



OHIO FACILITIES CONSTRUCTION COMMISSION

**Ohio Facilities Construction Commission
October 25, 2012
William McKinley Room
2:30 PM**

MINUTES

Chairman Keen called the meeting to order at 2:50 PM.

Roll Call

Members present: Chairman Timothy Keen, Vice Chair Rand Howard and Mr. Gary Mohr.

Adoption of the September 10, 2012 Minutes

Mr. Mohr moved to approve the September 10, 2012 minutes.

Vice Chair Howard seconded the motion.

Approval: Vote 3-0.

Settlement Agreement Approval – Jon Walden, Chief Legal Counsel

Resolution 12-06 and Resolution 12-07

Resolution 12-06:

Jon Walden presented a settlement agreement with the Albert M. Higley Company on the Ohio Department of Transportation District 11 Headquarters project. . The temporary language in H.B.487, which created the Ohio Facilities Construction Commission (OFCC), transferred matters that were previously part of the Department of Administrative Services–State Architect's Office (SAO) to the Ohio Facilities Construction Commission. The language of the statute also allows for the substitution of parties and the OFCC to take over ownership as if it were the State Architect's Office. This settlement agreement related to construction issues that occurred on the Ohio Department of Transportation (ODOT) District 11 Headquarters project in New Philadelphia, Tuscarawas County. This settlement agreement was with the Albert Higley Company and was part of litigation that was filed in 2009 against the Albert Higley Company and the manufacturer of the roof on that facility. The building was completed some time ago, but shortly after the facility was occupied it began to sustain numerous problems including water infiltration, rust spots on the roof that occurred throughout much of the roof. ODOT, which is the owner of the project, and the State Architect's Office, which served as the contracting authority, engaged consultants to evaluate the issues. The consultants determined the leaks and corrosion required replacement of the roof. The roof was replaced in various phases and in 2009 litigation was initiated to recover the appropriate remediation costs. The figure that was used in litigation was the cost to do a like-type roof. The roof was replaced with a different material than was used initially, but the litigation only sought the cost of the like-type materials. The settlement was with the contractor for that portion of the defective installation in the amount of

\$500,000. Mr. Walden reported that the second part of the litigation with the manufacturer of the roofing material went to trial starting October 15th and recently concluded on October 23rd with a jury verdict in favor of the State in the amount of \$2.14 million. Mr. Walden stated that this was a successful remediation effort, but noted that there will likely be appeals. He acknowledged the efforts of the Attorney General's Office that prosecuted the claim on behalf of the State. The settlement agreement was reviewed and recommended for approval by the Commission.

Director Mohr asked if the state continues to incur the cost of the consultant. Mr. Walden responded that consultant costs are not part of the litigation recovery.

Vice Chair Howard moved to approve Resolution 12-06.

Director Mohr seconded the motion.

Approval: 3-0

Resolution 12-07:

The second settlement agreement was for the construction issues that occurred on the Ohio Department of Transportation (ODOT) maintenance facility in Noble County. This was pending litigation waiting for the settlement in the Ohio Court of Claims. The litigation started as a State Architect's Office matter, but became the responsibility of the Ohio Facilities Construction Commission (OFCC) pursuant to H.B.487. The contractor involved in the settlement agreement was N.L. Construction which served as the general trades contractor on the Noble County facility when it started. Unfortunately, the State had to terminate N.L. Construction's contract. Subsequent to the termination, N.L. Construction initiated litigation in the Court of Claims contending that it was wrongfully terminated. The State brought a counter claim against N.L. Construction for substantial costs that incurred related to the default, as well as, defective work that the State needed to repair. Before the trial was scheduled to start, the Court of Claims ruled against the State in a summary judgment motion on the counterclaim and left only N.L. Construction's claim remaining in litigation. Thereafter, ODOT and OFCC reached a settlement agreement with concurrence of the Attorney General's Office to resolve the matter. The settlement agreement resulted in a payment of \$100,000 to N.L. Construction. It involves a partial release of claims against N.L. Construction. The settlement agreement was reviewed and recommended approval by the Commission.

Director Mohr moved to approve Resolution 12-07.

Vice Chair Howard seconded the motion.

Approval: 3-0.

State Agencies and Higher Education Report – Craig Weise, Chief of Projects

Craig Weise reported on two projects that are using Alternative Delivery Methods.

Mr. Weise noted that the first project was very close to OFCC staff: the tenant improvements on the 4th floor of the Bureau of Worker's Compensation (BWC) building for approximately 33,000 square feet of office space to house the combined OFCC staff. It was a fast track project.

From the date of selecting the design build firm to the completion with OFCC moving to the facility will be approximately 100 days. We worked with Real Estate and Planning within the Department of Administrative Services to develop a floor plan. That floor plan formed the design criteria which were passed over to the design build team to then finalize with construction documents and other mechanical-electrical modifications that were necessary. The procurement process of that design build team was expected to be within 30 days. At the end of that 30 day period of time we saw a guaranteed maximum price rate (GMP), so right on day one we had a guaranteed maximum price rate with what the cost of that renovations of the tenant improvements would be. The prices were very competitive and resulted in a GMP that was approximately 10 percent under the historical prices for renovations within the BWC tower. Just a year previously, the fifth floor (with almost the identical size and shape in configuration to our 4th floor) was renovated for the Department of Youth Services so we had very good comparable prices and the project cost was less than that. The demolition and construction of our tenant improvements began just two weeks after we selected the design build firm, so we selected them and then two weeks later they began removing carpet and tearing down walls. This would not have been possible under the traditional delivery models. As a comparison, under the traditional delivery model of a design bid building process, this process would have taken approximately seven to nine months and instead from start to finish it has taken 120 days. The project realized both a cost savings and certainly a schedule savings for the State using the design build method.

The next example is a slightly larger project, but also a design build and also on a very fast track. This was the dangerous wild animal facility for the Department of Agriculture. The project is slightly over 16,000 square feet and will be less than \$3.5 million in total cost. That facility is a pre-manufactured metal building that will temporarily hold wild animals after received by the State. Approximately 150 days after selecting the design build team, this project is targeted to be completed. In contrast to our BWC tenant improvement build out, when we selected the design build team in this project, we had no finished floor plan. We basically had a blank sheet of paper from a design standpoint. We had no design criteria to hand the design build team when we started right from day one. This project is also unique in which the funding required emergency funding from the Controlling Board, which was approved on September 10, 2012. It necessitated a public exigency being granted from the Department of Administrative Services. So those two emergency actions allowed the funding to be secured when needed and allowed procurement for us not to be followed for the procurement of the design build services. We expedited the procurement of the design build team in five days. We started the process on Monday and selected the design build team on Friday of the same week. Under the traditional design bid build delivery method, this project would have taken at least a year to complete. Instead it will take just under six months to complete. There are significant cost savings from a duration standpoint and certainly because of the urgent need to have this facility in place as soon as possible as a significant benefit to the State and certainly to the Department of Agriculture. These are two examples that demonstrate the benefits of design build in our alternative delivery methods.

Director Mohr commented that after 38 years in state government that this is truly revolutionary. This is remarkable and the Commission is excited about the projects. Director Mohr encouraged staff to continue to look for any refinements as we continue to do this but this was a great report. Chairman Keen added there has been a lot of discussion on the costs

associated with the building. Chairman Keen's understanding is the building itself does not necessarily drive some of the costs, it has been some of the security features that are necessary such as the high fencing and the submerged fencing.

Master Planning Report – Craig Weise, Chief of Projects

Craig Weise noted that some Commission members are familiar with the School Facilities Commission master planning process for K-12 schools and have had significant benefits of following that master plan process for building nearly 1,000 schools. Over the past couple years the State Architect's Office, which is now part of the Ohio Facilities Construction Commission, has started to implement those best practices with state agencies to gain that same benefit. Mr. Weise shared two recent examples of master planning efforts on behalf of State agencies.

The Ohio Department of Transportation (ODOT) historically has performed extensive master planning for roads and bridges, but they have not followed that same kind of process and procedures for master planning on the facilities side. About two and one-half years staff at the State Architect's Office began a master planning process with ODOT. It started as a pilot program planning a full service maintenance garage in one of ODOT's twelve regional districts to demonstrate the benefit of master planning. . Comparing and contrasting it with the master planning process for K-12 schools, the planning unit for a school is a child. The planning unit for a garage is the truck itself. They tried to identify what that planning unit is and analyzing where we start off with the use and operation of that truck. That lead to investigating the size of that truck, the size the facility would have to be to house it, and over the years the size of these trucks have grown substantially so a garage that was built twenty-five years ago, that truck was significantly smaller than they are today. In understanding the routes that these trucks take, the amount of the capacity for salt that can be disbursed over the roads, what number of lane miles any truck has to maintain within the region of the garage are all elements that were investigated with ODOT to identify how the best to plan for their facilities. The planning process first identified the optimal location of their garages within these districts, based on where is the work, which is mostly highways, and so they tried to find out where the optimal location would be to build these facilities and can the facilities be combined with other regions that are nearby that may serve the same vicinity. Through those early investigations and research, it did cause a lot of success within the facilities departments within ODOT and the small pilot grew to the surrounding regional districts and expanded to state wide. Over the past two and half years, ODOT has really embraced the facilities side of this master planning process and really took it over and took ownership of that planning process. We tried to instill early in the process just like the planning is so important on the roads and the bridges that they do in these long term master plannings, they have tried to repeat the same thing on the facilities side. We are currently helping them assess their 77 garages, 116 outposts and rest areas. Since they have so many facilities their master planning was done in segments. The best practice of ODOT from the facilities side was allocating approximately \$5 - 8 million per year for replacement garages. If you look at the number of garages they had existing across the state and if you say a garage will cost from approximately \$5 - 8 million, it could do one garage per year. Doing the math it would take approximately 100 years to get back to that same garage because you have to replace other garages, obviously not a sustainable model given the fact that facilities today don't last 100 years

without some kind of major renovation. Given the early planning efforts and being able to better communicate that internally within ODOT, they have garnered significant benefit of that early master planning effort. The planning has now been centralized versus decentralized within the twelve regions and instead of the \$5 - 8 million for a garage, by better communicating their facility needs and prioritizing those projects they have now approximately \$40 million per year for garages, so obviously recognizing the fact that a one hundred year cycle is not sustainable. Likewise, they have allocated \$15 million for major renovations, \$10 million for rest area improvements and \$12 million per year for repairs. That just demonstrates to be able to communicate the need and the priority of those projects strategically forward and their internal communication will improve and broaden the heightened awareness of the facilities. ODOT views this as a significant success.

Finance Report – David Chovan, Chief Operating Officer

David Chovan presented an overview of the FY14-15 operating budget for the Ohio Facilities Construction Commission. The request is for funding for \$362,678,093 for both FY14 and FY15. Ninety four percent of this request is for debt service for K-12 school building construction programs. The non-debt portion is \$20.8 million per year. There is no increase for the FY12-13 budget levels of the combined agency. The source of funding for these operations is threefold: 41 percent of the funding is from interest earnings and transfer from the OSFC capital funds, 46 percent is from project fees for state agencies and universities projects and 13 percent is from the State's general revenue fund. The requested local funding supports 98 staff positions and is 16 fewer positions than were funded in FY12-13 budget of the two groups that were consolidated. Some of the challenges that face us over the next biennium are:

- Full implementation of the Ohio Construction Reform with the delivery methods, contract documents and processes.
- Full integration of the OFCC organization with differing processes, looking at best practices, technology and support functions
- Stabilizing the funding for non-project activities to either reduce or replace the GRF funding that the agency now has by matching revenue sources to the costs. Further evaluating consolidation opportunities, we have further direction from the code to evaluate the Division of Engineering within the Department of Natural Resources and all with the goal of consistency in State construction functions.
- Programs for new types of schools such as STEM Schools and College Prep Boarding Schools.

The budget will result in a few operational changes for the new combined agencies. It does offer us to deliver construction services more efficiently and effectively. We have established a new contract compliance section within the agency to make sure that there is consistency in how the state is working with the construction community with contract processes. The projects section deals with the K-12 schools construction in addition to state agencies and college and universities. Our support services (Legal, Communications, IT and Finance) are consolidated and focused on supporting the construction activities in the area of IT. We have recently relocated our agency servers to the SOCC. We are beginning an initiative for voice over internet protocol, sometimes known as voice over IP and also virtual desktops. We are working with

OBM Ohio Shared Services to evaluate the transition of invoice processing to the centralized agency. Those are a few things that surround the environment of the budget for the OFCC.

Executive Director's Report

Director Hickman reported that, in conjunction with the legislation that created the Facilities Construction Commission by combining the State Architect's Office with the Ohio School Facilities Commission into a statewide Construction Commission Office we were charged with working with the Department of Natural Resources in determining what portions of the Division of Engineering might make sense to include with this new agency. We expect to have a report and recommendation to the Commission by the end of the year. Director Hickman shared a conversation that took place with ODNR with regard to master planning. Mr. Weise has described the master planning effort that has been undertaken with the ODOT and the EXPO Commission. We have been discussing master planning with ODNR as well. I might add, they recognized the importance of master planning since they have already ventured down that path with regards to maintenance and repair work that they believe is required on some 800 dams that they are responsible for across the state. They have really embellished the criteria that you would expect them to as they evaluate, prioritize and determine what needs to be done in each of their dams and broken them down into four different categories and determine where the most urgent need is so that as capital resources become available those capital resources are applied to the highest need with regard to those dam remediation projects. The discussion has followed into the parks that ODNR is responsible for across the state. So recognizing they will likely be receiving money from the fracking operations and understanding they may have some restrictions on how it is used. We are encouraged that they understand the importance of master planning the work that would be required on all park facilities across the state in determining on a facility by facility basis what is needed, what the cost might be and making sure that the precious state capital resources that they receive are applied to the highest and most needed projects within the park facilities. We expect a recommendation will be to complete the master planning exercise that I have described and that is good news. It does make sure that the state is taking capital resources and applying them to the most needed projects throughout the state. It is good that that type of track record has been established with ODOT and is now occurring with the EXPO Commission and is likely to occur with ODNR expands to the remainder of the state agencies. We think that is good fiscal management, as well as, good planning from a facilities standpoint.

Director Hickman reported on OFCC's move to the BWC space. It is planned shortly after Thanksgiving. We have been in significant discussions with the Office of Information Technology (OIT) Division within the Division of the Department of Administrative Services with regard to server equipment. OIT is moving down the path to provide better utilization of the SOCC and to ensure that maintenance of the State's computer hardware is done more effectively and in a more efficient fashion. We have bought into that and believe that makes good business sense and it is good sense from an economics standpoint as well and so as we move to our new facilities at BWC we will be relocating our server equipment to the SOCC and turn over the management of that equipment to DAS and that will enable us to redeploy our resources to looking at additional software development that will help us to manage our various

programs for state agencies, higher education as well as the school districts we serve in a more effective and efficient fashion.

Director Hickman then provided an update on where we are with the new contract delivery methods. From a state agency and higher education standpoint we currently have over twenty projects that have been identified for using general contracting, design build or CM at Risk. With regard to schools projects, we have identified another thirty buildings that will be identified for use in general contracting, design build and CM at Risk. We are excited not only about school districts, but state agencies and higher education that they are recognizing the cost and time benefits in utilizing these new delivery systems and are very, very pleased with the direction we are headed.

Director Hickman ended his report with a report on executed contracts.

School District Projects:

A/E Agreements/Amendments Approved:

- 3 contracts for design of demo plans for 3 school buildings for \$19,900 at Cleveland MSD, A/E is Cleveland Educational Design Alliance
- 1 contract amendment for SHP Leading design in the amount of \$14,811 at Miami Trace LSD for extended Architect services due to an extended construction schedule past the projected completion date
- No new contracts or amendments executed with Construction Managers.
- Trade Contracts Approved:
 - 47 contracts for 22 districts for more than \$26.8 million
 - 1 contract for Newark HS awarded to 2nd low, for Site Electric (Hilscher-Clarke Electric), low bid withdrew.
 - 17 contracts with QSCB: 15 for Cleveland MSD for 6 buildings; 1 for Three Rivers LSD for demolition and 1 for Toronto CSD for new MS/HS.
 - 1 contract with a PLA: Switzerland of Ohio LSD for wastewater treatment plant at Powhatan PK-8.

For State Agency and Higher Education Projects:

5 contracts for 5 agencies for \$9.8 million

2 A/E design contracts:

- Ellenzweig Associates for \$1,263,877 design contract for Campus Research & Academic Expansion at the Northeast Ohio Medical University; Planned project Delivery is GC (Portage County)
- EMH & T for \$42,800 engineering consultant agreement for a hangar ramp paving project for the Adjutant General's Office (Franklin County)

Report on Design-Build Contracts - First executed:

Continental Building Systems for \$1,065,000 DB contract for space build-out for new offices at BWC

General Contracting:

Eagle Electric for \$50,940 for the State Fire Marshall Lighting Upgrade project (Licking Co)

LW & Associates for \$7,419,810 Jefferson County Maintenance Facility for ODOT

There was no public testimony.

The meeting was adjourned at 3:37 PM.



Timothy S. Keen, Commission Chair



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