

**TENTATIVE AGENDA
OF THE
JOINT MEETING
OF THE**

Academic Facilities Oversight Committee

and

Commission On Public School Academic Facilities And Transportation

Wednesday, August 30, 2006

08:00 AM

**Room 171, State Capitol
Little Rock, Arkansas**

Legislative Members

Sen. Shane Broadway, Chair
Sen. Jim Argue
Sen. Dave Bisbee
Sen. Jimmy Jeffress
Sen. Jim Luker
Sen. Gene Jeffress
Sen. Mary Anne Salmon

Rep. David Cook, Chair
Rep. Joyce Elliott
Rep. Jodie Mahony
Rep. Will Bond
Rep. Bill Abernathy
Rep. Nancy Duffy Blount
Rep. David Rainey

Non-Legislative Members

Mr. Doug Eaton, ex officio

Commission Members

Dr. Ken James, Chair
Mr. Richard Weiss
Mr. Mack Dodson

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- A. Call to Order
 - B. Request for Approval of Academic Facilities Partnership Program Agreement Amendment 1 Long Form
Mr. Doug Eaton, Director, Division of Public School Academic Facilities and Transportation
 - C. Request for Approval of Academic Facilities Partnership Program Revised Project List
Mr. Doug Eaton, Director, Division of Public School Academic Facilities and Transportation
 - D. Review of Facilities Issues Related to the Adequacy of the State's System of Public Education [**Exhibit D**]
Ms. Sara Israel, Administrator, Statutory and Regulatory Review, Bureau of Legislative Research
 - E. Other Business
 - F. Adjournment

MINUTES OF THE JOINT MEETING OF THE
ACADEMIC FACILITIES OVERSIGHT COMMITTEE
AND
COMMISSION FOR PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION

Date: August 30, 2006

Place: Room 171, State Capitol Little Rock, AR

Attendees: Dr. Ken James, Director, Arkansas Department of Education
Richard Weiss, Director, Arkansas Department of Finance and Administration
Mac Dodson, President, Arkansas Development Authority
Legislative members of the Academic Facilities Oversight Committee

Call to Order/Roll Call: Dr. James called the thirteenth meeting of the Commission for Public School Academic facilities and Transportation joint meeting with the Academic Facilities Oversight Committee to order at 8:04 a.m. All Commission members were present.

Senator Shane Broadway began by stating the purpose of the joint meeting for the convinence of Mr. Doug Eaton whom had to attend both meetings and that the Commission only had two agenda items that needed to be addressed. He asked that questions be held to the end of the meeting for discussion as to not prolong the meeting and will be addressed afterwards. He then turned the floor over to the Commission to conduct the meeting in the normal format of a Commission meeting.

Dr. James reminded member to speak into microphones for purposes of the recorded minutes as a tape would be provided.

1. **Approval of June 29, 2006 Commission Meeting Minutes.** Dr. Ken James entertained a motion to approve the minutes. Richard Weiss made the motion which was seconded by Mac Dodson. **Minutes from the last meeting were approved unanimously.**

2. **Request for approval of Academic Facilities Partnership Program Agreement Amendment 1 Long Form.** Under tab 2 is the Long Form Agreement that was presented to the Commission in June of this year. It is being brought back to the Commission because we have made some minor changes to that agreement based on discussions that we have had and based on comments that we have received from gentlemen and ladies outside of this organization. When the agreement was approved in June 29 of this year the agreement immediately went into place. A number of districts are already using it; they've already signed it, and are on their way doing their projects. On the 25th of July a meeting was held. It was hosted by Rep. Cook, Dr. Don Stewart, and Senator Broadway. It brought together a couple of superintendents, an architect, and a couple of other individuals that had some questions of clarification. We went through the entire agreement and as a result of that I have wordsmithed part of this. I will lead you through it and show you exactly what I have changed, what it said before, and what it is saying now. Let me mention to you also that as part of that discussion that we had on the 25th of July, one of the architects that was there was going to attempt to get some other architects together which he did informally. He brought their comments to me, and I have discussed it with him and included the ones that I considered to be pertinent and germane to this agreement and have changed those. There has been no formal proposal to the Division, Commission, by any group outside of the Division staff as to what this agreement should read. I will mention also that this agreement was put together by a team of lawyers and architects. Let me just point out the changes to you. Let me first direct you to the Long Form agreement page 5. On page 5, paragraph A, you'll notice that the second sentence is underlined. The original agreement read "that the districts shall establish escrow accounts required by law for retainage on trade contracts." There was some concern over the term escrow account and there was some concern over the term retainage. It has been amended to read the way you see it here, where the districts shall include in the project funds sufficient funds as required by law for the issuance of trade contracts during the duration of the project. We took out the word escrow; we

took out the word retainage, and left the same basic definitions and meaning intact. I now direct you to appendix C and D; this is where the preponderance of the changes were. Surprisingly the changes were not to the agreement portions which were signed between the Division and the districts, it was those changes to the contract documents that the districts and architect engineer firms generally used in contracts. The first change was on page 1, paragraph 1. The original agreement read "The architect shall perform the responsibilities of the agreement as represented as of both the district and DPSAFT and as such shall make decisions that protect the interest of all." The concern was the "term interest of all." It was interpreted by some people to mean everybody having to do with the contract. It's now changed to read, "The architect/engineer shall perform the responsibilities of the agreement as representatives of both the district and the Division." So the intended meaning has not changed. As reads on page 1 paragraph 2B, there is a commercial liability clause that is put in that contract. It was interpreted that the commercial general liability clause was mandatory in the AIA contracts. It is not. If you read the AIA contract 151 dated 1997 paragraph 3.4.8 which stipulates that an architect can act as the construction manager on a contract, you have to have that clause in there. The contract was changed to read, that this clause is applicable in those contracts where the architect or engineer acts as the principal administrator of the construction contract. Otherwise it is included in the construction management contract. On page 2, paragraph 2C, where it read, "For all projects where the construction budget of \$5 million or more the architect shall in consultation with the owner shall obtain proposals for projects specific professional liability insurance." We amended that to read, "If requested by the owner." We left the discretion up to the district as to whether or not they wanted the architect to increase his professional liability up to that amount. On page 3, paragraph 6, where it says, "establishment of the bid date, final working drawings of project specifications, the final cost estimate, the project schedule"; there was concern about the terms "estimate and project schedule." These are terms that were taken directly out of the AIA contract. However, there were concerns they would like it to read that the final projected cost and the proposed project schedule. I feel that the meaning is still the same. It's still a document that we want included in the pre-bid report. On page 3, paragraph 7, the very last portion of it where it says the architect's responsibilities within this provision shall be performed without additional compensation. There was concern as to whether or not if there was a sufficient change to the project as a result of the bids coming in higher than the anticipated budget whether or not the architect would be on the hook for all the changes. Instead I added a sentence that said should the district exercise option 4 above which is to re-scope the project, make major changes to the program requirements, the architect engineer may be entitled to lost design fees for work accomplished on the original design. If there is a drastic change to the bid documents after the bid opening, then the district decides that they will turn the building 90 degrees or they are going to leave a major portion out. The architect truly is entitled to lost design fees up to that point if he has to do major redesigns to the building. This protects the architects. Richard Weiss asked "Who makes that determination?" Mr. Eaton said that it is based on a request from the architect to the district, the districts are the signees of the contract. Page 4, paragraph 8, states that the architect shall be responsible for assistance to the district in selection of contractors. It was changed to read the architects/engineer shall provide assistance. I feel the meaning is still the same. We wanted the architect engineer involved in assisting the district in the selection of any contractors. On page 4, paragraph 9, it read that the architect shall be responsible for the assistance to the district in any negotiations. That was changed to read the architect/engineer shall provide assistance. It's nice to have the architect there especially for those districts that are unfamiliar with the parameters of the AIA contract to assist them through any type of negotiations. Page 4, paragraph 12, originally read the architect shall be required to re-inspect the project fully and completely. That wording is in the AIA contract. They don't like that wording, so it was changed to read the architect engineer shall be required to accompany a contractor's re-inspection. The inconsistency there had to do with the meaning of what that re-inspection was meant to determine. It's not the architect's responsibility to re-inspect the facility 11 months for the craftsmanship and the way that the building was constructed. It's really intended for the architect to do an inspection about a year after the building has been occupied with the occupants to see what portions of the building are functioning well, what parts are not, what changes we would make to this facility if we were to build it again. Page 5, paragraph 15, stated the architect will provide as built drawings, copies of all shop drawings. That was changed to read that the architect will ensure that the following are provided and then lists the documents. The last change in this section had to do with the breakdown of the fees due to the architect. It was originally broken down as you see it with 15% to the schematic phase, 20% to the DD's, 40% to construction documents, etc. That has been changed to the last two items which read the bidding and negotiation fees will be 5% of the overall fee and the construction administration phase is 20%. Because

the bidding and construction phase is a small portion, though important, to the contract procedures but the amount of money should be commensurate with that. The last change was in Appendix D, the very last page. It originally read that we would request that bidders not withdraw their bids for a period of 90 days. There was a concern that holding the bids open for 90 days would not account for escalation that would occur during that period of time. So that was changed to 30 days. So it gives the district basically 30 days from the time the bids are received for any, reviews, negotiations, verifications, responsibility, responsiveness checks, adherence, and the ability of the contractor to do the job before they do the final award. That was all the changes. Prior to the meeting I was asked by Rep. Cook about the involvement of the outside agencies. I had a number of discussions with a couple of architects who were both at that meeting and did not attend that are comfortable with this agreement. We've had architects sign the original agreement. As a result of the meeting held on the 25th of July it was determined that we proceed with the agreement as voted on and approved by the Commission on June 29, 2006, which we have done. So I have some architects under the original agreement and a number that will be under the revised. Dr. James asked for questions from Commission members? Mac Dodson made a motion to approve. Richard Weiss seconded the motion. The request was unanimously approved.

3. **Request for Approval of Academic Facilities Partnership Revised Project List.** On June 29, 2006 the Commission approved the list that we recommended of projects submitted. We continued to conduct reviews and continued to work with the districts in formulating the scopes of work and the cost estimates for all the projects on this list. After conducting additional reviews, the June 29th list that was submitted to you needed some revisions. One project was inadvertently approved, that did not meet the criteria. That project has been removed. Several projects which were placed on the disapproved list because of lack of information submitted by the district have been clarified and moved to the approved list, and one district that has been taken off of fiscal distress that was on the suspended project list has been moved to the approved list. A number of projects on the approved list presented to you today constitute changes and increases in amount of state funding participation because some districts submitted projects that did not meet the minimum construction standards as outlined in the Arkansas School Facility Manual due to uncertainties and inexperience with use of the Manual. Upon further review and in consultation with those districts, this has been brought to their attention and they are in the process of modifying these projects. It is believed that each of these projects will meet the approved criteria once they have been brought up to the minimum standards. The Division has recalculated the state's financial participation to provide additional funding and presents it to you today. We discovered that there are approximately 36 projects on that list for new facilities and expansions to existing facilities that did not meet the Arkansas School Facility Manual standards. I would attribute that to the uncertainty of the districts knowing exactly how to use the manual. By the time you go through it and try to sort out what portions of that manual are applicable to your project it is confusing. We notified each of those districts personally, followed up with a phone call to every one of those districts to make sure they understood the message that they received. We have gotten together with a number of them. Many of them have contacted us; some of them realized the mistake and made the changes. What we told the districts at the time we notified them was that the project would stay on the approved list; we would escalate the cost of what we anticipated the project to cost based on the new size and that would be presented to the commission today. The financial adjustment on the list changed the overall value of the approved list from \$265.1 million that we presented to you on June 29, to \$ 277.2 million and a difference of \$ 12.1 million. The bottom line being is that no project on this list will go forward that does not meet the facility manual. That standard is the absolute minimum. There have been very few waivers, very few variances requested. There have been very few variances that have been granted. The ones that have (and they are noted on there) have simply been primarily storage or administrative areas that the district said they don't necessarily need to the size that were mandated in the standards. There are four lists in your books. The first one is the list of all the projects in priority order. That is the list that we normally present to the commission at all the commission meetings. You will notice that a number of those projects are highlighted in gray. Those are the projects that have changed. In summary on that list there are a total of sixty four changes. Of the 64 changes, 36 of them are facilities that were deemed not meeting the Arkansas state facility standards. Ten of those were scope validations from the original scope which was simply a narrative, to sitting down with the district and actually understanding what they are proposing to build. The scope was verified and in some cases changed and now we have a mutual understanding of what the project is and that resulted in the increases and decreases to the dollar amount. There were also seven projects added that were off of the suspension list. From the time that we

meet on June 29, the Arkansas Department of Education verified that Cross County School District had sufficient funds in its balance to support projects submitted on the partnership list. Subsequently, as we discussed June 29, that as those school districts came off the fiscal distress list their projects would be moved on the approved list. We did that for Cross County. There were seven projects totaling a state share of \$78 thousand dollars. The second list that you have is the disapproved project list. The disapproved project list removes a project inadvertently put on the approved project which we later discovered was funded under the Transitional programs. The third list is again the list of projects that are suspended. These are projects that are on fiscal distress. The one change on this list from the one that you saw on June 29, is the removal of Cross County School District. The fourth list is the approved project list in alpha order. That is the one that we refer to and is the one that is published on the website. It is the one that is easiest to find a specific school district so we included that within your book. Dr. James asked for questions from commission members. Richard Weiss made the motion to approve the lists. Mr. Dodson seconded the motion. Dr. James stated that he was in South Arkansas, and made a presentation to a Rotary club in Warren. The superintendent from Hermitage was in attendance and he asked him to come down and see the changes that had been made possible by immediate repairs and other funding as a result of this program. Dr. James accompanied Mr. Jordan to the facilities at Hermitage and reported to the committee and legislature members that he was able to see first hand what the results of this infusion of dollars and what the impact has been in that community. They have a new middle high school combination facility. They also have been able to do a variety of different things through immediate repair, and they are most appreciative of these resources and would not have been able to do any of this without this infusion and it really has become the highlight and a show case of the community. Pride is being exhibited by not only by the school staff members but by were several community members that joined them on a small tour of the high school, middle school, and elementary facilities. Dr. James reported to the commission members and what a pleasure it was to be there and to see what the impact has been in terms of the resources that have been put fourth with respect to the facilities. None of this would have been possible in this community without this allocation and without this infusion of resources. Richard Weiss asked Mr. Eaton about the cash flow and what point would we need to have \$270 million? Mr. Eaton stated that the initial cash flow based on the first budget submission that went to ADE was preliminary, and that it is very difficult to draw a conclusion on the cash flow of the partnership right now because we just now started. Mr. Eaton said that on the track record of the first two programs was to see a very slow start and then it just skyrocketed. It will be a couple of months as we start to work with the districts and we see where they are in their design and construction schedules we will be able to more accurately forecast what that dollar amount will be. Richard Weiss wanted to be sure the Partnership Program had enough money available. Since there were no other questions, a motion was made, seconded, and approved to adjourn the Commission Meeting.