these                                 | Eliminated in HB 59; some elements covered elsewhere                                     |
| <b>Sponsor’s Employees</b>       | Safety requirements imposed upon Sponsor’s own employees           | No such provision  |
| <b>Business Plan</b>             | Sponsor must provide a business plan and advise CFC of any changes | No such provision; FCC analyzes sustainability based upon publicly available information |
| <b>Construction</b>              | CFC specifies construction   | No such provision  |

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| <b>Standards</b>                     | standards and requires notification of material changes  |   |
| <b>Commission Meetings</b>           | Sponsor must attend and present at CFC meeting   | No such provision; grants approved through delegated authority, not at Commission meeting |
| <b>Warranties</b>                    | Warranties shall benefit and be assigned to CFC  | No such provision   |
| <b>Liability and Indemnification</b> | 4 pages  | Shortened to one page; no requirement for builder's risk                                  |
| <b>Construction contracting</b>      | CFC has right to review and consult on bid packages and contracts  | No such provision   |
| <b>Sponsor subcontracts</b>          | Sponsor must include a provision in all subcontracts that CFC is not bound by the contract   | No such provision   |
| <b>Standard contracting forms</b>    | Sponsor must use standard forms for all contractors and consultants  | No such provision   |
| <b>Professional design services</b>  | Not eligible for reimbursement   | Eligible under HB 59  |
| <b>Reimbursement procedures</b>      | Reimbursement to sponsor for paid invoices only  | Reimbursement to sponsor for work completed   |
| <b>Eminent domain</b>                | Provision in the event of taking by eminent domain   | No such provision; event has not occurred in history of program                           |
| <b>Damage</b>                        | Requirements for notification and repair standards   | No such provision   |
| <b>Status Reports</b>                | Monthly reports including design status, changes to the design, construction tasks, complete photographs of progress               | Reports on request only   |
| <b>Copies of contracts</b>           | Sponsor must provide copies of all contracts, change orders, amount expended within 15 days of award                               | No such provision   |
| <b>Project meetings</b>              | Sponsor shall provide a schedule of all project meetings; CFC shall be permitted to attend; minutes must be provided within 7 days | No such provision   |
| <b>Annual reports</b>                | Written report to include schedule of events and audited financial statements  | Reports on request only   |
| <b>Emergency procedures manual</b>   | Required to be submitted to CFC at opening and every 3 years after   | No such provision   |
| <b>Recognition</b>                   | CFC must be invited to any opening event; CFC must be verbally recognized and provided a speaking opportunity                      | No such provision   |
| <b>Communication</b>                 | CFC must approve wording of  | No such provision   |

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|                              | State's recognition in advance   |  |
| <b>Real estate materials</b> | Sponsor must provide legal property description, restriction, encumbrances and liens | Sponsor affirms that property title is free and clear of any liens or encumbrances |
| <b>Overall length</b>        | 34 pages + exhibits (8 pages)  | 11 pages + exhibits (4 pages)  |

Director Mohr asked if this has been looked at from the auditing standpoint making sure that there is at least enough structure to ensure that there is clarity about their expectations and then as a result becomes relatively easy for anyone who had to confirm the appropriate use of funds for the project. Have you thought about due diligence to ensure that the money is spent properly.

Jeff Westhoven responded on the due diligence part, we still reserve the right to have reports to audit financials and audit questions. Much of this information on the financial liability of the non-profit is still publicly available. If we were to have a question in year two – i.e. is this theatre still open, we can go to the internet and find out whether it is open. Having them provide monthly reports or end reports is of less need because really the threshold for us is it continuing to provide culture. If it does, then it is fulfilling its obligations and as long as it is over that 10-year period. What has been described are really the minimum standards for these agreements. We would always reserve the right to have supplemental conditions. An example would be if when we do our look at the publicly available financial records and we think that the entity is less financially stable then we are comfortable with, we can ask for a credit enhancement and put that into the agreement, such as a third party guarantee, such as funding letters from sponsors. We can actually write that into the agreement. That used to be in the agreement directly. We have that reserved as a supplemental condition. It is more a model of where we talk about the minimums and then we add things as necessary. We feel that is the right balance of efficiency and due diligence. Mr. Westhoven added that as a result of this analysis with our other agency partners the Department of Natural Resources sent us their new draft project. They have attempted to standardize with us to the extent possible and there are a lot of similarities between the two. We see it as a very encouraging sign that all of us are trying to do the same thing and be good stewards of the taxpayer's dollars.

Chairman Keen added this is a project that he had great interest in not only the culture, but that the Facilities Construction should review procedures that were previously used by the Cultural Facilities Commission and that there be an extended dialogue with the state entities that were offered funds. OFCC was asked to provide an oversight and discussion amongst those agencies that had the major predominance of community projects and to also reach out to some of the vocational community project funding agencies so that they understand these are palpable monies and that that they would be appropriately applied. The General Assembly has acted and specifically authorized a grant to an entity provided they can meet some minimum standards that ought to be provided. We are reaching the appropriate middle ground here in the OFCC and the dialogue amongst the other agencies is very productive for the state as a whole because we have different agencies that use different standards, some have purchased for too much and some probably needed to make sure they were getting the right information. Chairman Keen suggested that OFCC continue to reach out to some of the small agencies just to make sure that they know the basic checklist. There is great progress here. Vice Chair Blair added the strength of this is that there are stronger details than in the past.

Director Mohr moved to approve Resolution 14-06.  
Vice Chair Blair seconded the motion.  
Approval: Vote 3-0.

### **Cultural Facilities Delegation of Authority – Jeff Westhoven**

Jeff Westhoven presented a Cultural Facilities delegation of authority to approve Cultural Facilities Cooperative Use Agreements to the Executive Director to the Commission members for approval. This authority currently exists in current project approval guidelines.

Vice Chair Blair moved to approve Resolution 14-07.  
Director Mohr seconded the motion.  
Approval: Vote 3-0.

### **Settlement Agreement Approval – Jon Walden**

Jon Walden presented a settlement agreement with Lake Erie Electric and the Northeast Ohio Medical University (NEOMED) to the Commission members for approval. Lake Erie Electric served as the electrical contractor. Lake Erie Electrical asserted claims against OFCC and NEOMED related to purported delays and disruptions seeking additional compensation in excess of \$750,000. The owners assessed liquidated damages against Lake Erie Electric for failure to meet a contract completion milestone. The parties mediated the dispute in late May. At the mediation an agreement was reached whereby the parties agreed to issue a change order for additional funds of \$300,000 and releasing Lake Erie Electric's contract balance.

Director Mohr moved to approve Resolution 14-08.  
Vice Chair Blair seconded the motion.  
Approval: Vote 3-0.

### **Executive Director's Report**

Director Hickman reported that provided in the meeting materials were listings of design and construction contracts that had been executed since the April meeting for agency and higher education projects. The meeting materials also included contracts that had been executed for the K-12 program. Also included in the meeting materials, were meeting dates for the calendar year 2015.

Director Hickman announced that an upcoming series of full-day industry meetings throughout the State of Ohio with design professionals, construction contractors and owners, whether they be a school district, a state agency or higher education. The first meeting is on 7/16 in Cincinnati, 7/29 in Dublin, 8/14 in Cleveland and 8/28 in Dublin. Last year we had well over 1,200 participants in these conferences. We have taken the time over the last several months to survey the industry to ensure that the format that we use in these full-day meetings meets the varying interests of the participants.

There was no public testimony.

The meeting was adjourned at 3:32 PM.

A handwritten signature in blue ink, appearing to read "Timothy S. Keen", written over a horizontal line.

Timothy S. Keen, Commission Chair

A handwritten signature in blue ink, appearing to read "Carolyn L. McClure", written over a horizontal line.

These meeting minutes were prepared by  
Carolyn L. McClure, Secretary to the Commission