



OHIO FACILITIES CONSTRUCTION COMMISSION

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**Ohio Facilities Construction Commission**  
**October 23, 2014**  
**William McKinley Room**  
**2:30 PM**

*MINUTES*

Chairman Keen called the meeting to order at 2:37 PM.

**Roll Call**

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

**Adoption of the July 10, 2014 Minutes**

Vice Chair Blair moved to approve the July 10, 2014 minutes.

Director Mohr seconded the motion.

Approval: Vote 3-0.

**Authority to File Administrative Rule Approval – Sarah Spence – Resolution 14-09**

Sarah Spence provided Administrative Rule Approval authorizing the executive director to file an amended rule for the prequalification of professional design firms for Commission approval.

Under the Ohio Revised Code, the Commission has authority to establish a prequalification process for selecting professional design firms through administrative rule. The prequalification list created through this process is used to contract with various design professionals to provide engineering, architectural, testing and surveying services for small projects, projects requiring an accelerated design schedule, or emergency projects that require expedited services.

Under the proposed rule, firms wishing to be considered for the prequalification list will have to maintain a current statement of qualifications on file with the Commission. Commission staff will evaluate all statements of qualification before submitting the firms to the Controlling Board for approval; however, in order to give staff more flexibility, interviews of those firms before Controlling Board approval will no longer be required.

The processes to follow for certain contract thresholds were also adjusted to give Commission staff more flexibility in using the prequalification list based upon the project's need while leaving in the necessary oversight. For contracts of \$100,000 or less, staff can either ask for technical proposal from three firms on the list and rank them based on the proposals, or can select one firm from the list and request a technical and fee proposal. For contracts greater than

\$100,000, staff must ask for technical proposal from three firms on the list and may interview those firms and then rank them based upon the proposals. All firms on the list are still subject to the \$250,000 cap of contract dollar amount that they can receive.

Vice Chair Blair commented that we did the prequalification forever at ODOT and it was a good deal. How does a firm lose its prequalification status. Sarah Spence deferred Vice Chair Blair's question to Craig Weise. Craig Weise responded every firm in the state in essence becomes part of our prequalification list. There are approximately 250 – 275 architectural and engineering firms. To not be on our list is due to their lack of submission to our request each biennium. We ask for this in December and every 2 years in December, we ask for a new list. Vice Chair Blair said let us assume some firm comes in and did not do a good job or maybe lost some architects or something, do you have the power to disqualify them. Craig Weise responded that we would not disqualify them, we just would not select them. Vice Chair Blair asked you would not select them, but you would not take them off your prequalified list. Craig Weise responded we would not necessarily have to take them off our prequalified list. We would just not use them because we have access to every single firm in the state from that list, we would just pick other firms that are equally qualified in that area of the state. That is why we have never really rejected it because we have a flexibility to not use them, it is not like a low bid environment, we can choose anyone we think is the most qualified for a particular project.

Director Mohr asked if there is any recourse for a company that you do not select because they are still on the list, but they have not performed on one or more jobs in an appropriate way. They are still on the list, you do not select them, what is their form of recourse for not being selected. Craig Weise responded each opportunity they can to present how they have changed as we work with them and any firm can ask for a debrief. We do them practically every week with firms and we discuss how they can better prepare themselves for the next project to succeed. Director Mohr asked if there was a defined recourse such as the Common Pleas Court or State Claims Court that they could go to. Craig Weise responded that no, every public authority has a discretion to select, through this process or through an RFQ process, who they determine to be the most qualified. Director Hickman responded that this is a very good question. Any selection of a consultant, whether they be a design professional, specialty consultant or a contractor for a project, actually goes in front of a selection committee that typically involves two people from our office, two people from the agency that is actually paying for the project and as a part of that selection process the public owner is permitted to review past performance of contractors, design professionals on projects that they have previously been involved with and to take that under consideration during the selection process. There is an avenue to go down the path that makes sure that the firms that are selected to do work for state projects are going to do a good job for both the owner and the project. We are prohibited as an agency from overriding the selection of this selection committee except for certain conditions, and that is in rule and so there are pretty tough thresholds for us to meet in order for us to overturn a selection. It has really never happened. It is up to that selection committee again to review the proposals for review projects that the firms have previously been involved with and make some decision that ensures that the right firm is being selected for the project.

Vice Chair Blair added that back in the '90s at ODOT because we were doing the same thing with engineering firms, it was a long list. What we were finding is that a lot of local

communities might also look at our lists when you prequalify them. What we decided to do, and believe we got legislation on this, we decided if they had a number of bad reviews and these were done after projects, we actually got permission to take them off the list. He just wonder if this puts a little more teeth into it than not selecting. Director Hickman responded that there are statutory provisions for debarment. There is an avenue for us to deal with a contractor that meets the test that is prescribed in order to debar a firm from working with the state, but that is currently in statute. I don't know that we have had any firm in recent history that have been debarred, however, we do have the authority to debar firms that are debarred by the Federal Government and ODOT who has that statutory authority. We did have a recent case where we did exercise that authority. We had a firm that had been debarred at the Federal level and as result of that debarment, we used that authority not to award new contracts with that company. Director Mohr commented that having worked with Director Hickman for years in this position and prior, the secret is there has to be a stick quite frankly and we do not like to talk about it, but there does have to be a stick and I trust and like this organization so much. I trust the work that they do and I just encourage them that when we find companies that are not compliant with the contracts that we issue and do not satisfy our customers that the best stick is no more work. Whether we call it debarment, it sounds like you guys have the authority to do that and I just wanted to make sure that happens because the best indicator of the future is the past.

Vice Chair Blair moved to approve Resolution 14-09.

Director Mohr seconded the motion.

Approval: Vote 3-0.

### **Metrics Performance Update – David Chovan**

David Chovan provided a performance metrics update to the Commission members. As a construction agency, probably the most important metrics are those that measure the cost and timeliness of the construction projects for which we are responsible. In FY14, 86 % of agency and higher education projects were completed on or under budget. For these projects, the original budgets are established by the customers without input from OFCC. Similarly, 56% of K-12 projects were completed on or under budget due to market conditions that prevailed at the time of bidding in comparison to when the original budgets were established 2 to 3 years earlier. This metric compares the actual costs of the completed projects to the original project budgets. Of those same projects, 19% of agency and higher education projects were completed on time. This takes into consideration the time to achieve project close-out which in many cases has taken longer than expected; however, beneficial occupancy for these projects was largely not impacted and the customers were able to take ownership of their projects without delay. Similarly, 38% of K-12 projects were completed on time. Even though construction completion may have been slightly later than originally planned, most of these school buildings opened on time to allow the educational delivery to proceed uninterrupted. We do believe that these project metrics can be improved. We are assessing the factors that impact both project cost and the schedule and are implementing measures to bring about the necessary results.

The completed projects in FY14 were almost exclusively built under the multi-prime model that was solely available prior to the implementation of construction reform. With the implementation of construction reform, we anticipate these project metrics will improve based

on the benefits provided from alternative delivery methods to complete projects in less time and to cap the costs with a guaranteed maximum price.

Other results that support the OFCC mission and its customers include:

Fully met all milestones in transitioning and streamlining the new OFCC cultural projects program. Completed updates to all contract documents based upon discussions with and feedback from the industry and owners. Built toward an enrollment projection accuracy within 4.9% of actual enrollment for current school district projects. Configured OAKS-CI for school districts and brought on 32 new K-12 projects in order to consolidate and reduce the number of IT applications used to manage projects. Fully met all milestones in planning and implementing the new school security grant program. Procured 47 professional service contracts in an average of 76 days; closed out 16 school district construction projects; reducing backlog by 11%; and LEED certified 65 completed buildings.

### **Settlement Agreement Approval – Jon Walden – Resolution 14-10**

Jon Walden presented a settlement agreement with Quandel Construction and Ohio University for Commission approval. Quandel Construction, Ohio University and the Commission entered into a contract for Quandel to serve as the General Contractor for the Scripps College of Communication, Schoonover Hall Renovation Project. The project encountered several delays and failed to complete by the original completion date. Due to those delays, Ohio University and the Commission assessed liquidated damages against Quandel consistent with the terms of its contract. Quandel thereafter asserted a claim against the Commission and Ohio University related to alleged additional costs, delays, and disruptions on the project. After mediation and several negotiation sessions, the parties have reached an agreement to resolve the dispute, which includes Quandel dismissing its affirmative \$1.3 million claim, and the Commission and Ohio University releasing all liquidated damages and retained funds to Quandel except for the amount of \$450,000. As part of the settlement, the Commission and Owner have agreed to release certain claims against Quandel.

Vice Chair Blair asked about the relationship with the universities. Jon Walden responded we are the contracting authority on this project. Ohio University is the owner. On this project we provided the project manager, administered the project for them overseeing the bidding, the paperwork, used OAKS-CI and worked with the owner's staff to try work the project to completion. Vice Chair Blair asked if we are project managers for all the universities. Jon Walden responded that technically we are over all the universities and agencies; however, universities have what is known as local administration, and they can go through our processes and training and get local administration for authority to do their own projects. Traditionally we do not have any interaction with Ohio State University except they do need to use the state documents so the uniformity of the documents comes from us. They can have supplemental conditions that might fit their condition or what is needed. Director Hickman added that we provide annual training with university staff on our documents and processes and certify them as trained in terms of understanding state construction documents. From time to time we do have universities, even though they have the authority to manage construction projects on their own, that will come to us and ask for our assistance in managing a project. Over the years we have had a good relationship with Ohio University. They typically have evaluated the work they have

ahead of them, determine what projects they want to manage and determine what projects they would like our assistance on. The Scripps project at Athens was one of those projects where they requested our assistance in helping them manage the project. We are heavily involved in the administration of projects on the campuses of our two year colleges, but the four years typically have sufficient staff and background and training to manage their own construction projects.

Director Mohr moved to approve Resolution 14-10.

Vice Chair Blair seconded the motion.

Approval: Vote 3-0.

### **Authority to File Suit Approval – Jon Walden – Resolution 14-11**

Jon Walden presented an authority to file suit with Karl R. Rohrer Associates, Inc. and Ohio Department of Transportation's (ODOT) District 11 Headquarters project for Commission approval. ODOT has reported several issues with the building's envelope. After investigation, it was determined that the steel lintels included as part of Rohrer's scope of work for the design related to the window openings were not adequately sized. This design defect caused twenty-seven of the forty-five windows in the structure to be affected by not sufficiently supporting the building's brick veneer. During the course of the remedial work to address the lintel issue, the project team discovered latent defects resulting from substantial defective, non-compliant work. The Attorney General's Office has been involved in the remedial work and recommends initiating litigation against Rohrer. The Commission seeks authority to file suit against Karl R. Rohrer Associates, Inc.

Director Mohr moved to approve Resolution 14-11.

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 July meeting for agency, higher education projects and the K-12 program. The Director noted that we had our first design build contract for a school district. Four Cultural Facilities Grants were approved for the first time since authority was given to OFCC in July, 2014. Director Hickman concluded his report by pointing out that included in the meeting materials were the meeting dates for 2015.

### **Honoring Richard Hickman on his Retirement – Chairman Keen – Resolution 14-12**

Chairman Keen presented Resolution 14-12. At the Chairman's request, Ms. McClure read Resolution 14-12 in its entirety, honoring Richard Hickman on his retirement. Chairman Keen added that it had been a pleasure to work with Mr. Hickman and that he had done a great job in his various capacities. There is a lot more that could have gone into this resolution undoubtedly because of all the important matters that you have worked on. You have done a great job and you will certainly be missed. Director Mohr added that it had been a great pleasure to work with Mr. Hickman. He did a great job in his various capacities. Director Mohr said that the true test

of a person's character is how they handle adversity and Mr. Hickman did that. Director Mohr agreed with an earlier statement from Vice Chair Blair describing Mr. Hickman as a consummate public servant and thanked him for his service to the state. Vice Chair Blair remembered the battles with the legislature as we tried to get the construction rules changed and being able to go there with you hand-in-hand and arm-in-arm in front of those legislators and fending off numerous attacks from various interest groups that weren't interested in that and blocked it for years. Being there with you, I felt like I was there with a gladiator that could help us get through that. That was a tremendous accomplishment. Being there when it was finally decided for the betterment of the state to move the State Architect's Office into the Ohio Facilities Construction Commission combining those people together and making their time more valuable, making the state's time more valuable and putting that together was another great accomplishment for you. It will be difficult to replace you.

Chairman Keen moved to approve Resolution 14-12.

Vice Chair Blair seconded the motion.

Approval: Vote 3-0.

### **Resignation of Richard Hickman – Chairman Keen – Resolution 14-13**

Chairman Keen explained that Resolution 14-13 accepts the resignation of Director Hickman, which is a formal duty that we have to undertake and it also sets up a process for us to proceed with identifying an Interim Executive Director. The resolution accepts the resignation of Richard Hickman and approves the Chairman to administer a process of filling the position of the Interim Executive Director, including taking on all reasonable steps necessary for the performance of that function and the Commission will approve the final selection of the candidate to fill the Interim Executive Director position.

Chairman Keen talked about what he would intend to do upon the Commission's approval of the resolution. The Interim Executive Director needs to come from the senior leadership ranks of the Ohio Facilities Construction Commission. He had asked Director Hickman to provide him with the resumes of the senior leadership team members. He did not know if they were interested or not in the interim position or in the permanent position. An interim leader is needed for a period of time, but then we will promptly begin a process to select a permanent Executive Director.

Chairman Keen indicated that next week a special meeting would take place to propose a resolution that would outline a process that would be followed in the selection of a permanent Executive Director. Each of the senior leadership team members would be contacted on Friday, October 24th to get a sense of where they are and if they are interested in both the interim and permanent Executive Director positions. It would then be determined what the next steps would be, conduct the appropriate interviews and then come back early the next week with a recommendation. In that special meeting next week, there would most likely be an executive session called so that they could discuss the matters of the appointment of the Interim Executive Director. They would be able to have the appropriate and permitted discussions in executive session about the selection of the Interim Executive Director. They would then come out of

executive session and pursuant to legal requirements take the action to appoint the Interim Executive Director.

Director Mohr felt this was a very solid approach and that it was critical that we have the continuity and leadership in the interim role.

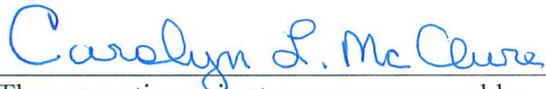
Director Mohr moved to approve Resolution 14-13.  
Vice Chair Blair seconded the motion.  
Approval: Vote 3-0.

There was no public testimony.

The meeting was adjourned at 3:38 PM.

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

Timothy S. Keen, Commission Chair

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

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