

AGENDA OF THE UTAH STATE BUILDING BOARD

Wednesday, May 5, 2010
Utah State Capitol Building,
Room 250
Salt Lake City, Utah
9:00am

- (Action) 1. **Approval of Minutes of April 7, 2010** Tab 1
- (Action) 2. **University of Utah – Approval of Data Center Retrofit Project** Tab 2
- (Action) 3. **Demolition of Old Facilities Building** Tab 3
- (Action) 4. **Proposed Amendments to Rules:**
FOUR ACTION ITEMS:
ACTION A: R23-1. Procurement of Construction
ACTION B: R23-22. General Procedures for Acquisition and selling of Real Property
ACTION C: R23-23. Health Insurance in State Contracts – Implementation
ACTION D: Proposal of New Rule 23-7. State Construction Contracts and Drug
and Alcohol Testing. Tab 4
- (Action) 5. **Administrative Reports for University of Utah and Utah State University**
..... Tab 5
- (Information) 6. **Administrative Report for DFCM** Tab 6

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 CeeCee Niederhauser 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>*



Gary R. Herbert
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: David G. Buxton
Date: April 15, 2010
Subject: **Approval of Minutes of April 7, 2010**

Attached for your review and approval are the meeting minutes of the Utah State Building Board meeting held April 7, 2010.

DGB:CMN

Attachment

Utah State Building Board



MEETING

April 7, 2010

MINUTES

Utah State Building Board Members in Attendance:

Mel Sowerby, Chair
George Daines
Wilbern McDougal
Sheila Gelman
Cyndi Gilbert

DFCM and Guests in Attendance:

Gregg Buxton	Division of Facilities Construction & Management
Kurt Baxter	Division of Facilities Construction & Management
CeeCee Niederhauser	Division of Facilities Construction & Management
John Nichols	Division of Facilities Construction & Management
Alan Bachman	Attorney General's Office/DFCM
LaPriel Dye	Attorney General's Office/DFCM
Chris Hipwell	Wadman Corp.
Jerry Jensen	Utah Department of Commerce
Bill Juszczak	UDOT
Kade Minchey	Legislative Auditor
Dallas Earnshaw	USH
Tiffany Woods	BHB Consulting Engineers
Cynthia Cook	FFKR Architects
Chris Coutts	Architectural Nexus
Keiren Hansen	Weber State University
Jim Michaelis	Utah Valley University
Frank Young	Utah Valley University
Douglas Dawes	Utah State University
Bryan Wilmot	Utah Correctional Industries
Curtis Burk	Department of Administrative Services
Bob Askerlund	Salt Lake Community College
David F. Tanner	Southern Utah University
Ken Berrett	Utah State University

Rachel McQuillon	Kiewit
Adam Smith	Kiewit
Judy Duncombe	Utah State Fair Park
Andrew Carlino	Utah State Fair Park
Ralph Hardy	OCHE
Greg Stauffer	OCHE
Mike Perez	University of Utah
Ian Christensen	OLAG
Alyn Lunceford	Utah Courts
Keith Davis	DHS
Jackie McGill	Spectrum Engineers
Kim Hood	DAS

On Wednesday, April 7, the Utah State Building Board held a regularly scheduled meeting at the Utah State Capitol Complex, Room 250, Salt Lake City, Utah. Chair Mel Sowerby called the meeting to order at 9:03 a.m.

APPROVAL OF MINUTES OF MARCH 10, 2010

Chair Sowerby sought a motion for approval of the minutes.

MOTION: Wilbern McDougal moved to approve the meeting minutes of March 10, 2010. The motion was seconded by Sheila Gelman and passed unanimously.

MASTER PLAN APPROVAL FOR SNOW COLLEGE

Kurt Baxter from DFCM indicated that the original master plan for Snow College was about 7 years old. There have been many changes and additions at the college. They recently acquired Ephraim Elementary School which included about 7 acres of land and they want to incorporate that into the master plan along with making changes to some of their old out-dated student housing. Therefore, they would like to make an addendum to the Master Plan with additional funds being provided by Snow College.

MOTION: Cyndi Gilbert moved for approval of the New Master Plan as paid for with Snow College Funds. Motion was seconded by George Daines and passed unanimously.

ALLOCATION OF FY 2010 CAPITAL IMPROVEMENT FUNDS

Ken Nye reported that the University of Utah continues to deal with problems with their infrastructure. Last summer they experienced a number of major, very expensive failures to their high temperature water distribution system. Those who attended the Building Board tour last summer had an opportunity to see this first hand. At that time, DFCM's Director

Gregg Buxton encouraged the University to visit with a number of Legislative leaders to address this critical need. One of the responses from the Legislature included encouragement to do everything possible with the existing funding. They later submitted a request to the Legislature for the first portion of the capital development request. The Legislature was not able to fund that request but ended up authorizing a reallocation of \$3,550,000.00 of the current fiscal year's capital improvement money that had been previously authorized to the University of Utah. They applied those funds to the high temperature water distribution system replacement. They wanted to clarify that this reallocation does not provide any additional funding to the University. It takes previously allocated funds from FY 2010 and directs them to this particular project (See attachment #1).

DAS Director, Kim Hood asked if this \$3.5 Million reallocation only funds the high temperature water line replacement. With these funds, how close will the University be to completing this project? Ken Nye responded that the \$3.5 Million reallocation and the additional \$2.5 Million that was funded for FY 2011 will help them complete roughly one half of the project.

George Daines said that they must have had a number of places they could have taken the money from but elected to draw from a certain list of projects. He indicated that he would be interested in having a copy of the list which showed the possible choices. Ken Nye responded that the only project that was not under contract in FY 2010 was a fume hood project that had been delayed in construction because of some code problems they were trying to work through. There were not a lot of options left.

MOTION: Wilbern McDougal moved to approve the Allocation of FY 2010 Capital Improvement Funds. The motion was seconded by George Daines and passed unanimously.

☐ ALLOCATION OF FY 2011 CAPITAL IMPROVEMENT FUNDS

Kurt Baxter reported that DFCM's recommendations for the reallocation of capital improvement funds were developed under due process and approved by the Board. The total costs of all requests received this year from all agencies and institutions of higher ed was \$182 Million. The Legislature funded \$50.6 Million. Mr. Baxter reported that the process to narrow the list of selections was a big undertaking with the procedure starting eight months ago with contacts to project managers to verify project costs and to make sure they were important and needful. Most of these items are repairs to infrastructure, HVAC, electrical, roofing, structural or paving problems. Upgrades to life safety systems are given a high priority. There are several items to review (see attachment #2).

The first is a summary of replacement costs of facilities verses the share of FY 2011 capital improvement funding. Higher education received a significant amount of the funding at \$29 Million. The percent for FY 2011 funding is 61.8% and replacement cost at 62.5%. Next

line is state agencies with \$18 Million. The percent of funding was at 38.2% and replacement cost at 37.5%. The sum of these figures equal the \$47 Million allocated. The \$3.4 Million goes into the general funds for planning funds for roofing, paving and other projects that are distributed around the state on an "as needed" basis to all agencies except University of Utah and Utah State which have their own funds for these projects. The grand total of \$50,685,400.00 is the amount appropriated to us from the Legislature.

The FY 2010 capital improvement projects status report on the same page shows there are 125 projects completed or under construction out of 139 which show their percentage at 89% (See attachment #2). Gregg Buxton explained that this percentage was probably an indication of the status of the economy. DFCM is trying to complete their job with fewer personnel and as a result some of these processes are struggling.

Mr. Baxter continued his report by explaining the capital improvement funding for FY 2007 to FY 2011. He explained that this is a five-year overview of the allocation of capital improvement funds to each agency and institution of higher education in the state. The column before the total on the far right shows this year's allocation with roughly 2% going to higher education and about 38% going to state agencies. A comparison of other years, show they are fairly similar. Occasionally there are variations in funding when there is a large piece of equipment or a large improvement project.

Next is a list of capital improvements that DFCM is recommending to the Building Board for allocations for FY 2011 (See attachment #3). This is a breakdown of every project individually for each agency and institution with a total at the bottom. Mr. Baxter indicated they would like to fund a lot more than the \$40 Million but it's the second year in a row they have been cut back to a low number in capital improvements. At this time Mr. Baxter opened the discussion up for questions.

Ben Barrett from Utah State University indicated there was a small error on the report where one number ended off the line on their list of projects and Mr. Baxter made note of the correction. The Final list includes the correction to the USU Misc Funds Project for \$157,000

Sheila Gelman questioned the Salt Lake Community College RRC Legacy Fountain Phase II. Is this a water fountain? Mr. Baxter responded that it was a water feature. She asked why, when there are financial problems and budget cuts, are we allocating money for a fountain? Mr. Baxter replied that the Building Board has required of agencies and institutions to have 75% of their needs from ISIS reports and critical improvements with 20-25% from other needs on campus. The fountain was a project that was started several years ago and needs to be finished up.

Mel Sowerby questioned the need from the Capitol Preservation Board to update and refurnish pews and benches which were quite expensive when we are looking at what appears to be life safety issues at Utah State buildings. How is that decided? Mr. Baxter

responded that again they look at their ratio of 75% to 25%. Twenty-five percent of their allocation could be used for miscellaneous improvements, not necessarily life safety ISIS type situations. The Capitol Preservation Board oversees the capitol complex which has a high replacement costs, as you might imagine. Mr. Baxter emphasized that the funding is basically directed by the percentages.

MOTION: Cyndi Gilbert moved to approve the Allocation of FY 2011 Capital Improvement Funds. The motion was seconded by George Daines and passed unanimously.

☐ ADMINISTRATIVE REPORTS FOR UNIVERSITY OF UTAH AND UTAH STATE UNIVERSITY

Ken Nye was the spokesman for the University of Utah. He reported that as part of their administrative report they were asked to provide a summary of the status of their FY 2010 capital improvement projects which was part of the report by Mr. Baxter. They had 17 projects funded for FY 2010 and 14 were completed, making their percentage at 82% (See attachment #4).

For their regular administrative report, they had 10 design agreements and 5 study or other type agreements with no significant items on any of those. The second page of their report shows 3 remodeling contracts and one site improvement contract, again with no significant items on any of those. The third page shows no activity in their project reserve fund last month. Mr. Nye anticipates next month they will be showing some savings going into that project reserve. The fourth page covers the contingency reserve fund. Project 20,024, the High Temperature Water Line in the Hales Sciences Area for \$40,000 covered a number of unforeseen items, such as buried stairs, duct banks as well as utilities that were not quite in the location as shown from the as-builts. Project 20,006 dealt with the Physics Building Drainage Improvements. The \$11,885.00 covers the cost of correcting deficient work that wasn't discovered until excavation commenced around the building. There was an underground basement that extended out away from the 45 year old building. The concrete bed, instead of having a slope that would drain away from the building, drained back into the building. This amount covers the cost of putting in a waterproofing system to correct the problem.

Mel Sowerby asked if the University was treating each of these high temperature water sections of campus as separate entities and Mr. Nye indicated they were.

MOTION: Cyndi Gilbert moved to approve this month's Administrative Report of the University of Utah. The motion was seconded by Wilbern McDougal and passed unanimously.

Mel Sowerby reminded the Board that last month they tabled the Utah State University Report because Utah State University officials were unable to attend the Building Board

Meeting. He asked if there were any questions regarding last month's Utah State University's monthly report? If not, then they will proceed with this month's report which should be all inclusive.

Ken Berrett from Utah State University indicated that FY 2010 funding was winding down. There were no new professional contracts. There were 4 new construction contracts issued this month. No changes to the contingency reserve fund and no changes to the project reserve fund. Of the 48 current projects, 21 were substantially complete this month and 21 in construction. Five were in design or study phase and one pending. On page 3 of their report that lists new construction projects, the Fine Art's Safety Complex repairs and Eccles Conference Center Business Walkways – those 2 projects make them 100% obligated for the year. The bulk of their projects are nearing completion, however there are two projects that are scheduled to begin right after commencement. Both projects involve areas where they need to wait for students to get out so they can begin work.

Mel Sowerby asked if there were any questions regarding this month's Utah State University administrative report? He then indicated they should address last month's report. He asked for a motion to accept last month's administrative report.

MOTION: Cyndi Gilbert moved to approve last month's Administrative Report of Utah State University. The motion was seconded by Wilbern McDougal and passed unanimously.

Mel Sowerby asked if there were any questions regarding this month's Utah State University administrative report? If not he asked if there was a motion to accept this month's administrative report for Utah State University.

MOTION: Cyndi Gilbert moved to approve this month's Administrative Report of Utah State University. The motion was seconded by George Daines and passed unanimously.

☐ ADMINISTRATIVE REPORTS FOR DFCM.....

Kurt Baxter reported there were no significant lease reports or architectural/engineering service agreements awarded. However, there were 18 architect/engineering agreements that were very small in nature. There were 24 construction contracts awarded which included the Provo 4th District Courts Facility Chiller Replacement and the Split Mountain Youth Center HVAC Controls Upgrade.

For decreases in the contingency reserve fund, they had USU UStar with change orders #5-7 for various items listed. That came to \$328,000 which they consider a significant item. In addition, the Uintah Basin ATC had a change order of \$80,000 for a landscaping item. Snow College had an item of \$75,000 for some issues with the boiler. The report of the project reserve fund activity shows a major decrease. There were a couple of small

decreases, but the large one was Senate Bill #3 in the 2010 Legislative session which reduced our reserve fund by \$5 Million. Mr. Baxter indicated that the only thing that may have an affect is the new ability that the Building Board has to reallocate improvement funds back to other improvement projects. Their reserve fund is a bit on the low side so things may not reallocate until their accountant is confident that they have a healthy reserve fund. Then they can start reallocating those capital improvement funds back to the agencies. He indicated that he knows this affects some of the institutions and agencies who are present today.

Mel Sowerby encouraged Mr. Baxter to do the math so that they don't allocate funds they do not have and Mr. Baxter assured him that they would keep the fund healthy. He was told that the fund needs to be between \$4 Million and \$5 Million and the fund is right at \$4 Million now. They have found that bids have been coming in substantially lower than they have in the past and they anticipate future savings on improvement projects and hope to reallocate those back to the agencies and institutions where originally allocated. This of course would come through the Building Board process.

☐ DFCM/DPS REQUEST FOR PLANNING FUNDS

Kurt Baxter reported that the Legislature gave direction to pursue a study to determine if the new EOC should be built in conjunction with Salt Lake City. Currently they have some estimates showing the cost associated with the venture. There are possibilities for receiving funds from ARRA but first they need to get approval for the study from the Building Board. The study will determine the possible impact there would be with constructing the building with Salt Lake City on the same piece of property or going alone and building it west of the city. There are various advantages both ways.

Second, they need approval to use the planning funds if they cannot get them from the ARRA funds. Of course they will try to get the federal funds because it is free money. They would like to get the approval from the Board that if they can't get the ARRA funds then they could use the planning fund to make this study happen. Therefore, they are requesting permission from the Building Board to do the study and to pay for it with funds from the planning fund if necessary.

Mel Sowerby asked Mr. Baxter if he had an amount. Mr. Baxter indicated it was close to \$75,000.

George Daines stated that they are presuming that they will ask the question of whether the location of the facility in an urban area would be a useful place to locate in terms of it's function. Mr. Baxter responded that if you have two EOC's together and the fault line goes right through them, what would be left? Obviously there is a big advantage to having them located in two separate locations. The consultant would address those questions – costs and locations. Mr. Daines reminded Mr. Baxter that the Building Board had some questions and concerns when an earlier presentation was given to the Board about location and

about how costs should be allocated for this project. He encouraged Mr. Baxter to go back and listen to the recording of that presentation. Mr. Baxter assured Mr. Daines that he would do that. Mr. Baxter indicated that Jim Russell, project manager for DFCM would be taking on this project and he would make sure Mr. Russell was informed of the concerns. They want to make sure that the state funds are wisely spent and that it makes sense strategically.

Gregg Buxton indicated that this is a political issue and has been mandated that we report this to the Legislature prior to June 30th. They are concerned that this study be completed accurately with all facts presented. Mr. Buxton felt this did not happen last time and assured the Board that this time the study would be done properly.

MOTION: George Daines moved to approve DFCM/DPS Request for Planning Funds. The motion was seconded by Sheila Gelman and passed unanimously.

ADJOURNMENT.....

MOTION: Cyndi Gilbert moved to adjourn at 9:52a.m. The motion was seconded by Sheila Gelman and passed unanimously.

University of Utah
Requested Reallocation of Capital Improvement Funds
For HTW Line Replacements

April 7, 2010

Project #	Project Name	Total Funded	Funding Reallocated	Comments
20031	Campus Utility Metering System (FY10)	100,000	63,567	This is the balance that was not yet formally committed when the reallocation language was adopted by the legislature. The remaining scope will be cancelled.
20034	Eccles Health Sciences Library Fire Protection (FY10)	1,808,000	420,000	This is savings resulting from construction and hazardous materials bids that came in under estimate.
20228	Replace HVAC Controls in Buildings (FY10)	450,000	450,000	This project represents half of the amount originally requested for FY10. Due to funding limitations, only half was funded with the intent of funding the other half in FY11. The work anticipated to be done with the FY10 funding will now be accomplished using FY11 funding.
20214	Campus Site Lighting (FY10)	400,000	202,965	This is the balance that was not yet formally committed when the reallocation language was adopted by the legislature. The remaining scope will be cancelled.
20035	Campus Wide Asbestos Abatement (FY10)	50,000	50,000	This reallocates the FY10 funding. This fund will receive additional funding in FY11.
20025	Price Museum of Fine Arts Window Replacement (FY10)	200,000	135,857	The purpose of this project was to maintain desired humidity levels on a consistent basis. Part of the scope was completed in preparation for a major exhibit. After this work was done, condensation problems developed due to humidity. We are currently studying how to maintain appropriate humidity levels without creating condensation problems. This will then be addressed in a future request.
20186	Electrical Distribution System (FY10)	2,500,000	2,227,612	In order to arrive at the amount directed by the legislature to be reallocated, it is necessary to reallocate almost all of the funding for this project. Work that was planned to be accomplished with this funding will be addressed through FY11 funding.
TOTAL			<u>3,550,000</u>	

Note: The amounts of funding requested to be reallocated include the associated portion of the contingency budget.

Division of Facilities Construction and Management

Summary of Facility Replacement Cost vs. Share of Capital Improvement Funding

Agency/Institution		FY 2011 Funding	Percent FY 2011 Funding	Replacement Cost
Higher Education	\$	29,198,585	61.8%	62.5%
State Agencies	\$	18,036,815	38.2%	37.5%
SUBTOTAL	\$	47,235,400	100.0%	100.0%
Statewide funding Acct.	\$	3,450,000		
Grand Total	\$	50,685,400		

FY 2010 Capital Improvement Projects Status Report

April 1, 2010

Projects managed by improvement team FY 2010	139
Number of projects completed or under construction	125
% of projects complete or under construction	89%

Summary of Capital Improvement Funding FY2007 - FY2011

Agency	FY2007	%	FY2008	%	FY2009	%	FY2010	%	FY2011	%	Total	%
Higher Education												
College of Eastern Utah	\$ 1,024,600	2%	\$ 974,300	1%	\$ 992,822	1%	\$ 420,000	1%	\$ 1,120,000	2%	\$ 4,531,722	2%
Dixie College	\$ 1,290,100	2%	\$ 1,779,600	3%	\$ 2,497,328	3%	\$ 600,400	2%	\$ 1,125,000	2%	\$ 7,292,428	3%
Salt Lake Community College	\$ 3,588,900	6%	\$ 3,848,000	6%	\$ 3,703,989	5%	\$ 1,733,200	5%	\$ 2,207,585	5%	\$ 15,081,674	5%
Snow College	\$ 1,847,500	3%	\$ 1,793,300	3%	\$ 1,680,160	2%	\$ 781,700	2%	\$ 1,046,500	2%	\$ 7,149,160	2%
Southern Utah University	\$ 2,525,100	4%	\$ 2,510,400	4%	\$ 2,428,595	3%	\$ 1,199,400	3%	\$ 1,750,000	4%	\$ 10,413,495	4%
University of Utah	\$ 11,638,800	19%	\$ 13,035,400	19%	\$ 16,679,405	22%	\$ 8,288,000	23%	\$ 10,252,000	22%	\$ 59,893,605	21%
Utah State University	\$ 6,432,800	11%	\$ 7,328,500	11%	\$ 8,400,799	11%	\$ 4,000,000	11%	\$ 4,970,000	11%	\$ 31,132,099	11%
Utah Valley State College	\$ 2,682,800	4%	\$ 3,279,000	5%	\$ 2,932,643	4%	\$ 1,526,300	4%	\$ 2,411,000	5%	\$ 12,831,743	4%
Weber State University	\$ 3,795,700	6%	\$ 4,152,800	6%	\$ 4,246,222	6%	\$ 1,958,500	5%	\$ 2,449,500	5%	\$ 16,602,722	6%
UCAT	\$ 1,841,200	3%	\$ 2,051,800	3%	\$ 2,703,530	4%	\$ 1,485,000	4%	\$ 1,867,000	4%	\$ 9,948,530	3%
Total Higher Education	\$ 36,667,500	61%	\$ 40,753,100	60%	\$ 46,265,491	61%	\$ 21,992,500	60%	\$ 29,198,585	62%	\$ 174,877,176	61%
State Agencies												
Agriculture	\$ 146,600	0%	\$ -	0%	\$ 76,371	0%	\$ 27,900	0%	\$ 172,760	0%	\$ 423,631	0%
Alcoholic Beverage Control	\$ 383,600	1%	\$ 346,100	1%	\$ 305,484	0%	\$ 284,200	1%	\$ 234,909	0%	\$ 1,554,293	1%
Capitol Preservation Board	\$ 1,538,500	3%	\$ 1,694,500	3%	\$ 1,756,531	2%	\$ 1,317,600	4%	\$ 1,842,000	4%	\$ 8,149,131	3%
Community & Economic Dvlp.	\$ 485,600	1%	\$ 250,000	0%	\$ 404,766	1%	\$ 328,200	1%	\$ 240,000	1%	\$ 1,708,566	1%
Corrections	\$ 3,327,900	5%	\$ 4,041,800	6%	\$ 4,154,577	5%	\$ 1,994,400	5%	\$ 2,476,900	5%	\$ 15,995,577	6%
Courts	\$ 2,120,000	3%	\$ 2,093,900	3%	\$ 3,016,651	4%	\$ 1,806,800	5%	\$ 2,305,766	5%	\$ 11,343,117	4%
DFCM	\$ 3,111,500	5%	\$ 4,510,100	7%	\$ 3,459,602	5%	\$ 1,423,200	4%	\$ 2,822,600	6%	\$ 15,327,002	5%
Environmental Quality	\$ 318,000	1%	\$ -	0%	\$ 129,831	0%	\$ 1,000,000	3%	\$ 89,192	0%	\$ 1,537,023	1%
Fairpark	\$ 515,200	1%	\$ 607,400	1%	\$ 504,048	1%	\$ 183,200	1%	\$ 174,000	0%	\$ 1,983,848	1%
Health	\$ 743,800	1%	\$ 250,100	0%	\$ 801,894	1%	\$ 303,000	1%	\$ 540,000	1%	\$ 2,638,794	1%
Human Services	\$ 3,050,000	5%	\$ 3,067,200	5%	\$ 3,795,634	5%	\$ 1,574,200	4%	\$ 2,048,945	4%	\$ 13,535,979	5%
National Guard	\$ 1,503,800	2%	\$ 1,254,000	2%	\$ 2,993,739	4%	\$ 720,000	2%	\$ 975,476	2%	\$ 7,447,015	3%
Natural Resources	\$ 3,415,000	6%	\$ 4,493,300	7%	\$ 4,780,818	6%	\$ 1,265,000	3%	\$ 1,527,382	3%	\$ 15,481,500	5%
Public Ed/Rehab/Deaf & Blind	\$ 188,400	0%	\$ 600,000	1%	\$ 572,782	1%	\$ 310,200	1%	\$ 189,472	0%	\$ 1,860,854	1%
Public Safety	\$ 119,500	0%	\$ 667,400	1%	\$ 313,121	0%	\$ 172,300	0%	\$ 255,000	1%	\$ 1,527,321	1%
Tax Commission	\$ 199,200	0%	\$ 126,500	0%	\$ 259,661	0%	\$ 112,500	0%	\$ 342,663	1%	\$ 1,040,524	0%
Transportation	\$ 1,855,800	3%	\$ 1,760,400	3%	\$ 1,939,821	3%	\$ 1,120,000	3%	\$ 1,322,000	3%	\$ 7,998,021	3%
Veterans Affairs	\$ -	0%	\$ 236,374	0%	\$ 206,201	0%	\$ 180,000	0%	\$ -	0%	\$ 622,575	0%
Workforces Services	\$ 909,900	2%	\$ 660,400	1%	\$ 633,878	1%	\$ 299,800	1%	\$ 477,750	1%	\$ 2,981,728	1%
Total State Agencies	\$ 23,932,300	39%	\$ 26,659,474	40%	\$ 30,105,409	39%	\$ 14,422,500	40%	\$ 18,036,815	38%	\$ 113,156,498	39%
Subtotal	\$ 60,599,800	100%	\$ 67,412,574	100%	\$ 76,370,900	100%	\$ 36,415,000	100%	\$ 47,235,400	100%	\$ 288,033,674	100%
Restore FY2009 Funds							\$ 15,000,000				\$ 24,805,526	
Statewide Funding	\$ 4,993,500		\$ 5,647,326		\$ 6,467,200		\$ 4,247,500		\$ 3,450,000		\$ 24,805,526	
Grand Total	\$ 65,593,300		\$ 73,059,900		\$ 82,838,100		\$ 55,662,500		\$ 50,685,400		\$ 327,839,200	

FY 2010
Capital Improvement Performance Report
Projects Managed by the University of Utah
April 7, 2010

<u>Summary</u>		
	<u>Number</u>	<u>Percentage</u>
Total Projects Managed by UofU	19	
Projects Cancelled/Reallocated	2	
Remaining Projects Managed by UofU	17	
Number of Projects Completed	14	82%
Number of Projects Not Completed	3	18%

Notes:

1. Of the three projects in the Not Completed status, two are High Voltage Electrical Distribution System projects where we delayed construction pending the results in the legislature of our Infrastructure capital development request.
2. Construction of the third project in the Not Completed status was delayed while we are resolving challenges associated with code and noise ordinance requirements.



Gary R. Herbert
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: David G. Buxton
Date: April 27, 2010
Subject: **University of Utah -- Approval of Data Center Retrofit Project**

Recommendation

DFCM recommends that the Building Board review the request from the University of Utah for approval of the Data Center Retrofit Project.

Background

This project will renovate an existing, University-owned building for use as a data center and will not result in any additional square footage. It is being funded entirely through Non-State funding sources with the largest contributions coming from Hospital operations and University research.

DGB:cmn
Attachment



Office of the Vice President
for Administrative Services

April 21, 2010

Mr. David G. Buxton, Director
Division of Facilities Construction and Management
State Office Building Room 4110 PO Box 14116
Salt Lake City, UT 84114-1160

Dear Gregg:

RE: UNIVERSITY OF UTAH – APPROVAL OF DATA CENTER RETROFIT PROJECT

DFCM has asked the University to seek Building Board approval of this project. We understand this is due to the amount of funds required to retrofit this existing building for use as a major data center.

This project will renovate an existing, University-owned building for use as a data center. This Center will meet requirements for a Tier III Data Center for critical enterprise applications and storage. The current estimate for total project cost is \$21 million based on a study performed by HP Critical Mission Facilities. We desire to proceed initially with design in order to develop a phasing strategy to complete the renovation over time.

This project will not result in any additional square footage. It is being funded entirely through Non-State funding sources with the largest contributions coming from Hospital operations and University research. No state funds will be sought for the construction, future operations and maintenance costs, or capital improvement needs. The University is treating this as an auxiliary operation. Therefore, these costs will be funded from charges the Data Center makes to the Hospital, research, and other University/State operations.

The University currently operates seven on-campus data centers to house critical enterprise operations. These centers are located in buildings that do not meet standards for mission-critical operations. This puts critical operations, including the Hospital, at substantial risk in the event of any catastrophic event.

In response to this need, the University purchased a 74,000 square foot industrial building located at 875 South West Temple Street in Salt Lake City. This facility had previously been acquired by Verizon who initiated a renovation to convert it into a data center. Due to changing economic conditions, Verizon opted to dispose of this asset and it became available for the University to purchase in 2008.

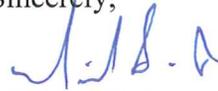
Associate Vice President Facilities Management

1795 East South Campus Dr Rm 222
V. Randall Turpin University Services Building
Salt Lake City, UT 84112-9404
(801) 581-6510
FAX (801) 581-6081

We anticipate that this project will be administered by the DFCM as the cost is expected to exceed the \$10 million threshold for delegation.

We respectfully ask for the consideration and approval by the Utah State Building Board.

Sincerely,



Michael G. Perez
Associate Vice President

c: Ken Nye, University of Utah
Steve Hess, University of Utah



Gary R. Herbert
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: David G. Buxton
Date: April 26, 2010
Subject: **Demo of Old Facilities Bldg.**

Recommendations

DFCM recommends that the Building Board review the UVU request to demolish the old facilities building (Old residential house)

Background

UVU is in the process of building a new Facilities Building. The existing building is a combination of an old residential house and a couple of modular housing unit. The house has no historical significance and the modular unit will also be disposed.

DGB:kfb
Attachments







STATE
VEHICLES
ONLY





Gary R. Herbert
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: David G. Buxton
Date: April 27, 2010
Subject: **Proposed Amendments to Rules:
FOUR ACTION ITEMS:
ACTION A: R23-1. Procurement of Construction
ACTION B: R23-22. General Procedures for Acquisition and selling of Real Property
ACTION C: R23-23. Health Insurance in State Contracts – Implementation
ACTION D: Proposal of New Rule 23-7. State Construction Contracts and Drug and Alcohol Testing.**

Recommendation

In accordance with the 2010 General Session of the Utah State Legislature, the above named rules have been amended to implement changes made in statute during this Legislative Session.

The DFCM recommends that the Building Board approve these amendments to the attached copies of the following rules:

- R23-1. Procurement of Construction
- R23-22. General Procedures for Acquisition and selling of Real Property
- R23-23. Health Insurance in State Contracts – Implementation

It is further recommended that the Building Board approve the new proposed Rule R23-7, entitled State Construction Contracts and Drug and Alcohol Testing to implement a new rule to comply with the provisions of Section 63G-6-604.

Actions on filing the changes to Rules R23-1, R23-22, R23-23 and the new Rule R23-7 should be made by separate motions and votes.

If the Building Board is satisfied with the proposed amendments to these rules (as attached), the DFCM recommends that a Substantive Change for each amended rule and a Notice of Proposed New Rule be filed with the Division of Administrative Rules. At such time, if negative comments are not received after publication and the 30-day comment period, the DFCM requests that the Board approve the filing of the effective notices without returning to the Board.

DGB:ASB
Attachments

R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement of Construction.

R23-1-1. Purpose and Authority.

(1) In accordance with Subsection 63G-6-208, 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 63G-6-208 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 63G-6-103.

(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) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

(m) "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.

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

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

(p) "Using Agency" means any state agency or any political subdivision of the state which

utilizes any services or construction procured under these rules.

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

R23-1-5. Competitive Sealed Bidding.

(1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, shall be used for the procurement of construction if the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) is used unless a determination is made by the Director in accordance with Subsection R23-1-15(1)(c) that the competitive sealed proposals procurement method should be used.

(2) Public Notice of Invitations For Bids.

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

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

(ii) In appropriate trade publications;

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

(iv) By any other method determined appropriate.

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

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

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

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

(c) Directions for obtaining the bidding documents;

(d) A brief description of the project;

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

(4) Bidding Time. Bidding time is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the Division. Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the Director.

(5) Bidding Documents. The bidding documents for an Invitation For Bids:

(a) shall include a bid form having a space in which the bid prices shall be inserted and which the bidder shall sign and submit along with all other required documents and materials; and

(b) may include qualification requirements as appropriate.

(6) Addenda to the Bidding Documents.

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

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

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

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

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

permitted.

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

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

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

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

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

(10) Mistakes in Bids.

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

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

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

(i) Minor formalities are matters which, in the discretion of the Director, are of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the Director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The Director, in his sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the procuring agencies. Examples include the failure of a bidder to:

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

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

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

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

that a mistake was made.

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

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

(11) Bid Evaluation and Award. Except as provided in the following sentence, the contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the bidding documents and no bid shall be evaluated for any requirements or criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a resident contractor if the provisions of Section 63G-6-405 are met.

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

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

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

(c) Any determination of nonresponsibility of a bidder shall be made by the Director in writing and shall be based upon the criteria that the Director shall establish as relevant to this determination with respect to the particular project. An unreasonable failure of the bidder or to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder or determined to be nonresponsible shall be provided with a copy of the written determination within a reasonable time. The Board finds that it would impair governmental procurement proceedings by creating a disincentive for bidders to respond to inquiries of nonresponsibility. Therefore information furnished by a bidder or pursuant to any inquiry concerning responsibility shall be classified as a protected record pursuant to Section 63G-2-305 and may be disclosed only as provided for in Subsection R23-1-35.

(13) Tie Bids. Tie bids shall be resolved in accordance with Section 63G-6-426.

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

(a) The subcontractor list shall include the following:

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

(ii) the subcontractor's name;

(iii) the subcontractor's bid amount;

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

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

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

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

- (i) comply with the requirements of Section 63A-5-208 and
- (ii) clearly list himself on the subcontractor list form.

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

(e) Pursuant to Sections 63A-5-208 and 63G-2-305, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

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

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

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

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

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

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

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

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

R23-1-10. Multi-Step Sealed Bidding.

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

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

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

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

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

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

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

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

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

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

(i) that unpriced technical offers are requested;

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

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

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

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

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

(vii) that bidders may designate those portions of the unpriced technical offers which the bidder believes qualifies as a protected record as provided in Section R23-1-35. Such designated portions may be disclosed only as provided for in Section R23-1-35.

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

(d) Receipt and Handling of Unpriced Technical Offers. After the date and time established for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection. Prior to award, unpriced technical offers shall be shown only to those involved with the evaluation of the offers who shall adhere to the requirements of GRAMA and this rule. Except for those portions classified as protected under Section R23-1-35 or otherwise subject to non-disclosure under applicable law, unpriced technical offers shall be open to public inspection after award of the contract.

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

(f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be conducted with bidders who submit an acceptable technical offer. During the course of discussions, any information derived from one unpriced technical offer shall not be disclosed to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been

found unacceptable may submit supplemental information modifying or otherwise amending its technical offer until the closing date established by the Director. Submission may be made at the request of the Director or upon the bidder's own initiative.

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

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

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

(a) before unpriced technical offers are considered;
(b) after any discussions have commenced under Subsection R23-1-10(4)(f); or
(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).

(6) Carrying Out Phase Two.

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

(i) open bids submitted in phase one (if bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended subsequent to the submittal of bids; or

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

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

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

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

R23-1-15. Competitive Sealed Proposals.

(1) Use.

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

(b) Design-Build. In order to meet the requirements of Section 63G-6-703, competitive sealed proposals shall be used to procure design-build contracts.

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

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

(3) Public Notice.

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

(b) The public notice shall include:

(i) a brief description of the project;

(ii) directions on how to obtain the Request for Proposal documents;

(iii) notice of any mandatory pre-proposal meetings; and

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

(4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the public notice and the date and time set for the receipt of proposals by the Division. In each case, the proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory pre-proposal meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

(5) Form of Proposal. The Request for Proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.

(6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors until the deadline for best and final offers.

(7) Modification or Withdrawal of Proposals.

(a) Proposals may be modified prior to the due dates established in the Request for Proposals.

(b) Proposals may be withdrawn until the notice of selection is issued.

(8) Late Proposals, and Late Modifications. Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the due dates established in the Request for Proposals shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

After the date established for the first receipt of proposals or other required information, a register of offerors shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals who shall adhere to the requirements of GRAMA and this rule.

(10) Confidentiality of Performance Evaluations and Reference Information. The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsections 63G-2-305 and shall be disclosed only to those persons involved with the performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the contractor that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

(11) Evaluation of Proposals.

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

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

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

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

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

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

(12) Proposal Discussions with Individual Offerors.

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

(b) Discussions are held to:

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

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

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

(13) Best and Final Offers. If utilized, the Director shall establish a common time and date to submit best and final offers. Best and final offers shall be submitted only once unless the Director makes a written determination before each subsequent round of best and final offers demonstrating that another round is in the best interest of the procuring agencies and additional discussions will be conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(14) Mistakes in Proposals.

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

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

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

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

(15) Award.

(a) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

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

(16) Publicizing Awards.

(a) Notice. After the selection of the successful offeror(s), notice of award shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(b) Information Disclosed. The following shall be disclosed with the notice of award:

(i) the rankings of the proposals;

(ii) the names of the selection committee members;

(iii) the amount of each offeror's cost proposal;

(iv) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and

(v) the written justification statement supporting the selection.

(c) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

(i) the names of individual selection committee scorers in relation to their individual scores or rankings; and

(ii) non-public financial statements.

R23-1-17. Bids Over Budget.

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

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

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

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

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

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

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

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

R23-1-20. Small Purchases.

(1) Procurements of \$100,000 or Less.

(a) The Director may make procurements of construction estimated to cost \$100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.

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

(c) If the Director determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost \$100,000 or less, the Director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R23-1-15 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of [~~\$10,000~~]\$25,000 or Less. The Director may make small purchases of construction of [~~\$10,000~~]\$25,000 or less in any manner that the Director shall deem to be adequate and reasonable.

(3) Professional Services related to Construction. Small purchases for Architect or Engineer services may be procured as a small purchase in accordance with Rule R23-2-20. For other professional services related to construction, including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors and testing entities; the Director may make small purchases of such professional services if the cost of such professional service is \$100,000 or less in any manner that the Director shall deem to be adequate and reasonable.

~~(3)~~(4) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.

R23-1-25. Sole Source Procurement.

(1) Conditions for Use of Sole Source Procurement.

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

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

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

(c) procurement of public utility services;

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

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

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

R23-1-30. Emergency Procurements.

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

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

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

(4) Authority to Make Emergency Procurements.

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

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

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

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

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

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

R23-1-35. Protected Records.

(1) General Classification. Records submitted to the Division in a procurement process are classified as public unless a different classification is determined in accordance with Title 63G, Chapter 2, U.C.A., Government Records Access and Management Act, hereinafter referred to as GRAMA.

(2) Protected Records. Records meeting the requirements of Section 63G-2-305 will be treated as protected records if the procedural requirements of GRAMA are met. Examples of protected records include the following:

(a) trade secrets, as defined in Section 13-24-2, if the requirements of Subsection R23-1-

35(3) are met;

(b) commercial information or nonindividual financial information if the requirements of Subsection 63G-2-305(2) and Subsection R23-1-35(3) are met; and

(c) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division, including, but not limited to, those records for which such a determination is made in this rule R23-1, Procurement of Construction, or rule R23-2, Procurement of Architect-Engineer Services.

(3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in Subsections R23-1-35(2)(a) and R23-1-35(2)(b) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. Such statements must address each portion of a document for which protected status is requested.

(4) Notification. A person who complies with this Section R23-1-35 shall be notified by the Division prior to the Division's public release of any information for which business confidentiality has been asserted.

(5) Disclosure of Records and Appeal. The records access determination and any further appeal of such determination shall be made in accordance with the provisions of Sections 63G-2-309 and 63G-2-401 et seq., GRAMA.

(6) Not Limit Rights. Nothing in this rule shall be construed to limit the right of the Division to protect a record from public disclosure where such protection is allowed by law.

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

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

(2) Acceptable Bid Security.

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

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

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

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

(ii) only one bid is received.

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

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

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

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

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

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

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

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Director shall consider the results achieved on similar projects in the past, the methods used, and other appropriate and effective methods and how they might be adapted or combined to fulfill the needs of the procuring agencies. The use of the design-bid-build method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost equal to or less than \$1,500,000 and the construction manager/general contractor method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost greater than \$1,500,000. The Director shall include a statement in the project file setting forth the basis for using any construction contracting method other than those suggested in the preceding sentence.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, the Director shall consider the factors outlined in Subsection 63G-6-501(1)(c).

(5) General Descriptions.

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

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

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

(d) Construction Manager/General Contractor. A construction manager/general contractor is a firm experienced in construction that provides professional services to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. The procurement of a construction manager/general contractor may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63G-6-401 through 63G-6-426, in a similar manner as if the subcontract work was procured directly by the Division.

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

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

- (a) adequate price competition is not obtained as provided in Subsection (2); and
- (b) the amounts set forth in Subsection (3) are exceeded.

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

- (a) When a contract is awarded based on competitive sealed bidding;
- (b) When a contractor is selected from competitive sealed proposals and cost was one of the selection criteria;

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

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

- (e) When costs are based upon established catalogue or market prices;
- (f) When costs are set by law or rule;
- (g) When the Director makes a written determination that other circumstances have resulted

in adequate price competition.

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

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

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

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

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

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

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

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

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

R23-1-55. Specifications.

(1) General Provisions.

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

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

(c) Nonrestrictiveness Requirements. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner

of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(2) Director's Responsibilities.

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

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

(c) Whenever specifications are prepared by persons other than Division personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this section.

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

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

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

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

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

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

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

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

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

(4) Procedures for the Development of Specifications.

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

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

(c) Use of Proprietary Specifications.

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

(ii) Unless the Director determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary

specifications shall include a description of the particular design, functional, or performance characteristics which are required.

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

(iv) The Division shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made in accordance with Section R23-1-25.

R23-1-60. Construction Contract Clauses.

(1) Required Contract Clauses. Pursuant to Section 63G-6-601, the document entitled "Required Construction Contract Clauses", Dated May 25, 2005, and on file with the Division, is hereby incorporated by reference. Except as provided in Subsections R23-1-30(7) and R23-1-60(2), the Division shall include these clauses in all construction contracts.

(2) Revisions to Contract Clauses. The clauses required by this section may be modified for use in any particular contract when, pursuant to Subsection 63G-6-601(5), the Director makes a written determination describing the circumstances justifying the variation or variations. Notice of any material variations from the contract clauses required by this section shall be included in any invitation for bids or request for proposals. Examples of changes that are not material variations include, but are not limited to, the following: grammatical corrections; corrections made that resolve conflicts in favor of the intent of the document as a whole; and changes that reflect State law or rule and applicable court case law.

KEY: contracts, public buildings, procurement

Date of Enactment or Last Substantive Amendment: June 1, 2006

Notice of Continuation: May 24, 2007

Authorizing, and Implemented or Interpreted Law: 63G-6-101 et seq.

R23. Administrative Services, Facilities Construction and Management.

R23-22. General Procedures for Acquisition and Selling of Real Property.

R23-22-1. Purpose.

This rule defines the procedures of the Division of Facilities Construction and Management for acquisition and selling of real property.

R23-22-2. Authority.

(1) This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as the "Division").

(2) This rule is also authorized and intended to implement the requirements of Section 63A-5-401, as well as Subsection 63A-5-103(1) (e) (iii).

R23-22-3. Policy.

It is the general policy of the Board that, except as otherwise allowed by the Utah Code, the Division shall buy, sell or exchange real property in accordance with this Rule to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale or exchange.

R23-22-4. Scope of This Rule.

This Rule shall apply to all purchases, sales, donations and exchanges of DFCM, as applicable in this Rule, except as otherwise allowed by the Utah Code. The requirements of this Rule shall also not apply to a contract or other written agreement prior to May 5, 2008; or to any contract or to any purchase, sale or exchange of real property where the value is determined to be less than \$100,000 as estimated by DFCM.

R23-22-5. Requirements for Purchase or Exchanges of Real Property.

DFCM shall comply with the following in regard to the purchase or exchange of real property that is subject to this Rule:

(1) DFCM must find that all necessary approvals have been obtained from State and other applicable authorities. DFCM will assist other State agencies in obtaining these approvals when it is deemed by DFCM to be in the interest of the State.

(2) DFCM shall coordinate as required any necessary financing requirements through the State Building Ownership Authority, or other relevant bonding authority, as authorized by the Legislature.

(3) DFCM shall assist other State agencies in accordance with DFCM's governing statutes, through financial analysis and other appropriate means, in selecting the appropriate or particular real property to be purchased and/or exchanged.

(4) DFCM shall, in accordance with DFCM's governing statutes, negotiate, draft and execute the applicable Real Estate Contract with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract.

(5) DFCM shall obtain and review the following documents when such is determined by DFCM to be customary in the industry for the size and type of transaction or if required by another provision of this Rule or State law:

- a. title insurance commitment;
- b. an environmental assessment;

- c. an engineering assessment;
- d. a code review;
- e. an appraisal;
- f. an analysis of past maintenance and operational expenses, when available and relevant;
- g. the situs, zoning and planning information;
- h. an ALTA land survey;~~and~~
- i. an historic property assessment under Section 9-8-404; and
- ~~[i]~~j. other requirements determined necessary by DFCM, this Rule or State law.

(6) DFCM shall review, approve and execute when in the interest of the State, closing documents as prepared by the selected title company.

(7) DFCM may use boiler plate documents approved as to form by the Utah Attorney General or shall consult with the Utah Attorney General regarding provisions of the sale or significant changes to the boiler plate documents approved as to the form by the Utah Attorney General.

(8) DFCM shall endeavor to monitor the distribution of closing documents.

R23-22-6. Additional Requirements Regarding R23-22-5(5).

DFCM shall comply with the provisions below. None of the provisions below shall restrict the Director from requiring or not requiring any of the following if in the Director's opinion such is advantageous to the State or if such is required or allowed by State law:

(1) Title insurance commitment. The following applies to real property that may become State property by purchase, donation or exchange: DFCM shall obtain an Owner's Policy of Title Insurance for real property valued by DFCM at \$500,000 or above. For real property valued by DFCM at less than \$500,000, DFCM shall obtain a title report and may obtain an Owner's Policy of Title Insurance if, in the judgment of DFCM, title insurance is advantageous to the State.

(2) Phase I Environmental Assessment or Greater. The following applies to real property that may become State property by purchase, donation or exchange: A Phase I or greater Environmental Assessment may be required by DFCM prior to a purchase or exchange of real property when the property considered to become State property has a use and/or occupancy history which in the opinion of DFCM indicates the possibility of environmental issues that would materially affect the DFCM's purchase of the property or the State agency's use of the property.

(3) Engineering Assessment. The following applies to real property that may become State property by purchase, donation or exchange: For all improved real property valued by DFCM at \$250,000 or above, DFCM shall obtain an engineering assessment of mechanical systems and structural integrity of improvements located on the property. An engineering assessment may be waived by the DFCM Director if an engineering assessment has already been performed within the past 12 months or if the land is unimproved. The State may perform an engineering assessment for real property valued at less than \$250,000 if, in the judgment of the Director, such an assessment is advantageous to the State.

(4) Code and Requirements Review. DFCM shall review the real property that may potentially become State property through purchase, donation or exchange to ascertain its suitability under all applicable codes and requirements, including any applicable provisions of State law.

(5) Appraisal. For real property that may potentially become State property through purchase or exchange, the State shall arrive at a fair market valuation of the property prior to purchase that is agreeable to the seller and the State. The fair market value determination used by DFCM in the negotiation shall be based upon an appraisal completed by an appraiser that

specializes in the type of the subject real property and is a state-certified general appraiser under Section 61-2B-2 or by a State of Utah licensed MAI appraiser who also has such a certificate, except as follows:

- (a) When this rule is not applicable under its scope;
- (b) When State law otherwise provides that DFCM does not have to use fair market value;

or

(c) When the Director has determined by a writing filed with DFCM, that the cost of obtaining the appraisal is not justified in the economic interest of the State of Utah.

(6) Past maintenance and operational expenses. DFCM shall endeavor to obtain, past maintenance and operational expense histories attached to any real property that may be acquired by the State, including real property that is acquired by purchase, donation or exchange, unless it is determined by the Director that the obtaining of such records is not justified in the economic interest of the State of Utah.

(7) Situs, zoning and planning information. DFCM shall endeavor to obtain preexisting situs, zoning and planning information regarding the real property that may be acquired by purchase, donation or exchange when required by State law, or if the Director determines that the obtaining of such information is advantageous to the State.

(8) ALTA land survey. For all real property acquired by DFCM through purchase, donation or exchange, and the property to become State property is valued by DFCM at \$250,000 or above, DFCM shall obtain an ALTA/ACSM Land Title Survey, current revision, of the subject property. An ALTA survey shall not be required if an ALTA survey has already been performed within the past 12 months unless otherwise determined by the Director. The State may perform an ALTA survey for real property valued less than \$250,000 if the Director determines that such a survey is in the interest of the State.

R23-22-[6]7. Requirements for the Disposition of Real Property by DFCM.

(1) Determination of disposition of real property.

(a) Notwithstanding, any other provision of this Rule R23-22, any real property that is of historical significance to the State of Utah shall not be disposed by the Division, regardless of the value amount of the property, unless approval has been obtained by the Legislative Management Committee of the Utah Legislature.

(i) "Historical significance" for the purposes of this Rule R23-22 includes real property, including any statues or other improvements on the real property, that is listed on or eligible for inclusion on the National Register of Historic Places or the State Register.

(ii) The Division, after consultation with the State Historic Preservation Officer, shall make a recommendation to the Board as to whether a property proposed to be declared as surplus property, is historically significant based on the definition of "historically significant" in this Rule. The Board, after considering the recommendation of the Division as well as any other interested persons or entities, shall determine whether or not the property is historically significant.

(iii) A copy of the determination regarding Historical Significance shall be sent to the State Historic Preservation Officer as well as the Chair and Vice-Chair of the Legislative Management Committee, any of which may within ten (10) working days of the receipt of the determination by the Board, decide that the issue should be considered by the Legislative Management Committee and that the Division shall not proceed with the disposition of the property until the Legislative Management Committee approves the disposition.

(b) If the Board has not determined that the real property is historically significant, then the

Building Board may declare the real property to be surplus under the procedures described in this Rule.

(i) Thereafter, if the appraised value of the real property is estimated by the Director to be \$500,000 or below, then the Board may authorize the Division to dispose of the real property in accordance with the provisions of this Rule.

(ii) If the appraised value as estimated by the Director is above \$500,000, then the Board shall refer consideration of the sale of the real property to the Legislative Management Committee.

(c) Nothing in the rule shall prohibit the Director from proceeding with lot line and other minor, incidental adjustments with other State entities or other public/private persons or entities, as long as the Director reasonably determines that such property is not historically significant after consultation with the State Historic Preservation Officer, that the adjustment is in the public interest, and that the value of the adjustment as determined by the Director is less than \$100,000.

(2) Determination of surplus property. If the real property is determined to not be historically significant under this rule and in addition to the policy of Rule R23-22-3, it is the policy of this Board to efficiently and economically dispose of real property that is determined by DFCM or the State to be surplus in accordance with State law. In accordance with State law, DFCM may recommend to the Board that certain real property be declared as surplus. The Board shall consider the following factors in the determination of declaring the property to be surplus:

(i) the input of the Division;

(ii) the input of State agencies;

(iii) any other input received from concerned persons or entities; and,

(iv) the appraised value of the property.

(3) Detailed disposition procedures. After the appropriate determination is made that the real property is surplus, and it is determined that the property is not historically significant under this rule, then DFCM shall endeavor to sell the surplus real property on the open market, unless such property is to be conveyed to another State agency or public entity in accordance with Utah law. If there is such a sale, it shall be as follows:

(1)(a) DFCM shall confirm that all necessary approvals have been sought for the declaration of surplus property.

(2)(b) Unless otherwise allowed by State law, DFCM shall obtain at least fair market value for the real property to be sold. This shall be accomplished by the following:

(a)(i) DFCM shall determine a fair market valuation of the property prior to the offer for sale. The fair market value determination used by DFCM in offer for sale shall be based upon an appraisal completed by an appraiser that specializes in the type of the subject real property and is a state-certified general appraiser under Section 61-2B-2, or by a Utah licensed MAI appraiser who also has such a certificate, except as follows:

(i)A When this rule is not applicable under its scope;

(i)B When State law otherwise provides that DFCM does not have to use fair market value;

or

(iii)(C) When the Director has determined by a writing filed with DFCM, that the cost of obtaining the appraisal is not justified in the economic interest of the State of Utah.

(b)(c) DFCM shall establish a listing price based on the appraisal obtained under this Rule or, if there is no appraisal based on the above, based upon DFCM's knowledge of prevailing market conditions and other circumstances customarily used in the industry for such sales.

(e)(d) DFCM shall advertise the property for sale in such a manner that is commercially reasonable in the discretion of the Director. DFCM may set a time deadline for the submission of

bids for the real property based upon the economic conditions at the time of the sale.

(d)(e) DFCM shall endeavor to enter into a contract for sale to the highest reasonable bidder, unless the DFCM Director files a written justification statement as to why a lower bidder is more advantageous to the State or if there is a sole bidder, that such bid is unreasonable. If after a reasonable timeline set by the Director of public advertisement, no acceptable bid is submitted, then DFCM may sell the property through a private negotiated sale, provided that any sale below the fair market value initially established by DFCM for the subject property is accompanied by a written justification statement filed by the Director and a copy of which is provided to the Board prior to execution of the contract for sale.

(e)(f) DFCM shall, in accordance with DFCM's governing statutes, negotiate, draft and execute the applicable Real Estate Contract, with due consideration to the comments of the affected State agency. The affected State agency may be required by DFCM to be a signatory to the Contract.

(f)(g) DFCM shall review, approve, and execute when appropriate, closing documents as prepared by the selected title company.

(g)(h) DFCM may use boiler plate documents approved as to form by the Utah Attorney General or shall consult with the Utah Attorney General regarding provisions of the sale or significant changes to the boiler plate documents approved as to the form by the Utah Attorney General.

(h)(i) DFCM shall endeavor to monitor the distribution of the closing documents.

R23. Administrative Services, Facilities Construction and Management.

R23-23. Health Reform – Health Insurance in State Contracts – Implementation.

R23-23-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63A-5-205.

R23-23-2. Authority.

This rule is authorized under [Subsection 63A-5-103\(1\)\(e\)](#), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as [Section 63A-5-205](#) which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in [Section 63A-5-205](#).

(2) In addition:

(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, the Director's duly authorized designee.

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

(d) "Employee(s)" is as defined in [63A-5-205\(1\)\(c\)](#) and includes only those employees that live and/or work in the State of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than the use of the term employee for purposes of State of Utah Workers' Compensation laws along with their dependents.

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

R23-23-4. Applicability of Rule.

(1) Except as provided in [Rule R23-23-4\(2\)](#) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board on or after July 1, 2009, ~~if~~ and

(a) applies to a prime ~~the~~ contractor if the prime contract is ~~for design and/or construction~~ in the amount of \$1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract ~~the prime contract~~ is in the amount of ~~\$1,500,000~~ \$750,000 or greater. ~~;~~ ~~or~~

~~— (i) a subcontract, at any tier, is in the amount of \$750,000 or greater.]~~

(2) This Rule R23-23 does not apply if:

(a) the application of this Rule R23-23 jeopardizes the receipt of federal funds,

(b) the contract is a sole source contract,

(c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in [Section 63G-6-103](#), or a modification to a contract, when the contract does not meet the initial threshold required by [Rule R23-23-4\(1\)](#).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

R23-23-5. Contractor to Comply with Section 63A-5-205.

All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

R23-23-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this ~~[to comply with this]~~ Rule or Section 63A-5-205:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor (including consultants, designers and others under contract with the Division) that is subject to the requirements of this Rule no later than the time ~~[of execution of the contract]~~ the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the Director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees; and

(b) The contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors (including subconsultants) at any tier that is subject to the requirements of this Rule.

(2) Recertification. The Director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsections 63A-5-205(1)(e)(i) and (iii) is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department; or an actuary selected by the contractor; or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this Rule R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding any of the following:

~~[(a) In accordance with Section 26-40-106(2)(a), the largest insured commercial enrollment offered by a health maintenance organization in the State, [which the Children's Health Insurance Program has determined is the SelectHealth plan currently offered by SelectHealth, 4646 West Lake Park Blvd, Salt Lake City, Utah 84130. The reference to SelectHealth herein is to provide an example of a qualifying plan and is not intended to endorse or indicate a preference for the use of SelectHealth as the insurance provider in any way;~~

or]which details of the plan are provided on the website of the Division at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>; or]

(a) As delineated on the DFCM website at <http://dfcm.utah.gov/downloads/Health%20Insurance%20Benchmark.pdf>, a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the State, in which:

(i) The employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the State; and

(ii) for purposes of calculating actuarial equivalency under this Rule R23-23-7(3)(a):

(A) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels, the deductible is \$750 per individual and \$2,250 per family; and the out-of-pocket maximum is \$3,000 per individual and \$9,000 per family;

(B) dental coverage is not required; and

(C) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(b)(i) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either:

(A) the lowest deductible permitted for a federally qualified high deductible health plan;
or

(B) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(ii) an out-of-pocket maximum that does not exceed three times the amount of the annual deductible; and

(iii) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the State.

(4) The health insurance must be available upon the first day of the calendar month following the initial ninety (90) days from the [beginning of employment]date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this Rule shall be liable to the employee for health care costs [~~not covered by insurance~~]that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Rule R23-23-7(8)(c)(i) as provided in Subsection 63A-5-205(3)(g)(ii).

R23-23-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.

DRAFT RULE

R23. Administrative Services, Facilities Construction and Management

R23-7. State Construction Contracts and Drug and Alcohol Testing.

R23-7-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63G-6-604.

R23-7-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63G-6-604(4).

R23-7-3. Definitions.

(1) The following definitions of Section 63G-6-604 shall apply to any term used in this Rule R23-7:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) For purposes of Rule R23-7(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division including the Division of Facilities Construction and Management;

(iii) an agency;

(iv) a board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by the Division.

(g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include a supplier who provides only materials, equipment,

or supplies to a contractor or subcontractor.

(2) In addition:

(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, the Director's duly authorized designee.

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

(d) "State" as used throughout Rule R23-7 means the State of Utah except that it also includes those entities described in Rule R23-7-3(1)(e) as the term "state is used in Rule R23-7-4(5).

R23-7-4. Applicability.

(1) Except as provided in Rule R23-7-5, on and after July 1, 2010, the Division may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the state public procurement unit that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Rule R23-7-4(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Rule R23-7-4 (1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the Division, which shall be demonstrated by a provision in the contract where the contractor acknowledged this Rule R23-7 and agrees to comply with all aspects of this Rule R23-7, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Rule R23-7-4(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Rule R23-7-4 (1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Rule R23-7-4 (2), if a contractor or subcontractor fails to comply with Rule R-23-7-4(1), the contractor or subcontractor may be suspended or debarred in accordance with this Rule R23-7.

(b) On and after July 1, 2010, the Division shall include in a state construction contract a reference to this Rule R23-7.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply

with Rule R23-7-4(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with R23-7-4(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Rule R23-7-4(1) is that the contractor, by executing the construction contract with the Division, is deemed to certify to the Division that the contractor, and all subcontractors under the contractor that are subject to Rule R23-7-4(1), shall comply with all provisions of this Rule R23-7 as well as Section 63G-6-604; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the Division in writing information that indicates compliance with the provisions of Rule R23-7 and Section 63G-6-604.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6-604. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 63G-6-604 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Rule R23-7(4) (1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 8, Legal and Contractual Remedies; and

(b) may not be used by a state public procurement unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After the Division enters into a state construction contract in compliance with Section 63G-6-604, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6-604.

(b) The state is not liable in any action related to Section 63G-6-604 and this Rule R23-7, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R23-7-5. Non-applicability.

(1) This Rule R23-7 and Section 63G-6-604 does not apply if the Division determines

that the application of this Rule R23-7 or Section 63G-6-604 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

- (a) jeopardizing the receipt of federal funds;
- (b) the state construction contract being a sole source contract; or
- (c) the state construction contract being an emergency procurement.

R23-7-6. Not Limit other Lawful Policies.

(1) If a contractor or subcontractor meets the requirements of Section 63G-6-604 and this Rule R23-7, this Rule R23-7 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.



Gary R. Herbert
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: David G. Buxton
Date: April 26, 2010
Subject: **Administrative Reports for 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.

DGB:cmn

Attachment



Office of the Vice President
For Administrative Services

April 23, 2010

Mr. Gregg Buxton, Director
Division of Facilities Construction and Management
State Office Building Room 4110
Salt Lake City, UT 84114

Subject: U of U Administrative Reports for May 5th Building Board Meeting.

Dear Gregg:

The following is a summary of the administrative reports for the U of U for the period 3/19/10 to 4/23/10. Please include this in the packet for the May 5, 2010 Building Board Meeting.

Professional Services Agreements (Page 1)

The Professional Services Agreements awarded during this period consist of:

4 Design Agreements, 0 Programming/Planning Agreements, 6 Study/Other Agreements.

No significant items.

Construction Contracts (Page 2)

The Construction Contracts awarded during this period consist of:

0 New Space Contracts, 3 Remodeling Contracts, 0 Site Improvement Contract.

No significant items.

Report of Project Reserve Fund Activity (Page 3)

Increases:

Project 20021: Fine Arts Building #036 Code Improvements

This project was completed significantly below budget. The excess funds were transferred to the Project Reserve.

Project 20147: Student Services Building Glazing/Structure Repair

This transfers the balance of the construction budget remaining after award of the construction contract.

Associate Vice President Facilities Management

1795 East South Campus Dr Rm 219
V. Randall Turpin University Services Building
Salt Lake City, UT 84112-9404
(801) 581-6510
FAX (801) 581-6081

Gregg Buxton, Director
April 23, 2010
Page 2

Project 20003: Regulated Waste Management Facility Shipping Office

The budget for this project included \$50,000 to upgrade the barrel exhaust system. As the project progressed, it was determined that a much more substantial modification was required which would cost \$140,000. As a result, this portion of the project scope was dropped and a new project will be requested in FY12 to address this need.

Decreases:
None.

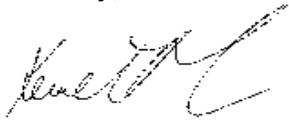
Report of Contingency Reserve Fund (Page 4)

Increases:
None.

Decreases:
No significant items.

Representatives from the University of Utah will attend the Building Board meeting to address any questions the Board may have.

Sincerely,



Kenneth E. Nye, Director
Facilities Management Business Services

Enclosures

cc: University of Utah Trustees
Mike Perez
Gregory L. Stauffer



**Professional Services Agreements
Awarded From March 19, 2010 to April 23, 2010**

Item Number	Project Number	Project Name	Firm Name	Project Budget	Contract Amount
<i>Design</i>					
1	H50053	Expand Transplant Clinic, Bldg 529 Level A	Architectural Nexus	\$581,988	\$49,750
2	20247	The Children's Center - Child Care Center	HHY Associates	\$1,850,000	\$105,875
3	H50088	Add New 400 Ton Plate - Frame Heat Exchanger, Bldg 526	Van Boerum & Frank	\$10,500	\$10,500
4	H50059	Resolve ADA Accessibility Issues	Eaton Architecture	\$250,000	\$35,700
<i>Programming/ Planning</i>					
<i>Study/ Other</i>					
5	20216	S. J. Quinney College of Law Pre-Programming Facility Study	Valentiner Crane Brunjes Onyon (VCBO)	\$131,375	\$131,375
6	21001	Health Sciences Center South - Traffic & Parking Study	Project Engineering Consultants	\$10,960	\$10,960
7	20218	HPER Complex HTW	Professional Service Industries Inc.	\$451,607	\$14,864
8	20227	University Student Apts Tower 1 & 2 Exterior Concrete Study	CMT- Construction Materials Technologies	\$30,910	\$30,910
9	20098	George Thomas Building, College of Science Pre-Programming Study	Perkins + Will Inc.	\$213,750	\$80,450
10	20160	USTAR HPER Tunnel & Utility Installation - Commissioning	Heery International, Inc.	\$155,147,610	\$13,235



**Construction Contracts
Awarded From March 19, 2010 to April 23, 2010**

Item Number	Project Number	Project Name	Firm Name	Design Firm	Project Budget	Contract Amount
<i>Construction - New Space</i>						
<i>Construction - Remodeling</i>						
1	20120	Entrada Ranch Electrical	Nichols Building LLC	Ken Garner Engineering	\$347,509	\$54,300
2	20156	Student Union-Mechanical Pipe Replacement Phase 2	Rocky Mountain Mechanical, Inc	Harold L. Whipple DBA TWEA	\$1,368,000	\$435,000
3	21006	MEB-Nuclear Engineering Facility Renovation, Room 1206	Mark R. Hamilton Corporation	NA	\$75,000	\$60,343
<i>Construction - Site Improvement</i>						



University Of Utah
Report Of Project Reserve Fund Activity
For the Period of March 19, 2010 to April 23, 2010

PROJECT NUMBER	PROJECT TITLE	TRANSFER AMOUNT	DESCRIPTION FOR CONTINGENCY TRANSFER	% OF CONSTR. BUDGET
	BEGINNING BALANCE	458,320.01		
20021	FINE ARTS BLDG #036 CODE IMPROVEMENTS	53,331.45	Transferred remaining balance to project reserve	
20147	STUDENT SERV BLDG GLAZING/STRUCTURE REPAIR	40,000.00	Excess construction budget after bidding	
20003	REGULATED WASTE MANAGEMENT FACILITY - SHIPPING OFFICE	49,787.87	Transferred remaining balance to project reserve	
	DECREASES TO PROJECT RESERVE FUND:			
	CURRENT BALANCE OF PROJECT RESERVE:	601,439.33		



University Of Utah
Report Of Contingency Reserve Fund Activity
For the Period of March 19, 2010 to April 23, 2010

PROJECT NUMBER	DESCRIPTION	CURRENT TRANSFERS	TOTAL TRANSFERS FROM CONTINGENCY	% OF CONSTR. BUDGET	PROJECT STATUS
	BEGINNING BALANCE	1,648,072.23			
	INCREASES TO CONTINGENCY RESERVE FUND				
	DECREASES TO CONTINGENCY RESERVE FUND				
	NEW CONSTRUCTION				
20024	REMODELING HTW Lines Replacement - Health Sciences Area	(9,431.98)	(313,440.96)	9.93%	Construction
	ENDING BALANCE 01-00376-7000-05107	1,638,640.25			

26 April 2010

David G. Buxton, Director
Division of Facilities Construction
and Management
State Office Building Room 4110
PO Box 141160
Salt Lake City, Utah 84114-1163

Dear Gregg:

SUBJECT: USU Administrative Reports for May 2010 Building Board Meeting

The following is a summary of the administrative reports for USU for the period 03/19/10 to 04/26/10:

Professional Contracts, 2 contracts issued (Page 1)

Comments are provided on the report.

Construction Contracts, 3 contracts issued (Page 2)

An amount of \$31,394.28 is needed from the Project Reserve Fund to issue a contract to Raymond Construction on the Eccles Conference Center/Business Walkways project. Additional comments are provided on the report.

Report of Contingency Reserve Fund (Page 3)

No significant items. The fund decreased by a total of \$32,995.28.

Report of Project Reserve Fund Activity (Page 4)

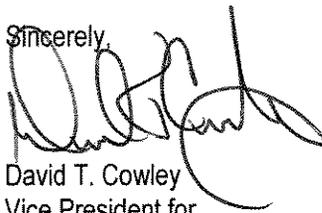
As noted above, \$31,394.28 is needed from the Project Reserve Fund in order to issue a contract to Raymond Construction on the Eccles Conference Center/Business Walkways project.

Current Delegated Projects List (Pages 5-6)

Of USU's 48 current projects, 21 are Substantially Complete, 21 in Construction, 5 in the Design/Study phase, and 1 Pending.

Representatives from Utah State University will attend the Building Board meeting to address any questions the Board may have.

Sincerely,



David T. Cowley
Vice President for
Business and Finance

DTC/jm

c: Gregory L. Stauffer
Darrell E. Hart
Ben R. Berrett
Stanley G. Kane



UtahStateUniversity

Office of the Vice President for Business and Finance
1445 Old Main Hill
Logan, UT 84322-1445

Professional Contracts Awarded From 03/19/10 to 04/26/10

Contract Name	Firm Name	A/E Budget	Fee Amount	Comments
1 Utah Botanical Center Classroom Building	AJC Architects	\$99,800.00	\$99,800.00	Construction documents and Administrative services
2 Fine Arts Complex Safety Repairs	Spectrum Engineers	\$18,187.00	\$4,000.00	Kent Concert Hall/Morgan Theatre lighting design



Office of the Vice President for Business and Finance
 1445 Old Main Hill
 Logan, UT 84322-1445

Construction Contracts Awarded From 03/19/10 to 04/26/10

Project	Firm Name	Design Firm	Const Budget	Contract Amt	Comments
1 Eccles Conference Center/ Business Walkways	Raymond Construction	GreenWorks	\$159,280.50	\$190,674.78	Balance needed of \$31,394.28 from Project Reserve Fund
2 HPER Office/Classroom Upgrade	USU Facilities	USU Facilities Planning and Design	\$168,696.00	\$22,450.10	Air handler coil replacement
MISCELLANEOUS CONTRACTS					
3 Water Lab Fume Hood Upgrade	Eagle Environmental		\$3,390.00	\$3,390.00	Asbestos abatement



Office of the Vice President for Business and Finance
 1445 Old Main Hill
 Logan, UT 84322-1445

Report of Contingency Reserve Fund From 03/19/10 to 04/26/10

Project Title	Current Transfers	Total Transfers To (From) Contingency	% to Construction Budget	Project Status	% Completed (Paid)
BEGINNING BALANCE	\$607,447.92				
INCREASES TO CONTINGENCY RESERVE FUND					
None					
DECREASES TO CONTINGENCY RESERVE FUND					
Classroom Upgrades FY10 (Change order)	(14,354.66)	(14,354.66)	5.57%	Construction	76%
Miscellaneous Critical Improvements FY10 (Military Science 115A-115K remodel change orders)	(13,675.06)	(13,675.06)	3.83%	Construction	36%
CPD Fire Alarm FY09 (Change orders)	(4,630.56)	(13,885.21)	10.44%	Substantial Completion	98%
Water Lab Fume Hood Upgrade (Course of construction insurance)	(335.00)	(335.00)	0.03%	Construction	64%
ENDING BALANCE	\$574,452.64				



Office of the Vice President for Business and Finance
 1445 Old Main Hill
 Logan, UT 84322-1445

Report of Project Reserve Fund Activity From 03/19/10 to 04/26/10

Project Title	Transfer Amount	Description	% of Construction Budget
BEGINNING BALANCE	\$384,545.25		
INCREASES TO PROJECT RESERVE FUND			
None			
DECREASES TO PROJECT RESERVE FUND			
Eccles Conference Center/Business Walkways	(31,394.28)	Amount needed to award construction contract	17.76%
ENDING BALANCE	\$353,150.97		



Office of the Vice President for Business and Finance
 1445 Old Main Hill
 Logan, UT 84322-1445

Current Delegated Projects List

04/26/10

Project Number	Project Name	Phase	Project Budget
CAPITAL DEVELOPMENT/IMPROVEMENT			
A21736	Equine Education Center	Construction	\$3,280,235 *
A07961	Building 86C/Wind Tunnel Replacement (Structures Lab)	Substantial Completion	889,656
A16967	Fume Hood Upgrades FY08 A/C & Controls Upgrade FY08	Substantial Completion	500,000 426,740
A16878	Campus-wide Medium Voltage Upgrades	Substantial Completion	682,808
A16873	Fire Alarm Upgrades FY08	Partial Completion	282,051
A16881	CEP Chillers	Substantial Completion	1,494,504
A16876	Access Control/Security Systems Upgrades	Construction	188,800
A16877	CEP Electrical Feed	Equipment order	188,685
A16872	Tanner Fountain	Substantial Completion	314,752
A16971	Planning & Design Fund FY08	Design/Study	100,000
A16783	UWRL Hydraulics Laboratory	Substantial Completion	1,836,523
A18615	Steam Line Replacement to NFS	Substantial Completion	933,000
A18972	Planning & Design Fund FY09	Design/Study	100,000
A18973	Health, Life Safety & Code Compliance Projects FY09	Substantial Completion	192,727
A18728	Campus-wide Sidewalk Replacements	Substantial Completion	321,775
A18974	Business Building Cladding	Substantial Completion	422,158
A18975	Water Lab Fire Lane Access/Bridges	Substantial Completion	919,947
A18976	Water Lab Fume Hood Upgrade	Construction	1,392,982
A18978	Tippetts Gallery Lighting/HVAC	Substantial Completion	863,437
A18980	CPD Fire Alarm FY09	Substantial Completion	153,242
A18981	Natural Resources Siding	Construction	94,453
A18982	Campus-wide Benches/Trash Receptacles/Urns	Construction	118,038
A18984	Eccles Conference Center/Business Walkways	Construction	189,393
A18985	Miscellaneous Critical Improvements FY09	Construction	196,193
A18363	Tooele Classrooms Addition	Substantial Completion	3,608,399
A19843	TSC 3rd Floor HVAC Remodel	Substantial Completion	637,421
A20091	Military Science Renovation (Psychology Teaching Lab/1st & 2nd Floors)	Substantial Completion	197,207
A19028	Roosevelt Child Lab/Bookstore Remodel	Substantial Completion	293,935
A20143	SER Observatory	Substantial Completion	265,347
A20520	USTAR Biofuels Outdoor Facility (Innovation Campus)	Substantial Completion	863,151

A20557	Campus-wide Medium Voltage Upgrade FY10	Construction	617,176
A20794	Ray B. West Window Replacement	Construction	768,439
A20856	Miscellaneous Critical Improvements FY10	Construction	392,246
A20857	Planning & Design Fund FY10	Design/Study	100,000
A20858	Health, Life Safety & Code Compliance Projects FY10	Construction	107,142
A20859	Classroom Upgrades FY10	Construction	298,903
A20860	HPER Office/Classroom Upgrade	Construction	205,421
A20861	Fine Arts Complex Safety Repairs	Construction	331,812
A20862	Building Recommissioning	Construction	236,607
A20863	Campus Wide Bike Racks	Construction	47,273
A20864	Business MCC and E-Panel	Construction	94,546
A20865	NE Campus (NFS) Steam Line Replacement	Substantial Completion	500,000
A20736	Spectrum Locker Rooms Remodel	Substantial Completion	490,657
A21088	Utah Botanical Center Wetland Lab ARRA Improvements	Construction	360,000
A20593	Utah Botanical Center Classroom Building	Design	2,860,656
A22304	Utah Botanical Center Riparian Stream System	Design	100,000
A22269	Motor Pool Interior Remodel	Construction	130,998

PAVING (STATEWIDE)

A08076	Miscellaneous Paving	Pending	<u>8,540</u>
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TOTAL (48)

\$29,597,975

* Project management delegated to USU.



Gary R. Herbert
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: David G. Buxton
Date: April 27, 2010
Subject: **Administrative Reports for DFCM**

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

Lease Report (Pages 1 - 2)

No significant items

Architect/Engineering Agreements Awarded, 21 Agreements Issued (Pages 3 - 5)

No significant items

Construction Contracts Awarded, 33 Contracts Issued (Pages 6 - 9)

Item #3, Fairpark Grand Building Controls Upgrade

Project Reserve funds were used to cover this contract which bid over budget.

Item #12, Dixie State College New Athlete Weight Training Metal Building

This construction contract was approved as a direct award by Director Buxton, based on the stipulation by the donor of the project funding.

Report of Contingency Reserve Fund (Page 10)

Increases

This increase of \$465,370 is the result of decrease change order #14 on the Multi-Agency Office Building for the residual balance of two allowances in the general contractor's agreement for an off-site parking lot and connection/impact fees. The decrease was netted against an increase for FFE costs in the shared fitness room, shared locker room and keyboards.

Decreases, New Construction

University of Utah USTAR Building

This increase of \$336,658 is the State's share of change order #11 for various items; UDOT would not approve the routing of the sewer line down 5th South so a redesign was required, the sewer line was shown at the wrong elevation through the business loop and hard rock was encountered which required a boring machine, unforeseen high temp water line was encountered, and to change the gas meter location.

Report of Contingency Reserve Fund Continued (Page 10)

Decreases, New Construction Continued

Snow College Library/Classroom Building

This transfer of \$242,034 is to cover the State's share of change orders #11 – 15. Items included on these change orders include; scope changes to add storage room and shelves for the café, provide BIM drawings and clash detection, add Caesar stone for the café counter tops and laminate to walls behind counters, additional framing, sheetrock and shelf's for café storage room, addition of icynene insulation around the perimeter of the building attic, design errors add soffits at the 3rd floor restrooms and study area's to accommodate ceiling height requirements, change glazing in south staircase to tempered glass, modify exterior suffix and trim detail to match approved renderings, unknowns to add monitoring for elevator shaft exhaust fan, replace 36" fireplace with a 72" fireplace, light fixture for radius staircase to include motor and pulley system to raise and lower fixture, add shaft wall and return air duct, and omissions for added power connection for the space saver shelving, add light fixtures, add condensate pumps for condensate drains server room, add power and data wiring for owner provided FFE,

Mountainland ATC North Utah County Building

This transfer of \$147,775 covers change orders #1 - #3. Items included on these change orders include; unknowns to relocate plumbing lines due to conflicts with beams, increase elevation height of the generator and cooling tower enclosures to completely conceal the equipment, site utility changes as per Lehi public utilities requirements, omissions for additional plumbing and electrical required for the pedicure stations and the addition of 2 floor drains, add air handler coil freeze protection pumps, scope changes to convert 2D plumbing drawings into 3D for use in BIM and clash detection.

Decreases, Remodeling

POST Academy Building Remodeling

This transfer of \$92,156 covers change orders 13 and 14, as well as increased DTS wiring costs. The change orders include unknowns to replace some of the original galvanized waterlines which were severely rusted resulting in very poor quality brown water at the water taps, and misc electrical modifications to alarm system and misc. signage and trim items to complete project.

Report of Contingency Reserve Fund Continued (Page 10)

Decreases, Remodeling

Price DOT Maintenance Station Steam Piping Replacement

This transfer of \$17,255 covers change order #1 for various unknowns to replace the existing PVC water piping which was broken and leaking, relocate existing water line away from the existing steam line and the new steam line, extra work required by the excavation contractor due to asbestos abatement required, and additional seals at the foundation wall to the boiler plant were required due to the existing size of the opening.

Report of Project Reserve Fund Activity (Page 11)

Increases

These items reflect savings on projects that were transferred to Project Reserve per statute.

Decreases

Transfer is to award construction contract that bid over budget.

DGB:DDW

Attachments

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 3/16/10 to 4/15/2010

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

LEASES

	National Guard Recruiting, Richfield	Full	Office	MtoM		720		\$ 4.79	Temporary lease, waiting for completion of new space.
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AMENDMENTS

	Corrections, Adult Probation & Parole Price	Full	Office	5 Yrs.		5,932	5,932	\$15.65	\$16.29	Renewal at market.
	Education, Rehabilitation Taylorsville	Full	Office	5 Yrs.		7,300	7,300	\$20.53	\$20.53	Renewal, no change in rental costs.
	Human Services, Child & Family Services West Valley	Full	Office	2 Yrs.		26,736	26,736	\$22.72	\$22.72	Term extension, no change in rental costs.
	Public Safety Highway Patrol Wendover	Full	Office	3 Yrs.		754	754	\$11.50	\$11.50	Renewal, no change in rental costs.



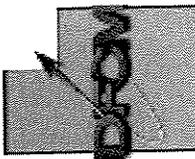
Division of Facilities Construction and Management
 4110 State Office Building, Salt Lake City, UT 84114
 Telephone (801) 538-3018 FAX (801) 538-3267

LEASE REPORT

From 3/16/10 to 4/15/2010

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

	Tax Commission Auditing, Cedar City	Full	Office	5 Yrs.	1,439	1,259	\$10.25	\$10.25	Renewal, no change in rental costs, decrease in square footage due to program reduction.
	Transportation Region 4, St. George	Full	Office	2 Yrs.	238	238	\$ 4.25	\$ 4.25	Renewal, no change in rental costs.
	USTAR, Orem	Full	Office	2 Yrs.	1,552	1,552	\$10.39	\$10.39	Renewal, no change in rental costs.



State of Utah

Division of Facilities and Construction Management

Professional Contracts Awarded

Contract Type = P; Award Date >= 03/18/2010; and less than 04/22/2010

#	Agency	Contract Name	Firm	Type	Budget	Award
Design						
1	State Hospital	State Hospital Demo Of Old Water Tank	Van Boerum & Frank Assoc Inc	Design	\$6,000	\$5,630
2	Weber State University	tennis Courts Resurfacing - Design	Caldwell Richards Sorensen	Design	\$30,000	\$29,500
3	Dept Of Comm & Culture	Department Of Community And Culture glendinning Home Remodel - Design	Thalmann Fred L Aia	Design	\$9,000	\$8,635
4	Utah Valley University	Uvu Dental Lab Improvements	Hart Fisher Smith & Associates	Design	\$23,100	\$23,100
5	Capitol Preservation Bd	White Chapel Improvements	Mjsa Architecture Pc	Design	\$12,000	\$12,375
6	Capitol Preservation Bd	Daughters Of Utah Pioneers Phase Ii	Mjsa Architecture Pc	Design	\$44,000	\$43,725
7	Dixie St College Of Utah	Dixie State College holland Centennial Commons - Design	Vcbo Architecture Llc	Design	\$2,615,000	\$1,823,181
8	Utah Valley University	Uvu Extended Education Bldg Improvements	Prior & Associates	Design	\$25,000	\$24,750
9	Dfcm - Managed Buildings	Governor's Carriage House Exterior Improvements	Mjsa Architecture Pc	Design	\$28,000	\$25,072
10	Utah Valley University	Uvu Facilities Bldg. Improvements	Prior & Associates	Design	\$86,000	\$83,700

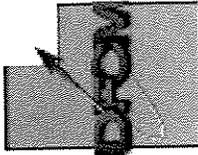
State of Utah

Division of Facilities and Construction Management

Contract Type = P-Award Date >= 03/18/2010; and less than 04/22/2010

Professional Contracts Awarded

#	Agency	Contract Name	Firm	Type	Budget	Award
Design						
11	Natural Resources	Department Of Natural Resources administration Building - Hvac Renovation And Fire Alarm Upgrade - Design	Thomas & Kolkman Engineering Co Inc	Design	\$7,000	\$6,600
Miscellaneous Services						
12	Dixie State College	edith Whitehead And Career Center Buildings hazmat Survey And Assessment Services	Ihi Environmental	Haz Mat Consult	\$21,000	\$20,800
13	Southern Utah University	Southern Utah University gibson Science Center - Cost Consulting Services	Construction Control Corp	Unclass Consult	\$74,150	\$27,677
14	Salt Lake Comm College	Salt Lake Community College - South City Campus center For New Media - Commissioning	Utah New Vision Construction Llc	Commissioning	\$230,000	\$223,997
15	Governors Office	Statewide Energy Benchmarking Outreach Program education And Technical Support	The Cadmus Group Inc	Unclass Consult	\$300,000	\$300,000
16	Southern Utah University	Suu Gibson Science Center Addition	Sunrise Engineering Inc	Insp Observ Ser	\$252,000	\$96,432
17	Ogden/weber Atc	Owatec Health Tech Bldg	Emc Engineers Inc	Commissioning	\$164,833	\$164,833
18	Dixie St College Of Utah	Dixie State College holland Centennial Commons Building design Commissioning Services	Utah New Vision Construction Llc	Commissioning	\$10,000	\$10,000
19	Weber State University	Wsu Dee Event Center Roof Structure Study	Arw Engineers	Study	\$24,000	\$23,570
20	Utah Valley	Uvu Track & Field Facility	Western Technologies Inc	Insp Observ Ser	\$10,400	\$11,285



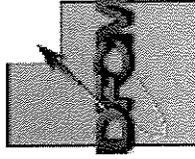
State of Utah

Division of Facilities and Construction Management

Professional Contracts Awarded

Contract Type = P; Award Date >= 03/18/2010; and less than 04/22/2010

#	Agency	Contract Name	Firm	Type	Budget	Award
Miscellaneous Services						
	University					JAIM
21	National Guard Utah National Guard manti Armory - Inspections		Western Technologies Inc	Insp Observ Ser	\$14,152	\$7,433



State of Utah

Division of Facilities and Construction Management

Construction Contracts Awarded

Contract Type = C;Award Date >= 03/18/2010; and less than 04/22/2010

#	Agency	Contract Name	Firm	Type	Budget	Award
Construction						
1	Southern Utah University	Suu Utility Tunnel Entry/exit Hatchways	Nichols Building Llc	Const Remodel	\$90,642	\$66,900
2	Weber State University	Wsu Dee Event Center Roof Structure	Jacobsen Construction	Const Remodel	\$50,000	\$49,516
3	Fairpark	Utah State Fairpark grand Building - Controls Upgrade	Utah Yamas Controls	Const Remodel	\$29,449	\$36,250
4	Courts	Richfield Courts Covered Parking	C K Construction & Services Corp	Const Remodel	\$226,225	\$55,450
5	Corrections - Draper	Department Of Corrections draper Prison - Olympus Cell Fronts	Stock Building Supply Db a architectural Building Supply	Const Remodel	\$46,108	\$30,825
6	Dixie St College Of Utah	Dixie Athletics New Metal Building	Aj Construction	Const New Space	\$507,000	\$507,000
7	Utah Valley University	Uvu Fire Science Exhaust Improvemen Ts	A J Sheet Metal	Const Remodel	\$46,000	\$39,559
8	Ogden/weber Atc	O/w Atc Welding And Metals Bldg Remodel	Patriot Construction	Const Remodel	\$150,000	\$123,966
9	Corrections - Ap&p	Division Of Adult Probation And Parole bonnevill e And Fremont Cocs staff Restroom Upgrades	Chad Husband Construction Inc	Const Remodel	\$68,251	\$35,456
10	Courts	Administrative Office Of The Courts west Jordan Juvenile Courts - Probation Office ada Ramp Reconstruction	Bradley Construction	Const Site Imp	\$68,153	\$49,697
11	Southern Utah	Suu Steam Dist. Anchoring & Expansion Joints	Carter Enterprises	Const Remodel	\$277,634	\$86,100



State of Utah

Division of Facilities and Construction Management

Contract Type = C; Award Date >= 03/18/2010; and less than 04/22/2010

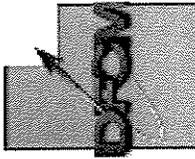
Construction Contracts Awarded

#	Agency	Contract Name	Firm	Type	Budget	Award
Construction						
	University					JAIM
12	Corrections - Cucf	Department Of Corrections central Utah Correctional Facility n4 Lightning Protection System	Kap Electric Inc	Const Remodel	\$131,546	\$53,300
13		Division Of Wildlife Resources faust Residence - Demolition	Anchored Excavation	Const Site Imp	\$17,000	\$16,750
14	National Guard	Utah National Guard lehi Armory - Plumbing Upgrade	Tod R Packer Heating & Air Conditioning	Const Remodel	\$27,000	\$26,900
15	Fairpark	Utah State Fairpark various Buildings - Fire Alarm System Upgrade	Taylor Electric Inc.	Const Remodel	\$73,768	\$37,200
16	Dept Of Transportation	Utah Department Of Transportation escalante Heritage Center	C K Construction & Services Corp	Const New Space	\$500,000	\$469,499
17	Capitol Preservation Bd	Cpb Capitol Hill Concrete Repairs And Replacements	Utah Correctional Industries	Const Remodel	\$46,000	\$45,500
18	Dnr - Wildlife Resources	Dwr Springville Fish Hatchery Managers House & Bird Coop Reroof	Utah Correctional Industries	Const Remodel	\$25,000	\$22,500
19	Weber State University	Wsu Stadium Lighting And Tower Replacement	J&j Electric, Inc.	Const Remodel	\$394,500	\$394,500
20	Weber State University	Wsu Lind Lecture Hall Seating Replacement	Wadman Corp	Const Remodel	\$274,900	\$274,900
Miscellaneous Construction						
21		Weber State University	Environmental Abatement Inc	Haz Mat Const	\$17,000	\$16,750

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Apr 22, 2010 5:49 PM

1003-01 Contracts Awarded



State of Utah

Division of Facilities and Construction Management

Construction Contracts Awarded

Contract Type = C; Award Date >= 03/18/2010; and less than 04/22/2010

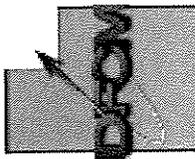
#	Agency	Contract Name	Firm	Type	Budget	Award
Miscellaneous Construction						
22	Weber State University	lasal Hall - Asbestos Abatement And Testing For demolition	Anchored Excavation	Haz Mat Const	\$25,000	\$24,650
23	Administrative Office Of The Courts	new Ogden Juvenile Courts Site	Environmental Abatement Inc	Haz Mat Const	\$375,000	\$49,835
24	Dnr - Wildlife Resources	hone Oil Company Property - Excavation	M&m Asphalt Service	Paving	\$82,382	\$40,127
25	National Guard	Utah National Guard - Fillmore Armory hazardous Materials Abatement	Rocmont Industrial Corp	Haz Mat Const	\$43,500	\$41,778
26	Corrections - Cucf	Central Utah Correctional Facility 2000 Kw Emergency Generation System	Energy Management Corporation	Unclass Const	\$454,915	\$454,915
27	Tax Commission	Tax Comm. Parking Lot Repairs And Slurry	Kevin D. Allen & Associates	Paving	\$93,386	\$21,890
28	Veterans Affairs	Veterans Memorial Cemetery Paving Improvements	Morgan Asphalt Inc	Paving	\$149,749	\$134,854
29	Workforce Services	Dws Clearfield Parking Lot Paving Improvements	M&m Asphalt Service	Paving	\$30,000	\$19,231
30		Division Of Wildlife Resources faust Residence - Asbestos Abatement	Eagle Environmental Inc	Haz Mat Const	\$22,000	\$21,978
31	Dept Of Comm &	Department Of Community And Culture rio Grande Depot - Hvac Upgrade	Ralph Tye & Sons Inc	Mechanical	\$57,383	\$50,716

JAIM

3 / 4

Apr 22, 2010 5:49 PM

1003-01 Contracts Awarded



State of Utah

Division of Facilities and Construction Management

Construction Contracts Awarded

Contract Type = C; Award Date >= 03/18/2010; and less than 04/22/2010

#	Agency	Contract Name	Firm	Type	Budget	Award
Miscellaneous Construction						
32	Weber State University	Wsu Stewart Library Reroof	Kendrick Bros Roofing Inc	Roofing	\$424,621	\$456,911
33	Juvenile Justice Services	Division Of Juvenile Justice Services lightning Peak Alternative/home Detention Center asbestos Abatement	Rocmont Industrial Corp	Haz Mat Const	\$22,000	\$21,146

DFCM

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

May-10

REPORT OF CONTINGENCY RESERVE FUND

	PROJECT TITLE	GENERAL STATE FUNDS		TRANSPORTATION FUNDS		TOTAL TRANSFERS FROM CONTINGENCY	% TO CONSTR. BUDGET	PROJECT STATUS	% Complete
		CURRENT TRANSFERS	TRANSFERS	CURRENT TRANSFERS	TRANSFERS				
	BEGINNING BALANCE	9,661,186.63		5,238.93					
	INCREASES TO CONTINGENCY RESERVE FUND								
	OTHER INCREASES								
07268	DFCM Multi Agency Office Building	465,370.50	-	-	-	185,408.46	0.33%	Construction	81%
	DECREASES TO CONTINGENCY RESERVE FUND								
	NEW CONSTRUCTION								
06291	U STAR UU Neuroscience Research Center	(336,657.80)	-	-	-	1,709,438.00	1.10%	Construction	16%
07258	Snow Library/Classroom Building	(242,034.14)	-	-	-	670,798.43	3.41%	Construction	69%
07039	MATC North Utah County Building	(147,775.00)	-	-	-	147,775.00	0.75%	Construction	30%
07042	Health Unified Lab Facility	(25,627.54)	-	-	-	769,730.74	2.36%	Construction	80%
09226	National Guard Brigham City Armory Remodel	(25,423.00)	-	-	-	25,423.00	2.28%	Construction	6%
09241	National Guard Manti National Guard Armory Remodel	(17,849.00)	-	-	-	17,849.00	1.79%	Construction	1%
07260	U OF U Nursing Bldg Renovation Expansion	(5,790.43)	-	-	-	219,371.00	0.97%	Construction	62%
09242	National Guard Fillmore National Guard Armory Remodel	(5,500.00)	-	-	-	5,500.00	0.66%	Construction	6%
08032	UNG Vernal, Camp Williams, Springville Armories Remodel	(5,464.00)	-	-	-	158,187.87	4.66%	Construction	60%
06281	Courts St George Courthouse	(1,325.00)	-	-	-	398,055.29	1.22%	Construction	74%
08260	DHS Purchase Of Libbie Edwards School For Deaf & Blind	(785.45)	-	-	-	146,484.18	2.25%	Construction	33%
	REMODELING								
07030	Public Safety Post Academy Remodel	(92,155.80)	-	-	-	330,631.88	13.23%	Construction	98%
09095	DOT Price DOT Station Replace Steam Piping	(17,254.83)	-	-	-	17,254.83	8.63%	Construction	93%
08070	SLCC SCC North Wing Window Replacement	(7,213.70)	-	-	-	20,001.70	1.91%	Construction	27%
08194	USDC Boiler Replacement/Building Repairs	(4,405.65)	-	-	-	76,965.24	3.08%	Construction	107%
08322	WSU Information Booth	(4,350.78)	-	-	-	24,976.71	12.98%	Construction	98%
09163	MATC Remodel Lab For Composites Program	(2,827.00)	-	-	-	-	0.00%	Pending	0%
07183	DNR Admin Bldg HVAC Renovation	(2,615.00)	-	-	-	194,928.36	5.45%	Construction	58%
04146	Human Services USDC Raintree Bldg Remodel	(1,872.50)	-	-	-	188,599.21	11.96%	Construction	93%
07196	UVU Losee Center Remodel Programming/Design	(287.36)	-	-	-	64,652.96	1.42%	Closed	95%
08211	UDOT Parley's Canyon Maint Station Replacement	(265.00)	-	-	-	96,570.56	4.88%	Closed	98%
09068	DWR Hardware Ranch Install Overhead Door	(98.00)	-	-	-	12,900.04	23.45%	Closed	94%
08071	DWS Provo North Office Landscaping/Drainage	(93.00)	-	-	-	8,375.51	2.85%	Closed	78%
	TOTAL	9,178,887.15		5,238.93					

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 PROJECT RESERVE FUNDS ACTIVITY

	PROJECT TITLE	STATE FUNDS	DOT FUNDS	DESCRIPTION	May-10	% of Constr.	Budget
<u>BEGINNING BALANCE</u>		<u>4,078,638</u>	<u>932,272</u>				
<u>INCREASES TO PROJECT RESERVE FUND:</u>							
None							
<u>DECREASES TO PROJECT RESERVE FUND:</u>							
WSU - Stadium Light Tower Replacement		(15,500.00)		To Award Construction Contract		3.74%	
<u>ENDING BALANCE</u>		<u>4,063,138</u>	<u>932,272</u>				