

AGENDA OF THE UTAH STATE BUILDING BOARD

Wednesday, February 4, 2004
Department of Alcoholic Beverage Control Boardroom
1625 South 900 West
Salt Lake City, Utah
9:00am

- (Action) 1. **Approval of Minutes of January 7, 2004** Tab 1
- (Information) 2. **Legislative Update** Tab 2
- (Action) 3. **Additional “Other Funds” Project for USU** Tab 3
- (Action) 4. **Amendment to Procurement Rules R23-1 and R23-2** Tab 4
- (Action) 5. **Amendment to Rule R23-3, Planning and Programming for Capital Projects**
..... Tab 5
- (Action) 6. **Delegation to USU for Brigham City Campus Remodel** Tab 6
- (Action) 7. **Reallocation of Capital Improvement Funds** Tab 7
- (Information) 8. **DFCM Capital Development Group** Tab 8
- (Information) 9. **Administrative Reports** Tab 9
- University of Utah
 - Utah State University
- (Information) 10. **Administrative Reports for DFCM** Tab 10
- (Information) 11. **Other** Tab 11

Notice of Special Accommodation During Public Meetings - In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify Shannon Lofgreen 538-3261 (TDD 538-3260) at least three days prior to the meeting.

*This information and all other Utah State Building Board information
is available on DFCM web site at <http://buildingboard.utah.gov>*



Olene S. Walker
Governor

Utah State Building Board

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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: December 3, 2003
Subject: **Approval of Minutes of January 7, 2004**

Attached for your review and approval are the Utah State Building Board meeting minutes from January 7, 2004

FKS:sl

Attachment

Utah State Building Board



MEETING

January 7, 2004

MINUTES

Utah State Building Board Members in attendance:

Larry Jardine, Chair
Kerry Casaday, Vice-Chair
Steven Bankhead
Manuel Torres
Katherina Holzhauser
Kerry Casaday
Darren Mansell
Cyndi Gilbert

DFCM and Guests in attendance:

F. Keith Stepan	Division of Facilities Construction & Management
Kenneth Nye	Division of Facilities Construction & Management
Shannon Lofgreen	Division of Facilities Construction & Management
Representative Loraine Pace	House of Representatives
Randa Bezzant	Governor's Office of Planning and Budget
Kevin Walthers	Legislative Fiscal Analyst's Office
Mark Spencer	Utah System of Higher Education
Michael Wollenzien	Office of Rehabilitation
Raymond Duda	Utah National Guard
Col. Craig V. Morgan	Utah National Guard
Jackie McGill	Spectrum Engineers
Matt Rich	Jacobsen Construction
Jeremy Blanck	Okland Construction
Mark Burton	State Fire Marshall's Office
Paul Hacking	Uintah Basin ATC
Keith Sprouse	Uintah Basin ATC
Bob Askerlund	Salt Lake Community College
Gordon Storrs	Salt Lake Community College
Gary Adams	Department of Workforce Services
Dennis Geary	College of Eastern Utah
Mike Perez	University of Utah

RoLynne Christensen
David Hart

VCBO Architecture
Capitol Preservation Board

On Wednesday, January 7, 2004, the Utah State Building Board held a regularly scheduled meeting at the Utah State Capitol, Committee Room 129, Salt Lake City, Utah. Chairman Larry Jardine called the meeting to order at 9:00am.

APPROVAL OF MINUTES OF DECEMBER 3, 2003

Chair Jardine sought comments on the meeting minutes of December 3, 2003.

MOTION: Kerry Casaday moved to accept the Utah State Building Board meeting minutes of December 3, 2003. The motion was seconded by Manuel Torres and passed unanimously.

ELECTION OF VICE-CHAIR.....

Chair Jardine stated the Chairman is an appointed position and the Vice Chair is elected by the Board. He sought comments on electing the Vice Chair position recently vacated.

MOTION: Kerry Casaday moved to elect Manuel Torres as Vice Chair. Manuel Torres declined due to his location and not being able to respond timely. Kerry Casaday withdrew his motion.

MOTION: Manuel Torres moved to elect Kerry Casaday as Vice Chair. The motion was seconded by Katherina Holzhauser and passed unanimously.

GOVERNOR'S BUDGET RECOMMENDATIONS

Kenneth Nye stated Governor Walker's budget recommendations were released on December 15 for the upcoming legislative session and were summarized in the included memo. The capital development projects recommended by the Governor included the Oxbow Jail, which was recommended at a much smaller amount of \$729,000 to purchase additional property, \$3,474,000 for improvements, and \$7 million for the purchase of the jail. The original appraisal was for \$15 million. Governor Walker requested DFCM to contact Salt Lake County to discuss the purchase. Keith Stepan had prepared a written proposal and is waiting for their response. The Governor also recommended the Ogden Regional Center, which was the Building Board's top priority after capital improvements, as well as a first phase of funding of \$50 million for the Capitol building restoration. The Capitol building and the Oxbow Jail were recommended as general obligation bonds, and another \$102 million was recommended highways totaling \$163 million in general obligation bonds.

Concerns have been raised regarding the general increase of the State's debt and what is being paid off versus new debt being authorized. The general obligation bonds being repaid in FY2005 totaled almost \$135 million, which is \$25 million less than the recommendation. Unfortunately, highway construction has increased the debt level of the state over the last five years.

The Ogden Regional Center and the ABC Commission projects were recommended to be funded as a lease revenue bond and would be repaid through the rent budgets of the agencies and increased sales for ABC. The lease revenue bond recommendation totaled approximately \$17 million and approximately \$41 million would be repaid in FY2005, with approximately \$23 million coming from the U of U housing Olympic revenues.

Governor Walker recommended all other funds projects recommended by the Board excluding the Correctional Industries Expansion in Gunnison (\$1,000,000) and the Southeast ATC building in Blanding (\$200,000) as they were not received in time for consideration.

Projects with economic sense, but not recommended, will have other alternatives explored in attempt to pursue the projects. Randa Bezzant stated the Governor raised concerns with the State's debt level and kept her recommendation of bonding as minimal as possible. Utah currently has a very favorable rating which they wish to maintain.

Representative Pace stated Kent Michie recently reported several factors are considered with a AAA bonding factor. Over the last decade, Utah has gone from being a low bond state to a mid-high bonding state. Utah must continue to provide structural balance in order to retain the AAA bonding rate. The Capital Facilities Sub-appropriation Committee is frustrated with the road construction funding while dire needs exist in buildings. The Committee hopes to encourage a better balance this year and ensure facilities are available for the future.

Governor Walker also recommended that the few million dollars in the capital budget be redirected to other needs. The Legislature is anticipated to make the same recommendation causing building projects to be funded out of a bond with the exception of capital improvements.

Mr. Nye reported Governor Walker recommended \$43,977,000 for capital improvements, which is the .9% of the replacement cost level. While the 1.1% remains in statute, the .9% may be implemented during budget difficulties.

DFCM requested to have the general funds restored for DFCM's administrative budget to manage projects, which not recommended by the Governor. DFCM was recommended to

be funded out of project reserve and contingency funds, which only has sufficient balances to cover one more year. This is an increasing concern within the stability of the group and while recruiting replacement FTEs.

Keith Stepan added that the capital improvement budget of .9% is low compared to industry, corporations and other institutions, but is comparable to other states. Unfortunately, \$200 million has been requested for capital improvements in the next year. While the deferred maintenance needs increase, DFCM is only able to meet emergency needs rather than scheduled needs.

❑ CAPITOL BUILDING RESTORATION

David Hart, Executive Director of the Capital Preservation Board, presented the Board with details of the restoration of the Utah State Capitol regarding future expectations for the Capitol and background on what has occurred. The presentation covered the progress, structural/mechanical/electrical issues, the age of the Capitol, stewardship responsibilities and the funding needs for the current year.

In 2000, the Capitol Preservation Board prepared a 20 year master plan. They also completed a historic structures report and began the development of design guidelines and imperatives for phase 1 and phase 2 of that master plan, which were the east and the west building guidelines.

In 2001, the Capitol Preservation Board accomplished completing the design guidelines and imperatives, the master plan, selecting the design team for the new east and west buildings, and the construction manager.

Construction of the extension buildings and the parking structure took place in 2002. The Construction Manager and Architect for the Capitol were also selected.

The Capitol Preservation Board began some demolition of various elements within the building in 2003 in an attempt to discover the complexities within the Capitol. Over 17 design workshops were held, scope documents were developed, and pricing structures were verified to begin procuring \$10 million in long lead items such as stone, terracotta, and historic lighting. Mr. Hart had finalized a 30% cost analysis on the project's progress and appeared to be on budget.

Mr. Hart highlighted events for 2004. On March 31 the Capitol Preservation Board will receive the completed east and west buildings and begin occupancy. Mr. Hart noted the buildings were currently on time and budget and had no change orders to date. Occupancy of the new building will commence on April 1. The asbestos issues were greater than anticipated. On June 1, the asbestos abatement will begin on the Archives building. The

Capitol will close for restoration on July 30. On August 1, asbestos abatement in the Capitol will begin, historic elements will be removed, demolition will begin on the Archives building and excavation will occur around the building to remove all of the mechanical, electrical and gas lines to prepare for base isolation, which will begin September 1. The Capitol Preservation Board was hopeful the Capitol will be completed by 2007 with some additional work taking place in 2008. The Legislative session would be held in the Capitol in 2008.

When the Capitol was constructed, the seismic issues were not fully addressed, and the Capitol lacks reinforcing, and the concrete strength is very poor in lateral load. During a sizable earthquake, the Capitol would collapse and injure most of the occupants. Mr. Hart showed an example of what would occur with the Capitol in an anticipated 7.3 earthquake. The earthquake would move the parapet over 12 inches, but at eight inches, the building would begin to yield and at nine inches it would collapse. The dome would move over 18 to 20 inches in this type of earthquake. The Capitol drum is extremely weak and tests have shown the concrete strength is substantially lower than is acceptable. Over time moisture has seeped into the dome and because of the type of sand and gravel and cement used, a chemical reaction occurred in the dome structure which is weakening the structure. The drum is currently the weakest part of the Capitol and is most vulnerable to collapse. Standard seismic stabilization or shear walls would only enhance the problem. Mr. Hart demonstrated how the Capitol would react with shear walls and the fact that it would actually drive the forces into the top of the dome causing it to move even much more than if shear walls didn't exist.

The columns on the building are virtually unsupported and have no lateral load resisting capacity and will aid the collapse. The columns around the building are segmented with no resisting elements in between. Once they base isolate, they can epoxy to allow the columns to withhold the load. The columns on the inside of the building are monolithic; however, they have hollowed out the center of the column to support the third floor. In the event of an earthquake the column would serve only as a beam and would bring down the third and fourth floor of the Capitol.

If the building were put on base isolators, the deformation in the members would not change and would hold vertical. He again showed a shake table which displayed what base isolation does in a 7.2 earthquake.

Mr. Hart showed four piers holding up the rotunda and the dome which would require excavation around the foundations and new structural foundations to be placed. They would then place the isolators on the new foundation. Upon those, they would build 12 foot deep structural beams which would penetrate through the existing footing and foundation walls using post tensioning. They would then cut the existing foundations free and the building would ride on the new super structure.

Mr. Hart stated the Capitol's mechanical systems are basically failing and disintegrating. The building does not meet modern codes and the only solution to resolve the problems is to replace the entire mechanical system. The electrical system was also not originally designed for the high level of energy being used requiring the complete electrical system to be replaced.

Due to the aging of the Capitol, there is granite falling off of the pediments, cracks in the terracotta and water intrusions, which is destroying the art work.

In regards to heritage, the Capitol symbolizes the freedoms and openness of government and is the embodiment of our constitution. Our forefathers struggled for over 50 years to build the Capitol for almost \$3 million almost 100 years ago. Approximately 30,000 school children visit the Capitol every year to understand their heritage. The stewardship of the Capitol has been left to the citizens of Utah to save and restore for future generations.

The Capitol Preservation Board requested authorization to proceed forward with the project and anticipated the funding would be developed each year from cash flow analysis developed by Mr. Hart and the Construction Manager. Each fiscal year the amount required for the project would be requested and reported to the Governor and the Legislature. \$50 million was requested each year for FY2005, FY2006, and FY2007, and \$35 million was requested for FY2008 for a total of \$185 million. Furniture, artwork and technology are expected to add an addition \$13 million to the total budget.

Manuel Torres inquired about the price per square foot on the two completed wings. Mr. Hart did not have the itemized figures since the funds included seismically upgrading and restoring the parking structure and completing the plaza. The east plaza totaled \$8 million and the total project was \$44-45 million. The square footage of the two buildings totaled approximately 180,000sf, not including the east building parking. Mr. Hart offered to provide itemized figures to DFCM for distribution.

Kerry Casaday asked if base isolation was used in other buildings throughout the valley. Mr. Hart responded that it was used on the City and County Building and the Emergency Center in Salt Lake County. San Francisco had several buildings completed with base isolation comparable to the Capitol.

Keith Stepan stated the Capitol building is an architectural treasure and it ranks high among the Capitols in the nation for its history, heritage and architecture. He asked Mr. Hart to comment on the use of the east and west buildings pertaining to the transition. Mr. Hart stated the east and west buildings would be used as swing facility when the Capitol is vacated. The Executive branch would temporarily relocate to the east building and the Legislative branch would relocate to the west building. Upon the Capitol's completion,

some of the Executive branch would return to the Capitol along with the Senate and House offices and Leadership, and the west building would house Legislative Research and General Counsel, the Legislative Fiscal Analysts office and the Legislative Auditor General. Several new committee rooms will also be built out at that time. The east building will continue to house the cafeteria and the Auditor, Treasurer, and Attorney General.

Mr. Hart stated part of the 20 year master plan is a recommendation to analyze and study the State Office Building with options to replace the building or upgrade the building. Several space planning problems exist with the current building, therefore, the recommendation may be to demolish the State Office Building and to build a third building similar to the east and west building.

Keith Stepan stated DFCM does not have direct link to the Preservation Board, but have some oversight and financial responsibilities. DFCM will also perform the maintenance and address the code and building approval issues.

Colonel Craig Morgan, Utah National Guard, stated the Utah National Guard is building a readiness center on 1700 South and 2200 West as part of an emergency operations center. He thought there may be synergy by combining the effort of the command center demolition into the emergency operations center. He and Mr. Hart agreed to discuss the prospect after the meeting.

❑ LEGISLATIVE PREVIEW.....

Some Legislators have taken an early position regarding not bonding this session with the exception of the Capitol. This may have a significant impact on the capital budget.

Typically the Building Board and Capital Facilities Committee convene on the afternoon of the February meeting and at this time would be able to discuss capital facilities issues. The Legislative session begins January 19 and ends on March 3.

Mr. Nye was aware of one piece of legislation sponsored by Representative Wayne Harper that would have a substantial impact on DFCM. The bill had not been published, but Mr. Nye provided Representative Harper with a substantial amount of feedback regarding the bill and was waiting for the final results. The bill would require DFCM to establish a dispute and claims resolution process through an administrative rule. By placing it in rule, the issue would become more flexible and could be adapted to solve problems as they occur. Mr. Nye anticipated the bill will have some requirements regarding topics to be addressed in the rule.

Keith Stepan added that part of the intent of the legislation is to allow the subcontractors to have a process as well as the general contractors. This is an attempt to keep this as a

rules issue rather than a statute requiring legislative involvement. Kenneth Nye added that the biggest concern deals with how to resolve subcontractor issues when resolving the ability to have access to a claims process, but it shouldn't be left too broad.

Mr. Nye stated there have been several bills proposed to address the ability of subcontractors to access payment bonds. From reading the bills, he got the impression that some of the legislation's response is to try to remove some of the technical impediments raised in the past regarding subcontractors accessing payment bonds. Other bills affect mechanics liens on private construction. State projects are not subject to mechanics liens and this would not directly affect DFCM.

Mr. Nye referenced three bills that did not have text available at Board packet time. Since then, text had become available for the Contractor Licensing Amendments sponsored by Senator Parley Hellewell. Mr. Nye understood it dealt with changing a current ten year requirement to be a five year requirement, which would not have a direct impact on DFCM.

Mr. Nye had been unable to reach Representative Ure about this bill regarding the sale of real property by state agencies. There had been some concern in the past with the statute not including requirements for state agencies in selling property. Keith Stepan added that many agencies besides DFCM have the right to purchase and sell property, and this may be an oversight group.

Mr. Nye stated Representative Pace publicly opened a bill file dealing with art in capital facilities, which was currently unavailable. Representative Pace commented that last session they had to cut a few million out of the Utah State University library and some from Archives because they were so late in acquiring any kind of a bond. In speaking with the agencies and institutions, it was determined to cut the 1% for the art money, which created some controversy. Therefore, Representative Pace opened a bill file so she could control what happened in that area. She since met with the Arts Council who expressed they were comfortable with the current statutes, and she has abandoned the bill. Representative Pace wished to ensure presentations were made on its value prior to discussing the capital projects regarding the 1% for the arts. Kenneth Nye felt that this year there would be a clear indication from the Legislature as to whether art is included in projects which would help to clarify the problem.

Kenneth Nye stated there would be other pieces of legislation that may impact DFCM, but at this point in time he was not aware of any other items. Keith Stepan stated DFCM would be meeting with DAS executive leadership every morning and offered to provide updates as the Board desired.

- MASTER PLAN FOR THE STATE CAMPUS IN BRIGHAM CITY AND NAMING OF BUILDING**

Chair Jardine stated at the last meeting, the Board discussed the master planning on the Brigham City campus and there were some decisions that were postponed. Kenneth Nye stated at the last meeting there was a lengthy discussion and presentation about the master plan proposed for Brigham City at the shopping center initially anchored by Grand Central and Albertsons. The presentation was included in the packet for reference.

Mr. Nye highlighted a few changes that occurred since the presentation. On the second page of the narrative document, the first bullet on page two was further clarified that USU has the ability to pursue state funding, capital improvement funding, or development funding for their space at the building. This is the first time DFCM has dealt with the continuing education aspects of higher education in a separate state owned building, but did not see a reason why USU would not have the same access as any other academic part of Higher Education.

Another change was expanded to recommend that USU space continue to be contiguous after it exceeds the capacity of Building H. This could occur by building a new building elsewhere on the property and then turning building H over to other state needs. Another alternative would be to demolish a portion of the space between the Fred Meyer and the Albertsons buildings and replace the area with a larger building that would better meet their needs. Both of those items are in the far future when they fill their building, but should be included as part of the master plan.

Utah State also had a former K-Mart building donated to them and the City was encouraging them to relocate there. Mr. Nye understood that Utah State would not pursue relocating to the K-Mart building, but would find another purpose for it.

A recommendation within the master plan indicated the Driver License office was substantially undersized for their needs and should be expanded in the near future. Expansion would involve taking some classroom space away from Utah State for Driver License and replacing the space for Utah State in the Fred Meyer building. Funding to cover the expansion of inadequate restroom space is also being recommended. Kevin Womack stated USU was pleased with the changes and were committed to staying in the Fred Meyer facility. Chair Jardine sought a motion on the master plan.

MOTION: Katherina Holzhauser moved to approve the Brigham City master plan as presented. The motion was seconded by Darren Mansell and passed unanimously.

Kenneth Nye stated Higher Education buildings typically are named through the Higher Education process. In this case, the property is actually owned by DFCM as opposed to Higher Education. The Building Board has a rule that whatever entity holds title to the building will then have the ability to decide upon a name. Buildings owned by DFCM

should have the Building Board approve any naming request for the building. USU requested naming the building after the donor of the K-Mart building as part of the donation agreement. Kevin Womack, Utah State University, provided further explanation and background regarding honorary donor. USU's criteria for naming a building indicated they needed to be a significant donor. Since USU elected to not use the K-Mart building, they needed to name the Brigham City building after the donor.

Mr. Womack stated the donor, Milton P. Miller, was born in 1918 as a child of Russian immigrants. He married his wife in 1949 and had two children. Mr. Miller was a real estate attorney by trade, which is how he became involved in property investments of which he made significant investments in K-Mart properties across the country. After his death, Mrs. Miller liquidated the assets and chose to make the K-Mart building a donation for an educational purpose. Mr. Miller felt education was an extremely important component in his life and was a supporter of Higher Education.

Kenneth Nye reiterated the Building Board held authority for naming the building and the request fit into the Building Board's rule.

MOTION: Darren Mansell moved to rename the Fred Meyer building to the Utah State University Milton P. Miller Continuing Education Facility. The motion was seconded by Katherina Holzhauser and passed unanimously.

☐ REALLOCATION OF CAPITOL IMPROVEMENT FUNDS.....

Kent Beers stated DFCM recommended the Building Board reallocate FY2004 capital improvement funding for the following projects including \$700,000 to the University of Utah to address Life Safety Issues at the Huntsman Center; \$163,000 to Southern Utah University for the design, asbestos abatement and interior demolition of the Old Main Building; \$300,000 to the Brigham City Education Center to expand restrooms and construct replacement classrooms for USU and remodel office space for the Drivers License Division; and \$39,000 to DFCM to hire a consultant to update the State's design standards.

Mr. Beers stated in FY2004, the Building Board authorized \$1,202,000 in improvement funding to upgrade the HVAC and fire sprinkling system at the Public Safety POST Academy. Subsequently, the Department of Public Safety has sought to relocate its POST operations to a new location on the Salt Lake Community College Campus. As a result, DFCM recommended the HVAC and fire sprinkling system project be postponed until a new use for the POST Academy Building is determined.

At the University of Utah, the Huntsman Center has an existing 35 year old fire alarm system that is failing and needs to be upgraded. A fire sprinkler system needs to be added to bring it into compliance with current fire and life safety codes and ADA alarm requirements. The \$700,000 in funding from the State will augment funds from the University to complete this project. The total of the upgrade including U of U funds would total \$1 million.

Back in FY2002, the Board was directed to authorize capital improvement money of \$1.5 million at Southern Utah University to upgrade the Old Main Building seismically and to seismically upgrade the Braithwaite building for another \$1.5 million. However, during planning, both buildings were determined to be in need of a complete HVAC and electrical upgrade which should be done in conjunction with the seismic upgrade. Because the University did not want both buildings out of commission at the same time, the Board transferred funds assigned to the Old Main project to the Braithwaite project with the understanding that additional funding would be obtained for the Old Main project after the Braithwaite project was completed. The Braithwaite project is now completed and the University is ready for DFCM to proceed with the Old Main project. University officials desire to have the Old Main renovation completed by July 15, 2005. In order to meet this schedule, it is necessary to move forward immediately with the design, asbestos abatement and interior demolition. DFCM recommended that \$163,000 be transferred, with funding for construction to be requested in the FY 2005 capital improvement cycle. The SUU will return to the Building Board in May with its FY2005 request and will have a very good estimate of the construction dollars needed to complete the project.

The Brigham City Education Center has a need to expand the Driver License office. USU currently occupies the space needed for the expansion of Driver License and consequently, DFCM wished to build two classrooms in the Miller Education Center and expand the restrooms in for Utah State University. This move will vacate the space next to the Driver License and allow them to expand the Driver License division office.

Lastly, the DFCM Design Standards were completed several years ago. Recent changes to the building code, fire code and improvements to materials and technologies have rendered the current standards obsolete. DFCM wished for \$39,000 to upgrade those standards. Selection of a consultant would be done through a selection process.

Steve Bankhead wondered if the Huntsman Center could raise private funds for their project so that these funds could be used for projects that do not get funded by the Legislature. Keith Stepan stated the University has come up with a good portion by raising \$300,000. The Board previously made an agreement to have DFCM involved in the process and the University finally had funds available for the project. Kenneth Nye added that DFCM couldn't use capital improvement money to address capital development issues.

Kerry Casaday asked if the \$163,000 would be part of the \$2,432,000 allocated for the Old main buildings remodel and seismic upgrade. Kent Beers responded it would and in August of 2003, the Building Board authorized \$143,000 to the Old Main project so they could proceed with design. The necessary funds were available for the Value Based Selection in the selection of a designer, if the Board chose not to move on this item.

Chair Jardine sought a motion on the reallocation of capital improvement funds.

MOTION: Cyndi Gilbert moved approval of the reallocation of the capital improvement funds as reviewed. The motion was seconded by Kerry Casaday and passed unanimously.

☐ DELEGATION OF PROJECTS TO THE U OF U AND USU

Keith Stepan stated DFCM has authority to delegate projects to the University of Utah and Utah State University for project management. DFCM asked the Board to consider authorizing delegating projects at the University of Utah Chemistry Gauss Haus and the Utah State University Recital Hall. Mr. Stepan wished to table the USU remodeling for expansion in Brigham City until USU and DFCM have a final program and understanding of the financial approach to the project.

The University of Utah Chemistry Gauss Haus was approved by the Legislature in 2002, with a smaller scope of \$1.5 million. As programming got underway, they saw the realities needed for future technology, and increased the program to \$7.6 million which exceeds the limit level of delegated projects of \$5 million allowed to the University of Utah. DFCM wished to make an exception and ask the Board to approve delegation based on the University already being heavily involved in the programming and management. This project is on the other funds list recommended by the Board and will return to the Legislature at the \$7.6 million level. The delegation would be based on receiving Legislative approval of the project.

Darren Mansell expressed concern with the project being a \$5.5 million difference. Mike Perez, University of Utah, responded Ron Pugmire, Associate Vice President for Research, explained to the Building Board in October 2003 meeting that when the budget was created at \$1.5 million in 2001-2002, the technology needs were not as great. Since that time, 50% of the project is being funded by NIH grants and 50% by research money from the University. During programming, the scope increased and stricter environmental controls became apparent. A potential increase for O&M did exist.

Kenneth Nye stated two issues were associated with the project, including one dealing with approval of the project itself, which received legislature approval at a lower scope in 2002. The University has been very upfront in the growth in the size of the project and has

chosen to return to the approval process because of the substantial change in the size. The second issue relates to project management. DFCM currently has an agreement in place allowing the University of Utah to manage their projects less than \$5 million, and DFCM to manage projects over \$5 million. There is the ability to allow exceptions to grant the University of Utah authorization to manage projects over \$5 million with Board approval.

Potential O&M increases were presented in the October meeting. The request for O&M has increased in size, but there is no requirement to fund it. The legislature would take action on the O&M when the building is ready to occupy.

Cyndi Gilbert felt it would be somewhat disingenuous for DFCM to manage the project if the funds were coming from national grants and the University of Utah.

MOTION: Steve Bankhead moved to approve the delegation of the Chemistry Gauss Haus to the University of Utah. The motion was seconded by Cyndi Gilbert and passed unanimously.

Kevin Walthers stated the request for operations and maintenance funds is a multi-step process. The Legislative Fiscal Analyst's office tries to determine how much Enrollment and Growth (E&G) activity will be taking place in the building and then will recommend the University request that amount for approval for O&M.

Cyndi Gilbert felt other funds were basically requested through larger institutions, specifically the University of Utah and Utah State University. She asked if DFCM had standards to help keep the O&M with the other institutions that did not have the ability to raise additional funds. Kevin Walthers stated some institutions can raise money more easily, sometimes receive criticism if they cannot raise funds for every project. He felt the Higher Education committee considered donated buildings when reviewing O&M requests, which is a difficult issue since O&M funds are not adjusted for inflation. Ms. Gilbert felt the Board should pay attention to this issue.

Keith Stepan stated the Utah State University requested delegation of the Recital Hall. The project was approved by the Legislature approximately 10 years ago, and they have since been working on completion of the funding and getting the donations of approximately \$8,340,000. DFCM wished to delegate the project at the request of USU.

MOTION: Steve Bankhead moved to delegate the Utah State University Recital Hall to Utah State University. The project was seconded by Manuel Torres and passed unanimously.

Chair Jardine sought a motion to table the request for delegation of the Utah State University remodeling for expansion in Brigham City.

MOTION: Manuel Torres moved to table the request for delegation of the Utah State University remodeling for expansion in Brigham City. The motion was seconded by Katherina Holzhauser and passed unanimously.

☐ ADMINISTRATIVE REPORTS FOR UNIVERSITY OF UTAH

Mike Perez, Utah State University, reported for the period of November 14 to December 17, 2003. There were two new A/E contracts awarded for the period including one for the South Jordan Medical Clinic to MHTN Architects and one to Cooper Roberts Simonsen Architects for the RMCOEH Conversion to Research Administration.

Darren Mansell asked if the South Jordan Medical Clinic was a build-out. Mr. Perez responded it was and it is a leased space and they are adding ten examination rooms, a small pharmacy, and a nurse's station. The contract amount was for the architect only.

MOTION: Steve Bankhead moved to approve the administrative report for the University of Utah. The motion was seconded by Cyndi Gilbert and passed unanimously.

Darren Mansell stated during the same period he also bid out a build-out on a medical complex and his design fee was 3% lower than the University of Utah's contract from the same standard of architectural firm. He felt that because the state does not bid, they pay more.

There was no report available for Utah State University.

Kenneth Nye commented he had asked for the University of Utah and Utah State University to begin including an executive summary describing the major issues in the report.

☐ ADMINISTRATIVE REPORTS FOR DFCM

Keith Stepan referenced the lease report and stated a difficult lease was settled in Park City. There were seven agreements with A/E firms and 61 construction contracts issued. He also referenced the contingency reserve fund, which will fund DFCM over the next year.

☐ OTHER.....

Keith Stepan stated DFCM intended to bring the Board a final report on Value Based Selection and a review for approval of the changes that would be made through the process. The project has been a bigger job than anticipated and will be presented at the February meeting. This will still be in time for legislative review. Chair Jardine sought committee members for three VBS projects.

Larry Jardine will serve on the Parks and Recreation Willard Bay Recreation Facility Improvements selection committee on February 4 and 9, 2004.

Kerry Casaday will serve on the selection committee for the Southern Utah University Old Main building remodel and seismic upgrade on January 21 and 28, 2004.

Steve Bankhead will serve on the selection committee for UDOT Region One office expansion (A/E selection) on January 22 and 28, 2004.

The next Utah State Building Board meeting will be held at the Department of Alcoholic Beverage Control on February 4, 2004. The Board will tour the facility after the meeting and then meet with the Capital Facilities Sub-appropriation Committee in the afternoon.

Kenneth Nye stated each year DFCM publishes the Board's five year building program as a formal document. It is currently at the printer and the Board should expect to receive it in the mail later the next week. The book is currently available on the Building Board's web site.

❑ ADJOURNMENT.....

MOTION: Cyndi Gilbert moved to adjourn at 10:57am. The motion was seconded by Steve Bankhead and passed unanimously.

Minutes prepared by: Shannon Lofgreen



Olene S. Walker
Governor

Utah State Building Board

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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **Legislative Update**

DFCM will discuss the status of budget actions and legislation that have occurred or are anticipated. Those that were known at the time this memo was prepared are summarized below.

Capital Budget:

In its first committee meeting on January 22, the Capital Facilities and Administrative Services Appropriations Subcommittee adopted several guiding principles for their deliberations this session. One of those principles was that the amount of new general obligation bonds for buildings should not exceed the amount that will be paid off (\$64,000,000) and that they would explore alternative methods of funding the Capitol Building Renovation so that it would not apply against this limit. Another principle was that they would do everything they could to preserve the State's AAA bond rating, keep debt short term and pursue debt opportunities while interest rates are low. The third principle adopted was to address general obligation bonds and lease revenue bonds in separate bills. While no motion was adopted, the subcommittee also discussed that the amount of lease revenue bonds for state entities that will be repaid is \$17.9 million.

While the subcommittee discussed the importance of the capital improvement funding, no clear statement has yet been made regarding the level of funding that will be appropriated. There are indications, however, that capital improvements will be funded at the 0.9% level allowed when the State is in budget difficulty. This formula is 0.9% of the replacement value of state facilities excluding auxiliary facilities. This would provide funding of \$43,977,000. If the full 1.1% funding were provided, this would amount to \$53,750,000.

Under the current schedule for subcommittee meetings, the Building Board will meet with the subcommittee on February 4 which is the same day as the Board meeting. That meeting is scheduled from 2:00 to 5:00 in room 403 of the State Capitol Building. The Legislative Fiscal Analyst's capital budget recommendations will be presented at that meeting and will not be released until shortly before the meeting. The current schedule also indicates that DFCM's operating budgets and the Percent For Art program will be discussed in that meeting.

DFCM is aware of two additional "Other Funds" projects that will be presented to the Legislature that have not been discussed with the Board. In its meeting on January 16, the Board of Regents approved the following two projects to be pursued in this legislative session.

Purchase of Board of Regents Building

In 2001, the Board of Regents purchased the majority of the space it is currently occupying in its new building in Gateway. The purchase was financed through a revenue bond issued through the higher education student loan program. The level of debt authorized by the Legislature at that time was insufficient to purchase all of the space needed. The current proposal is to purchase first two floors and mezzanine which is the balance of this building, much of which is already being leased by the Board of Regents. Financing of the purchase cost of \$3.6 million would occur in the same manner as the original transaction.

Purchase of SLCC Metro Campus

Several years ago, Salt Lake Community College entered into a long-term lease for a building at 115 South Main in Salt Lake City. A number of problems then arose regarding the condition of this building as well as several other legal difficulties with the owner. SLCC believes that the best solution available to them at this time is to purchase the building to eliminate the current lease obligation. DFCM understands that the terms of the transaction require that the seller make a substantial investment to upgrade the condition of the building.

Operating Budgets:

DFCM is not currently aware of any consideration to significantly change its operating budgets from the levels and funding sources approved for the current year. This would mean that DFCM's administrative budget would be funded from a combination of capital improvement funds and excess balances in the Project Reserve and Contingency Reserve.

Legislation:

Of the legislation that was available at the time this information was prepared, the following bills appear to have the potential of significantly impacting the Board or DFCM. Legislative actions taken through January 22 are noted. If no legislative action is noted, the bill has not yet received any action other than being introduced. Other legislation that comes to light before the Board meeting will be presented at the meeting.

HB 30 – Amendments to Administrative Services Rate Committee, Rep. David Clark

This bill clarifies the process for review and approval of rates charged by internal service funds. It also requires that a market analysis of rates be completed by July 1, 2005. DFCM's Facilities Management program is an internal service fund and would be affected by these requirements. The House has passed this bill and it is now being considered by the Senate.

HB 173 – Liability Insurance for Contractors – Monitoring System, Rep. Michael Morley

This bill expands the responsibility of the Division of Occupational and Professional Licensing (DOPL) to include monitoring compliance with insurance requirements associated with contractor licenses. It also requires insurers to report monthly to DOPL regarding the status of contractors' comprehensive general liability insurance policies. Failure to maintain required insurance would be grounds for suspension or revocation of licensure.

HB 205 – State Settlement Agreements Amendments, Rep. Wayne Harper

This bill exempts settlements of claims resolved under DFCM's internal dispute resolution processes from requirements for Governor's and legislative approvals. This bill is associated with HB 217.

HB 215 – Uniform Building Standards Amendments, Rep. Stuart Adams

This bill requires DOPL to adopt building codes for energy conservation, fuel gas, and one and two family residential construction.

HB 217 – Changes to DFCM Contract Procedures and Requirements, Rep. Wayne Harper

This bill requires DFCM to establish through administrative rules a claims and dispute resolution process for contractors, subcontractors and other entities involved with contracts under DFCM's procurement authority. The bill identifies items that must be addressed in this rule and requires that the proposed rule be presented to the Government Operations Interim Committee for its review and comment by August 31, 2004. The rule will set requirements that must be met in order for a claim to be submitted into the process and the options that are available for appeal. The bill also sets maximum time periods for resolution of the claim and states that a decision under this process stands unless property appealed. The bill also specifies some provisions that must be addressed in DFCM's construction contracts. Most of these provisions are already addressed in DFCM's contracts and this portion of the bill is not expected to make any substantive changes. DFCM has been working with Representative Harper along with Rep. Stephen Clark to develop a bill that is workable from DFCM's perspective.

HB 226 – Legislative Approval of Capital Projects, Rep. David Ure

Several years ago, Rep. Gerry Adair carried legislation that gave the Building Board the authority to approve projects that do not include state funds in the design and construction of the project or the operations and maintenance and capital improvements of the resulting facility. That bill did not define what constitutes "state funds". HB 226 provides a definition of "state funds" that includes all funds held or controlled by a state agency or institution except for "monies donated for a specific capital development project." This definition is so tight that DFCM does not believe that any projects for state entities would ever qualify for approval by the Building Board. As a result, these projects would need to go to the Legislature for approval. The only projects that the Building Board would be able to approve would be requests by non-state entities to construct a building on state property with their funds.

HB 228 – Sale, Exchange or Donation of Real Property by State Agencies, Rep. David Ure

This bill establishes a number of process and approval requirements for the disposition of real property by DFCM, UDOT, and the Department of Natural Resources. This includes process requirements that DFCM already follows in virtually all property dispositions such as public notice and obtaining an impartial appraisal. It requires that property be sold for not less than 95% of the appraised value. It gives the Building Board the authority to approve sales at less than 95% of appraised value if no one is willing to pay that price. It requires that DFCM deposit proceeds from its sales into the General Fund. The bill also requires that all sales, exchanges and donations of property with an appraised value greater than \$100,000 be approved by the Governor. If the appraised value is greater than \$500,000, it must be reviewed with the Legislative Management Committee and if greater than \$1,000,000, it must be approved by the Legislature in a general or special session. DFCM has a number of concerns with how the bill is worded that it is attempting to resolve with the Legislature.

SB 15 – Carryover of Authorized Capital Outlay Amendments, Sen. Beverly Evans

Current statutes require the Legislature to authorize the level of capital outlay for internal service funds. This bill provides that these authorizations lapse at the end of the fiscal year.



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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **Additional "Other Funds" Projects for USU**

Recommendation:

DFCM recommends that the Board include these projects requested by Utah State University to its recommendations for "Other Funds" projects.

Background:

At the October hearing for "Other Funds" projects, USU provided general information regarding this request but was not able to provide sufficient clarity regarding the scope of the project for the Board to take action. USU was asked to return to the Board after it had resolved the scope of the project that would be pursued.

USU has since had a number of internal discussions to resolve the scope of work that would be pursued along with the funding sources. The results of this effort are described in the attached summary provided by USU. This request can be summarized in the following two components.

Romney Stadium Renovation and Nelson Fieldhouse Expansion

The first component would be financed through the issuance of revenue bonds. It would include a renovation of Romney Stadium to address life safety, sanitation and other code problems as well as replace the turf. It would also include a minor expansion of the Nelson Fieldhouse Aerobic Facility by approximately 2,700 square feet. The total cost of this project would be \$9 million.

Romney Stadium Team Building Replacement

The second component would be funded through donations. It would replace the Stadium Team Building at the north end of Romney Stadium. The estimated cost of this project is \$10 million.

No state funds will be requested for operations and maintenance of any of these projects.

This request was not presented to the Building Board in January because of USU's desire to first obtain the approval of its Board of Trustees and the Board of Regents. The USU Board of Trustees approved the project on January 7 and the Board of Regents approved it on January 16.

FKS:KEN:sll

Attachment

Other Funded Projects at Utah State University

Descriptions – 9 January 2004

Romney Stadium Life Safety, Sanitation and Code Renovation Project

This project will involve the renovation, or complete demolition and reconstruction, of the press box, concessions and restrooms on the west side of Romney Stadium that are all contained within the west grand stands. The press box is seismically deficient and ADA non-compliant. The west side sanitary facilities also have a sewer system that does not drain properly, which does not allow the restrooms to be utilized. This situation has created the need to use porta-pottys that are placed uncomfortably close to the concession stands, due to a lack of room on the promenade under the stands. In addition, the restrooms on the east side of the stadium are insufficient and there are pedestrian traffic problems that need to be addressed.

This project will consist of structurally upgrading the press box structure to bring it into seismic code compliance and also allow the eventual construction of spectator sky boxes and a cantilevered structure to cover premium seating (the sky boxes and premium seating would be constructed at a later date using private donations). An elevator will be installed within the structure and in all other ways be brought into ADA compliance. The west side sewer system will also be either renovated or redone to allow the restrooms to function properly and eliminate the need for porta-pottys. The east side restrooms will be improved and the number increased to accommodate the demand, and the pedestrian entrance and egress difficulties will be addressed.

The total project cost will be \$7,750,000.

Romney Stadium Turf Replacement

The sod in Romney Stadium is to be replaced by an artificial playing surface. Large areas of the sod within the stadium require extreme amounts of water in addition to significant maintenance efforts and yet still remain brown. An artificial playing surface would eliminate the need to irrigate and much of the maintenance effort, in addition to opening the field up to student intramural and recreational sports use.

The total project cost will be \$750,000.

Nelson Field House Aerobic Facilities Expansion

The recently renovated mezzanine of the Nelson Field House, which is now a top class aerobic work out facility, will be expanded by 50 percent (approximately 2,700 square feet) to accommodate additional aerobic exercise equipment. This additional space will be to the south of the existing mezzanine and over a section of the track.

The total project cost will be \$500,000.

The above three projects will be funded through the proceeds of a parity bond, which is essentially a “refinancing” of the stadium/spectrum bond. This bond will be retired through already existing student fees. No state O&M dollars are being requested for any of these projects.

Stadium Team Building

This is a proposed project that would involve the demolition of the 9,600 gsf locker room at the north end of Romney Stadium and construction of a new 50,000 gsf complex. The new building would include locker rooms for home and visiting teams, a weight room, training room, football coaching offices, film room, meeting rooms, hall of fame, equipment room, and social banquet rooms. Private donations are funding this project, which will enable the athletics department to better fulfill its primary mission and provide enhanced training facilities for over 300 student athletes. The anticipated cost of the new building is \$10,000,000. No state support is requested.



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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **Amendments to Procurement Rules R23-1 and R23-2**

Recommendation:

DFCM recommends that the Board review and, if satisfied, approve the proposed amendments to DFCM's procurement rules for construction (R23-1) and architect-engineer services (R23-2).

Background:

As was discussed in the December 2003 Board meeting, a substantial review of DFCM's procedures for the procurement of construction and architect-engineer services was conducted last fall. The review committees included representatives of private construction and architect-engineer firms and associations along with legislators, Building Board members and DFCM staff. The recommendations from these committees were presented to the Board in December. The Board gave conceptual approval with the expectation that DFCM would return in a subsequent meeting with any amendments to its procurement rules that were necessary to implement the recommendations.

DFCM has reviewed its procurement rules and proposes the amendments noted in the attached documents. The full text of both rules is included to aid in understanding the context of the proposed amendments. Proposed new text is underscored. Text that is proposed to be deleted is bracketed and stricken through. A summary of the proposed amendments follows. Please note that the term used in the rule for the "low bid" method is "competitive sealed bidding" and the term used for the "Value Based Selection" (VBS) method is "competitive sealed proposals." These terms are used in order to be consistent with the procurement statutes that the rules implement.

Amendments to R23-1, Procurement of Construction

1. Standard Selection Methods – Amendments are proposed to state that the competitive sealed bidding method and the multi-step sealed bidding method are the standard procurement methods for construction that is accomplished through the design-bid-build method of construction contract management although the director may authorize the use of the competitive sealed proposals method when warranted by unique circumstances. Amendments are also proposed to state that the competitive sealed proposals method is the standard procurement method for the procurement of a construction manager under the construction manager/general contractor method of construction contract

management. The rule already required that the competitive sealed proposals method be used for procuring a design/build team. These amendments are contained in lines 52 through 66 on page 2 and lines 323 through 355 on pages 8 and 9.

2. Confidentiality of Past Performance and Reference Information – Amendments are proposed to clarify the confidentiality of this information. The proposed amendments clarify that the confidentiality extends to information related to past performance in addition to references. They also identify parties that may receive this information. These amendments are contained in lines 301 through 303 on page 7 and lines 401 through 413 on page 10.
3. Scoring of Proposals – Amendments are proposed on lines 466 through 470 on page 11 regarding the formal scoring of proposals in the selection process.
4. Selecting the Method of Construction Contracting – Amendments are proposed on lines 618 through 628 on page 15 to provide that the design-bid-build method is the standard construction contracting method for contracts under \$1,500,000 and construction manager/general contractor is the standard method for contracts over \$1,500,000. The director must document his approval of a contracting method that deviates from this guideline.
5. Descriptions of Construction Contracting Methods – Amendments are proposed on lines 637 through 684 on pages 15 and 16 to simplify and clarify the descriptions of construction contracting methods typically used by DFCM. This section is descriptive in nature and does not constrain DFCM from modifying the methods described or using alternative methods that are not described.
6. Other Technical Corrections and Clarifications – Several other amendments are proposed to provide technical corrections or clarifications throughout the rule. The most substantive of these amendments is the clarification that a modified competitive sealed proposals method may be used for small procurements that do not require a public notice. This amendment is contained in lines 511 through 515 on page 12.

Amendments to R23-2, Procurement of Architect-Engineer Services

1. Confidentiality of Past Performance and Reference Information – Amendments are proposed to clarify the confidentiality of this information. The proposed amendments clarify that the confidentiality extends to information related to past performance in addition to references. They also identify parties that may receive this information. These amendments are contained in lines 95 through 106 on page 3 and lines 146 through 153 on page 4.
2. Selection Criteria – Several amendments are proposed in lines 119 through 125 on page 3 to clarify the criteria to be used in selections.

3. Other Technical Corrections and Clarifications – Several other amendments are proposed to provide technical corrections or clarifications throughout the rule. None of these amendments make a substantive change in the rule.

FKS:KEN:sl

Attachment

**Proposed Amendments
January 23, 2004**

R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement of Construction.

R23-1-1. Purpose and Authority.

(1) In accordance with Subsection 63-56-14(2), this rule establishes procedures for the procurement of construction by the Division.

(2) The statutory provisions governing the procurement of construction by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-1-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63-56-5.

(2) In addition:

(a) "Acceptable Bid Security" means a bid bond meeting the requirements of Subsection R23-1-40(4).

(b) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(c) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(d) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(e) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(f) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(g) "Price Data" means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices and includes data relevant to both prime and subcontract prices.

(h) "Procuring Agencies" means, individually or collectively, the state, the Division, the owner and the using agency.

(i) "Products" means and includes materials, systems and equipment.

(j) "Proprietary Specification" means a specification which uses a brand name to describe the standard of quality, performance, and other characteristics needed to meet the procuring agencies' requirements or which is written in such a manner that restricts the procurement to one brand.

(k) "Public Notice" means the notice that is publicized pursuant to this rule to notify contractors of Invitations For Bids and Requests For Proposals.

(l) "Specification" means any description of the physical, functional or performance characteristics of a supply or construction item. It may include requirements for inspecting, testing, or preparing a supply or construction item for delivery or use.

(m) "State" means the State of Utah.

46 (n) "Subcontractor" means any person who has a contract with any person other than the
47 procuring agency to perform any portion of the work on a project.

48 (o) "Using Agency" means any state agency or any political subdivision of the state which
49 utilizes any services or construction procured under these rules.

50 (p) "Work" means the furnishing of labor or materials, or both.

51
52 **R23-1-5. Competitive Sealed Bidding.**

53 (1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, ~~may~~ shall
54 be used for the procurement of construction if the design-bid-build method of construction contract
55 management described in Subsection R23-1-45(5)(b) is used unless a determination is made by the
56 Director in accordance with Subsection R23-1-115(1)(c) that the competitive sealed proposals
57 procurement method should be used. [÷

58 ~~(a) the contract is expected to cost \$250,000 or less;~~

59 ~~(b) the contract is expected to cost more than \$250,000 but less than \$1,000,000 and the~~
60 ~~Director determines in writing that competitive sealed bidding is the most appropriate method for~~
61 ~~procuring the contract due to one or more of the following circumstances:~~

62 ~~(i) the contract is predominantly for products or materials and it is not necessary to evaluate~~
63 ~~the features of the products or materials in the selection process; or~~

64 ~~(ii) the contract is for work for which there is not a significant benefit derived from~~
65 ~~evaluating the past performance, project management plans or other qualification factors of the~~
66 ~~contractor; or~~

67 ~~(c) the Director determines in writing that other unique and compelling factors exist causing~~
68 ~~it to be in the best interests of the procuring agencies to use the competitive sealed bidding method.]~~

69 (2) Public Notice of Invitations For Bids.

70 (a) Public notice of Invitations For Bids shall be publicized electronically on the Internet;
71 and may be publicized in any or all of the following as determined appropriate:

72 (i) In a newspaper having general circulation in the area in which the project is located;

73 (ii) In appropriate trade publications;

74 (iii) In a newspaper having general circulation in the state;

75 (iv) By any other method determined appropriate.

76 (b) A copy of the public notice shall be available for public inspection at the principal office
77 of the Division in Salt Lake City, Utah.

78 (3) Content of the Public Notice. The public notice of Invitation For Bids shall include the
79 following:

80 (a) The closing time and date for the submission of bids;

81 (b) The location to which bids are to be delivered;

82 (c) Directions for obtaining the bidding documents;

83 (d) A brief description of the project;

84 (e) Notice of any mandatory pre-bid meetings.

85 (4) Bidding Time. Bidding time is the period of time between the date of the first
86 publication of the public notice and the final date and time set for the receipt of bids by the Division.

87 Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be
88 not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as
89 determined in writing by the Director.

90 (5) Proposal Form. The bidding documents for an Invitation For Bids shall include a

91 proposal form having a space in which the bid prices shall be inserted and which the bidder shall
92 sign and submit along with all other required documents and materials.

93 (6) Addenda to the Bidding Documents.

94 (a) Addenda shall be distributed or otherwise made available to all entities known to have
95 obtained the bidding documents.

96 (b) Addenda shall be distributed or otherwise made available within a reasonable time to
97 allow all prospective bidders to consider them in preparing bids. If the time set for the final receipt
98 of bids will not permit appropriate consideration, the bidding time shall be extended to allow proper
99 consideration of the addenda.

100 (7) Pre-Opening Modification or Withdrawal of Bids.

101 (a) Bids may be modified or withdrawn by the bidder by written notice delivered to the
102 location designated in the public notice where bids are to be delivered prior to the time set for the
103 opening of bids.

104 (b) Bid security, if any, shall be returned to the bidder when withdrawal of the bid is
105 permitted.

106 (c) All documents relating to the modification or withdrawal of bids shall be made a part of
107 the appropriate project file.

108 (8) Late Bids, Late Withdrawals, and Late Modifications. Any bid, withdrawal of bid, or
109 modification of bid received after the time and date set for the submission of bids at the location
110 designated in the notice shall be deemed to be late and shall not be considered, unless it is the only
111 bid received in which case it may be considered.

112 (9) Receipt, Opening, and Recording of Bids.

113 (a) Upon receipt, all bids and modifications shall be stored in a secure place until the time
114 for bid opening.

115 (b) Bids and modifications shall be opened publicly, in the presence of one or more
116 witnesses, at the time and place designated in the notice. The names of the bidders, the bid price,
117 and other information deemed appropriate by the Director shall be read aloud or otherwise made
118 available to the public. After the bid opening, the bids shall be tabulated or a bid abstract made.
119 The opened bids shall be available for public inspection.

120 (10) Mistakes in Bids.

121 (a) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid
122 correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible but only
123 at the discretion of the Director and only to the extent it is not contrary to the interest of the
124 procuring agencies or the fair treatment of other bidders.

125 (b) When it appears from a review of the bid that a mistake may have been made, the
126 Director may request the bidder to confirm the bid in writing. Situations in which confirmation may
127 be requested include obvious, apparent errors on the face of the bid or a bid substantially lower than
128 the other bids submitted.

129 (c) This subsection sets forth procedures to be applied in three situations described below in
130 which mistakes in bids are discovered after opening but before award.

131 (i) Minor formalities are matters which, in the discretion of the Director, are of form rather
132 than substance evident from the bid document, or insignificant mistakes that can be waived or
133 corrected without prejudice to other bidders and with respect to which, in the Director's discretion,
134 the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be
135 significant. The Director, in his sole discretion, may waive minor formalities or allow the bidder to

136 correct them depending on which is in the best interest of the procuring agencies. Examples include
137 the failure of a bidder to:

138 (A) Sign the bid, but only if the unsigned bid is accompanied by other material indicating
139 the bidder's intent to be bound;

140 (B) Acknowledge receipt of any addenda to the Invitation For Bids, but only if it is clear
141 from the bid that the bidder received the addenda and intended to be bound by its terms; the addenda
142 involved had a negligible effect on price, quantity, quality, or delivery; or the bidder acknowledged
143 receipt of the addenda at the bid opening.

144 (ii) If the Director determines that the mistake and the intended bid are clearly evident on the
145 face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn.
146 Examples of mistakes that may be clearly evident on the face of the bid document are typographical
147 errors, errors in extending unit prices, transposition errors, and arithmetical errors.

148 (iii) A bidder may be permitted to withdraw a low bid if the Director determines a mistake is
149 clearly evident on the face of the bid document but the intended amount of the bid is not similarly
150 evident, or the bidder submits to the Division proof which, in the Director's judgment, demonstrates
151 that a mistake was made.

152 (d) No bidder shall be allowed to correct a mistake or withdraw a bid because of a mistake
153 discovered after award of the contract; provided, that mistakes of the types described in this
154 Subsection (10) may be corrected or the award of the contract canceled if the Director determines
155 that correction or cancellation will not prejudice the interests of the procuring agencies or fair
156 competition.

157 (e) The Director shall approve or deny in writing all requests to correct or withdraw a bid.

158 (11) Bid Evaluation and Award. Except as provided in the following sentence, the contract
159 is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements
160 and criteria set forth in the bidding documents and no bid shall be evaluated for any requirements or
161 criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a
162 resident contractor if the provisions of Section 63-56-20.6 are met.

163 (12) Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.

164 (a) Although issuance of an Invitation For Bids does not compel award of a contract, the
165 Division may cancel an Invitation For Bids or reject bids received in whole or in part only when the
166 Director determines that it is in the best interests of the procuring agencies to do so.

167 (b) The reasons for cancellation or rejection shall be made a part of the project file and
168 available for public inspection.

169 (c) Any determination of nonresponsibility of a bidder or offeror shall be made by the
170 Director in writing and shall be based upon the criteria that the Director shall establish as relevant to
171 this determination with respect to the particular project. An unreasonable failure of the bidder or
172 offeror to promptly supply information regarding responsibility may be grounds for a determination
173 of nonresponsibility. Any bidder or offeror determined to be nonresponsible shall be provided with
174 a copy of the written determination within a reasonable time. Information furnished by a bidder or
175 offeror pursuant to any inquiry concerning responsibility shall be classified as a protected record
176 pursuant to Section 63-2-304 and shall not be disclosed to the public by the Division without the
177 prior written consent of the bidder or offeror.

178 (13) Tie Bids.

179 (a) Definition. Tie bids are low responsive bids from responsible bidders that are identical
180 in price.

181 (b) Award. Award shall be determined through a coin toss or the drawing of lots as
182 determined by the Director. The coin toss or drawing of lots shall be open to the public, including
183 the bidders who submitted the tie bids.

184 (c) Record. Documentation of the tie bids and the procedure used to resolve the award of
185 the contract shall be placed in the contract file.

186 (14) Subcontractor Lists. For purposes of this Subsection (14), the definitions of Section
187 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays,
188 Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to
189 be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of
190 the dollar amounts stated in Subsection 63-A-5-208(3)(a).

191 (a) The subcontractor list shall include the following:

192 (i) the type of work the subcontractor is to perform;

193 (ii) the subcontractor's name;

194 (iii) the subcontractor's bid amount;

195 (iv) the license number of the subcontractor issued by the Utah Division of Occupational and
196 Professional Licensing, if such license is required under Utah law; and

197 (v) the impact that the selection of any alternate included in the solicitation would have on
198 the information required by this Subsection (14).

199 (b) The contract documents for a specific project may require that additional information be
200 provided regarding any contractor, subcontractor, or supplier.

201 (c) If pursuant to Subsection 63A-5-208(4), a bidder intends to perform the work of a
202 subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:

203 (i) comply with the requirements of Section 63A-5-208 and

204 (ii) clearly list himself on the subcontractor list form.

205 (d) Errors on the subcontractor list will not disqualify the bidder if the bidder can
206 demonstrate that the error is a result of his reasonable reliance on information that was provided by
207 the subcontractor and was used to meet the requirements of this section, and, provided that this does
208 not result in an adjustment to the bidder's contract amount.

209 (e) Pursuant to Sections 63A-5-208 and 63-2-304, information contained in the
210 subcontractor list submitted to the Division shall be classified public except for the amount of
211 subcontractor bids which shall be classified as protected until a contract has been awarded to the
212 bidder at which time the subcontractor bid amounts shall be classified as public. During the time
213 that the subcontractor bids are classified protected, they may only be made available to procurement
214 and other officials involved with the review and approval of bids.

215 (15) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid
216 opening, the contractor may change his listed subcontractors only after receiving written permission
217 from the Director based on complying with all of the following:

218 (a) The contractor has established in writing that the change is in the best interest of the
219 State and that the contractor establishes an appropriate reason for the change, which may include,
220 but is not limited to, the following reasons:

221 (i) the original subcontractor has failed to perform, or is not qualified or capable of
222 performing,

223 (ii) the subcontractor has requested in writing to be released;

224 (b) The circumstances related to the request for the change do not indicate any bad faith in
225 the original listing of the subcontractors;

226 (c) Any requirement set forth by the Director to ensure that the process used to select a new
227 subcontractor does not give rise to bid shopping;

228 (d) Any increase in the cost of the subject subcontractor work shall be borne by the
229 contractor; and

230 (e) Any decrease in the cost of the subject subcontractor work shall result in a deductive
231 change order being issued for the contract for such decreased amount.

232
233 **R23-1-10. Multi-Step Sealed Bidding.**

234 (1) Description. Multi-step sealed bidding is a two-phase process. In the first phase bidders
235 submit unpriced technical offers to be evaluated. In the second phase, bids submitted by bidders
236 whose technical offers are determined to be acceptable during the first phase are considered. It is
237 designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest
238 responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed
239 proposals procedure through the solicitation of technical offers and the conduct of discussions to
240 arrive at technical offers and terms acceptable to the Division and suitable for competitive pricing.

241 (2) Use. The multi-step sealed bidding method may be used when the Director deems it to
242 the advantage of the state. Multi-step sealed bidding may be used when it is considered desirable:

243 (a) to invite and evaluate technical offers or statements of qualifications to determine their
244 acceptability to fulfill the purchase description requirements;

245 (b) to conduct discussions for the purposes of facilitating understanding of the technical
246 offer and purchase description requirements and, where appropriate, obtain supplemental
247 information, permit amendments of technical offers, or amend the purchase description;

248 (c) to accomplish (a) or (b) prior to soliciting bids; and

249 (d) to award the contract to the lowest responsive and responsible bidder in accordance with
250 the competitive sealed bidding procedures.

251 (3) Pre-Bid Conferences In Multi-Step Sealed Bidding. The Division may hold one or more
252 pre-bid conferences prior to the submission of unpriced technical offers or at any time during the
253 evaluation of the unpriced technical offers.

254 (4) Procedure for Phase One of Multi-Step Sealed Bidding.

255 (a) Public Notice. Multi-step sealed bidding shall be initiated by the issuance of a Public
256 Notice in the form required by Subsections R23-1-5(2) and (3).

257 (b) Invitation for Bids. The multi-step Invitation for Bids shall state:

258 (i) that unpriced technical offers are requested;

259 (ii) when bids are to be submitted (if they are to be submitted at the same time as the
260 unpriced technical offers, the bids shall be submitted in a separate sealed envelope);

261 (iii) that it is a multi-step sealed bid procurement, and bids will be considered only in the
262 second phase and only from those bidders whose unpriced technical offers are found acceptable in
263 the first phase;

264 (iv) the criteria to be used in the evaluation of the unpriced technical offers;

265 (v) that the Division, to the extent the Director finds necessary, may conduct oral or written
266 discussions of the unpriced technical offers;

267 (vi) that the item being procured shall be furnished in accordance with the bidders technical
268 offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids; and

269 (vii) that bidders may designate those portions of the unpriced technical offers which contain
270 trade secrets or other proprietary data which are to remain confidential. If the bidder selected for

271 award has requested in writing the non-disclosure of trade secrets and other proprietary data so
272 identified, the Director shall examine the request to determine its validity prior to award of the
273 contract. If the parties do not agree as to the disclosure of data in the contract, the Director shall
274 inform the bidder in writing what portion of the offer will be disclosed and that, unless the bidder
275 withdraws the offer, it will be disclosed.

276 (c) Amendments to the Invitation for Bids. After receipt of unpriced technical offers,
277 amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced
278 technical offers and they shall be allowed to submit new unpriced technical offers or to amend those
279 submitted. If, in the opinion of the Director, a contemplated amendment will significantly change
280 the nature of the procurement, the Invitation for Bids shall be canceled in accordance with
281 Subsection R23-1-5(12) and a new Invitation for Bids may be issued.

282 (d) Receipt and Handling of Unpriced Technical Offers. After the date and time established
283 for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection.
284 Prior to award, unpriced technical offers shall be shown only to those involved with the evaluation
285 of the offers. The unpriced technical offer of the successful bidder shall be open to public inspection
286 for a period of 90 days after award of the contract. Unpriced technical offers of bidders who are not
287 awarded contracts shall not be open to public inspection.

288 (e) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by
289 bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids
290 which may include an evaluation of the past performance of the bidder. The unpriced technical
291 offers shall be categorized as acceptable or unacceptable. The Director shall record in writing the
292 basis for finding an offer unacceptable and make it part of the procurement file.

293 (f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be
294 conducted with bidders who submit an acceptable technical offer. During the course of discussions,
295 any information derived from one unpriced technical offer shall not be disclosed to any other bidder.
296 Once discussions are begun, any bidder who has not been notified that its offer has been found
297 unacceptable may submit supplemental information modifying or otherwise amending its technical
298 offer until the closing date established by the Director. Submission may be made at the request of
299 the Director or upon the bidder's own initiative.

300 (g) Notice of Unacceptable Unpriced Technical Offer. When the Director determines a
301 bidder's unpriced technical offer to be unacceptable, he shall notify the bidder in writing. Such
302 bidders shall not be afforded an additional opportunity to supplement technical offers.

303 (h) Confidentiality of Past Performance and Reference Information. Confidentiality of past
304 performance and reference information shall be maintained in accordance with Subsection R23-1-
305 15(10).

306 (5) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be
307 withdrawn during phase one:

308 (a) before unpriced technical offers are considered;

309 (b) after any discussions have commenced under Subsection R23-1-10(4)(f); or

310 (c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may
311 be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).

312 (6) Carrying Out Phase Two.

313 (a) Initiation. Upon the completion of phase one, the Director shall either:

314 (i) open bids submitted in phase one (if bids were required to be submitted) from bidders
315 whose unpriced technical offers were found to be acceptable; provided, however, that the offers have

316 remained unchanged, and the Invitation for Bids has not been amended subsequent to the submittal
317 of bids; or

318 (ii) invite each acceptable bidder to submit a bid.

319 (b) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement
320 except:

321 (i) as specifically set forth in Section R23-1-10; and

322 (ii) no public notice is given of this invitation to submit.

323

324 **R23-1-15. Competitive Sealed Proposals.**

325 (1) Use. ~~[Except as specifically provided for elsewhere in this rule, the Division shall~~
326 ~~procure construction through the use of competitive sealed proposals. After consideration of the~~
327 ~~following factors, the Board and Director determine that the use of competitive sealed proposals is~~
328 ~~generally more advantageous to the state than competitive sealed bidding for the procurement of~~
329 ~~construction by the Division.~~

330 ~~(a) The Division's experience with competitive sealed bidding and competitive sealed~~
331 ~~proposals indicates that construction contracts procured under the competitive sealed proposal~~
332 ~~method tend to have a lower level of change orders while being more likely to be completed on time;~~

333 ~~(b) There is a need to consider other factors such as the skills, experience, and past~~
334 ~~performance of contractors in addition to the initial cost reflected in the bid amount; and~~

335 ~~(c) It is in the best interests of the state to select the proposal which provides the best value~~
336 ~~to the procuring agencies after giving due consideration to qualifications, past performance,~~
337 ~~management plans, cost, and other factors applicable to the project.~~

338 ~~(d) Notwithstanding the above, the procurement of the types of contracts described in~~
339 ~~Subsection R23-1-5(1) may not warrant the additional effort required for the competitive sealed~~
340 ~~proposal method.~~

341 (2)]

342 (a) Construction Management. The competitive sealed proposals procurement method shall
343 be used in the procurement of a construction manager under the construction manager/general
344 contractor method of construction contract management described in subsection R23-1-45(5)(d) due
345 to the need to consider qualifications, past performance and services offered in addition to the cost of
346 the services and because only a small portion of the ultimate construction cost is typically
347 considered in this selection.

348 (b) Design-Build. In order to meet the requirements of Section 63-56-43.1, competitive
349 sealed proposals shall be used to procure design-build contracts.

350 (c) Design-Bid-Build. The competitive sealed proposals procurement method may be used
351 for procuring a contractor under the design-bid-build method of construction contract management
352 described in subsection R23-1-45(5)(b) only after the Director makes a determination that it is in the
353 best interests of the state to use the competitive sealed proposals method due to unique aspects of the
354 project that warrant the consideration of qualifications, past performance, schedule or other factors
355 in addition to cost.

356 (2) Documentation. The Director's determination made under subsection R23-1-15(1)(c)
357 shall be documented in writing and retained in the project file.

358 (3) Public Notice.

359 (a) Public notice of the Request for Proposals shall be publicized in the same manner
360 provided for giving public notice of an Invitation for Bids, as provided in Subsection R23-1-5(2).

361 (b) The public notice shall include:
362 (i) a brief description of the project;
363 (ii) directions on how to obtain the Request for Proposal documents;
364 (iii) notice of any mandatory pre-proposal meetings; and
365 (iv) the closing date and time by which the first submittal of information is required;
366 (4) Proposal Preparation Time. Proposal preparation time is the period of time between the
367 date of first publication of the public notice and the date and time set for the receipt of proposals by
368 the Division. In each case, the proposal preparation time shall be set to provide offerors a
369 reasonable time to prepare their proposals. The time between the first publication of the public
370 notice and the earlier of the first required submittal of information or any mandatory pre-proposal
371 meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a
372 particular procurement as determined, in writing, by the Director.
373 (5) Form of Proposal. The Request for Proposals may state the manner in which proposals
374 are to be submitted, including any forms for that purpose.
375 (6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made
376 in the same manner provided for addenda to the bidding documents in connection with Invitations
377 for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors
378 until the deadline for best and final offers.
379 (7) Modification or Withdrawal of Proposals.
380 (a) Proposals may be modified prior to the due dates established in the Request for
381 Proposals.
382 (b) Proposals may be withdrawn until the notice of selection is issued.
383 (8) Late Proposals, and Late Modifications. Except for modifications allowed pursuant to
384 negotiation, any proposal, or modification received at the location designated for receipt of
385 proposals after the due dates established in the Request for Proposals shall be deemed to be late and
386 shall not be considered unless there are no other offerors.
387 (9) Receipt and Registration of Proposals.
388 (a) After the date established for the first receipt of proposals or other required information,
389 a register of offerors shall be prepared and open to public inspection. Prior to award, proposals and
390 modifications shall be shown only to procurement and other officials involved with the review and
391 selection of proposals.
392 (b) Except as provided in this rule, proposals of the successful offeror shall be open to public
393 inspection after award of the contract. Proposals of offerors who are not awarded contracts shall not
394 be open to public inspection although the amount of each offeror's cost proposal shall be disclosed
395 after the contract is awarded.
396 (c) The Request for Proposals may provide that certain information required to be submitted
397 by the offeror shall be considered confidential and classified as protected if such information meets
398 the provisions of Section 63-2-304 of the Government Records Access and Management Act.
399 (d) If the offeror selected for award has requested in writing the non-disclosure of trade
400 secrets and other proprietary data so identified, the Director shall examine the request to determine
401 its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in
402 the contract, the Director shall inform the offeror in writing what portion of the proposal will be
403 disclosed and that, unless the offeror withdraws the proposal, it will be disclosed.
404 (10) Confidentiality of Past Performance and Reference Information. The Board finds that it
405 is necessary to maintain the confidentiality of ~~individual responses from persons who are contacted~~

406 ~~as references]~~ past performance and reference information in order to avoid competitive injury and
407 to encourage those persons providing the information to respond in an open and honest manner
408 without fear of retribution. Accordingly, ~~[responses to requests for references are]~~ records
409 containing past performance and reference information are classified as protected records under the
410 provisions of Subsections 63-2-304(2) and (6) and shall be disclosed only ~~[in summary form]~~ to
411 those persons involved with the performance evaluation, the contractor that the information
412 addresses and procurement and other officials involved with the review and selection of proposals.
413 The Division may, however, provide reference information to other governmental entities for use in
414 their procurement activities and to other parties when requested by the contractor that is the subject
415 of the information. ~~[This Subsection (10) applies only to responses from references submitted by the~~
416 ~~offeror.]~~

417 (11) Evaluation of Proposals.

418 (a) The evaluation of proposals shall be conducted by an evaluation committee appointed by
419 the Director that may include representatives of the Division, the Board, other procuring agencies,
420 and contractors, architects, engineers, and others of the general public. Each member of the
421 selection committee shall certify as to his lack of conflicts of interest.

422 (b) The Request for Proposals shall state all of the evaluation factors and the relative
423 importance of price and other evaluation factors.

424 (c) The evaluation shall be based on the evaluation factors set forth in the request for
425 proposals. Numerical rating systems may be used but are not required. Factors not specified in the
426 request for proposals shall not be considered.

427 (d) Proposals may be initially classified as potentially acceptable or unacceptable. Offerors
428 whose proposals are unacceptable shall be so notified by the Director in writing and they may not
429 continue to participate in the selection process.

430 (e) This classification of proposals may occur at any time during the selection process once
431 sufficient information is received to consider the potential acceptability of the offeror.

432 (f) The request for proposals may provide for a limited number of offerors who may be
433 classified as potentially acceptable. In this case, the offerors considered to be most acceptable, up to
434 the number of offerors allowed, shall be considered acceptable.

435 (12) Proposal Discussions with Individual Offerors.

436 (a) Unless only one proposal is received, proposal discussions with individual offerors, if
437 held, shall be conducted with no less than the offerors submitting the two best proposals.

438 (b) Discussions are held to:

439 (i) Promote understanding of the procuring agency's requirements and the offerors'
440 proposals; and

441 (ii) Facilitate arriving at a contract that will be most advantageous to the procuring agencies
442 taking into consideration price and the other evaluation factors set forth in the request for proposals.

443 (c) Offerors shall be accorded fair and equal treatment with respect to any opportunity for
444 discussions and revisions of proposals. In conducting discussions, there shall be no disclosure of
445 any information derived from proposals submitted by competing offerors. Any oral clarification or
446 change of a proposal shall be reduced to writing by the offeror.

447 (13) Best and Final Offers. If utilized, the Director shall establish a common time and date
448 to submit best and final offers. Best and final offers shall be submitted only once unless the Director
449 makes a written determination before each subsequent round of best and final offers demonstrating
450 that another round is in the best interest of the procuring agencies and additional discussions will be

451 conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or
452 changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed
453 that if they do not submit a notice of withdrawal or another best and final offer, their immediate
454 previous offer will be construed as their best and final offer.

455 (14) Mistakes in Proposals.

456 (a) Mistakes discovered before the established due date. An offeror may correct mistakes
457 discovered before the time and date established in the Request for Proposals for receipt of that
458 information by withdrawing or correcting the proposal as provided in Subsection R23-1-15(7).

459 (b) Confirmation of proposal. When it appears from a review of the proposal before award
460 that a mistake has been made, the offeror may be asked to confirm the proposal. Situations in which
461 confirmation may be requested include obvious, apparent errors on the face of the proposal or a
462 proposal amount that is substantially lower than the other proposals submitted. If the offeror alleges
463 mistake, the proposal may be corrected or withdrawn as provided for in this section.

464 (c) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as
465 provided in this section, shall be treated as they are under Subsection R23-1-5(10)(c).

466 (c) Mistakes discovered after award. Offeror shall be bound to all terms, conditions and
467 statements in offeror's proposal after award of the contract.

468 (15) Award.

469 (a) Award Documentation. A written determination shall be made showing the basis on
470 which the award was found to be most advantageous to the state based on the evaluation factors set
471 forth in the Request for Proposals. This requirement may be satisfied through documentation of a
472 scoring of the proposals based on the evaluation factors and associated points as identified in the
473 Request for Proposals.

474 (b) One proposal received. If only one proposal is received in response to a Request for
475 Proposals, the Director may, as he deems appropriate, make an award or resolicit for the purpose of
476 obtaining additional competitive sealed proposals.

477 (16) Publicizing Awards. After a contract is entered into, notice of award shall be available
478 in the principal office of the Division in Salt Lake City, Utah.

479
480 **R23-1-17. Bids Over Budget.**

481 (1) In the event all bids for a construction project exceed available funds as certified by the
482 appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by
483 more than 5%, the Director may, where time or economic considerations preclude resolicitation of
484 work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid
485 requirements, with the low responsive and responsible bidder in order to bring the bid within the
486 amount of available funds.

487 (2) As an alternative to the procedure authorized in Subsection (1), when all bids for a
488 construction project exceed available funds as certified by the Director, and the Director finds that
489 due to time or economic considerations the re-solicitation of a reduced scope of work would not be
490 in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the
491 following methods:

492 (a) reducing the scope of work in specific subcontract areas and supervising the re-bid of
493 those subcontracts by the low responsive and responsible bidder;

494 (b) negotiating with the low responsive and responsible bidder for a reduction in scope and
495 cost with the value of those reductions validated in accordance with Section R23-1-50; or

496 (c) revising the contract documents and soliciting new bids only from bidders who submitted
497 a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response
498 time than otherwise required.

499 (3) The use of one of the alternative procedures provided for in this subsection (2) must
500 provide for the fair and equitable treatment of bidders.

501 (4) The Director's written determination, including a brief explanation of the basis for the
502 decision shall be included in the contact file.

503 (5) This section does not restrict in any way, the right of the Director to use any emergency
504 or sole source procurement provisions, or any other applicable provisions of State law or rule which
505 may be used to award the construction project.
506

507 **R23-1-20. Small Purchases.**

508 (1) Procurements of \$50,000 or Less.

509 (a) The Director may make procurements of construction estimated to cost \$50,000 or less
510 by soliciting at least two firms to submit written quotations. The award shall be made to the ~~[person]~~
511 firm offering the lowest acceptable quotation.

512 (b) The names of the persons submitting quotations and the date and amount of each
513 quotation shall be recorded and maintained as a public record by the Division.

514 (c) If the Director determines that other factors in addition to cost should be considered in a
515 procurement of construction estimated to cost \$50,000 or less, the Director shall solicit proposals
516 from at least two firms. The award shall be made to the firm offering the best proposal as
517 determined through application of the procedures provided for in Section R23-1-15 except that a
518 public notice is not required and only invited firms may submit proposals.

519 (2) Procurements of \$5,000 or Less. The Director may make small purchases of
520 construction of \$5,000 or less in any manner that he shall deem to be adequate and reasonable.

521 (3) Division of Procurements. Procurements shall not be divided in order to qualify for the
522 procedures outlined in this section.
523

524 **R23-1-25. Sole Source Procurement.**

525 (1) Conditions for Use of Sole Source Procurement.

526 The procedures concerning sole source procurement in this Section may be used if, in the
527 discretion of the Director, a requirement is reasonably available only from a single source.
528 Examples of circumstances which could also necessitate sole source procurement are:

529 (a) where the compatibility of product design, equipment, accessories, or replacement parts
530 is the paramount consideration;

531 (b) where a sole supplier's item is needed for trial use or testing;

532 (c) procurement of public utility services;

533 (d) when it is a condition of a donation that will fund the full cost of the supply, material,
534 equipment, service, or construction item.

535 (2) Written Determination. The determination as to whether a procurement shall be made as
536 a sole source shall be made by the Director in writing and may cover more than one procurement. In
537 cases of reasonable doubt, competition shall be solicited.

538 (3) Negotiation in Sole Source Procurement. The Director shall negotiate with the sole
539 source vendor for considerations of price, delivery, and other terms.
540

541 **R23-1-30. Emergency Procurements.**

542 (1) Application. This section shall apply to every procurement of construction made under
543 emergency conditions that will not permit other source selection methods to be used.

544 (2) Definition of Emergency Conditions. An emergency condition is a situation which
545 creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics,
546 riots, natural disasters, wars, destruction of property, building or equipment failures, or any
547 emergency proclaimed by governmental authorities.

548 (3) Scope of Emergency Procurements. Emergency procurements shall be limited to only
549 those construction items necessary to meet the emergency.

550 (4) Authority to Make Emergency Procurements.

551 (a) The Division makes emergency procurements of construction when, in the Director's
552 determination, an emergency condition exists or will exist and the need cannot be met through other
553 procurement methods.

554 (b) The procurement process shall be considered unsuccessful when all bids or proposals
555 received pursuant to an Invitation For Bids or Request For Proposals are nonresponsive,
556 unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer,
557 and time or other circumstances will not permit the delay required to resolicit competitive sealed
558 bids or proposals. If emergency conditions exist after or are brought about by an unsuccessful
559 procurement process, an emergency procurement may be made.

560 (5) Source Selection Methods. The source selection method used for emergency
561 procurement shall be selected by the Director with a view to assuring that the required services of
562 construction items are procured in time to meet the emergency. Given this constraint, as much
563 competition as the Director determines to be practicable shall be obtained.

564 (6) Specifications. The Director may use any appropriate specifications without being
565 subject to the requirements of Section R23-1-55.

566 (7) Required Construction Contract Clauses. The Director may modify or not use the
567 construction contract clauses otherwise required by Section R23-1-60.

568 (8) Written Determination. The Director shall make a written determination stating the basis
569 for each emergency procurement and for the selection of the particular source. This determination
570 shall be included in the project file.

571

572 **R23-1-35. Qualifications of Contractors.**

573 (1) Project Specific Requirements. The Division may include qualification requirements in
574 the bidding documents as appropriate for that specific project.

575

576 **R23-1-40. Acceptable Bid Security; Performance and Payment Bonds.**

577 (1) Application. This section shall govern bonding and bid security requirements for the
578 award of construction contracts by the Division in excess of \$50,000; although the Division may
579 require acceptable bid security and performance and payment bonds on smaller contracts. Bidding
580 Documents shall state whether acceptable bid security, performance bonds or payment bonds are
581 required.

582 (2) Acceptable Bid Security.

583 (a) Invitations for Bids and Requests For Proposals shall require the submission of
584 acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is
585 submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be

586 deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

587 (b) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive,
588 unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an
589 acceptable bid security may be deemed nonsubstantial if:

590 (i)(A) the bid security is submitted on a form other than the Division's required bid bond
591 form and the bid security meets all other requirements including being issued by a surety meeting
592 the requirements of Subsection (5); and

593 (B) the contractor provides acceptable bid security by the close of business of the next
594 succeeding business day after the Division notified the contractor of the defective bid security; or

595 (ii) only one bid is received.

596 (3) Payment and Performance Bonds. Payment and performance bonds in the amount of
597 100% of the contract price are required for all contracts in excess of \$50,000. These bonds shall
598 cover the procuring agencies and be delivered by the contractor to the Division at the same time the
599 contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be
600 found nonresponsive and its bid security shall be forfeited.

601 (4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from
602 sureties meeting the requirements of Subsection (5) and must be on the exact bond forms most
603 recently adopted by the Board and on file with the Division.

604 (5) Surety firm requirements. All surety firms must be authorized to do business in the State
605 of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding
606 Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring
607 Companies for an amount not less than the amount of the bond to be issued. A cosurety may be
608 utilized to satisfy this requirement.

609 (6) Waiver. The Director may waive the bonding requirement if the Director finds, in
610 writing, that bonds cannot be reasonably obtained for the work involved.

611

612 **R23-1-45. Methods of Construction Contract Management.**

613 (1) Application. This section contains provisions applicable to the selection of the
614 appropriate type of construction contract management.

615 (2) Flexibility. The Director shall have sufficient flexibility in formulating the construction
616 contract management method for a particular project to fulfill the needs of the procuring agencies.
617 In each instance consideration commensurate with the project's size and importance should be given
618 to all the appropriate and effective means of obtaining both the design and construction of the
619 project. The methods for achieving the purposes set forth in this rule are not to be construed as an
620 exclusive list.

621 (3) Selecting the Method of Construction Contracting. In selecting the construction
622 contracting method, the Director shall consider the results achieved on similar projects in the past,
623 the methods used, and other appropriate and effective methods and how they might be adapted or
624 combined to fulfill the needs of the procuring agencies. The use of the ~~[single prime contractor]~~
625 design-bid-build method ~~[in conjunction with the sequential design and construction approach]~~ is an
626 appropriate contracting method for the majority of construction contracts entered into by the
627 Division with a cost equal to or less than \$1,500,000 and the construction manager/general
628 contractor method is an appropriate contracting method for the majority of construction contracts
629 entered into by the Division with a cost greater than \$1,500,000. The Director shall include a
630 statement in the project file setting forth the basis for using any ~~other~~ construction contracting

631 method other than those suggested in the preceding sentence.

632 (4) Criteria for Selecting Construction Contracting Methods. Before choosing the
633 construction contracting method to use, the Director shall consider the factors outlined in Subsection
634 63-56-36(1)(c).

635 (5) General Descriptions.

636 (a) Application of Descriptions. The following descriptions are provided for the more
637 common contracting methods. The methods described are not all mutually exclusive and may be
638 combined on a project. These descriptions are not intended to be fixed for all construction projects
639 of the State. In each project, these descriptions may be adapted to fit the circumstances of that
640 project.

641 (b) [~~Single Prime Contractor. The single prime contractor~~] Design-Bid-Build. The design-
642 bid-build method is typified by one business, acting as a general contractor, contracting with the
643 state to complete [~~an entire~~] a construction project in accordance with drawings and specifications
644 provided by the state within a defined time period. Generally the drawings and specifications are
645 prepared by an architectural or engineering firm under contract with the state. Further, while the
646 general contractor may take responsibility for successful completion of the project, much of the
647 work may be performed by specialty contractors with whom the prime contractor has entered into
648 subcontracts.

649 (c) [~~Multiple Prime Contractors. Under the multiple prime contractor method, the Division~~
650 ~~contracts directly with a number of specialty contractors to complete portions of the project in~~
651 ~~accordance with the Division's drawings and specifications. The Division may have primary~~
652 ~~responsibility for successful completion of the entire project, or the contracts may provide that one~~
653 ~~of the multiple prime contractors has this responsibility.~~

654 (d) Design-Build. In a design-build project, a business contracts directly with the Division
655 to meet requirements described in a set of performance specifications. The design-build contractor is
656 responsible for both design and construction. This method can include instances where the design-
657 build contractor supplies the site as part of the package.

658 (e) Construction Manager/General Contractor. A construction manager/general contractor is
659 a [~~person~~] firm experienced in construction that [~~has the ability~~] provides professional services to
660 evaluate and to implement drawings and specifications as they affect time, cost, and quality of
661 construction and the ability to coordinate the construction of the project, including the administration
662 of change orders. The Division may contract with the construction manager/general contractor early
663 in a project to assist in the development of a cost effective design. The construction
664 manager/general contractor will generally become the general contractor for the project and procure
665 subcontract work at a later date. [~~may become the single prime contractor, or may guarantee that the~~
666 ~~project will be completed on time and will not exceed a specified maximum price. This method is~~
667 ~~frequently used on fast track projects with the construction manager obtaining subcontractors~~
668 ~~through the issuance of multiple bid packages as the design is developed. A Construction Manager,~~
669 ~~including a Construction Manager/General Contractor, shall be selected using one of the source~~
670 ~~selection methods provided for in Sections 63-56-20 through 63-56-35.8.] The procurement of a
671 construction manager/general contractor may be based, among other criteria, on proposals for a
672 management fee which is either a lump sum or a percentage of construction costs with a guaranteed
673 maximum cost. If the design is sufficiently developed prior to the selection of a construction
674 manager/general contractor, the procurement may be based on proposals for a lump sum or
675 guaranteed maximum cost for the construction of the project. The contract with the construction~~

676 manager/general contractor may provide for a sharing of any savings which are achieved below the
677 guaranteed maximum cost. When entering into any subcontract that was not specifically included in
678 the Construction Manager/General Contractor's cost proposal submitted in the original procurement
679 of the Construction Manager/General Contractor's services, the Construction Manager/General
680 Contractor shall procure that subcontractor by using one of the source selection methods provided
681 for in Sections 63-56-20 through 63-56-35.8 in [~~the same~~] a similar manner as if the subcontract
682 work was procured directly by the Division.

683 [~~(f) Sequential Design and Construction. Sequential design and construction denotes a~~
684 ~~method in which design of substantially the entire structure is completed prior to beginning the~~
685 ~~construction process.~~

686 [~~(g) Phased Design and Construction. Phased design and construction denotes a method in~~
687 ~~which construction is begun when appropriate portions have been designed but before design of the~~
688 ~~entire structure has been completed. This method is also known as fast track construction.]~~

689

690 **R23-1-50. Cost or Pricing Data and Analysis; Audits.**

691 (1) Applicability. Cost or pricing data shall be required when negotiating contracts and
692 adjustments to contracts if:

693 (a) adequate price competition is not obtained as provided in Subsection (2); and

694 (b) the amounts set forth in Subsection (3) are exceeded.

695 (2) Adequate Price Competition. Adequate price competition is achieved for portions of
696 contracts or entire contracts when one of the following is met:

697 (a) When a contract is awarded based on competitive sealed bidding;

698 (b) When a contractor is selected from competitive sealed proposals and cost was one of the
699 selection criteria;

700 (c) For that portion of a contract that is for a lump sum amount or a fixed percentage of other
701 costs when the contractor was selected from competitive sealed proposals and the cost of the lump
702 sum or percentage amount was one of the selection criteria;

703 (d) For that portion of a contract for which adequate price competition was not otherwise
704 obtained when competitive bids were obtained and documented by either the Division or the
705 contractor;

706 (e) When costs are based upon established catalogue or market prices;

707 (f) When costs are set by law or rule;

708 (g) When the Director makes a written determination that other circumstances have resulted
709 in adequate price competition.

710 (3) Amounts. This section does not apply to:

711 (a) Contracts or portions of contracts costing less than \$100,000, and

712 (b) Change orders and other price adjustments of less than \$25,000.

713 (4) Other Applications. The Director may apply the requirements of this section to any
714 contract or price adjustment when he determines that it would be in the best interest of the state.

715 (5) Submission of Cost or Pricing Data and Certification. When cost or pricing data is
716 required, the data shall be submitted prior to beginning price negotiation. The offeror or contractor
717 shall keep the data current throughout the negotiations certify as soon as practicable after agreement
718 is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a
719 mutually determined date.

720 (6) Refusal to Submit. If the offeror refuses to submit the required data, the Director shall

721 determine in writing whether to disqualify the noncomplying offeror, to defer award pending further
722 investigation, or to enter into the contract. If a contractor refuses to submit the required data to
723 support a price adjustment, the Director shall determine in writing whether to further investigate the
724 price adjustment, to not allow any price adjustment, or to set the amount of the price adjustment.

725 (7) Defective Cost or Pricing Data. If certified cost or pricing data are subsequently found
726 to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the
727 Division shall be entitled to an adjustment of the contract price to exclude any significant sum,
728 including profit or fee, to the extent the contract sum was increased because of the defective data. It
729 is assumed that overstated cost or pricing data increased the contract price in the amount of the
730 defect plus related overhead and profit or fee; therefore, unless there is a clear indication that the
731 defective data were not used or relied upon, the price should be reduced by this amount. In
732 establishing that the defective data caused an increase in the contract price, the Director shall not be
733 required to reconstruct the negotiation by speculating as to what would have been the mental
734 attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on
735 price.

736 (8) Audit. The Director may, at his discretion, and at reasonable times and places, audit or
737 cause to be audited the books and records of a contractor, prospective contractor, subcontractor, or
738 prospective subcontractor which are related to the cost or pricing data submitted.

739 (9) Retention of Books and Records. Any contractor who receives a contract or price
740 adjustment for which cost or pricing data is required shall maintain all books and records that relate
741 to the cost or pricing data for three years from the date of final payment under the contract. This
742 requirement shall also extend to any subcontractors of the contractor.

743
744 **R23-1-55. Specifications.**

745 (1) General Provisions.

746 (a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply or
747 construction item adequate and suitable for the procuring agencies' needs and the requirements of the
748 project, in a cost-effective manner, taking into account, the costs of ownership and operation as well
749 as initial acquisition costs. Specifications shall permit maximum practicable competition consistent
750 with this purpose. Specifications shall be drafted with the objective of clearly describing the
751 procuring agencies' requirements.

752 (b) Preference for Commercially Available Products. Recognized, commercially-available
753 products shall be procured wherever practicable. In developing specifications, accepted commercial
754 standards shall be used and unique products shall be avoided, to the extent practicable.

755 (c) Nonrestrictiveness Requirements. All specifications shall be written in such a manner as
756 to describe the requirements to be met, without having the effect of exclusively requiring a
757 proprietary supply, or construction item, or procurement from a sole source, unless no other manner
758 of description will suffice. In that event, a written determination shall be made that it is not
759 practicable to use a less restrictive specification.

760 (2) Director's Responsibilities.

761 (a) The Director is responsible for the preparation of all specifications.

762 (b) The Division may enter into contracts with others to prepare construction specifications
763 when there will not be a substantial conflict of interest. The Director shall retain the authority to
764 approve all specifications.

765 (c) Whenever specifications are prepared by persons other than Division personnel, the

766 contract for the preparation of specifications shall require the specification writer to adhere to the
767 requirements of this section.

768 (3) Types of Specifications. The Director may use any method of specifying construction
769 items which he considers to be in the best interest of the state including the following:

770 (a) By a performance specification stating the results to be achieved with the contractor
771 choosing the means.

772 (b) By a prescriptive specification describing a means for achieving desired, but normally
773 unstated, ends. Prescriptive specifications include the following:

774 (i) Descriptive specifications, providing a detailed written description of the required
775 properties of a product and the workmanship required to fabricate, erect and install without using
776 trade names; or

777 (ii) Proprietary specifications, identifying the desired product by using manufacturers, brand
778 names, model or type designation or important characteristics. This is further divided into two
779 classes:

780 (A) Sole Source, where a rigid standard is specified and there are no allowed substitutions
781 due to the nature of the conditions to be met. This may only be used when very restrictive standards
782 are necessary and there is only one proprietary product known that will meet the rigid standards
783 needed. A sole source proprietary specification must be approved by the Director.

784 (B) Or Equal, which allows substitutions if properly approved.

785 (c) By a reference standard specification where documents or publications are incorporated
786 by reference as though included in their entirety.

787 (d) By a nonrestrictive specification which may describe elements of prescriptive or
788 performance specifications, or both, in order to describe the end result, thereby giving the contractor
789 latitude in methods, materials, delivery, conditions, cost or other characteristics or considerations to
790 be satisfied.

791 (4) Procedures for the Development of Specifications.

792 (a) Specifications may designate alternate supplies or construction items where two or more
793 design, functional, or proprietary performance criteria will satisfactorily meet the procuring
794 agencies' requirements.

795 (b) The specification shall contain a nontechnical section to include any solicitation or
796 contract term or condition such as a requirement for the time and place of bid opening, time of
797 delivery, payment, liquidated damages, and similar contract matters.

798 (c) Use of Proprietary Specifications.

799 (i) The Director shall seek to designate three brands as a standard reference and shall state
800 that substantially equivalent products to those designated will be considered for award, with
801 particular conditions of approval being described in the specification.

802 (ii) Unless the Director determines that the essential characteristics of the brand names
803 included in the proprietary specifications are commonly known in the industry or trade, proprietary
804 specifications shall include a description of the particular design, functional, or performance
805 characteristics which are required.

806 (iii) Where a proprietary specification is used in a solicitation, the solicitation shall contain
807 explanatory language that the use of a brand name is for the purpose of describing the standard of
808 quality, performance, and characteristics desired and is not intended to limit or restrict competition.

809 (iv) The Division shall solicit sources to achieve whatever degree of competition is
810 practicable. If only one source can supply the requirement, the procurement shall be made in

811 accordance with Section R23-1-25.

812

813 **R23-1-60. Construction Contract Clauses.**

814 (1) Required Contract Clauses. Pursuant to Section 63-56-40, the document entitled
815 "Required Construction Contract Clauses", dated January 28, 2002 and on file with the Division, is
816 hereby incorporated by reference. Except as provided in Subsections R23-1-30(7) and R23-1-60(2),
817 the Division shall include these clauses in all construction contracts for more than \$50,000.

818 (2) Revisions to Contract Clauses. The clauses required by this section may be modified for
819 use in any particular contract when, pursuant to Subsection 63-56-40(5), the Director makes a
820 written determination describing the circumstances justifying the variation or variations. Notice of
821 any material variations from the contract clauses required by this section shall be included in any
822 invitation for bids or request for proposals.

823

824 **KEY: contracts, public buildings, procurement**

825 **May 3, 2002**

826 **Notice of Continuation June 6, 2002**

827

828

829

830

63A-5-103 et seq.

63-56-14(2)

63-56-20(7)

**Proposed Amendments
January 23, 2004**

R23. Administrative Services, Facilities Construction and Management.

R23-2. Procurement of Architect-Engineer Services.

R23-2-1. Purpose and Authority.

(1) In accordance with Subsection 63-56-14(2), this rule establishes procedures for the procurement of architect-engineer services by the Division.

(2) The statutory provisions governing the procurement of architect-engineer services by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-2-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63-56-5.

(2) The following additional terms are defined for this rule.

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Public Notice" means the notice that is publicized pursuant to this rule to notify architects and engineers of Solicitations.

(e) "Solicitations" means all documents, whether attached or incorporated by reference, used for soliciting information from architects and engineers seeking to provide architect-engineer services to the Division.

(f) "State" means the State of Utah.

(g) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

R23-2-3. Register of Architectural/Engineering Firms.

(1) Architects and engineers interested in being considered for architect-engineer services procured by the Division under Section R23-2-19 may submit an annual statement of qualifications and performance data.

(2) The Division shall maintain a file of information submitted under Subsection (1).

(3) Except for services procured under Sections R23-2-17 and R23-2-19, an updated or project specific statement of qualifications shall generally be required in order to be considered in procurements of services for a specific project as provided in the solicitation.

R23-2-4. Public Notice of Solicitations.

The Division shall publicize its needs for architect-engineer services in the manner provided in Subsection R23-1-5(2). The public notice shall include:

(1) the closing time and date by which the first submittal of information is required;

(2) directions for obtaining the solicitation;

(3) a brief description of the project; and

46 (4) notice of any mandatory pre-submittal meetings.
47

48 **R23-2-5. Submittal Preparation Time.**

49 Submittal preparation time is the period of time between the date of first publication of the
50 public notice, and the date and time set for the receipt of submittals by the Division. In each case,
51 the submittal preparation time shall be set to provide architects and engineers a reasonable time to
52 prepare their submittals. The time between the first publication of the public notice and the earlier
53 of the first required submittal of information or any mandatory meeting shall be not less than ten
54 calendar days, unless a shorter time is deemed necessary for a particular procurement as determined,
55 in writing, by the Director.
56

57 **R23-2-6. Form of Submittal.**

58 The solicitation may provide for or limit the form of submittals, including any forms for that
59 purpose.
60

61 **R23-2-7. Addenda to Solicitations.**

62 Addenda to the solicitation may be made in the same manner provided for addenda to the
63 bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except
64 that addenda may be issued until the selection of an architect or engineer is completed.
65

66 **R23-2-8. Modification or Withdrawal of Submittals.**

- 67 (1) Submittals may be modified prior to the due dates established in the solicitation.
68 (2) Architects and engineers may withdraw from consideration until a contract is executed.
69

70 **R23-2-9. Late Proposals and Late Modifications.**

71 Except for modifications allowed pursuant to negotiation, any proposal or modification
72 received at the location designated for receipt of submittals after the due dates established in the
73 Solicitation shall be deemed to be late and shall not be considered unless no other submittals are
74 received.
75

76 **R23-2-10. Receipt and Registration of Submittals.**

77 After the date established for the first submittal of information, a register of submitting
78 architects and engineers shall be prepared and open to public inspection. Prior to award, proposals
79 and modifications shall be shown only to procurement officials and other persons involved with the
80 review and selection process.
81

82 **R23-2-11. Disclosure of Contents of Submittals and References.**

83 (1) Except as provided in this rule, submittals of the successful architect or engineer shall be
84 open to public inspection after award of the contract. Submittals of architects and engineers who are
85 not awarded contracts shall not be open to public inspection.

86 (2) The Solicitation may provide that certain information required to be submitted by the
87 offeror shall be considered confidential and classified as protected if such information meets the
88 provisions of Section 63-2-304 of the Government Records Access and Management Act.

89 (3) If the architect or engineer selected for award has requested in writing the non-disclosure
90 of trade secrets and other proprietary data so identified, the Director shall examine the request to

91 determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of
92 data in the contract, the Director shall inform the architect or engineer in writing what portion of the
93 proposal will be disclosed and that, unless the architect or engineer withdraws the submittal, it will
94 be disclosed.

95 (4) The Board finds that it is necessary to maintain the confidentiality of ~~[individual~~
96 ~~responses from persons who are contacted as references]~~ past performance and reference information
97 in order to avoid competitive injury and to encourage those persons providing the information to
98 respond in an open and honest manner without fear of retribution. Accordingly, ~~[responses to~~
99 ~~requests for references are]~~ records containing past performance and reference information are
100 classified as protected records under the provisions of Subsection 63-2-304(2) and (6) and shall be
101 disclosed only ~~[in summary form]~~ to those persons involved with the performance evaluation, the
102 architect-engineer that the information addresses and persons involved with the review and selection
103 of [process] submittals. The Division may, however, provide reference information to other
104 governmental entities for use in their procurement activities and to other parties when requested by
105 the architect-engineer that is the subject of the information. ~~[This Subsection (4) applies only to~~
106 ~~responses from references submitted by the architect or engineer.]~~

107
108 **R23-2-12. Selection Committee.**

109 (1) The Board delegates to the director the authority to appoint a selection committee which
110 may include representatives of the Board, the Division, the using agency, and architects, engineers
111 and others of the general public.

112 (2) Each member of the selection committee shall certify as to his lack of conflicts of
113 interest.

114
115 **R23-2-13. Evaluation and Ranking.**

116 (1) The selection committee shall evaluate the relative competence and qualifications of
117 architects and engineers who submit the required information.

118 (2) The evaluation shall be based on evaluation factors set forth in the solicitation and may
119 include:

120 (a) past performance and references;

121 (b) ~~[references]~~ qualifications and experience of the firm and key individuals;

122 (c) plans for managing and avoiding project risks;

123 (d) interviews; and

124 (e) other factors that indicate the relevant competence and qualifications of the ~~[architect or~~
125 ~~engineer]~~ architect-engineer and the architect-engineer's ability to satisfactorily provide the desired
126 services.

127 (3) The evaluation may be conducted in two phases with the first phase identifying no less
128 than the top three ranked firms to be evaluated further in the second phase unless less than three
129 firms are competing for the contract.

130 (4) Numerical rating systems may be used but are not required.

131 (5) The evaluation committee shall rank at least the top three firms. Notice of the selection
132 results shall be provided to each firm competing for the contract.

133
134 **R23-2-14. Negotiation and Appointment.**

135 The Director shall conduct negotiations as provided for in Section 63-56-44 until an

136 agreement is reached.

137

138 **R23-2-15. Role of the Board.**

139 (1) The Board has the responsibility to establish and monitor the selection process. It must
140 verify the acceptability of the procedure and make changes in procedure as determined necessary by
141 the Board.

142 (2) At each regular meeting of the Board, the Division shall submit a list of all
143 architect/engineer contracts entered into since its previous report and the method of selection used.
144 This shall be for the information of the Board.

145

146 **R23-2-16. Performance Evaluation.**

147 (1) The ~~[using agency and staff from the]~~ Division shall evaluate the performance of the
148 architectural/engineering firm and shall provide an opportunity for the using agency to comment on
149 the Division's evaluation.

150 (2) This rating shall become a part of the record of that architectural/engineering firm within
151 the Division. The architectural/engineering firm shall be apprised in writing of ~~[their]~~ its
152 performance rating at the end of the project and may enter ~~[their]~~ its response in the file.

153 (3) Confidentiality of the evaluation information shall be addressed as provided in
154 Subsection R23-2-(4).

155

156 **R23-2-17. Emergency Conditions.**

157 The Director, in consultation with the chairman of the Board, shall determine if emergency
158 conditions exist and document his decision in writing. The Director may use any reasonable method
159 of awarding contracts for architect-engineer services in emergency conditions.

160

161 **R23-2-18. Direct Awards.**

162 (1) The Director may award a contract to an architectural/engineering firm without
163 following the procedures of this rule if:

164 (a) The contract is for a project which is integrally related to, or an extension of, a project
165 which was previously awarded to the architectural/engineering firm;

166 (b) The architectural/engineering firm performed satisfactorily on the related project; and

167 (c) The Director determines that the direct award is in the best interests of the State.

168 (2) The Director shall place written documentation of the reasons for the direct award in the
169 project file and shall report the action to the Board at its next meeting.

170

171 **R23-2-19. Small Purchases.**

172 (1) If the Director determines that the services of architects and engineers can be procured
173 for less than \$50,000, or if the estimated construction cost of the project is less than \$500,000, the
174 procedures contained in Subsection (2) may be used.

175 (2) The Director shall select a qualified firm and attempt to negotiate a contract for the
176 required services at a fair and reasonable price. The qualified firm may be, but is not required to be,
177 selected from the register of architectural and engineering firms provided for in Section R23-2-3. If,
178 after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is
179 fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with

180 another qualified firm. This process shall continue until a contract is negotiated at a fair and
181 reasonable price.

182

183 **R23-2-20. Alternative Procedures.**

184 (1) The Division may enhance the process whenever the Director determines that it would be
185 in the best interest of the state. This may include the use of a design competition.

186 (2) Any exceptions to this rule must be justified to and approved by the Board.

187 (3) Regardless of the process used, the using agency shall be involved jointly with the
188 Division in the selection process.

189

190 **KEY: procurement*, architects, engineers**

191 **September 15, 2001**

63A-5-103 et seq.

192 **Notice of Continuation May 4, 2000**

63-56-14(2)

193

194

195



Olene S. Walker
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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: Amendment to Rule R23-3, Planning and Programming for Capital Projects

Recommendation:

DFCM recommends that the Board review and, if satisfied, approve the proposed amendments to Rule R23-3, Planning and Programming for Capital Projects.

Background:

Rule R23-3 currently prohibits a firm that provides programming services for a project from being considered for the design of that project. Concerns with this restriction were raised by architects and engineers in the recent review of DFCM's procedures for the procurement of architects and engineers.

DFCM concurred that the current policy is overly restrictive and agreed that any restriction should be addressed on a project specific basis. This will provide greater flexibility in obtaining the best services available.

An exception to this general policy is a continuation of the prohibition when the design-build method is expected to be used. This exception is proposed due to the substantial advantage that a programming firm can bring to a design-build team due to its involvement on the project and access to key decision makers.

These changes would be accomplished through the amendments proposed in the attached version of the rule.

FKS:KEN:sll

Attachment

Proposed Amendments
January 23, 2004

R23. Administrative Services, Facilities Construction and Management.

R23-3. Planning and Programming for Capital Projects.

R23-3-1. Purpose and Authority.

- (1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital development and capital improvement projects and the use and administration of the Planning Fund.
- (2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.
- (3) The statutes governing the Planning Fund are contained in Section 63A-5-211.
- (4) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

R23-3-2. Definitions.

- (1) "Agency" means each department, agency, institution, commission, board, or other administrative unit of the State of Utah.
- (2) "Board" means the State Building Board established pursuant to Section 63A-5-101.
- (3) "Capital Development" is defined in Section 63A-5-104.
- (4) "Capital Improvement" is defined in Section 63A-5-104.
- (5) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.
- (6) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.
- (7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.
- (8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.
 - (a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.
 - (b) "Program" does not mean feasibility studies, building evaluations, master plans, or general project descriptions prepared for purposes of soliciting funding through donations or grants.

R23-3-3. When Programs Are Required.

- (1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.
- (2) For capital improvement projects, the Director shall determine whether the nature of the project requires that a program be prepared.

R23-3-4. Authorization of Programs.

- (1) The initiation of a program for a capital development project must be approved by the Legislature or the Board if it is anticipated that state funds will be requested for the design or construction of the project.
- (2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

R23-3-5. Funding of Programs

Programs may be funded from one of the following sources.

- (1) Funds appropriated for that purpose by the Legislature.
- (2) Funds provided by the agency.
 - (a) This would typically be the funding source for the development of programs before the Legislature funds the project.
 - (b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.
 - (c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.
- (3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

R23-3-6. Administration of Programming.

- (1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.
- (2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

R23-3-7. Restrictions of Programming Firm.

- ~~[(1) A firm that prepares a program for a project may not be selected as the lead design firm or be a subconsultant to the lead design firm or contractor of that project.~~
- ~~(2) The restriction contained in subsection (1) does not apply to:~~
- ~~(a) a subconsultant to the firm preparing the program unless the procurement documents for the selection of the programming firm state otherwise;~~
 - ~~(b) a single selection of a firm to provide both the programming and design services for a project;~~
 - ~~(c) the selection of a design firm if the scope and cost of the design services are small enough to be procured under the small purchase of architect/engineer services contained in Section R23-2-19;~~
 - ~~(d) firms entering into contracts for programming services prior to the effective date of this rule in which case the programming firm will be subject to any restrictions contained in the solicitation or contract for those programming services; or~~

~~(e) projects where the Director makes a determination that it is in the best interests of the State to waive the requirements of this Section.]~~

- (1) Except as provided in Subsections 2 and 3, neither a firm that prepares a program for a project nor its subconsultants may be prohibited from being considered for selection as the lead design firm or a member of the design team for that project unless the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services contains such a restriction.
- (2) In general, a firm that prepares a program for a project that is expected to be developed using the design-build method described in Section R23-1-45 may not be a member of the design-build team for that project. In order for this restriction to take effect, this restriction must be stated in the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services. This restriction shall not apply to a subconsultant of the programming firm unless the procurement documents contain such a restriction.
- (3) A restriction, as provided for in this Section may be waived if the Director makes a written determination that it is in the best interests of the State to waive this requirement.

R23-3-8. Use and Reimbursement of Planning Fund.

- (1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:
 - (a) facility master plans;
 - (b) programs; and
 - (c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.
- (2) Expenditures from the Planning Fund must be approved by the Director.
- (3) Expenditures in excess of \$25,000 for a single planning or programming purpose must also be approved in advance by the Board.
- (4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning Fund.
- (5) The Division shall report changes in the status of the Planning Fund to the Board.

R23-3-9. Development and Approval of Master Plans.

- (1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.
- (2) The purpose of the master plan is to encourage long term planning and to guide future development.
- (3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.
- (4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.



Olene S. Walker
Governor

Utah State Building Board

4110 State Office Building
Salt Lake City, Utah 84114
Phone (801) 538-3018
Fax (801) 538-3267

MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **Delegation to USU for Brigham City Campus Remodel**

Recommendation:

DFCM recommends that the Board approve the delegation of this project to Utah State University as requested in the attached letter dated January 9, 2004 with the following additional conditions: (1) the plans and specifications be approved by DFCM prior to the commencement of construction and (2) DFCM's building official oversee the compliance with building code requirements in a manner similar to projects managed by DFCM.

Background:

This remodeling project has been discussed in the last two Board meetings as part of the discussion of the master plan for the state campus in Brigham City. In the January meeting, the Board authorized \$300,000 of capital improvement funds for remodeling needs at this campus. Approximately \$50,000 of this allocation will be used to incorporate two classrooms currently used by USU into the space used by the Driver License Division. It is anticipated that DFCM will manage this project. The remaining \$250,000 of capital improvement funds will be combined with USU funds for the project that is the subject of this delegation request.

If this project were occurring on an USU-owned campus, the administration of the project would be automatically delegated to USU under the across-the-board delegation that the Board approved several years ago. This project does not fall under that delegation authority because it is occurring on a campus owned by DFCM. DFCM does not see any reason why USU should not be allowed to manage the project.

The two conditions noted above are recommended by DFCM due to the unique circumstance of USU managing a project in a campus for which DFCM has ownership and general responsibility.

FKS:KEN:sll

Attachment



OFFICE OF THE VICE PRESIDENT
FOR ADMINISTRATIVE SERVICES
1445 Old Main Hill
Logan UT 84322-1445
(435) 797-1146
FAX: (435) 797-0710

9 January 2004

F. Keith Stepan, Director
Division of Facilities Construction
and Management
4110 State Office Building
Salt Lake City, UT 84114

Dear Keith:

SUBJECT: Delegation Request – USU Brigham City Campus Additional Space Renovation

Utah State University requests delegation for the design and renovation of up to 15,000 square feet of educational space at the Brigham City Campus (former Fred Meyer property). A portion of the unused space in the Fred Meyer Building will be renovated to be used as classrooms, restrooms, and student commons area. The space will be used year round to help meet the educational needs of the continuing higher education students served by USU Brigham City. Currently USU occupies approximately 22,000 square feet of space at the Brigham City Campus. Due to high rates of growth in enrollment over the past five years and projected continuing high rates of enrollment, it is no longer possible to effectively meet the requirements of the students. Since the Brigham City facility is managed by DFCM, delegation to USU is needed. Justification for the delegation request is as follows:

REQUIREMENTS FOR DELEGATION

- A. SCOPE – The project consists of designing and constructing ADA approved restroom facilities for both male and female students, eight to twelve classrooms for face-to-face instruction, and the related commons areas associated with a student population. This will leave approximately 15,000 square feet of undeveloped space within the Fred Meyer building for future expansion.
- B. EFFICIENCY – The project will be managed by USU Facilities Design and Construction Office. The staff includes licensed architects and engineers. No additional staff will be required.
- C. SIZE OF PROJECT – The total project budget will not exceed \$450,000.
- D. DEMONSTRATED BENEFITS – The main benefit to delegation of this project will be the efficiency of dealing with individuals who have already been deeply involved in the economic and technical aspects of this type of renovation.

- E. CAPABILITY TO ADMINISTER THE PROJECT – Past performance on delegated projects has produced excellent quality projects and a good working relationship with the user, consultants, and contractor. Facilities personnel have developed an understanding of DFCM and Building Board concerns. Since the project will be relatively small, the amount of coordination necessary may be more difficult if administered from Salt Lake City.

QUALIFICATION CRITERIA

A. PROJECT MANAGEMENT

1. The project manager will be Stanley Kane AIA, RIBA. Stanley has been a project manager with Utah State University for 11 years. He is a licensed architect and certified building inspector, and he has 25 years experience in design and construction.
2. The project management will be traditional with monthly reporting to DFCM and the Building Board.
3. Design Criteria – The unusual nature of designing and incorporating additional educational space into the existing facilities and the complexity of the number of players will necessitate a lot of on site coordination which would be more easily handled by USU. DFCM design criteria as well as USU design standards will be utilized.
4. Change Order Review – Change Order procedures will be the same as DFCM procedures with review by USU Facilities Design and Construction, and USU Office of the Vice President for Administrative Services.
5. Dispute Resolution – Dispute resolution will be handled by the Vice President for Administrative Services with assistance from Facilities Design and Construction staff and the Attorney General's representative assigned to USU as necessary.

B. BUILDING OFFICIAL AUTHORITY

1. The renovation will be in an existing facility that complies with building codes that applied to this type of building when it was built. USU will coordinate closely with all State agencies including DFCM and the State Fire Marshal for the plans to remodel and change use in the existing building.

C. ADMINISTRATIVE MANGEMENT

1. Preparation and Adequacy of Budget – The project budget of \$450,000 is based on preliminary estimates produced by engineering consultants and will be further refined by RFP respondents when proposals are returned.
2. Funding – Funding will be through USU Brigham City student fee accounts and USU Brigham City State program appropriation.

3. Financial Management – Financial Management will be handled through the Office of the Vice President of Administrative Services. All previous delegated projects have been successfully managed by this office.
4. Procurement of Services – Value Based Selection procedures will be followed in reviewing proposals.

ADMINISTRATION OF DELEGATED PROJECTS

- A. FIDUCIARY RESPONSIBILITY – USU will accept fiduciary responsibility and ensure that all contracts are awarded legally.
- B. REPORTING – USU will report the project through the regular delegation/administration report process and submit any other reports to DFCM as requested.

Your favorable response to this request at the next meeting of the Building Board will be appreciated. Please let me know if further information is needed.

Sincerely,



Kevin C. Womack
Associate Vice President
for Administrative Services

KCW/jm

c: Kenneth E. Nye



Olene S. Walker
Governor

Utah State Building Board

4110 State Office Building
Salt Lake City, Utah 84114
Phone (801) 538-3018
Fax (801) 538-3267

MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **Reallocation of Capital Improvement Funds**

Recommendation:

DFCM recommends that the Board reallocate \$50,000 to the Department of Human Services and Workforce Services second story build-out of the Clearfield office building.

Background:

DFCM has been working with Human Services and Workforce Services to coordinate the build-out over the last two years for the second story of the Clearfield office. The Clearfield office is jointly used by both agencies. In order to coordinate transfer of staff from leased space, the build-out needs to be completed by September 1, 2004, as the leases will expire at the end of August. As a result, DFCM needs to hire an architect by the end of February to accomplish the design so that construction can be commenced in May.

The funding for the project will come from \$40,000 from a cancelled project at the Calvin Rampton building that was to design organizational and energy efficient space, and \$10,000 from the old energy fund.

FKS:KDB:sll



Olene S. Walker
Governor

Utah State Building Board

4110 State Office Building
Salt Lake City, Utah 84114
Phone (801) 538-3018
Fax (801) 538-3267

MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **DFCM Capital Development Group**

DFCM will introduce the staff in its capital development group and provide an overview of the services they provide.

FKS:KEN:sll



Olene S. Walker
Governor

Utah State Building Board

4110 State Office Building
Salt Lake City, Utah 84114
Phone (801) 538-3018
Fax (801) 538-3267

MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **Approval of Administrative Reports for the University of Utah and Utah State University**

Attached for your review and approval are the administrative reports for the University of Utah and Utah State University

FKS:sl



January 16, 2004

Mr. Keith Stepan
Division of Facilities Construction
and Management
4110 State Office Building
Salt Lake City, UT 84114

Reference: Delegated Projects Report for the Meeting of February 4, 2004

Dear Keith:

The status report of delegated projects to the University of Utah is enclosed for the Utah State Building Board.

Please call me at 581-5743 if there are any questions.

Sincerely,

Brad Clawson
Manager, Support Services

Enclosures

c: Mike Perez
John Huish

Campus Design & Construction
University Services Building
1795 E. South Campus Drive, Rm 201
Salt Lake City, Utah 84112-9403
(801) 581-6883
FAX (801) 581-6081



MEMORANDUM

To: Utah State Building Board
From: John W. Huish
Date: January 16, 2004
Subject: Administrative Reports for University of Utah

The following is a summary of the administrative reports for the University of Utah.

Architect/Engineering Agreements Awarded (Page 1)
No significant Items.

Construction Contracts Awarded (Page 2)
No significant Items.

Report of Contingency Reserve Fund (Page 3)
No activity since the last report.

Report of Project Reserve Fund Activity (Page 4)
No activity since the last report.

JWH:sf

Attachment

University of Utah
Architect/Engineer Agreements
Awarded From December 17, 2003 to January 16, 2004

Design			
Project No.	Project Name	Firm Name	Comments
		Proj. Budget	Contract Amt

Programming			
Project No.	Project Name	Firm Name	Comments
		Const. Budget	Contract Amt

Study			
Project No.	Project Name	Firm Name	Comments
		Const. Budget	Contract Amt

University of Utah
Construction Contracts
Awarded From December 17, 2003 to January 16, 2004

Construction - New Space					
Project No.	Project Name	Firm Name	Design Firm	Contract Amt	Comments

Construction - Remodeling					
Project No.	Project Name	Firm Name	Design Firm	Contract Amt	Comments

Construction - Site Improvement					
Project No.	Project Name	Firm Name	Design Firm	Contract Amt	Comments

Design/Build					
Project No.	Project Name	Firm Name	Design Firm	Contract Amt	Comments

University Of Utah
 Report Of Contingency Reserve Fund
For the Period of December 18, 2003 to January 16, 2004

PROJ. NO.	DESCRIPTION	CURRENT TRANSFERS	TOTALS TRANSFERS FROM CONTINGENCY	% TO CONSTR. BUDGET	PROJECT STATUS
BEGINNING BALANCE	INCREASES TO CONTINGENCY RESERVE FUND	902,713.07			
DECREASES TO CONTINGENCY RESERVE FUND					
NEW CONSTRUCTION					
REMODELING					
PLANNING / OTHER					
ENDING BALANCE 01-003411-7000-05107		902,713.07			

University Of Utah
 Report Of Project Reserve Fund Activity

For the Period of December 18, 2003 to January 16, 2004

PROJECT NUMBER	PROJECT TITLE	TRANSFER AMOUNT	DESCRIPTION FOR CONTINGENCY TRANSFER	% OF CONSTR. BUDGET
	BEGINNING BALANCE	172,982.70		
	INCREASES TO PROJECT RESERVE FUND:			
	DECREASES TO PROJECT RESERVE FUND:			

CURRENT BALANCE OF PROJECT RESERVE:

172,982.70



OFFICE OF THE VICE PRESIDENT
FOR ADMINISTRATIVE SERVICES
1445 Old Main Hill
Logan UT 84322-1445
(435) 797-1146
FAX: (435) 797-0710

14 January 2004

F. Keith Stepan, Director
Division of Facilities Construction
and Management
4110 State Office Building
Salt Lake City, Utah 84114

Dear Keith:

SUBJECT: USU Administrative Reports for February 2004 Building Board Meeting

The following is a summary of the administrative reports for USU for the period 11/12/03 to 01/14/04:

Professional Contracts, 4 contracts issued (Page 1)

The budget amount and the fee amount on each of these contracts is the same. This is because each contract represents only part of a larger project. The entire A/E budget will not be fully justified until all contracts for the entire project have been issued.

Construction Contracts, 6 contracts issued (Page 2)

Item 1, 4, and 5 - The construction budget and the contract amount on each contract is the same. These contracts represent only a portion of the construction budget amount. Multiple contracts will be issued to eventually meet the construction budget amount.

Item 3 and 6, Inside Wiring Phase I - The construction budget for materials and installation of wire is \$1,018,300. Multiple small construction contracts will be issued as needed as the project progresses.

Report of Contingency Reserve Fund (Page 3)

No significant items.

Report of Project Reserve Fund Activity (Page 4)

No changes.

Current Delegated Projects List, (Pages 5-6)

Two new projects listed.

HPER Upgrades - This project is USU's #1 priority for capital improvement funding for FY05. The upgrades include air conditioning, floors, locks, and fire alarms. USU is proceeding at this time with the design only of the air conditioning portion with institutional funds in order to be

F. Keith Stepan
14 January 2004
Page 2

able to install air conditioning this summer. If state funding is not allocated, USU will absorb the cost of the design work.

Recital Hall - Delegation authority of this \$8 million project to USU was approved by the Building Board in its 7 January 2004 meeting. Design work continues.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald S. Godfrey".

Ronald S. Godfrey
Vice President for
Finance and Business

RSG/jm

c: Darrell E. Hart
Stanley G. Kane
Brent Windley



Office of the Vice President for Administrative Services
1445 Old Main Hill
Logan, UT 84322-1445

Professional Contracts Awarded From 11/12/03 to 01/14/04

Contract Name	Firm Name	Budget	Fee Amount	Comments
1 HPER Upgrades	Spectrum Engineers	\$39,380.00	\$39,380.00	Design air conditioning portion of project
2 Inside Wiring Phase I	Wells Consulting	\$30,000.00	\$30,000.00	Field engineer/consultant
3 Technical Support Services Renovation	Robert Jacoby Architect and Associates	\$15,000.00	\$15,000.00	Pre-design services
4 Housing Fire and Life Safety Improvements	Beazer Engineering	\$11,000.00	\$11,000.00	Design site lighting portion of project
Total		\$95,380.00	\$95,380.00	



Office of the Vice President for Administrative Services
 1445 Old Main Hill
 Logan, UT 84322-1445

Construction Contracts Awarded From 11/12/03 to 01/14/04

Project	Firm Name	Design Firm	Const Budget	Contract Amt	Comments
1 Tunnel Extension - Edith Bowen Area	Jacobsen Construction	Jacobsen Construction	\$253,942.00	\$253,942.00	
2 Ag Science Elevator/ Communications	Spindler Construction	USU Facilities Planning and Design	n/a	\$126,522.82	Construction management contract
3 Inside Wiring Phase I	Bailey Construction	USU Facilities Planning and Design	\$54,270.00	\$54,270.00	
4 Water Tank Retrofit/Stabilize Reservoir	ProTech	Sargent Engineers	\$52,675.00	\$52,675.00	
5 Water Tank Retrofit/Stabilize Reservoir	Island Heights Construction	Sargent Engineers	\$19,500.00	\$19,500.00	
MATERIALS					
6 Inside Wiring Phase I	John B. Rudy Co.	USU Facilities Planning and Design		\$700,000.00	Open order for materials
Total			\$380,387.00	\$1,206,909.82	

Report of Contingency Reserve Fund
From 11/12/03 to 01/14/04

Project Title	Current Transfers	Total Transfers To (From) Contingency	% to Construction Budget	Project Status	% Completed (Paid)
BEGINNING BALANCE	\$638,585.71				
INCREASES TO CONTINGENCY RESERVE FUND					
None					
DECREASES TO CONTINGENCY RESERVE FUND					
Veterinary Science Electrical/Mechanical Upgrade (Change order)	(9,473.59)	(26,139.47)	10.46%	Substantial Completion	99%
Water Lab Fire Alarm Upgrade (Change orders, advertising)	(3,291.52)	(3,291.52)	1.94%	Construction	5%
First Dam Repairs Phase III (Correct safety issue)	(2,776.36)	(2,776.36)	1.16%	Complete	100%
Fine Arts Visual Fire Alarm/Generator Upgrade (Advertising)	(7.09)	(7.09)	0.00%	Construction	20%
Nutrition & Food Science Fire Alarm Upgrade (Advertising)	(7.09)	(7.09)	0.00%	Construction	17%
ENDING BALANCE	\$623,030.06				



Office of the Vice President for Administrative Services
 1445 Old Main Hill
 Logan, UT 84322-1445

Report of Project Reserve Fund Activity

From 11/12/03 to 01/14/04

Project Title	Transfer Amount	Description	% of Construction Budget
BEGINNING BALANCE	\$145,617.77		
INCREASES TO PROJECT RESERVE FUND			
None			
DECREASES TO PROJECT RESERVE FUND			
None			
ENDING BALANCE	\$145,617.77		

Current Delegated Projects List

01/14/04

Project Number	Project Name	Phase	Project Budget
CAPITAL DEVELOPMENT/IMPROVEMENT			
8-81123	First Dam Repairs Phase III	Complete	\$3,751,727 *
8-81065	Guard Rails/Hand Rails	Construction	250,000
8-80336	Utah Botanical Center Pavilion/Restroom	Substantial Completion	270,022
8-81077	Caine Dairy Improvements	Partial Completion	235,004
8-81081	Fume Hoods Biology/Natural Resources	Partial Completion/Design	905,000
8-81132	Transformer/High Voltage Distribution Line/Water System (2001 Utility Upgrade)	Partial Completion/Construction	990,000
8-81083	Campus Air Conditioning Phase II	Substantial Completion	500,000
8-80338	Bookstore Renovation (North and South)	Substantial Completion	1,956,929
8-80409	Housing Fire and Life Safety Improvements	Partial Completion/Construction	2,500,173 *
8-80430	Master Planning (Housing/Arts)	Master Plan	587,155
8-81099	Steam System Supply (HPER/Museum of Art)	Construction	340,000
8-81100	Veterinary Science Electrical/Mechanical Upgrade	Substantial Completion	388,140
8-81134	Fine Arts Visual Fire Alarm/Generator Upgrade	Construction	194,731
	Campus Safety Lighting	Pending	50,000
	Electrical Cabling from North Sub-Station	Pending	200,000
8-80527	Campus Fiber Optic Enhancements	Construction	750,000
8-81133	Water Tank Retrofit/Stabilize Reservoir	Partial Completion/Construction	183,000
8-81136	Water Lab Fire Alarm Upgrade	Construction	116,266
8-81090	Cogeneration/Chilled Water	Construction	14,709,960 *
8-81101	Athletic Locker Room/Office Facility	Design	1,374,970
8-81096	Lab Animal Research Center Addition	Substantial Completion	297,691
8-81105	Water Lab Fire Damage Repairs	Construction	462,268
8-81009	Technical Support Services Renovation	Construction	400,000
8-81140	Tunnel Extension - Edith Bowen Area	Design	1,000,000
8-81107	Central Plant Chiller Addition (Natural Resources & Spectrum)	Construction	750,000
	Buried Natural Gas Pipe Replacement	Construction	100,000
8-80611	Old Heat Plant Tank Removal	Pending	50,000
	Steam/Condensate Pipe Replacement	Substantial Completion	250,000
8-81138	Nutrition & Food Science Fire Alarm Upgrade	Pending	123,162
8-81137	Lundberg Fire Escape	Construction	50,000
8-81139	New Well	Design	50,000
	Veterinary Science Fire Pumps/Generator	Study	350,000
		Pending	350,000

8-80530	Inside Wiring Phase I	Construction	1,150,000
	CPD Fire Alarm Upgrade	Pending	165,841
8-81109	HPER Upgrades (NEW PROJECT)	Design	1,000,000
	Recital Hall (NEW PROJECT)	Design	8,340,000 *
LIFE SAFETY (STATEWIDE)			
8-81058	Ag Science Elevator/Communications	Construction	126,523
PAVING (STATEWIDE)			
8-81114	Motor Pool South/Public Safety	Construction	318,676
8-81114	Slurry Seal at Various Lots	Pending	46,000
8-81114	North Shuttle Bus Turnaround	Design	95,000
8-81114	A-2 Lot Parking Overlay	Pending	60,000
8-81114	Miscellaneous Paving	Complete	45,013
ROOFING (STATEWIDE)			
8-81008	Spectrum	Substantial Completion	160,000
8-81008	Miscellaneous Roofing	Pending	66,666
ENERGY & WATER CONSERVATION (STATEWIDE)			
8-81084	Classroom/Office Sensors	In-house Installation	100,000
8-81088	UWRL Lighting/Occupancy	In-house Installation	112,000
8-81104	Nutrition & Food Science Chiller Replacement	Equipment Installation	300,000
	Insulate Condensate Lines	Pending	200,000
TOTAL (48)			<u>\$46,721,917</u>

* Project management delegated to USU.



Olene S. Walker
Governor

Utah State Building Board

4110 State Office Building
Salt Lake City, Utah 84114
Phone (801) 538-3018
Fax (801) 538-3267

MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: February 4, 2004
Subject: **Administrative Report for DFCM**

The following is a summary of the administrative reports for DFCM.

Lease Report (Page 1)

No significant Items.

Architect/Engineering Agreements Awarded, 7 Agreements Issued (Page 2)

No significant Items.

Construction Contracts Awarded, 61 Contracts Issued (Page 3)

No significant Items.

Report of Contingency Reserve Fund (Page 4)

Increases

The increase is an additional transfer to Contingency Reserve, of the amount that was budgeted for contingency on this FY'04 funded project, which just had a final project budget completed.

Decreases, New Construction

Univ. of Utah Health Science Education Building

This is for change order #5 for various unknown site conditions such as; undocumented communications duct bank, and other undocumented utility lines.

Report of Project Reserve Fund Activity (Page 5)

Increases

This item reflects savings on a project that was transferred to Project Reserve per statute. This particular transfer was discussed in last months Board report.

Decreases

Eureka DOT Maintenance Station Addition

Funds required to award construction contract

Provo ABC Store #5 Replace Floor Tile

Return funds previously transferred to Project Reserve, to complete project.

DFCM

Division of Facilities Construction and Management
 4110 State Office Building, Salt Lake City, UT 84114
 Telephone (801) 538-3018 FAX (801) 538-3267

LEASE REPORT

From 12/16/2003 to 1/14/2004

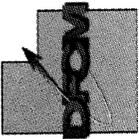
No	Agency/Location	Services	Space Type	Lease Term	Square Feet		Cost/Sq. Ft.		Comment
					Old	New	Old	New	

NEW LEASES

1.	Human Services, Child and Family Services Castle Dale	Full	Office	5 Yrs.	2,689	5,400	\$11.45	\$14.95	New location at market. Additional space for program growth.
2.	Human Services, Child and Family Services Ogden	Net	Office	5 Yrs.	10,362		\$ 4.21		New Christmas Box Lease.

AMENDMENTS

1.	Natural Resources Water Rights/FFSL Logan	Full	Office	5 Yrs.	507	2,597	\$15.25	\$15.25	Amendment to add space for program growth.
2.	Natural Resources Water Rights, Richfield	Full	Office	5 Yrs.	3,000	3,000	\$ 6.90	\$ 6.90	Renewal, no change.
3.	Public Safety Aero Bureau Salt Lake City	Net	Hangar	5 Yrs.	1,323	1,323	\$ 2.27	\$ 2.27	Renewal, no change.
4.	Public Safety Criminal Investigation Salt Lake City	Full	Office	5 Yrs.	6,000	6,000	\$ 3.00	\$ 5.55	Renewal, increase to market.



Division of Facilities Construction and Management
4110 State Office Building Salt Lake City, UT 84114

Professional Contracts Awarded From 12/17/2003 To 1/15/2004

Design

<u>Agency</u>	<u>Contract Name</u>	<u>Firm</u>	<u>Type</u>	<u>Budget</u>	<u>Contract Amt</u>
1 WSU	WSU ENG TECH BLDG LAB REMODEL DESIGN	MHTN ARCHITECTS INC	DESIGN	\$49,700.00	\$49,700.00
2 CUCF BLDG	CUCF SECURITY IMPROVEMENTS DESIGN	DMJM ARCHITECTS	DESIGN	\$35,000.00	\$22,644.00
3 WSU	TECH EDUC BLDG STEAM, CONDENSATE & DOMESTIC WATER PIPING REPL	WHW ENGINEERING INC	DESIGN	\$49,024.00	\$53,930.00
4 DRAPR FAC	DRAPER PRISON SEWAGE PRETREATMENT SYSTEM DESIGN	EARTHFAK ENGINEERING INC.	DESIGN	\$9,800.00	\$13,300.00

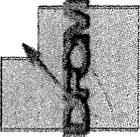
Programming/Master Planning

<u>Agency</u>	<u>Contract Name</u>	<u>Firm</u>	<u>Type</u>	<u>Budget</u>	<u>Contract Amt</u>
5 DFCM	MASTER PLANNING SERVICES - CEU	MHTN ARCHITECTS INC	PRG MSTR PLAN	\$25,000.00	\$24,300.00

Miscellaneous Services

<u>Agency</u>	<u>Contract Name</u>	<u>Firm</u>	<u>Type</u>	<u>Budget</u>	<u>Contract Amt</u>
6 DRAPR FAC	DRAPER PRISON TECHNICAL ENERGY AUDIT EVALUATION	ETC GROUP INC	STUDY	\$15,000.00	\$15,000.00
7 CEU	CEU GEARY THEATER/MUSIC BLDG SEISMIC/STRUCTURAL EVALUATION	CA CARTWRIGHT & ASSOCIATES	STUDY	\$6,000.00	\$5,700.00
8 NG	DRAPER NG HDQTRS PHASE 3 ROOF/SEISMIC QC INSPECTION SERVICES	ROOFTECH CONSULTING GROUP INC	INSP OBSERV SER	\$9,000.00	\$8,794.00
11 YTH CORR	VARIOUS DYC HAZMAT SURVEYS (CACHE/DAVIS/WEBER)	ROWLAND CONSULTING INC	HAZ MAT CONSULT	\$50,000.00	\$49,938.75
12 DRAPR FAC	FRED HOUSE ACADEMY LEAD ABTMT/HVAC INVESTIGATION	IHI ENVIRONMENTAL	HAZ MAT CONSULT	\$15,000.00	\$14,505.00

End of Report



Division of Facilities Construction and Management
4110 State Office Building Salt Lake City, UT 84114

Construction Contracts Awarded From 12/17/2003 To 1/15/2004

Construction

<u>Agency</u>	<u>Contract Name</u>	<u>Firm</u>	<u>Type</u>	<u>Budget</u>	<u>Contract Amt</u>
1 COURTS	SECURITY SYSTEM REPLACEMENT- MATHESON COURTHOUSE	ALPHACORP	CONST REMODEL	\$210,018.00	\$185,000.00
2 DWS	PROVO WFS FAC ELEVATOR INSTALLATION	FISH CONSTRUCTION INC	CONST REMODEL	\$116,751.00	\$115,989.45
3 PARKS	UTAH LAKE STATE PARK MARINA DREDGING	BUILD INC	CONST SITE IMP	\$200,000.00	\$198,825.00
4 STORES	PARK CITY ABC STORE #34 INTERIOR LIGHTING IMPROVEMENTS	BROKEN ARROW CONST CORP	CONST REMODEL	\$11,359.00	\$11,673.00
5 WSU	WSU MILLER ADMIN STEAM SYSTEM REPAIR	MECHANICAL SERVICE & SYSTEMS I	CONST REMODEL	\$8,000.00	\$8,407.00
6 YTH CORR	GENESIS YTH CORRECTIONS WINDOW REPAIR	ASPEN CREEK HOMES INC	CONST REMODEL	\$30,000.00	\$25,982.00

Miscellaneous Construction

<u>Agency</u>	<u>Contract Name</u>	<u>Firm</u>	<u>Type</u>	<u>Budget</u>	<u>Contract Amt</u>
7 DIXIE	MAIN PARKING LOT PAVING IMPROVEMENTS	A-T ASPHALT PAVING	PAVING	\$131,750.00	\$106,419.08
8 FAIR	FAIRPARK CATTLE BLDG #8 REROOF	WESTERN CONTRACTORS INC	ROOFING	\$43,000.00	\$42,740.00
9 PARKS	GOBLIN VALLEY STATE PARK PAVING IMPROVEMENTS	NIELSON CONSTRUCTION	PAVING	\$250,000.00	\$225,960.00
10 SLCC	AUTO TRADES ROOFING IMPROVEMENTS - REDWOOD ROAD CAMPUS	CLARKS QUALITY ROOFING INC	ROOFING	\$198,354.00	\$197,300.00

End of Report

DFCM

Division of Construction and Management
 4110 State Office Building Salt Lake City, UT 84144
 Telephone (801) 538-3018 Fax (801) 538-3267

REPORT OF CONTINGENCY RESERVE FUND

Feb-04

	PROJECT TITLE	GENERAL STATE FUNDS CURRENT TRANSFERS	TRANSPORTATION FUNDS CURRENT TRANSFERS	TOTAL TRANSFERS FROM CONTINGENCY	% TO CONSTR. BUDGET	PROJECT STATUS	% Complete
	BEGINNING BALANCE	7,024,123.75	91,447.32				
	INCREASES TO CONTINGENCY RESERVE FUND						
	FUNDING						
02221	SLCC Secondary irrigation connection	38,709.00	-	(3,215)	-0.84%	Construction	52%
	DECREASES TO CONTINGENCY RESERVE FUND						
	NEW CONSTRUCTION						
02042	U OF U Health Science Education Building	(36,443.06)	-	118,005	0.42%	Construction	9%
00018	Dixie College Delores Dore Eccles Fine Arts Center	(21,654.00)	-	39,998	0.27%	Construction	68%
00253	Snow College Performing Arts Building	(10,535.53)	-	322,103	2.05%	Complete	100%
02015	Youth Corrections Washington County Facility	(10,392.00)	-	10,554	0.16%	Construction	55%
01274	UDOT Richfield New District Warehouse	-	(5,457.90)	33,602	5.64%	Complete	100%
	REMODELING						
03217	CEU Central Tunnel Replacement	(9,200.00)	-	9,200	1.07%	Construction	0%
01193	WSU Education Bldg HVAC Upgrades/Abatement	(9,172.00)	-	62,654	4.17%	Complete	100%
03170	Corrections Draper Showers Tile Replacement PH II	(4,000.00)	-	4,000	5.55%	Construction	70%
02149	WSU Lampros Hall Renovation	(2,885.67)	-	2,886	0.11%	Construction	48%
02190	UDOT Rampton Chiller For Data Proc Area	(2,599.00)	-	2,599	3.15%	Complete	100%
01271	SUU Braithwaite Bldg Rehab	(1,927.00)	-	95,927	4.39%	Complete	100%
00165	Parks & Rec Edge of the Cedars State Park Upgrade Museum to Repository Standards	(459.70)	-	14,125	3.70%	Closed	100%
	TOTAL	6,953,564.79	85,989.42				



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REPORT OF PROJECT RESERVE FUNDS ACTIVITY

PROJECT TITLE	STATE FUNDS	DOT FUNDS	DESCRIPTION	Feb-04	% of Constr.	Budget
<u>BEGINNING BALANCE</u>	<u>2,665,667</u>	<u>49,726</u>				
<u>INCREASES TO PROJECT RESERVE FUND:</u>						
USDC Willowcreek Bldg Remodel	141,711.61		Balance of Construction Budget		11.61%	
<u>DECREASES TO PROJECT RESERVE FUND:</u>						
Eureka DOT Maint Station Addition		(10,277.00)	To Award Construction Contract		1.57%	
ABC Store #5 Replace Floor Tile	(7,367.69)		Return Funds to Reclose Project			
<u>Ending Balance</u>	<u>2,800,011</u>	<u>39,449</u>				

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STATEWIDE PLANNING FUND

\$350,000

Feb-04

INSTITUTION/ AGENCY	PROJECT NUMBER	PROJECT TITLE	AMOUNT
Southern Utah University	93177730	Shakespeare Expansion and Planning	5,950
Snow College	02273700	Master Plan	25,000
Dixie College/SLCC	03047640	Health Sciences Bldgs Programming	100,000
PLANNING FUND UNENCUMBERED BALANCE			\$219,050

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EMERGENCY FUND REPORT

Feb-04

BEGINNING BALANCE:

\$338,268

INCREASES TO EMERGENCY FUND:

None

DECREASES TO EMERGENCY FUND:

None

ENDING BALANCE OF EMERGENCY FUND

\$338,268

Statewide Planning Fund (Page 6)

No changes.

Emergency Fund Report (Page 7)

No changes

FKS:DDW:sll

Attachment