



OHIO FACILITIES CONSTRUCTION COMMISSION

Ohio Facilities Construction Commission
September 10, 2012
William McKinley Room
1:30 PM

MINUTES

Office of Budget and Management Director Timothy S. Keen called the first meeting of the Ohio Facilities Construction Commission to order at 1:39 PM.

Roll Call

Members present: OBM Director Timothy S. Keen, Department of Administrative Services Director Robert Blair and Mr. Gary Mohr.

Introduction of Members

Director Keen introduced himself and the other members of the Ohio Facilities Construction Commission. The Commission consists by statute of the Director of the Budget and Management; the Director of Administrative Services, Bob Blair and one appointee named by the Governor. Director Keen announced that the Governor had has appointed Gary Morh, to serve as the third member of the Commission. Mr. Morh is Director of Department of Rehabilitation and Corrections

Commission Responsibilities and Statutory Authority Overview

Mr. Jon Walden, Chief Legal Counsel, presented a brief statutory overview of the Ohio Facilities Construction Commission. The Commission was created under House Bill 487 as part of the Governor's management efficiency initiative in the Mid Biennium Review (MBR). The Ohio Facilities Construction Commission merged the State Architect's Office, which was formerly part of the Department of Administrative Services, run by Director Blair, with the School Facilities Commission. The goal was to reduce costs and align related authority and resources within a single responsive Commission with oversight responsibility for non-transportation related state construction.

The Ohio Facilities Construction Commission was established under Chapter 123.20 of the Ohio Revised Code to administer the design and construction of improvements to public facilities of the state. The Ohio Facilities Construction Commission acquires most responsibilities and powers previously held by SAO including administration of local construction authority by state agencies and universities, management of the energy efficiency and conservation program, declarations of public exigency which would be made by the Executive Director under the statute and debarment of contractors. More practical examples of what the Ohio Facilities Construction Commission will do is also help prepare the State of Requirements for Public Construction

documents that will be used by state agencies and universities across the state, which helps achieve having uniformity within the various organizations including the Ohio School Facilities Commission, which is a state agency included as part of the Ohio Facilities Construction Commission.

Under Ohio Revised Code Chapter 123.21, the Ohio Facilities Construction Commission can perform any act and share performance of any function necessary or appropriate to carry out the purposes of the Commission. The Commission also appoints the executive director for the Commission to handle the day to day supervision and operations. Under Chapter 123.21 (B), the Commission may delegate actions to the executive director and the executive director also independently can exercise powers that the Commission possesses. There are two separate Commissions, but we will have a single staff to work towards the goals of the organizations to make sure that we have one organization that can respond to the vertical construction. H.B. 487 also gave the Commission the task of working with the Department of Natural Resources to identify what if any portions of that agency's construction could become part of the Ohio Facilities Construction Commission.

The Commission is required to adopt Chapter 119 rules for the conduct of internal business, elect a Chair and Vice Chair of the Commission, consider the appointment of the Executive Director, adopt an ethics policy and a couple resolutions concerning potential delegation of powers. The Commission is only required to meet at least once per calendar year, so it will be up to the Chair to set the Commission schedule.

Election of the Chair and Vice Chair

Director Keen called for the nomination of Chair. Director Mohr nominated Director Keen. Director Blair seconded. There were no other nominations.

Director Keen closed the nominations and called for the vote for Director Keen as Chair of the Ohio Facilities Construction Commission.

Approval: Vote 3-0.

Chairman Keen called for the nomination of Vice Chair of the Commission. Director Mohr nominated Bob Blair as Vice Chair and Chairman Keen seconded. There were no other nominations.

Chairman Keen called for the vote for Director Blair as Vice Chair of the Ohio Facilities Construction Commission.

Approval: Vote 3-0.

Appointment of Executive Director - Resolution 12-01

Chairman Keen moved that the Commission adjourn to executive session for the purpose of considering the appointment and compensation of an employee for the Ohio Facilities Construction Commission.

Approval: Vote 3-0.

Upon completion of executive session, the Ohio Facilities Construction Commission then returned to open session.

Chairman Keen advanced the name of Richard Hickman to serve as executive director of the Facilities Construction Commission. The Chairman stated that Mr. Hickman is uniquely situated to help this new agency succeed and succeed from day one. He has twice served in the capacity as Executive Director of the School Facilities Commission and Chairman Keen has had the pleasure of working with him in both of those opportunities. He is very well versed in the operations of the School Facilities Commission construction programs. He has also had two stints in the Department of Administrative Services where he was very familiar with that agency's central service operations and particularly some of the work that was done at the School Facilities Commission. Prior to that he had a career in working in the public sector and the private sector working on matters of public management, construction and so that background suits him well for this job. Mr. Hickman has the skills and abilities that we need to advance the statutory responsibilities that the General Assembly has laid out for this organization.

Vice Chair Blair added that it was his great pleasure to have worked with Director Hickman for a number of years and that the Commission is extremely lucky to have him with us. Vice Chair Blair stated that put together this whole new package on construction reform. Ohio had this multiple prime problem for 134 years, which was increasing our costs and most importantly increasing the time it took us to build a building. It was taking forever and it was a mess. It needed to be changed. We went to the legislature, they saw the wisdom and saw what we needed to do and we were very fortunate that they supported us. Now the exciting part is implementing it. Nobody better in all the world to implement it than Rick Hickman who has lived this and we are already starting to see the fruits with design build and some of the projects we are working on. Vice Chair Blair stated that he is also in favor of Rick doing both jobs. He noted that there is a lot of work ahead us, but we are ready for it.

Director Mohr commented that he was very excited about the direction and the initiative. We have yet to realize the potential of this organization. It is often said that the truest test of a person's character is how they handle adversity and whether it is good or bad. Director Mohr noted that the Department of Rehabilitation and Correction handled some adversity about 10 or 12 years ago and we did that shoulder to shoulder and appreciated that. He stated that he also thinks that we are in good hands with Mr. Hickman as Director.

Chairman Keen moved to approve Resolution 12-01.
Director Mohr seconded the motion.
Approval: Vote 3-0.

Delegations of Authority - Resolution 12-02 and Resolution 12-03

Mr. Walden provided background on Resolution 12-02 and Resolution 12-03 for Commission approval. These resolutions are to help maximum the efficiencies for the administration and to help manage the day to day operations of the construction while having the specific goal of this Commission to focus on the broader policy picture for the organization and what the staff does to serve the Commission.

Resolution 12-02, delegating powers and duties to Ohio Facilities Construction Commission Executive Director, is consistent with Ohio Revised Code 123.21 in that the statute allows this Commission to delegate appropriate powers to the Executive Director. Ohio Revised Code 123.21 also recognizes the Executive Director on its own powers to carry out the same powers that the Commission has. Mr. Walden stated that this resolution will allow the Executive Director to approve and execute all contracts or agreements necessary or appropriate to carry out the purposes or fulfill the operation of the Commission. The Executive Director will take all steps necessary to implement and manage all the contracts incidental to the performance of the Ohio Facilities Construction Commission. The Executive Director will prepare a report that will be presented at each of the Commission's quarterly meetings to advise what has been done in relation to the actual contract and the transaction of the everyday business.

Vice Chair Blair moved to approve Resolution 12-02.
Director Mohr seconded the motion.
Approval: Vote 3-0.

Resolution 12-03, acknowledging and accepting Ohio School Facilities Commission delegation in Resolution 12-92, is a follow-up to a resolution that the School Facilities Commission passed at its August 23, 2012 meeting. Resolution 12-92 delegated some of the contract and the ability for the School Facilities Commission to delegate to the Ohio Facilities Construction Commission to both approve, award and administer the contracts for both construction and design to the Ohio Facilities Construction Commission to handle the day-to-day operations. It recognizes the structure of the Ohio School Facilities Commission serving as a Commission within a Commission or an agency within the Commission to better maximize the efficiencies for the organization and allows us to do the day-to-day transactional role to prepare a report. Mr. Walden stated that not only will there be a report provided to the Ohio Facilities Construction Commission, but Resolution 12-92 with the Ohio School Facilities Commission requires the Executive Director of the Ohio School Facilities Commission to prepare a report for that body at each of its meetings on what transactions have taken place.

Vice Chair Blair moved to approve Resolution 12-03.
Director Mohr seconded the motion.
Approval: Vote 3-0.

Commission Meetings Structure

Chairman Keen proposed that the Ohio Facilities Construction Commission meet on a quarterly schedule and possibly additional times as necessary. All these dates and times are scheduled to meet at the same day as the Ohio School Facilities Commission. All of these will be announced consistent with public meetings requirements and be posted on the Ohio Facilities Construction Commission website and distributed to interested parties. Our next meeting will be Thursday, October 25, 2012 following that Thursday, January 24, 2013, Thursday, April 25, 2013, Thursday, July 11, 2013 and Thursday, October 24, 2013.

OFCC Proposed Rules Resolution 12-04

Sarah Spence presented proposed rules for Commission approval. This resolution authorized the Executive Director to file rules for internal management and accessing personal information systems. H.B. 487 authorized the Ohio Facilities Construction Commission to adopt rules pursuant to Chapter 119. It also authorized the Legislative Service Commission to renumber rules that were housed in the State Architect's Office and the Ohio School Facilities Commission. The Ohio Facilities Construction Commission will be receiving rules from Administrative Code Chapters 123:4, which was the State Architect's Office; 153:1 which was Department of Administrative Services Public Works and Chapter 3318 for Ohio School Facilities Commission.

Between the two agencies, there are a total of 48 existing rules. Six of those rules are currently before Joint Committee on Agency Rule Review (JCARR) for their final JCARR hearing. The rules should be filed and effective in the next ten days and then all 48 rules that the Commission will be receiving will be in compliance with our five year review.

Ms. Spence stated that staff worked with the Legislative Service Commission to find a place to house the rules that would make sense both as far as the revised code structure and administrative code structure. Even though the Ohio Facilities Construction Commission was created within Ohio Revised Code 123, we cannot continue to use 123 because that is Department of Administrative Services' code.

Chapter 3318 was renamed the Ohio Facilities Construction Commission and 3318:1 was created for all of the rules for the Ohio School Facilities Commission.

Chapter 153 will be re-entitled Ohio Facilities Construction Commission State Construction. There are eight rules for your consideration. Three of those rules are internal management. The first rule talks about Commission members, establishing a designee process, the filling of vacancies and the designation of a Commission secretary. The second rule is meetings rules. This defines regular and special meetings and generally sets the order of business for the Commission and how to keep minutes of the Commission meetings. The third rule is public notice of meetings and will set up the procedures for sending out meeting notices for the public and also posting those notices. The second set of rules consists of five rules for accessing personal information systems. These rules are required for all state agencies and commissions by the Ohio Revised Code 1347.15. The rules set procedures for employee access to personal information systems within an agency. These rules are pretty standard across agencies and

commissions however, they do allow for specific instances within either agencies or commissions. These rules will call out the way to access personal information when employees are dealing with certified payroll, any type of background checks and compliance with worksite drug safety policies. I have reviewed all of the rules with legal counsel and we recommend the adoption of Resolution 12-04 which will authorize the Executive Director to file these rules with JCARR.

Director Mohr asked if there is a limit or term defined in the rules or statute for Commission members. Ms. Spence responded that it is not defined within the rules; however the statute has the appointee of the Governor as a three year term.

Vice Chair Blair moved to approve Resolution 12-04.

Director Mohr seconded the motion.

Approval: Vote 3-0.

Ethics – Resolution 12-05

Mr. Walden presented an ethics policy for the Ohio Facilities Construction Commission for Commission approval. He explained that the ethics policy is similar in structure to the policy identified by the Ohio Ethics Commission and it contains the following statement for the Commission: it is the policy of the Ohio Facilities Construction Commission to carry out its mission in accordance with the strictest ethical guidelines and to ensure that the Ohio Facilities Construction Commission employees conduct themselves in a manner that fosters public confidence in the integrity of the Ohio Facilities Construction Commission, its processes, and its accomplishments. The ethics policy recognizes that the Commission staff has many interactions with the private sector and provides guidance to those employees about the heightened responsibilities and obligations associated with the Ohio Facilities Construction Commission staff positions. The policy also requires the filing of financial disclosure statements with the Ohio Ethics Commission by the Executive Director, the executive staff and any other employees determined by the Executive Director. The ethics policy further requires annual training on Ohio's Ethics Law.

Director Mohr moved to approve Resolution 12-05.

Vice Chair Blair seconded the motion.

Approval: Vote 3-0.

Contracting Process

Crystal Canan presented information on the contracting process to the Commission. Construction reform added delivery models to our portfolio and with it comes slightly different agreements. With the addition of construction manager at risk to design build to the law the award criteria for that is no longer lump sum bid or the lowest price with a responsible company, but instead it combines price and qualifications. We will continue to accept projects which are design bid build or a single general contractor and in some cases project teams will continue to select the multiple trade contracting options when that fits a particular scenario. We may still have multiple trade contractors on a project pursuant to a lump sum bid, but the award criteria we

are faced with now with the new delivery models is different and it is called this best value combining price and qualifications with a two step selection process where price is considered, but not always the lowest price wins because the weighting on qualifications may in fact give more percentage to that factor and pick the team that is best qualified and they have a slightly higher price than another company that is competing for that contract.

With respect to the agreement structures for the new delivery models the State of Ohio has a proprietary set of documents. It is a large enough construction owner to design its own contracts and not use standard forms published by trade associations, so all of the new delivery models have new contract documents. They are standard documents that all agencies, universities and the school programs will use with the modifications to adopt particular project criteria that they may need that are specific to their job sites. In the general contracting and multiple trade projects, it will still be a bid with there being a lump sum contract award. On all of those projects there will be a contingency for change orders that are appropriate for items that are not clear in the specifications or additional work that is added to the contract amount; however in the construction manager at risk and design build world we will actually have a two-agreement structure where the first agreement will be for pre-construction services where the company will be involved with the design phase of the project coming up with alternatives, better solutions and design criteria for the project with a guaranteed maximum price amendment adding the cost of the work to the original agreement. The guaranteed maximum price is a negotiated amount that is a dynamic process based upon usually the design phased development completed documents. The guaranteed maximum price is then transitioned to a lump sum and paid to the contractor on a percent complete; however we do have the option for our owners to accept open book pricing backup for a guaranteed maximum price scenario which would require a pretty extensive review of every cost paid by that company and every invoice that they incur on that job. So again, in the construction manager at risk world and design build world going forward there will be a two agreement structure and potentially two controlling boards, one for the early pre-construction phase services and one to approve the guaranteed maximum price, which is essentially the trade contractor or the build out part of the project.

In the approval process there is a slight difference between the law for agencies and universities and that for schools. In the agency and university world the money is appropriated to the agency or university and the Ohio Facilities Construction Commission will be the contracting authority on their behalf. The Ohio Facilities Construction Commission will not be a co-funder. They will not have liability for any cost overruns. Any costs associated with that contract will remain at the agency or university level. The Ohio Facilities Construction Commission will actually engage the vendor. The party will be between the vendor and the Ohio Facilities Construction Commission with the agency concurring. There is a slight variation on the signature page on agency and university contract forms as opposed to that for schools. The Ohio School Facilities Commission projects are co-funded, co-owned and there is shared liability. In that structure, the vendor will actually be engaged by the school district board on behalf of the State of Ohio with the Ohio Facilities Construction Commission approving that contract, so the signature page for a school project has that slight variation related to the difference in law in terms of its being co-funded and co-owned with shared liability. Those are the contract forms and the award criteria that the staff will proceed with in our new alternative delivery model world and the contract framework that the Executive Director will sign on behalf of the Commission.

Director Mohr commented that this is exciting and that, as director of an agency that has a lot of facilities, this is a real breakthrough.

Transfer of Funding Report

David Chovan provided information regarding the transfer of funding which consolidated the Ohio School Facilities Commission and the State Architect's Office into one business unit within the state. In addition to the appropriation for the Ohio School Facilities Commission, there are two operating appropriation line items for the functions of the State Architect's Office: an enterprise fund line item and also a GRF line item. There are two capital lines within the State Architect's Office that will be moved into the new agency. All the capital lines for the Ohio Facilities Construction Commission will stay, remaining within the same business unit. The finance staff went through a process to cancel open purchase orders within the State Architect's Office and those are being reestablished. We have established new department and program structures. We have established combo codes to segregate payroll so that we make sure that the costs and operations of all staff are coded correctly between state projects and school projects. We have 32 positions within the State Architect's Office and the OAKS-CI group that have moved within the Ohio Facilities Construction Commission. Mr. Chovan thanked Office of Budget and Management and the Department of Administrative Services for a lot of cooperation. The combined operating funds for the two operations into the Ohio Facilities Construction Commission total \$20.8 million for FY13. In addition, \$342 million is paying school bonds out of the GRF.

Executive Director Report

Director Hickman shared with the Commission a table of organization that fully integrates staff from the Ohio School Facilities Commission and the Department of Administrative Services' State Architect's Office. We began meeting with both organizations back in June in planning for this day. This full integration of staff enables us to really hit the ground running and to be able to manage projects not only for school districts, but for state construction projects in a highly effective fashion. The budget for the combined staff establishes a staffing cap of 98 positions. This is less than the budget appropriations would permit us to staff, but believe it is an appropriate cap. There are currently 9 of the 98 positions that are vacant and as we manage construction projects, we will be very judicious in determining whether or not we fill those positions.

Director Hickman presented the table of organization. Steve Lutz, formerly the Chief of Planning for School Facilities, will take over the planning responsibilities for the combined organization. Craig Weise, who was a previous State Architect, was the Director of the implementation of the new delivery methods and has a long background with both School Facilities construction, as well as, state construction. Mr. Weise will take over the responsibilities as Chief of Projects and will be responsible for the bidding of construction projects and managing them through to completion. Crystal Canan is the Chief of Contract Compliance and Energy. Crystal comes from the State Architect's Office, but also has a strong background as legal counsel, as well as a background with the Ohio School Facilities Commission. We have combined operations of our finance office, human resources activities

and our IT systems under the leadership of David Chovan, Chief Operations Officer. Director Hickman noted the members of the Commission had the opportunity to work with Jon Walden through this organization meeting. Jon Walden is our Chief Legal Counsel and Cheryl Lyman is our Chief of Communications. Director Hickman stated that we have strong members from the State Architect's Office and the Ohio School Facilities Commission to make sure that construction projects throughout the state are managed in an effective and efficient fashion and we are very pleased that we will be able to move ahead beginning today.

Director Hickman noted that we have been working with Marcey Earley with the Department of Administrative Real Estate Office on space for this new organization. He thanked Ms. Earley for all her work in moving the combined organization into fourth floor of the Bureau of Worker's Compensation building. It requires some construction to occur and that construction will be accomplished using design build, one of our new delivery methods, and we expect to be in there in about twelve weeks. Director Hickman pointed out the rent savings at the new location is going to exceed \$100,000 on an annualized basis. We are saving not only rental rates with what we are paying at the current home of the Ohio School Facilities Commission, but also with the Surface Road facilities that currently houses the State Architect's Office.

Director Hickman stated that the legislation requires a study of the Ohio Department of Natural Resources Division of Engineering and their construction activity and to determine if there are functions that should be considered for inclusion in this new construction agency. In partnership with the Ohio Department of Natural Resources, we have selected an outside consulting firm, PMC, who has done work for not only the Ohio School Facilities Commission with regard to construction, but also with the State Architect's Office. They have already engaged the Ohio Department of Natural Resources. We expect that we will give you an update on the status of that effort at the October 25th Commission meeting and have a recommendation by the end of the year.

Staff has been working on a new website for the combined agency to be launched later today or early tomorrow. Since the Ohio School Facilities Commission continues to exist within the new consolidated agency, our existing Ohio School Facilities Commission's website remains active and that website will still contain programmatic information for our school districts, as well as equity list information and other areas that are important to our mission with school districts. The new Ohio Facilities Construction Commission website will have information regarding the new construction delivery methods, construction documents, compliance issues and things that are important to state agencies, as well as our overriding mission of managing construction within the State of Ohio.

In terms of communications, we will at the conclusion of this meeting, send out some email communications to state agencies, state supported colleges, universities and school district in the construction industry. We expect by tomorrow that we will be communicating the change to the General Assembly and to members of the media. The Ohio Department of Education is also reaching out to school districts through various newsletters and communication vehicles they have.

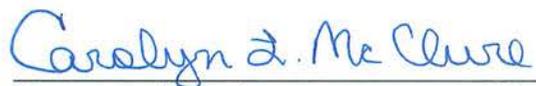
Director Mohr expressed his interest in the study at the Ohio Department of Natural Resources.

There was no public testimony.

The meeting was adjourned at 3:12 PM.

Handwritten signature of Timothy S. Keen in blue ink, written over a horizontal line.

Timothy S. Keen, Commission Chair

Handwritten signature of Carolyn L. McClure in blue ink, written over a horizontal line.

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