

Minutes
Board Facilities and Programs Committee
November 17, 2009, 4:30 p.m.

Present:

Brian Pennington, Chairman
Paul A Foster
Rachel Gillis
Brian Pennington
Dale E. Rice, Jr.
Marijo Strauss
Esteena K. Wells
Wesley Wilkerson
Joseph Lorenz, Board Attorney
Jill J. White, Interim President

Others present: Gary Yancey, Vice President for Administrative Services; David Alsop, Sam Marshall Architects; Del Lassard, Bay Beacon; Katie Tamman, Northwest Florida Daily News; Herb Jones, private citizen; Donna Utley, Associate Vice President for Business Services; Sam Jones, Facilities Director; Ed Livingston, Media Services Manager; Woody Mann, Technology Support Specialist; and, Carolyne Laux, Executive Assistant to the President.

Call to Order

Mr. Pennington called the meeting to order at 4:30 p.m.

Approval of Agenda

The Committee approved the Agenda, as presented (Motion: Wells; Second: Wilkerson. Vote for: Wells, Wilkerson, Rice, Pennington, Foster, Strauss, Gillis.)

Update on Community Services Complex

Dr. Yancey stated that the project is behind schedule but we are impressed with activities in construction for the past two months, and that the contractor is not making up time, but is moving at a good pace at this point. Dr. Yancey provided the trustees an overview, through PowerPoint, of the progress in the past few months.

Mr. Pennington commented that when the Committee met with the contractor in May, 2009, the contractor (Speegle) acknowledged being behind schedule and would make all efforts to get that cleared up.

The contractor has made a Request for Equitable Adjustment (REA) to the college. The college has been working with the architect on this request.

Mr. Lorenz talked about the REA. The college has two basic contracts for this project, one is with the building contractor (Speegle) and one is with the architect. We are the owner as described in the contracts, which are AIA contracts –developed by the American Institute of Architects. Under the contract, if circumstances warrant, the builder may submit a Request for Equitable Adjustment (REA). Contracts also stipulate that the Architect review the REA, collect information from all parties, and make a recommendation regarding the REA. That recommendation could be to honor the REA all or in part, or to reject it. The REA is based on the builder's claim that problems in the building plans related to steel placement triggered a 79 day delay and costs to the builder of approximately \$600,000.

So far, the architect has been asking for documentation, information, and responses concerning the REA. The engineer has made a very detailed response and the engineer does not agree that the contractor ought to receive this much of an extension or should receive the amount of money requested.

The college, as the owner, has also been requested to make a response – which the college did. The college position is that this issue is basically between the contractor and the engineer. However, if this request is found to be valid, the college would be required to pay for it. At this point, the owner (college) does not see the validity of the REA. The architect is getting the responses and then he will make a decision about the request as the contract documents provide for.

Dr. White offered some clarification. The Plans are out there and, as with any Plans, the contractor has to follow them. For whatever reasons, the contractor is claiming they were unable to follow those Plans. Because of that, they had to do things differently in the critical path for constructing the building and, because they had to do things differently and were delayed, etc., they are now asking for 79 days more to complete the project and that we grant those additional 79 days without liquidated damages. Speegle asserts that because of these 79 days, they have incurred additional administrative oversight costs. They did not have to rip anything out, they didn't have to reconstruct anything, and they did work with the engineers to adjust and reinforce the steel in these beams so that they will satisfy engineering and safety specifications. The additional \$600,000 in costs is apparently derived from Speegle's administrative expenses.

The beams are in place with some minor adjustments from the way they were drawn. The contractor is claiming that the adjustment caused the number days that they are behind and the costs requested. The contractor had the Plans well ahead of beginning construction –as far back as when they bid the project.

Both the college and the engineering firm (which was engaged by the architect at the beginning of the project) have provided a response to the architect, per the terms of the contract. The college's response is essentially that we don't see the reason to support the REA at this point, because it addresses something that should have been resolved early on between Speegle and the engineer during the building process.

There is no action at this point. The architect has to bring a recommendation back to the owner – then the college will have to make a decision. It is hopeful that the recommendation will be available at the January 19, 2010 Board meeting. It was determined that the Board Committee on Facilities and Programs will meet at 4:30 p.m. on January 19, 2010 prior to the Board meeting.

Mr. Lorenz stated that once the process started with the architect making this investigation and recommendation, he began getting letters from the Speegle's attorneys who took the position that contract documents weren't being honored with respect to the REA process, that responses were too late and that there were biases involved. At one point, they indicated they were going to demand mediation and arbitration. They notified the American Arbitration Association, made a deposit, and had an arbitrator assigned for the process. The college took the position that the provisions for arbitration/mediation had been stricken from the contracts, an action the college routinely follows. The college philosophy has always been that if the college is going to engage in arbitration or mediation, it is going to be because we want to, not because we signed a contract at the beginning of a process that now obligates us to enter into arbitration. There are specific contract provisions that are included in the bid documents that are part of the contract documents that waive the arbitration/mediation provisions. Mr. Lorenz has notified the American Arbitration Association of these facts and he has not heard anymore from them.

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