

AGENDA OF THE UTAH STATE BUILDING BOARD

Wednesday, August 4, 2004
Utah Valley State College
Sorensen Student Center – Center Stage
800 West University Parkway
Orem, Utah
1:00pm

- (Action) 1. **Approval of Minutes of July 14, 2004** Tab 1
- (Action) 2. **Dispute Resolution Process** Tab 2
- (Information) 3. **Capital Development Process** Tab 3
- (Information) 4. **Litigation Update** Tab 4
- (Information) 5. **Other** Tab 5
- VBS Schedule

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

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

Building Board Tour
August 4, 2004

Time	Activity
8:00 am	Van leaves State Capitol (for those wishing to travel as a group)
8:45 to 9:30	Tour <u>Women's Prison</u> in Draper (Timpanogas facility on north side of prison compound. From the north, exit I-15 onto Bangerter Highway. Go west on Bangerter then turn south at the first stop light onto the frontage road. Then turn east and Timpanogas is on the south side of the road. Corrections will meet us in the parking lot in front of the Timpanogas facility.) <i>See mandatory security requirements below.</i>
9:30 to 9:45	Tour <u>Lone Peak Nursery</u> (From the Timpanogas facility, go east and then south on the frontage road. Turn west on Bitterbrush Lane which leads to the main prison entry. The Lone Peak facilities are on the south side of the entrance road before you get to the manned security gate. Park in the dirt parking lot northeast of the green warehouse.)
9:45 to 10:15	Travel to Developmental Center in American Fork (From I-15 take the Highland/Alpine exit. Go east on 11000 North. Turn south on 4800 West. This road is also called 900 East depending on the city jurisdiction. The Developmental Center is south of Lone Peak High School and across the road to the northeast from the LDS Timpanogas Temple. Turn west into the Developmental Center and follow the signs to the Administration Building. Park in the lot in front of the Administration Building and gather in the conference room inside.)
10:15 to 11:00	Tour <u>Developmental Center</u> Existing Housing and Program Space
11:00 to 11:20	Travel to UVSC
11:20 to Noon	Tour <u>UVSC</u> (Existing Library and site for proposed library. Park in Parking Lot L on the north side of campus and meet at the entrance to the Sorenson Student Center.)
Noon to 1:00	Lunch provided by UVSC
1:00	Building Board meeting at UVSC

Confirmation of Participation – Please confirm your participation in the tour to Shannon Lofgreen at 244-4316 or email (slofgreen@utah.gov) by July 29 so that we can make appropriate arrangements for vans and lunch.

Security Requirements to Enter State Prison – For those participating on the tour of the Women's Prison, security clearance must be obtained through Corrections in order for you to enter the Prison. In order for Corrections to do the required background check, they must have your full name, date of birth, driver license number, and social security number. Please provide this information to Shannon Lofgreen at 244-4316 or slofgreen@utah.gov **no later than July 29** and she will forward it to Corrections. You must have your driver license with you for entry.



Olene S. Walker
Governor

Utah State Building Board

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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: August 4, 2004
Subject: **Approval of Minutes of July 14, 2004**

Attached for your review and approval are the meeting minutes of the Utah State Building Board on July 14, 2004.

FKS:sll

Attachment

Utah State Building Board



MEETING

July 14, 2004

MINUTES

Utah State Building Board Members in attendance:

Larry Jardine, Chair
Steven Bankhead
Katherina Holzhauser

DFCM and Guests in attendance:

F. Keith Stepan	Division of Facilities Construction & Management	
Kenneth Nye	Division of Facilities Construction & Management	
Shannon Lofgreen	Division of Facilities Construction & Management	
Kent Beers	Division of Facilities Construction & Management	
Tim Tucker	Division of Facilities Construction & Management	
Camille Anthony	Department of Administrative Services	
Alan Bachman	Attorney General's Office/DFCM	
Linda Bennett	Attorney General's Office/DFCM	
Kevin Walthers	Legislative Fiscal Analyst's Office	
Randa Bezzant	Governor's Office of Planning and Budget	
Walter Arabasz	Utah Seismic Safety Commission	
Barry Welliver	Utah Seismic Safety Commission	
Dana Miller	Southwest ATC	
Erika Oler	VCBO Architecture	
Bob Carey	Division of Emergency Services	
Russ Galt	Davis ATC	
Mike Perez	University of Utah	
Nancy Lyon	University of Utah	
Pieter J. van der Have	University of Utah	
Gregory Fitch	Utah College of Applied Technology	
Brent Windley	Utah State University	
Ron Godfrey	Utah State University	
Darrell Hart	Utah State University	
Kevin Hansen	Weber State University	
Mike Glenn		Utah Energy Office
Frank Gallardo	Chevron Energy Solutions	

Michael Raddon	Spectrum Engineers
Rick Wheeler	Snow College
Gary Adams	Department of Workforce Services
Bob Askerlund	Salt Lake Community College
Kristen Ireland	HFS Architects
Greg Stauffer	Southern Utah University
Jim Michaelis	Utah Valley State College
Rick Stock	Architectural Nexus
Richard Clarke	Department of Transportation
Bill Juszczak	Department of Transportation
Brad Mortensen	Board of Regents
Michael Wollenzien	State Office of Rehabilitation

On Wednesday, July 14, 2004, the Utah State Building Board held a regularly scheduled meeting in room W130 of the House Legislative Building, Salt Lake City, Utah. Chairman Larry Jardine called the meeting to order at 9:02am. He welcomed Camille Anthony and excused Representative Loraine Pace.

APPROVAL OF MINUTES OF JUNE 2, 2004

Chair Jardine sought a motion to approve the minutes.

MOTION: Steve Bankhead move to approve the minutes of the June 2, 2004, Building Board meeting. The motion was seconded by Katherina Holzhauser and passed unanimously.

UPDATE ON DISPUTE RESOLUTION PROCESS

Kenneth Nye provided an overview of the process developed by the Dispute Resolution Advisory Committee and noted they generated a draft rule which was included in the packet. The version included in the Board packet was an update of what was before the committee at the last meeting and represented DFCM's response. A final meeting with the committee will be held on Wednesday, July 21, and DFCM will then rapidly finalize a proposed draft for the August Board packet. At the next Building Board meeting, DFCM will request preliminary approval of the rule. In an effort to provide the Board an opportunity to provide input into the development of the rule before requesting preliminary approval, Mr. Nye wished to review the main aspects of the rule.

Mr. Nye previously spoke to Representative Wayne Harper, sponsor of the bill initiating this effort, and he was quite positive about the development of the rule. Representative Harper indicated other legislators had also expressed positive feedback. DFCM is attempting to arrange a meeting with concerned legislators to ensure their concerns were addressed before presenting the rule to the Government Operations Interim Committee on August 18.

DFCM will request final approval from the Board on September 10. During the process, DFCM has attempted clarify change order requests, construction change directives, and normal interaction occurring on a construction project to all be excluded from the dispute resolution process. The dispute resolution process would be activated when an agreement could not be reached through a normal process.

The first step created by the committee in the dispute resolution process was a preliminary resolution effort to formalize the issues. DFCM is required to issue a written decision within 30 days of receipt unless the parties agree to an extension. This provides an opportunity to resolve issues before going into the formal claim process. If the parties are not able to reach an agreement during the preliminary resolution effort, the other party would have the ability to file a formal claim.

One reason for the preliminary resolution effort step being inserted is a statute requirement for claims to be resolved within 60 days of filing. The preliminary resolution effort provides for an opportunity to resolve issues at a less formal level where legal counsel is less likely to be involved and time clocks are not subjected. Once involved in the claim process, the DFCM Director is required to seek agreement with the other party on the persons and processes being used to seek a resolution. If the Director and the other party cannot agree within 14 working days, the Director may specify the process in order to proceed with the resolution of the claim if the claimant is uncooperative.

DFCM provided that if a panel or an expert is used, the decision of the panel or expert is a recommendation to the Director. The Director then has the ability to depart from that in making his final decision. The primary reason for this is to allow the Director to assess the recommendation of the panel to hopefully reach an agreement with the parties before getting into a further appeal process. The panel or expert must also prepare a report and a preliminary draft of the report will be distributed to the parties to provide an opportunity to react prior to a final decision being granted by the Director.

The Director's decision must be issued within 60 days of when the claim is filed although the statute provided for two methods to extend the time period. If a party is evaluating the claim they, on their own initiative, can extend the time period for an additional 60 days, and then beyond that based on agreement of the claimant and the Division. Although the 60 day time period has received concerns, Mr. Nye felt that with the ability to extend it to 120 days without the cooperation of the claimant, and then after 120 days if the claimant is not willing to cooperate in further efforts by allowing further time extensions, it may be time to allow the claimant to be released from the administrative process and choose to take another direction. This concern generated legislation due to the desire to allow a claimant to have the administrative process end if an agreement is not met. The claimant does have the opportunity to appeal the decision within the administrative process and it is currently structured as a mandatory step before going to Court. The appeal would be to the

Executive Director of the Department. If the claimant is not satisfied with the result of the appeal, they would then go to court. .

The committee has also tried to minimize the degree of formality and legal process involved with the administrative process. The preliminary resolution effort is attempting to be structured to allow discussion between DFCM and the claimant without the need to have legal counsel. They specifically stated there are not formal rules of evidence.

Another principle reason the bill was brought forward was to provide the ability to subcontractors to submit a claim directly to DFCM. The draft identified which subcontractors could pursue claims and currently allows for all tiers to be able to pursue the process. The committee is still working on the wording of this as the draft does not adequately address the process for contractors at lower tiers to pursue claims.

Before a subcontractor can submit a claim to the State, they must first pursue all reasonable resolution efforts with the general contractor and go through a process similar to the preliminary resolution effort with the general contractor. If they are not able to reach agreement with the general contractor, they would then be able to submit a request for a preliminary resolution effort with DFCM. When subcontractors start their claims process with the general contractor, they need to provide DFCM with a copy of the claim in effort to allow DFCM to help facilitate a resolution.

In regards to cost, the rule as currently drafted provides for a filing fee of \$1500 for a claimant to submit a claim. The fee only applies at the claim level and does not apply to the preliminary resolution effort level. Part of the intent of the filing fee is to discourage frivolous claims. Once a decision is reached on a claim, the cost of pursuing the decision would then be allocated to the parties based on the final decision of financial responsibility, including the initial filing fee.

Mr. Nye sought comments on the committee's draft.

Chair Jardine asked if the State was still avoiding a contractual relationship with the subcontractor. Kenneth Nye affirmed and stated the wording of the rule specifically states anything filed by the subcontractor is viewed as being filed with the contractor and then automatically forwarded to DFCM.

Chair Jardine complimented Mr. Nye and Alan Bachman on their efforts and thanked Steve Bankhead for his involvement and providing valuable input.

Steve Bankhead questioned suspension and debarment procedures wording. He suggested changing the word responsibility to the word standing. Kenneth Nye stated the word responsibility refers back to the procurement code, but he agreed they may wish to

look at the wording. Alan Bachman stated the wording is a direct quote from a statute currently allowing the Director to debar a contractor if the contractor does something so serious and compelling as to affect its responsibilities as a state contractor.

Steve Bankhead also commented that it would be helpful for the Board to be notified when a formal claim is filed to help provide a better understanding of the process. Kenneth Nye stated in the past, they have made the Board aware and had discussions on more major claims. Camille Anthony stated it might be necessary to include some permissible language in the rule, particularly if those claims are going to be disclosed in the public setting. This would put the contractors on notice that may occur.

Chair Jardine stated the Board would take action at the next Board meeting. Kenneth Nye stated, given the need to get the rule to legislative staff immediately after the next Board meeting, he would appreciate any concerns being made before the Board meeting.

☐ CAPITAL DEVELOPMENT PROCESS

Chair Jardine stated earlier in the year the Board discussed a process that would give the Board a little more credence to the evaluation process of the capital development projects. He requested an update on the process from Kenneth Nye.

Mr. Nye stated that at the last Board meeting they discussed a draft of the evaluation guide for capital development projects. At that time, the Board gave conceptual approval for DFCM to proceed with distributing the process to agencies and institutions to begin the process for the current year. A few changes were made based on the Board's comments, which was included in the information distributed to the agencies and institutions. A copy of what was sent out was included in the Board packet as attachment three.

DFCM's intent was for the agencies and institutions to submit their requests along with a self scoring under the evaluation guide. The justification for their scores would be provided to the Board. The Board also discussed having DFCM do a review and provide a suggested scoring along with a justification from their perspective as to how they might deviate from what the agency or institution had suggested. All information submitted would be disseminated prior to the presentation.

DFCM anticipated they would also share their scoring and comments with each of the agencies before they make their presentation in October. Based on the information, the Board would then be able to adjust its scores accordingly. Those scores would then be the starting point for coming up with a priority list, with the Board having the ability to modify the order resulting from the scoring process.

Since the last meeting, DFCM has had a number of discussions with a number of involved parties submitting requests. They received a fair amount of comment, particularly with Higher Education. Per the Board's request, DFCM completed a sample scoring of eight projects submitted last year. This information was included in the packet as attachment two. The sample scoring reflected the revised criteria and scoring anchors and the weights suggested by the Board.

Mr. Nye suggested the Board address each of the objectives individually, both as to the suggested changes, how to apply the scoring and sample scoring, and any concerns of the Board members. After reviewing the objectives, Mr. Nye suggested weighting the objectives and reviewing the schedule.

Mr. Nye changed the order of the objectives to reflect the priority order discussed by the Board at the last meeting. Objective one now dealt with life safety and other deficiencies. He clarified that the condition assessment program used over the last few years is not necessarily accurate and complete for every building. Therefore, during evaluation of the scoring for the objective, he anticipated they would use the condition assessment information as well as any other documented analysis of the building. The desire would be to have DFCM staff work with agencies and institutions to identify issues to be considered in scoring.

Mr. Nye clarified wording pertaining to the evaluation criteria. The previous discussions have indicated that the conditions considered are basic building conditions, not just programmatic shortfalls. Other criteria dealt with improving the programmatic effectiveness. The Board may want to provide a clarification if they agree with that perception. Mr. Nye anticipated on preparing a sheet of instructions and clarifications to be distributed, and the clarification could be included on that sheet.

The Weber State University Swensen Building provided the best example of sample scoring for this objective. The condition assessment program had identified \$6,350,000 in potential problems in that building, which represented 74% of the total amount of the project. Based on the scoring, 74% would receive a score of five. Life safety was not considered in the sample scoring for Weber State University.

Objective two dealt with growth and how well the amount of space was being addressed to justify the demographic data, but was not limited to increased space. Based on this wording, a project involving a renovation would be scored on both objectives one and two, but a project with only new space would be scored only on objective two. This did not fit the balance desired between the two objectives. DFCM proposed to clarify objective two to address increases in space, not just the amount of space involved in the project.

Another similar issue pertained to the initial scoring anchors where the lowest score any objective could receive was a one. A project addressing both an existing building as well as additional space, would be evaluated under both objectives. Mr. Nye suggested that projects involved in both existing buildings as well as increase in space receive a score from each of those objectives and then be reduced to the proportion of the project involved with that objective. If a project is addressing 80% of an existing building and 20% of an addition, and the score came out as a five on objective one, it would receive a final score of 80% of 5. Under objective 2, if the same project received a score of five as far as growth of space, the five would be reduced to 20% of the score of five and would only receive a score of one. Mr. Nye felt that was a fair way to balance those two objectives, and a limited number of projects would be applicable to both objectives. He also suggested giving projects a score of zero if they did not address an objective.

For example, the U of U Marriott Library project involves three aspects including correcting a number of existing building deficiencies, general remodeling and reconfiguration of space for better functionality, as well as an addition for an automated storage retrieval system. The project addresses both objectives one and two. Under the first objective, Mr. Nye estimated that 48% of the project cost involved the correction of existing building deficiencies, resulting in a score of four. One point would be added for the potential impact of life safety concerns resulting in an initial score of five. Approximately 20% of the project was to build the addition and the ASRS system, so 80% of the project dealt with the existing building. The initial score of five is then reduced to a four by taking 80% of five. Looking at objective two, the suggested score was a four and because only 20% of the project involves new space, the total score was adjusted to .75. Therefore, the Marriott Library project received a total score of four on objective one and a .75 on objective two.

Katherina Holzhauser expressed apprehension about the false sense of accuracy. She was hesitant about getting involved with tenths, but still felt the decision was subjective.

Keith Stepan stated the goal is to achieve an objective tool, not necessarily a final answer, and the Board will need to continue dealing with the subjective issues. Katherina Holzhauser appreciated the addition of the zero. Mr. Nye offered to adjust the scoring according to the Board's desires.

Mr. Nye did not recommend any changes to objective three with the exception of changing the one to a zero. For the sample scoring, Mr. Nye looked at the cost per square foot for the type of space as the principle driver of the score. The project used for the sample scoring was the Moab Regional Center where the State had an opportunity to purchase the building for significantly less than appraised value but also included a time limit. Based on the sample scoring, DFCM suggested Moab would receive a score of five based on the bargain opportunity and the time limit of the bargain opportunity. Most other projects received a score of three on this objective.

The Board previously suggested rewording of the criteria on objective four. The previous wording referenced using technology and other innovative methods to improve program effectiveness and/or capacity, but the objective was broader. DFCM suggested broadening the wording of the criteria to not limit it to technology or innovative methods. Therefore, the evaluation criteria was reworded to include the degree the project improves program effectiveness or increases program capacity. The sample scoring indicated the Weber State University Swensen building receive a score of five based on the project taking remodeling old gymnasium space that was no longer functional into classroom space to add capacity. The changes in the wording clarified that capacity increases resulting in more space would not be scored in this objective.

On objective five, DFCM suggested a significant change in addressing scoring anchors. The Board requested the criteria provide a bonus point as a determination the project dealt with a critical program even though it may have lacked political support. After receiving feedback, DFCM considered scoring this objective on the criticality of the program involved with this request and how essential the request is for the program to be able to function.

Steve Bankhead referred to projects being sought to support a program expressly sought by the Governor and/or Legislature, which politicizes the decision making process. He thought the Governor had their own opportunity to prioritize projects. He felt the judgment of the Building Board should be based on presentations and evaluations and the Board should not need to decipher the level of interest by the Governor or the Legislature. Kenneth Nye stated if the Governor and Legislature have publicly supported a program, it would be an indication of a critical project. Even without the wording, they could achieve the same concept. Steven Bankhead suggested removing the word expressly since the issue was addressed in the evaluation process required to support a critical state program or initiative. Mr. Nye agreed to eliminate who was defining the program to be critical.

Chair Jardine referred back to objective four and asked if they were going to use a score of zero. Steve Bankhead stated they were not precluded from giving a score just because it was not listed. Katherina Holzhauser agreed and stated for objective four she would like to see a zero.

On objective six, Mr. Nye noted the document previously distributed indicated the arrow going to wrong direction. It was not their intention to penalize anyone for having alternative funding with a time limit. The intent is to give a bonus point if alternative funding requires state funding this budget cycle. The sample scoring included projects scored based on the degree in which they had alternative funding. A score of one was provided for those without alternative funding and the Board would need to determine if a zero would be given for no alternative funding. Steve Bankhead felt it would be problematic for critical state programs not receiving any state funding. This is a severe disadvantage and would skew the whole scoring process because of the dramatic differences. Mr. Nye suggested if there was a

project the Board saw as being critical, but did not receive the scoring, the Board could determine to use a “trump card” concept. He suggested changing the wording of the scoring anchor on objective six to allow a score of one if no alternative funding is available for this program. If alternative funding could have been pursued, but was not, the project would receive a score of zero. Keith Stepan felt this would help get donated funds to critical needs.

Mr. Nye highlighted the sample scoring for this objective for the Moab Regional Center due to the proposed lease revenue bond possibility. The ability was there to use existing rent budgets to cover the debt service payment. Mr. Nye considered the portion of the annual debt service that could be covered by non-state dollars as opposed to state dollars.

Mr. Nye referenced the weights and suggested keeping the numbers whole to make it mathematically easier. He also suggested the Board reconsider their weightings since the objectives were more clearly defined. Ms. Holzhauser proposed that the weightings include the following: objective one had a weight of three; objective two was weighted a two; objective three was weighted a three; objective four was weighted a two; objective five was weighted a two; and objective six would be weighted a one.

Kenneth Nye commented that the previous discussions had focused on keeping objective one and two balanced and the current proposal took away that balance. Katherina Holzhauser felt this was acceptable and the balance was addressed by doing the split. He asked if the Board wished to consider taking care of existing buildings and addressing growth as equal importance.

Mike Perez, University of Utah, stated in the context of the problems existing with deferred maintenance statewide, it seemed there may be regular emphasis on renovations and addressing those buildings. He felt it would be beneficial to have one weighted higher.

Keith Stepan stated last year in the legislature, Kevin Walthers expressed concern with leadership regarding DFCM not caring for existing buildings. Mr. Walthers stated the focus continued to be maintenance and replacement of the existing buildings due to the significant backlog and deferred maintenance continuing to grow each year.

Chair Jardine called for a motion.

MOTION: Katherina Holzhauser moved to approve the guidelines as discussed. The motion was seconded by Steve Bankhead and passed unanimously.

MOTION: Steve Bankhead moved to approve the weighting as the following: objective one – 3; objective two – 2; objective three – 3; objective

four – 2; objective five – 2; and objective six – 1. The motion was seconded by Katherina Holzhauser and passed unanimously.

Chair Jardine reiterated that while the sample scoring was a good process, it was not a proposal for this year. It was used to practice with the guidelines as opposed to defining scores. It is not criteria for what will be heard in October.

Kenneth Nye stated in regards to the projects that have been submitted to this point, most of the entities have submitted only one project per entity as requested. Within UCAT, each of those campuses has looked at this as a separate entity, UCAT will work with its Board to identify their top two priorities.

Mr. Nye also mentioned a concern with the perception that the agencies and institutions need to justify a five in every category. He hoped they would be seeing a more accurate and honest assessment of where the project really stands, and felt it would be beneficial for agencies and institutions to suggest proper scoring. Steve Bankhead felt that would be difficult because everyone is passionate about their own need.

In regards to schedule, there have been some discussions with Kevin Walthers regarding site visits with the legislative committee, but nothing had been confirmed. DFCM proposed having the next Building Board meeting at Utah Valley State College in Orem and also touring UVSC, the State Developmental Center in American Fork, and the Women’s Prison in Draper. Kenneth Nye stated they would invite the Legislature to participate along with them. Mr. Nye suggested touring northern Utah along with the meeting on September 10 at Weber State University. The Board would then need to choose another day to tour central Utah including Snow College, the College of Eastern Utah, and the Gunnison Prison.

Chair Jardine reminded the Board of the obligation to the five-year plan and informed agencies and institutions their submittals would be recommendations for the five-year plan.

☐ UTAH SEISMIC SAFETY COMMISSION PRESENTATION

Matthias Mueller, DFCM Program Director and member of the Utah Seismic Safety Commission, stated that last week the Commission celebrated its tenth year of service. He introduced Dr. Walter Arabasz and Barry Welliver who represented the Commission.

Dr. Arabasz is a native of Massachusetts who moved to the University of Utah in 1974 after ten years of earthquake related studies in California, Chile, and New Zealand. He received a Ph.D. in geology and geophysics from the California Institute of Technology in 1971. He is a research professor of geology and geophysics and has been Director of the University of Utah Seismograph Stations since 1985. During the past 30 years he has served on

many national, state advisory and policy making committees on earthquake issues and he has routinely provided professional consulting services on earthquake hazard evaluations, programs, nuclear facilities, and other critical structures in the western United States. He is a member and past Chair of the Utah Seismic Safety Commission and received the Governor's Medal for Science and Technology in 1996.

Barry H. Welliver acquired a degree in civil engineering from the University of Connecticut in 1973 and has been involved in structural engineering since and is a licensed structural engineer in three states. Pursuing his interest in earthquake engineering, Barry moved to California and worked for several prominent engineering firms before establishing his own practice in 1979. After 22 years in California, he moved with his family to Utah and has a growing practice here while still maintaining his California office. He received four Heritage Awards for his work on the Walker Mansion, McCune Mansion, Fort Douglas Theater and Alta Club. During the past 30 years he has been actively involved in the Structural Engineers Association of California and Utah, serving on and chairing several committees, and is currently the Chair of the Utah Seismic Safety Commission.

Mr. Welliver thanked the Board for the opportunity to inform them of the Seismic Safety Commission and their common motives and goals. The handouts included a summary document explaining the charges of the Commission. They review earthquake related hazards for the state and prepare and prioritize recommendations. Most importantly, they act as a source of information for agencies and the public to help characterize the nature of the earthquake threat and dangers in Utah.

The membership consists of 15 members prominent in the field of earthquake concerns and provides a good cross section of people with a well rounded view. The Commission deals with the Structural Engineers Association of Utah to combine efforts to bring about building code regulations for existing buildings. They encourage the adoption of new state building codes. New building construction is on a different level as far as technical input with regards to building design and code issues. The Commission hoped to identify items that can be done incrementally as a matter of course and maintenance to greatly improve the seismic strength of buildings. FEMA is creating documents called incremental to seismic rehab to introduce the issue and identify they do not have to necessarily consider major reworks of buildings to receive great benefit from incrementally putting these issues into our thinking. Structural engineering grapples with getting the message correctly characterized in terms of building danger and seismic risks, and bringing those issues together is the confluence of what the Commission is trying to do while being a resource to other agencies is one of their purposes.

Dr. Arabasz referenced the handout of six points. He identified he is an employee of the University of Utah. Within the Utah Seismic Safety Commission, he has excused himself

for deliberations regarding the Marriott Library and instead is a resource regarding earthquake information in Utah.

Dr. Arabasz highlighted available guidance. Well-founded methods and abundant information exist to guide rational, risk-based decisions on earthquake hazards in Utah. The Commission is an available resource to help any public decision making body in Utah avoid basing earthquake-related decisions on vague information or intuition.

In highlighting future outcomes, Dr. Arabasz noted earthquake risks including the likelihood of damages, losses and casualties, is increasing in Utah because of dramatic population and urban growth in areas like the Wasatch Front where there is enormous pent-up earthquake energy. Decisions we make today determine future losses, who will be in harm's way, and to what extent.

Seismologists, geologists, and engineers are in agreement about basic details of Utah's earthquake threat. The only element of surprise that Mother Nature holds is the precise when.

Dr. Arabasz highlighted quantifying the earthquake threat. Faced both with the threat of "Big Ones" and more frequent smaller shocks with significant damage potential, earthquake professionals use a method called Probabilistic Seismic Hazard Analysis (PSHA) to characterize what to expect in terms of the annual probability of strong ground shaking at any point or to depict the relative hazard throughout some area.

In comparing earthquake guards compared to everyday risks, and using the Salt Lake Valley as an example, and considering the likelihood of strong earthquake ground shaking that seriously endangers life safety in buildings, we are not talking about astronomical odds. The chances are comparable to everyday risks against which responsible people act to protect themselves and those who depend on them.

Dr. Arabasz referred to the primer for understanding earthquake hazards in Utah for policy and decision making which provided a distribution of historical and instrumental seismicity of earthquakes from 1850-2002. A broad zone of earthquake deformation indicated that earthquakes are not just a Wasatch Front Problem.

The average frequency of occurrence showed earthquakes in the magnitude of damaging earthquakes are in the time span of decades. Large earthquakes on the Wasatch Fault are expected an average of 350 years. Average repeat time in one of the individual segments ranges from 1000-2500 years. Specifically in the Salt Lake segment, the average repeat time is in 1400 years and it has been almost 1300 years since the last one. There is a chance of about one in 12 in the next 50 years.

Dr. Arabasz showed a depiction of ground motion for the “big one” in the Salt Lake Valley. The sole threat is not the infrequent Wasatch fault earthquake in the Salt Lake Valley. Earthquakes can originate on a number of active faults and there is a method to aggregate all of this information and then compile a hazard curve which relates the annual probability of ground motion exceeding some level versus ground motion.

Dr. Arabasz referred to the box describing a “g”. A 0.3g is a very strong shaking causing slight damage to specially designed structures but considerable damage in ordinary substantial buildings with partial collapse. That kind of expected ground shaking has a 10% probability in 50 years or an annual probability of 1 in 500 years. For severe and violent ground shaking, similar odds were tabulated. Annual probabilities are comparable to everyday risks.

☐ REALLOCATION OF CAPITAL IMPROVEMENT FUNDS.....

Kent Beers stated DFCM recommended the Building Board reallocate Capital Improvement funds at the following institutions: \$700,000 at Weber State University, \$790,000 at Utah Valley State College, \$267,200 at the Mantua Fish Hatchery for Wildlife Resources, and \$153,000 from Unallocated Energy Funds to the Department of Corrections.

Last May, the Building Board allocated \$776,600 to Weber State University for an upgrade of the Steam, Condensate & Domestic Water Line Replacement project. Upon hiring an engineer for this project, it became apparent that the complexity of the project was much greater than initially supposed. Consequently, the design phase will require several months to complete and construction cannot begin during the summer break. This project must be constructed during the summer months due to the disruption on campus. As a result, the University requested the construction funds associated with this project be reallocated to other projects which can be completed during the summer/fall. The University will request construction funding for the project next year (FY 2006) after the design is completed. The University requested for \$700,000 to be reallocated to the following projects: \$500,000 to the Browning Center Auditorium Rigging Replacement; \$150,000 to the Central Heating Plant Boiler Control Upgrade; and \$50,000 to the Chilled Water Plant Modification/Addition Study.

At Utah Valley State College, the Board authorized \$711,000 for the UVSC Administration Building HVAC Upgrade. These funds were combined with \$657,000 from last year’s Domestic and HVAC Hot Water Pipe and Valve Replacement Project because the two projects contained several overlapping elements and the engineering for both projects could be combined. Unfortunately, the engineering firm selected for the project missed the completion deadline for the final design by several weeks and construction cannot be completed over the summer break. This project must also be constructed during the summer months because of the disruption it will have on campus. As a result, the College

requested the Board reallocate the unused balance to other projects to be completed over the summer/fall. UVSC requested \$790,000 be reallocated to the following projects: \$125,000 to the Campus Wide Exterior Panel Replacement; \$225,000 to Campus Wide Paving Upgrades; \$310,000 to Replace the Concrete Liner in the Irrigation Ponds; and \$130,000 for a Student Road Crossing (previously approved but under funded).

At the Mantua Fish Hatchery, the Board authorized \$267,200 in May for projects at the Mantua Hatchery including \$187,200 for a roofing project and \$80,000 for raceway repairs. Subsequently, DFCM and officials from Wildlife Resources determined it would be more cost effective to demolish the old hatchery and raceways and reconstruct new facilities. The existing hatchery is upstream from the spring providing water to the hatchery which results in the hatchery spending approximately \$60,000 per year to pump water from the spring to the hatchery. The new facilities will be downstream from the spring eliminating pumping costs. The total cost of the project (hatchery and raceways) will be approximately \$1.8 million. Funding for the project will come from capital improvement funds (\$267,200) and a restricted fund for Wildlife Resources authorized by the Legislature for upgrading and repairing fish hatcheries.

At the Department of Corrections, the HVAC system at the Wasatch Chapel at the Draper Prison is undersized and part of the system has failed leaving the building without adequate cooling and heating. This nondenominational building is state owned and used to provide religious instruction and counseling for inmates. DFCM recommended using \$153,000 in Unallocated Energy Funds for this project. As noted in a previous Board meeting, DFCM is in the process of redirecting the Energy Fund Account. The Energy Fund was established several years ago with the intention of performing high payback energy savings projects such as lighting upgrades, motion sensors, etc. However, it was learned that performing these high payback energy savings projects inhibits DFCM's ability to accomplish more extensive ESCO projects.

MOTION: Steve Bankhead moved for the Board to authorize the reallocation of capital improvements at the institutions discussed. The motion was seconded by Katherina Holzhauser and passed unanimously.

☐ UPDATE ON ENERGY CONSERVATION EFFORTS

Kent Beers acknowledged Mike Glenn, State Office of Energy; Bruce Munson from Johnson Controls; and Frank Gellardo from Chevron Energy Solutions and expressed his appreciation for their attendance. Johnson Controls oversees the projects at the Department of Corrections and Chevron Energy Solutions oversees projects at Utah Valley State College and the Ogden Regional Center.

Mr. Beers stated Energy Service Companies (ESCOs) conduct energy audits which identify energy conservation measures and equipment upgrades that save electricity, natural gas, and water. They also assist the State in arranging for financing in these projects. At the Department of Corrections Phases I & II, DFCM has achieved \$11.5 million in financing at 4.8% interest. At Utah Valley State College, DFCM has achieved \$9.4 million at 4.79% interest and at the Ogden Regional Center, DFCM has achieved \$578,000 at 4.79% interest.

The ESCO also enters into a performance contract with the State, which is a construction contract to perform the work. They hire subcontractors on DFCM's behalf to upgrade the lighting, the HVAC equipment, water saving devices, etc.

ESCOs also guarantee the annual savings. Each year they conduct their annual measurement and verification of the savings to ensure they exist.

The main reason ESCOs are being done is due to the State spending between \$2-3 million to have all of the significant state owned buildings and infrastructure analyzed by a professional architectural and engineering firm. They have identified the State has an immediate need for \$199 million in immediate repairs. Over the next ten years they have identified \$1.1 billion in needed repairs. Mr. Beers identified the capital improvement funding history over the last ten years which totaled \$354 million, however approximately three times this amount is needed. One way to get more money to do these projects and eliminate the deferred maintenance is through the ESCO process. To date they have contributed \$21.6 million to capital improvement needs. At the Department of Corrections, they have funded repairs and upgrades \$11,580,000, at UVSC \$9,493,000 and at Ogden Regional \$578,000. Mike Glenn stated the University of Utah also undertook a project prior to these three projects which totaled almost \$43 million. The project is three years old and the estimated savings \$9.8 million and the actual savings has been \$10.8 million.

Kent Beers stated the ESCO projects save energy and water. At the Department of Corrections, the State is saving \$509,620 in energy and \$168,342 in water. At UVSC, \$556,888 is being saved in energy and \$10,313 is saved in water. At the Ogden Regional Center, \$33,488 is saved in energy and \$527 is saved in water. The totals over 20 years would be \$21,651,000 in electric and gas and \$179,182 in water. So far the projects are exceeding expectations.

Kent Beers stated the construction period at Corrections for the first year was estimated to save \$191,000 and the actual savings have been \$239,000. That is an additional \$48,000 in savings.

At Utah Valley State College, Mr. Beers highlighted some of the major upgrades being accomplished this year. DFCM is upgrading the lighting at a cost of \$878,000 which will

produce \$57,000 in savings each year. DFCM is upgrading water conservation devices \$118,000 and it will save \$21,000 in natural gas and over \$10,000 in water savings each year. Upgrades in the energy management control systems will cost \$2 million and will have an annual savings of \$58,000 in electric and \$24,000 in natural gas. DFCM is also installing a new electrical substation at \$3.6 million and that will produce annual savings of \$345,000 each year. A high efficiency chiller system is also being installed for \$2.9 million, which will produce \$39,000 a year in savings in electricity. A new cooling tower with variable frequency drives is also being installed for \$1.4 million that will save \$61,000 in electrical costs per year. The funds for those are in addition to the ESCO project.

This year DFCM received \$44 million in capital improvement funds from the Legislature which added almost 50% more through the ESCO financing. Regarding Utah Valley State College and the \$9.4 million they have received, Mr. Beers explained they receive about \$2 million in capital improvement funding. With this one ESCO project, they have received slightly over four years worth of capital improvement funding.

DFCM's goal is to approach the new Governor next spring to identify the data on these projects and receive approval to proceed with more of these ESCO financings. Keith Beers sought comments from the Board.

Mike Glenn added that Legislation establishes the ESCO process and allows it to occur. The Legislation allows up to a 25 year pay back, but those involved with the projects have placed a limit of 20 years. Part of the Legislation also requires those involved to submit an annual report to the Governor on energy efficiency in state buildings. A copy of this report was completed on June 30 and was distributed to the Board.

Kent Beers further added that in the May meeting, DFCM noted they had set aside \$1.5 million to the Department of Corrections for the Oxbow projects for capital improvements, however, the project is not proceeding. Mr. Beers noted in the May meeting that if it did not go forward, the \$1.5 million would be reallocated to other projects on the Department of Corrections list. Corrections would now like to proceed with the reallocation and Mr. Beers questioned the Board's desires. There were projects noted in the May packet or he could return next meeting and inform the Board which projects Corrections intends to proceed with and wait for the Board's direction.

Kenneth Nye raised the question that Kevin Walthers had indicated that the Legislature felt the \$1.5 million was somewhat under their direction. He was unaware if Corrections had discussions with legislative leadership on readdressing the money. Part of the discussion earlier with the Legislature was that if the money did not go to Oxbow, it would go to other projects facilitating a temporary housing expansion.

Keith Stepan suggested this be information to the Board and they would follow up with specific projects next time.

Kenneth Nye stated Higher Education was directed by the legislature this year to pursue a study of their energy conservation efforts and asked DFCM to assist in selecting a consultant. DFCM offered to provide \$10,000 from energy audit money to go towards cost for the study. In the future, DFCM will ask Higher Education to bring back the results of the study to inform the Board of conservation efforts within Higher Education.

ADMINISTRATIVE REPORTS FOR UNIVERSITY OF UTAH AND UTAH STATE UNIVERSITY

Pete van der Have, Vice President of Plant Operations at the University of Utah, presented the delegated project report for the period of May 15 to June 25, 2004. There were three design agreements and one new study agreement. There was one remodeling contract, two new site improvement contracts, and one design build contract for the new indoor football facility. There was no activity on the contingency reserve fund or the project reserve fund.

Mr. van der Have stated there has been a lot of activity with the community on the indoor practice facility. Several individuals have raised concerns regarding the height and exterior of the facility. The University has continued to process the concerns and move forward in the best direction possible. The facility will be located immediately south of the Eccles tennis facility.

MOTION: Steve Bankhead moved to accept the administrative report of the University of Utah. The motion was seconded by Katherina Holzhauser and passed unanimously.

Brent Windley presented the Utah State University report for the period of May 12 to June 23, 2004. There were four professional contracts issued and eight construction contracts awarded. There was \$199,609 added to the contingency fund, which amounts to 5.71% of the construction budget from delegated projects. \$20,000 was deducted from the reserve fund for pipe connections. There were 43 total delegated projects with seven new projects, 14 completed or partially completed projects, 15 still in construction, six in design and eight pending.

MOTION: Katherina Holzhauser moved to approve the administrative report of Utah State University. The motion was seconded by Steve Bankhead and passed unanimously.

ADMINISTRATIVE REPORTS FOR DFCM

Keith Stepan stated there were 18 architectural/engineering agreements issued and 39 construction contracts issued. There were three renewals on the lease report and the rates are consistent with guidelines.

Mr. Stepan referred to the contingency reserve which is listed at \$6.2 million, but \$3 million is going to operate DFCM this year. DFCM has new projects falling under this amount as well that are not yet listed. DFCM is also seeing substantial inflation in steel prices and the contingency reserve is needed to assist with change orders on existing projects. The reserve fund was listed as \$4.2 million and is the fund used for bids higher than anticipated or budgeted. Between the two funds there is \$10 million, but a good portion is committed.

Keith Stepan recalled DFCM had initiated a report for any buildings demolished across the State. DFCM wished to make notice to the Board of the demolition of the office building at Hyrum State Park.

Kent Beers also indicated the timing of the Corrections improvement process and waiting may cause some slow down in planning and processes. He requested conceptual approval to proceed pending any disagreement by the Legislature.

MOTION: Steve Bankhead moved to approve the projects pending verification with the Legislature. The motion was seconded by Katherina Holzhauser and passed unanimously.

OTHER.....

Keith Stepan suggested the Board may only be involved in selections greater than \$3-5 million in order to reduce the expectation of the Board.

Larry Jardine will serve on the selection committee for Tooele Courts.

Manuel Torres will serve on the selection committee for the CEU San Juan Campus Library and Classroom Building.

ADJOURNMENT.....

MOTION: Katherina Holzhauser moved to adjourn at 11:31am. The motion was seconded by Steve Bankhead and passed unanimously.



Olene S. Walker
Governor

Utah State Building Board

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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: August 4, 2004
Subject: **Dispute Resolution Process**

Recommendation:

DFCM recommends that the Board give a preliminary approval to the attached Dispute Resolution Rule as well as the proposed amendments to rule R23-4, Suspension/Debarment.

Background:

Subsequent to the last board meeting, DFCM had its final meeting with the Dispute Resolution Advisory Committee. This has resulted in the final draft rule that is attached. Significant changes that have been made to the draft that was presented at the last Board meeting are shown on the draft. Minor technical corrections such as paragraph numbering and grammatical corrections are not shown.

The Building Board is asked to do a final review of the draft rule and provide a preliminary approval. As required by the legislation, the draft rule will then be presented to the Government Operations Interim Committee for its review and comment on August 18. Following these reviews, it is anticipated that the rule will be presented to the Building Board on September 10 for final approval.

No major concerns were raised at the last Advisory Committee meeting. DFCM has also met with Representatives Harper (bill sponsor), Pace, Clark, and Morley along with Senator Evans regarding the proposed rule. These legislators were supportive of the direction taken and DFCM is not currently aware of any concerns with the wording of the rule.

DFCM appreciates the cooperative efforts of the members of the Advisory Committee who aided in the development of this process and rule. These members are listed below with the entity that they represented.

Larry Jardine, Building Board
Steve Bankhead, Building Board
John Fortuna, Associated General Contractors
Todd Bingham, Associated Builders and Contractors
Brian Babcock, Attorney for contractors
John Young, Attorney for Utah Subcontractors Council
Robert Bergman, Utah Subcontractors Council
Mike Cherrington, Utah Subcontractors Council

Jim Paull, Sheetmetal Association
Eric Tholen, AIA Utah
Ken Louder, AIA Utah
Jim Behunin, Legislative Auditor General
Derek Byrne, Legislative Auditor General
Keith Stepan, DFCM
Ken Nye, DFCM
Blake Court, DFCM
Alan Bachman, Assistant Attorney General for DFCM
Linda Bennett, Attorney General's Office

FKS:KEN:sll

Attachment

DRAFT

Revisions from the draft presented to the Building Board on July 14, 2004 are shown in red with new language underlined and deleted language ~~stricken through~~.

R23-26 Dispute Resolution

R23-26-1 Purpose and Scope

(1) The purpose of this rule is to establish a process for resolving disputes involved with contracts under the Division's procurement authority. The objectives of the procedure are to:

- (a) ~~assure~~encourage the payment of the appropriate and fair amount on a timely basis for work or services performed;
- (b) encourage the resolution of issues on an informal basis in order to minimize Disputes and Claims;
- (c) encourage fair and timely settlement of Claims;
- (d) ~~require~~provide a process that is as simple as possible and minimizes the costs to all parties in achieving a resolution;
- (e) maintain effective contractual relationships and responsibilities;
- (f) when possible, resolve related issues and responsibilities as a package;
- (g) discourage bad faith, frivolous or excessive Claims;
- (h) avoid having Claims interfere with the progress of the work;
- (i) assure that the presentation of good faith and non-frivolous issues and Claims do not negatively affect selection processes for future work, while bad faith and frivolous issues, as well as the failure of a Contractor or Subcontractor to facilitate resolution of issues, may be considered in the evaluation of the Contractor or Subcontractor; and
- (j) provide a process where Subcontractors at any tier, which have a Claim that involves a good faith issue related to the responsibility of the Division or anyone for whom the Division is liable, has the ability to present the matter for resolution in a fair and timely manner to those of any higher tier and ultimately to the Division without creating any contractual relationship between the Division and the Subcontractor at any tier.

(2) This rule does not apply to any protest under Section 63-56-45.

(3) A Claim under this rule that does not include a monetary claim against the Division or its agents is not limited to the dispute resolution process provided for in this rule.

(4) Persons pursuing Claims under the process required by this rule:

- (a) are bound by the decision reached under the process unless the decision is properly appealed; and

- (b) may not pursue a Claim under the dispute resolution process established in Sections 63-56-49 through 63-56-58.

(5) This rule does not apply to tort or other claims subject to the provisions of the Utah Governmental Immunity Act.

(6) This rule shall not limit the right of the Division to have any of its issues, disputes or claims considered in accordance with the applicable contract or law.

R23-26-2. Authority.

(1) The rule is authorized pursuant to Subsection 63a-5-208(6) and under the authority of the Utah State Building Board, Section 63A-5-101 and the Department of Administrative Services, Division of Facilities Construction and Management, Section 63A-5-201 et seq.

R23-26-3. Definitions. For purposes of this rule:

- (1) “Claim” means a dispute, demand, assertion or other matter submitted by a Contractor that has a contract under the procurement authority of the Division, including Subcontractors as provided for in this rule. The claimant may seek, as a matter of right, modification, adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the contract. A request for Preliminary Resolution Effort (PRE) shall not be considered a “Claim.” A requested amendment, requested change order, or a Construction Change Directive (CCD) is not a PRE or Claim unless agreement cannot be reached and the procedures of this rule are followed.
- (2) “Contractor” means a person or entity under direct contract with the Division and under the Division’s procurement authority.
- (3) “DFCM representative” means the Division person directly assigned to work with the Contractor on a regular basis.
- (4) “Director” means the director of the Division, including unless otherwise stated, his/her duly authorized designee.
- (5) “Division” means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201 et seq. It may also be referred in this rule as “DFCM.”
- (6) “Executive Director” means the Executive Director of the Department of Administrative Services, including unless otherwise stated, his/her duly authorized designee.
- (7) “Preliminary Resolution Effort” or “PRE” means the processing of a request for preliminary resolution or any similar notice ~~to the DFCM representative~~ about a problem that could potentially lead to a Claim and is prior to reaching the status of a Claim.
- (8) “Resolution of the claim” means the final resolution of the claim by the Director, but does not include any administrative appeal, judicial review or judicial appeal thereafter.
- (9) “Subcontractor” means any subcontractor or subconsultant at any tier under the Contractor, including any trade contractor, specialty contractor or consultant but does not include suppliers who provide only materials, equipment or supplies to a contractor, subcontractor or subconsultant. “Subcontractor” does not include any person or entity, at any tier, under contract with a Lessor.

R23-26-4. Procedure for Preliminary Resolution Efforts.

- (1) **Request for Preliminary Resolution Effort (PRE).** A Contractor raising an issue related to a breach of contract or an issue concerning time or money shall file a PRE as a prerequisite for any consideration of the issue by the Division.
- (2) **Time for Filing.** The PRE must be filed in writing with the DFCM representative within twenty-one (21) days after the Contractor knew or should have known of an event for initiating a PRE, as defined in the applicable contract. If the Division’s contract does

not define the event, the event shall be defined as the time at which the issue cannot be resolved through the normal business practices associated with the contract. The labeling of the notice shall not preclude the consideration of the issue by the Division. A shorter notice provision may be designated in the contract where damages can be mitigated such as delays or concealed or unknown conditions, the discovery of hazardous materials, emergency conditions, or historical or archeological discoveries.

(3) **Content Requirement.** The PRE shall be required to include in writing to the extent information is reasonably available at the time of such filing:

- (a) a description of the issue;
- (b) the potential impact on cost and time or other breach of contract; and
- (c) an indication of the relief sought.

(4) **Supplementation.** Additional detail of the content requirement above shall be provided later if the detail is not yet available at the initial filing as follows:

- (a) While the issue is continuing or the impact is being determined, the Contractor shall provide a written updated status report every 30 days or as otherwise reasonably requested by the DFCM Representative; and
- (b) After the scope of work or other factors addressing the issue are completed, the complete information, including any impacts on time, cost or other relief requested, must be provided to the DFCM Representative within twenty-one (21) days of such completion.

(5) **Subcontractors.**

(a) Under no circumstances shall any provision of this rule be intended or construed to create any contractual relationship between the Division and any Subcontractor.

(b) The Contractor must include the provisions of this subsection (5) in its contract with the first tier Subcontractor, and each Subcontractor must do likewise. At the Contractor's discretion, the Contractor may allow a Subcontractor at the 2nd tier and beyond to submit the PRE directly with the Contractor.

(c) In order for a Subcontractor at any tier to be involved with the preliminary resolution process of the Division, the following conditions and process shall apply:

(i) The Subcontractor must have ~~pursued all reasonable efforts attempted to resolve the issue~~ with the Contractor ~~to resolve the issue~~ including the submission of a PRE with the Contractor;

(ii) The Subcontractor must file a copy of the PRE with the DFCM Representative;

(iii) The PRE to the Contractor must meet the time, content and supplementation requirements of Section R23-26-4. The triggering event for a Subcontractor to file a PRE shall be the time at which the issue cannot be resolved through the normal business practices associated with the contract, excluding arbitration and litigation;

(iv) The PRE submitted to the Contractor shall only be eligible for consideration in the Division's PRE process to the extent the issue is reasonably related to the performance of the Division or an entity for which the Division is liable;

(v) The Contractor shall resolve the PRE to the satisfaction of the Subcontractor within sixty (60) days of its submittal to the Contractor or such

other time period as subsequently agreed to by the Subcontractor in writing. If the Contractor fails to resolve the PRE with the Subcontractor within such required time period, the Subcontractor may submit in writing the PRE with the Contractor and the Division. In order to be eligible for Division consideration of the PRE, the Subcontractor must submit the PRE within twenty-one (21) days of the expiration of the time period for the Contractor/Subcontractor PRE process. The Division shall consider the PRE as being submitted by the Contractor on behalf of the Subcontractor.

(vi) Upon such PRE being submitted, the Contractor shall cooperate with the DFCM Representative in reviewing the issue.

(vii) The Division shall not be obligated to consider any submission which is not in accordance with this rule.

(viii) The Subcontractor may accompany the Contractor in participating with the Division regarding the PRE raised by the Subcontractor. The Division is not precluded from meeting with the Contractor separately and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings.

(ix) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(6) **PRE Resolution Procedure.** The DFCM Representative may request additional information and may meet with the parties involved with the issue.

(7) **Contractor Required to Continue Performance.** Pending the final resolution of the issue, unless otherwise agreed upon in writing by the DFCM Representative, the Contractor shall proceed diligently with performance of the contract and the Division shall continue to make payments in accordance with the contract.

(8) **Decision.** The Division shall issue to the Contractor, and any other party brought into the process by the DFCM Representative as being liable to the Division, a written decision providing the basis for the decision on the issues presented by all of the parties within thirty (30) days of receipt of all the information required under Subsection R23-26-4 (5)(b) above.

(9) **Decision Final Unless Claim Submitted.** The decision by the Division shall be final, and not subject to any further administrative or judicial review (not including judicial enforcement) unless a Claim is submitted in accordance with this rule.

(10) **Extension Requires Mutual Agreement.** Any time period specified in this rule may be extended by mutual agreement of the Contractor and the Division.

(11) **If Decision Not Issued.** If the decision is not issued within the thirty (30) day period, including any agreed to extensions, the issue may be pursued as a Claim.

(12) **Payment for Performance.** Except as provided in this rule, any final decision where the Division is to pay additional monies to the Contractor, shall not be delayed by any PRE, Claim or appeal by another party. Payment to the Contractor of any final decision shall be made by the Division in accordance with the contract for the completed work. Notwithstanding any other provision of this rule, payment to the Contractor shall be subject to any set-off, claims or counterclaims of the Division. Payment to the Contractor for a Subcontractor issue submitted by the Contractor shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor

and the Subcontractor. Any payment or performance determined owing by the Contractor to the Division shall be made in accordance with the contract.

R23-26-5. Resolution of Claim.

(1) **Claim.** If the decision on the PRE is not issued within the required timeframe or if the Contractor is not satisfied with the decision, the Contractor or other party brought into the process by the Division, may submit a Claim in accordance with this rule as a prerequisite for any further consideration by the Division or the right to any judicial review of the issue giving rise to the claim.

(2) **Subcontractors.** In order for a Subcontractor to have its issue considered in the Claim process by the Division, the Subcontractor that had its issue considered under Section 23-26-4(6) may submit the issue as a Claim by filing it with the Contractor and the Division within the same timeframe and with the same content requirements as required of a Claim submitted by the Contractor under this rule. The Division shall consider the Claim as being submitted by the Contractor on behalf of the Subcontractor. Under no circumstances shall any provision of this rule be intended or construed so as to create any contractual relationship between the Division and any Subcontractor.

(a) Upon such Claim being submitted, the Contractor shall fully cooperate with the Director, the person(s) evaluating the claim and any subsequent reviewing authority.

(b) The Director shall not be obligated to consider any submission which is not in accordance with this rule.

(c) The Subcontractor may accompany the Contractor in participating with the Director, the person(s) evaluating the Claim and any subsequent reviewing authority regarding the Claim. The Director, the person(s) evaluating the Claim and any subsequent reviewing authority is not precluded from meeting with the Contractor separately, and it shall be the responsibility of the Contractor to keep the Subcontractor informed of any such meetings and matters discussed.

(d) Notwithstanding any provision of this rule, a Subcontractor shall be entitled to pursue a payment bond claim.

(3) **Time for Filing.** The Claim must be filed in writing promptly with the Director, but in no case more than twenty-one(21) days after the decision is issued on the PRE under Subsection 23-26-4(9) above or no more than twenty-one (21) days after the decision is not issued under Subsection 23-26-4(12) above, whichever is later.

(4) **Content Requirement.** The written Claim shall include:

(a) a description of the issues in dispute;

(b) the basis for the Claim, including documentation and analysis required by the contract and applicable law and rules that allow for the proper determination of the Claim;

(c) a detailed cost estimate for any amount sought, including copies of any related invoices; and

(d) a specific identification of the relief sought.

(5) **Extension of Time to Submit Documentation.** The time period for submitting documentation and any analysis to support a Claim may be extended by the Director upon written request of the claimant showing just cause for such extension, which request must be included in the initial Claim submittal.

(6) **Contractor Required to Continue Performance.** Pending the final determination of the Claim, including any judicial review or appeal process, and unless otherwise agreed upon in writing by the Director, the Contractor shall proceed diligently with performance of the Contract and the Division shall continue to make payments in accordance with the contract.

(7) **Agreement of Claimant on Method and Person(s) Evaluating the Claim.** The Director shall first attempt to reach agreement with the claimant on the method and person(s) to evaluate the Claim. If such agreement cannot be made within fourteen (14) days of filing of the Claim, the Director shall select the method and person(s), considering the purpose of this rule as stated in Section R23-26-1. Unless agreed to by the Director and the claimant, any selected person shall not have a conflict of interest or appearance of impropriety. Any party and the person(s) evaluating the Claim has a duty to promptly raise any circumstances regarding a conflict of interest or appearance of impropriety. If such a reasonable objection is raised, and unless otherwise agreed to by the Director and the claimant, the Director shall take appropriate action to eliminate the conflict of interest or appearance of impropriety. The dispute resolution methods and person(s) may include any of the following:

- (a) A single expert and/or hearing officer qualified in the field that is the subject of the Claim;
- (b) An expert panel, consisting of members that are qualified in a field that is the subject of the Claim;
- (c) An arbitration process which may be binding if agreed to by the parties to the Claim;
- (d) A mediator; or
- (e) Any other method that best accomplishes the purpose of Section R23-26-1.

(8) **Evaluation Process.**

(a) **No Formal Rules of Evidence.** There shall be no formal rules of evidence but the person(s) evaluating the Claim shall consider the relevancy, weight and credibility of the evidence.

(b) **Questions.** Parties and the person(s) evaluating the Claim have the right to ask questions of each other.

(c) **Investigation and Documents.** The person(s) evaluating the Claim has the right to investigate and request documents, consider any claims or counterclaims of the Division, may set deadlines for producing documents, and may meet with the parties involved with the Claim together or separately as needed. Copies of submitted documents shall be provided to all parties.

(d) **Failure to Cooperate.** The failure of a party to cooperate with the investigation or provide requested documentation may be a consideration by the person(s) evaluating the Claim in reaching the findings in its report.

(e) **Record of the Proceeding.** The person(s) evaluating the Claim shall determine the extent to which formal minutes, transcripts, and/or recordings shall be made of the meetings and/or hearings and shall make copies available to all parties.

(f) **Certification.** The person(s) evaluating the Claim may require the certification of documents provided.

(9) **Timeframe for Person(s) Evaluation the Claim and Director's Determination.** The Claim shall be resolved no later than sixty (60) days after the proper filing of the

Claim, which includes any extension of time approved under Section R23-26-5(5). The person(s) evaluating the Claim may extend the time period for resolution of the Claim by not to exceed sixty (60) additional days for good cause. The time period may also be extended if the claimant agrees. The person(s) evaluating the Claim shall issue to the parties a schedule providing the timeframe for the issuance of the following:

(a) a Preliminary Resolution Report including the preliminary findings regarding the Claim;

(b) the receipt of written comments concerning the preliminary report. A copy of such comments must be delivered to the other parties to the Claim within the same timeframe;

(c) a reply to written comments, which must also be delivered to the other parties to the Claim within the same timeframe; and

(d) a final report and recommendation which must be delivered to the Director and the other parties no later than seven (7) days prior to the expiration of the required timeframe for resolution of the Claim.

(10) **Director's Final Resolution.** The Director shall consider the final recommendation and report and issue the final resolution of the Claim, with any modifications, prior to the expiration of the required timeframe for resolution of the Claim.

R23-26-6. Administrative Appeal to the Executive Director of the Department of Administrative Services.

(1) **Administrative Appeal.** The Contractor may file a written administrative appeal of the final resolution of the person(s) evaluating the Claim with the Executive Director of the Department of Administrative Services. The administrative appeal is the prerequisite for any further consideration by the State of Utah, or to judicial review of the issue giving rise to the Claim. It shall be considered that the Contractor, or another party brought into the process by the Division, has not exhausted its administrative remedies if such an administrative appeal is not undertaken.

(2) **Time for Filing.** The administrative appeal must be filed in writing promptly with the Executive Director and delivered to the other parties to the Claim, but in no case more than fourteen (14) days after the Contractor's receipt of the Director's final resolution of the Claim.

(3) **Content.** The Administrative Appeal must state the basis for the appeal.

(4) **Response.** Within five (5) days of receipt of the Administrative Appeal, any party may deliver to Executive Director written comments concerning the appeal. A copy of such comments must be delivered to the other parties to the Claim within the same five (5) day time period.

(5) **Reply to Written Comments.** Within five (5) days of receipt of written comments, any party may deliver to the Executive Director a reply to the written comments concerning the appeal. A copy of such reply must be delivered to the other parties to the Claim within the same five (5) day time period.

(6) **Executive Director's Decision.** Within thirty (30) days of receipt of the Administrative Appeal, and after considering the appeal, the Director's final resolution, responses and replies, the Executive Director or his/her designee shall issue a final decision of the appeal in writing and shall state the basis of the decision. Failure of the Executive Director to issue a written decision within the thirty (30) day time period, shall

entitle the appellant to seek judicial review of the Claim. The time period for the Executive Director's decision may be extended by agreement of the Executive Director and the Appellant.

R23-26-7 Payment of Claim.

- (1) When a stand alone component of a Claim has received a final determination, and is no longer subject to review or appeal, that amount shall be paid in accordance with the payment provisions of the contract or judicial order.
- (2) When the entire Claim has received a final determination, and is no longer subject to review or appeal, the full amount shall be paid within fourteen (14) days of the date of the final determination unless the work or services has not been completed, in which case the amount shall be paid in accordance with the payment provisions of the contract to the point that the work or services is completed.
- (3) The final determination date is the earlier of the date upon which the claimant accepted the settlement in writing with an executed customary release document and waived its rights of appeal, or the expiration of the appeal period.
- (4) Any final determination where the Division is to pay additional monies to the Contractor shall not be delayed by any appeal or request for judicial review by another party brought into the process by the Division as being liable to the Division.
- (5) Notwithstanding any other provision of this rule, payment of all or part of a Claim is subject to any set-off, claims or counterclaims of the Division.
- (6) Payment to the Contractor for a Subcontractor issue (Claim) deemed filed by the Contractor, shall be paid by the Contractor to the Subcontractor in accordance with the contract between the Contractor and the Subcontractor.
- (7) The execution of a customary release document related to any payment may be required as a condition of making the payment.

R23-26-8. Judicial Review.

- (1) The Executive Director's decision on the appeal, or the failure to provide a decision within the required time period under Subsection R23-26-6(6), shall be deemed a final agency action subject to judicial review as provided in Sections 63-46b-14 and 63-46b15, including, but not limited to requirements for exhaustion of administrative remedies, the requirements for a petition of judicial review, jurisdiction and trial de novo.
- (2) The participation of a person in the claim evaluation process does not preclude the person from testifying in a judicial proceeding to the extent allowed by Utah law.

R23-26-9. Allocation of Costs of Claim Resolution Process.

- (1) In order to file a Claim, a claimant must pay a \$1500 filing fee to the Division. When the Claim is a pass-through from a Subcontractor in accordance with rule R23-26-4(6), the payment of the fee shall be made by the Subcontractor.
- (2) Unless otherwise agreed to by the parties to the Claim, the costs of resolving the Claim shall be allocated among the parties on the same proportionate basis as the determination of financial responsibility for the Claim.
- (3) The costs of resolving the Claim that are subject to allocation include the claimant's filing fee, the costs of any person(s) evaluating the Claim, the costs of making any

required record of the process, and any additional testing or inspection procured to investigate and/or evaluate the Claim.

(4) Each party is responsible for its own attorney fees.

R23-26-10. Alternative Procedures. To the extent otherwise permitted by law, if all parties to a Claim agree in writing, a protocol for resolving a Claim may be used that differs from the process described in this rule.

R23-26-11 Impact on Future Selections.

(1) The presentation of a good faith and non-frivolous issue or Claim shall not be considered by the Division's selection process for a future award of contract; and

(2) The submission of a bad faith and frivolous issue or Claim or the failure by a Contractor to facilitate resolution of a Claim, may be considered in the Division's

~~selection process for a future award of a contract~~ evaluation of performance.

R23-26-12 Delegated Projects. Projects delegated by the Division shall provide for contract provisions which provide a similar dispute resolution process as provided for in this rule.

R23-26-13 Report to Building Board. The Division may report on the status of claims to the Utah State Building Board.

Proposed Amendments to R23-4-5

~~R23-4. Suspension/Debarment and Contract Performance Review Committee.~~

R23-4-1. Purpose and Authority.

R23-4-2. Definitions.

R23-4-3. Suspended and Debarred Persons Not Eligible for Consideration of Award.

R23-4-4. Causes for Suspension/Debarment and Procedure.

R23-4-5. Contract Performance Review Committee.

R23-4-1. Purpose and Authority.

(1) This rule sets forth the ~~requirements regarding the Contract Performance Review Committee as well as~~ the basis and guidelines for suspension or debarment from consideration for award of contracts by the division.

(2) This rule is authorized under ~~Subsection 63A-5-208(6), which allows for the creation of a contract Performance Review Committee,~~ Subsection 63A-5-103(1), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management, and Subsection 63-56-14(2), which authorizes the Building Board to make rules regarding the procurement of construction, architect-engineering services, and leases.

R23-4-2. Definitions.

~~(1) "Committee" means a contract performance review committee established pursuant to Subsection 63A-5-208(6).~~

(2) "Director" means the director of the division, including, unless otherwise stated, his duly authorized designee.

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

(4) "Person" ~~means any business, individual, union, committee, other organization, or group of individuals, not including a state agency~~ shall have the meaning provided in Section 63-56-5.

R23-4-3. Suspended and Debarred Persons Not Eligible for Consideration of Award.

No person who has been suspended or debarred by the division, will be allowed to bid or otherwise solicit work on division contracts until they have successfully completed the suspension or debarment period.

R23-4-4. Causes for Suspension/Debarment and Procedure.

(1)(a) The causes for debarment and procedures for suspension/debarment are found in Sections 63-56-48 through 63-56-50, as well as Section 63A-5-208(8).

(b) Pursuant to subsection 63-56-48(2)(e), a pattern and practice by a state contractor to not properly pay its subcontractors may be determined by the Director to be so serious and compelling as to affect responsibility as a state contractor and therefore may be a cause for debarment.

(c) A pattern and practice by a subcontractor to not honor its bids or proposals may be a cause for debarment.

(2) The procedures for suspension/debarment are as follows:

(a) The director, after consultation with the using agency and the Attorney General, may suspend a person from consideration for award of contracts for a period not to exceed

three months if there is probable cause to believe that the person has engaged in any activity which may lead to debarment. If an indictment has been issued for an offense which would be a cause for debarment, the suspension, at the request of the Attorney General, shall remain in effect until after the trial of the suspended person.

(b) The person involved in the suspension and possible debarment shall be given written notice of the division's intention to initiate a debarment proceeding. The using agency and the Attorney General will be consulted by the director and may attend any hearing.

(c) The person involved in the suspension and debarment will be provided the opportunity for a hearing where he may present relevant evidence and testimony. The director may establish a reasonable time limit for the hearing.

(d) The director, following the hearing on suspension and debarment shall promptly issue a written decision, if it is not settled by written agreement.

(e) The written decision shall state the specific reasons for the action taken, inform the person of his right to judicial or administrative review, and shall be mailed or delivered to the suspended or debarred person.

(f) The debarment shall be for a period as set by the Director, but shall not exceed three years.

(g) Notwithstanding any part of this rule, the Director may appoint a person or person(s) to review the issues regarding the suspension or debarment as a recommending authority to the Director.

~~R23-4-5. Contract Performance Review Committee.~~

~~Rule text~~

~~The Director may establish a Committee that shall be subject to the following:~~

~~(1) The Committee shall adjudicate complaints about contractor, subcontractor, and supplier performance by following the procedures of of this rule and applicable statute;~~

~~(2) The Committee shall, when appropriate, impose suspensions or debarments from bidding on state building contracts on contractors, subcontractors, and suppliers for cause; and~~

~~(3) The Director may request the Committee to hear other matters, such as any properly filed contract claims against the Division, issues regarding terminations of contracts or defective work, and any other matters that the Director determines will assist the Division in carrying out its responsibilities.~~

~~(4) In regard to (1) and (2) above, the Committee is acting as the chief procurement officer or the head of a purchasing agency for purposes of Section 63-56-48.~~

~~(5) In regard to (3) above, the Committee is acting as a recommending authority to the Director.~~

~~(6) The Committee shall consist of three members selected by the Director. At least two of the three members shall have expertise with the type of issues that are likely to appear before the Committee and they shall not be a member of any State Board or part of any state agency. One of the three members may be an employee or officer of a client agency that is not involved with the specific subject matter and person being reviewed.~~

~~(7) The Committee shall, to the extent permitted by law, compel the attendance of any witnesses or production of documents.~~

~~(8) The Committee shall meet at such times as designated by the Director.~~

~~(9) The Committee shall issue all decisions or recommendations in writing with a brief description of the grounds for the decision.~~



Olene S. Walker
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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: August 4, 2004
Subject: **Capital Development Process and Schedule**

DFCM will review with the Board the following topics that are associated with the Capital Development prioritization process.

Evaluation Guide:

For the last three months, the Board has been working on a more structured process for evaluating capital development requests. The results of this effort are reflected in the attached Evaluation Guide (attachment 1). This Guide includes the changes that were approved by the Board in its last meeting. It will be used in the Board's evaluation of requested projects in October. The Board has indicated that it will use the scores resulting from this Guide in developing its priority list but the Board is not bound to strictly follow the results of the scores.

The Board has asked that the agencies and institutions requesting projects do a self scoring and provide a justification for their scores. This is reflected in the attached format for state-funded capital development requests (attachment 2). This format has been modified from that which was originally issued to reflect the changes approved by the Board in July.

The Board has also asked DFCM to suggest scores for the requested projects and provide an analysis supporting the suggested scores. This will be provided to the Board along with the requests, which include the self scoring by the requesting agencies and institutions. The Board will use this information as well as that obtained through tours and the October presentations to arrive at its scores. The Board's scores will then serve as the starting point for its prioritization.

Attachment 3 contains a list of capital development projects that DFCM is currently aware of.

Schedule of Tours and Meetings:

On the morning of August 4, the Board will be touring the Women's Prison, Lone Peak Nursery, State Developmental Center, and the UVSC Library.

The Board asked DFCM to develop a proposal to tour requests in northern Utah on the afternoon of September 10 following the joint meeting the Building Board will be having that morning with the Board of Regents at Weber State University. The Board also asked DFCM to identify some options for touring other requests in the central part of the state on another day. The tentative schedule for September 10 and the options for central Utah are shown in attachment 4.

If the Board desires to tour requests in central Utah, it will need to decide which option it wishes to pursue and identify a date for the tour.

It should be noted that the Legislature's Capital Facilities Appropriations Subcommittee is planning on joining the Building Board for its meetings and tour on September 10.

The Board's calendar currently includes meetings on both October 6 and 7 to hear capital development requests. In past years, this has usually been accomplished in one day. DFCM suggests that the Board limit the hearings to October 6. The Board will then meet on October 21 to determine its capital development recommendations.

FKS:KEN:sl

Attachment

Building Board
Capital Development Request Evaluation Guide

Attachment 1

Approved July 14, 2004

	Strategic Objectives	Evaluation Criteria	Weight	Scoring Anchors
1	Address life safety and other deficiencies in existing assets through renewal and replacement	Does the project address documented code and condition deficiencies? For life safety deficiencies, what is the potential impact and probability of occurrence?	3	5 = documented cost of deficiencies exceeds 60% of total project cost 3 = documented cost of deficiencies between 30% and 45% of total project cost 1 = documented cost of deficiencies is less than 15% of total project cost 0 = project does not address an existing facility -and- ↑↑ if substantial threat to life and property <u>and</u> higher probability of occurrence ↑ if substantial threat to life and property <u>or</u> higher probability of occurrence
2	Address essential program growth requirements	Does the increase in space address documented growth of the essential program and to what degree are other needs/desires added onto the request?	2	5 = increased space is well supported by demographics for existing demand plus a reasonable allowance for future growth for the essential program 3 = increased space is supported by demographics for existing demand and growth for the essential program while also incorporating other needs. 1 = increased space significantly exceeds the level justified by demographics or no demographics are provided 0 = project does not result in an increase in space
3	Cost effective solutions	Does the project reflect a cost effective solution appropriate to the facility need? Is this a “bargain” with a limited window of opportunity?	3	5 = Alternative approach that is substantially less costly to the State in the long term than a standard approach 3 = Cost effective solution appropriate to the facility 0 = More costly than is appropriate for the facility need -then- ↑ if this is a bargain opportunity that requires immediate action or it will be lost
4	Improve program effectiveness and/or capacity	To what degree does the project improve program effectiveness or increase program capacity other than the simple addition of space?	2	4 = substantial improvement in program effectiveness 2 = moderate improvement in program effectiveness -and- ↑ if significant increase in program capacity ↓ if minor increase in program capacity
5	Provide facilities necessary to support critical programs and initiatives	Is the project required to support a critical state program or initiative?	2	5 = project is required for an essential state program or initiative to operate 3 = project is needed to support an important state program 1 = project enhances a less critical state program
6	Take advantage of alternative funding opportunities for needed facilities	What portion of the total project cost is covered by alternative funds?	1	5 = more than 60% 3 = between 20% and 40% 1 = no alternative funding is available for this program -then- ↑ if alternative funding (excluding donations) requires state funding this budget cycle

1. Scoring is on a scale of 0 to 5 using whole numbers only with the scoring anchors identifying specific points on this scale.
2. ↑ and ↓ indicate that one point may be added or subtracted. This adjustment will not be made if it would cause the score to be greater than 5 or less than 0.
3. The scores for each criterion are multiplied by the weighting factor and summed to arrive at a total score.
4. Please see the attached additional information and instructions.

Building Board
Capital Development Request Evaluation Guide
Additional Information/Instructions

The following additional information and instructions are provided to aid in the application of the evaluation guide. The strategic objectives are broad objectives of the State as a whole which have an impact on facility needs. The criteria interpret each objective and identify the discriminating factor that differentiates the degree to which each request satisfies the strategic objective. The scoring anchors define specific points on the range of possible scores to facilitate consistent application. A project's score is determined by multiplying the score for each objective by the applicable weighting factor. These amounts are then summed to arrive at the total score. The total score indicates how well the project meets the objectives as a whole.

Clarification of how each objective should be scored is provided below.

Objective 1 – Address life safety and other deficiencies in existing assets through renewal and replacement

This objective measures the degree to which a project takes care of deficiencies in existing state-owned facilities. The measurement utilizes the information obtained through DFCM's facility condition assessment program. In consultation with DFCM, this may be supplemented by information obtained through other sources such as additional engineering studies or professional staff analysis.

In order to prevent a relatively small problem from justifying a much larger project, this measurement is calculated by dividing the cost of correcting deficiencies by the total cost of the requested project. The only deficiencies considered in this calculation are those that will be resolved directly through the requested project. This objective addresses basic deficiencies in the building and its systems. The cost of correcting programmatic deficiencies is not considered in this objective but is addressed in objective 4. An example of a programmatic deficiency is a space reconfiguration that is desired to improve space utilization or program effectiveness.

Additional points may be awarded based on the potential impact of life safety deficiencies and their probability of occurrence as noted in the scoring anchors. If the project addresses both existing space as well as an increase in space, the score resulting from the above calculation will need to be adjusted as explained below.

Objective 2 – Address essential program growth requirements

This objective evaluates the degree to which the requested increase in state-owned space is supported by demographic information. Due to the wide variety in types of requests submitted, it is anticipated that the requesting agency or institution will identify the most appropriate demographic data to support its request. The validity and completeness of the demographic support will be considered in evaluating the requested scope. In developing

its suggested score, DFCM may obtain and consider additional demographic data beyond that which is submitted with the request. If the project addresses both existing space as well as an increase in space, the score resulting from the above calculation will need to be adjusted as explained below.

Objectives 1 and 2 Scoring Adjustment

For projects that involve both an increase in space and the renovation or replacement of existing state-owned space, the scores for objectives 1 and 2 must be reduced by the same proportion as the project cost associated with the existing facility or the increase in space, as applicable, is to the total project cost.

The following example is provided to demonstrate this calculation. Assume that 80% of a requested project replaces an existing facility and 20% of the project creates an increase in space beyond that contained in an existing facility. Assume further that substantial problems are documented in the existing building that is being replaced that are sufficient to justify a score of 5. This score would then be reduced to a final score of 4.0 through the following calculation: $5 * 0.8 = 4$. Assume also that the demographic support for the increased space justifies a score of 4. This score would then be reduced to a final score of 0.8 through the following calculation: $4 * 0.2 = 0.8$. The results of these adjustments should be rounded to one decimal place.

Objective 3 – Cost effective solutions

This objective measures the cost effectiveness of the request. It is expected that most projects will receive a score of “3”. Windows of opportunity will be evaluated to assure their validity.

Objective 4 – Improve program effectiveness and/or capacity

This objective addresses the degree to which a project improves the effectiveness or capacity of a program. Capacity increases will be evaluated based on quantity of service that can be provided in a given amount of space. Capacity increases that are only the result of an increase in space will not be considered.

Objective 5 – Provide facilities necessary to support critical programs and initiatives

This objective seeks to measure the degree to which a request supports critical programs or initiatives. It is not addressing the level of support for a specific project. The scoring anchors address the criticality of the program or initiative and the degree to which the project is required in order for that program or initiative to operate.

Objective 6 – Take advantage of alternative funding opportunities for needed facilities

This objective addresses the degree to which alternative funding reduces the funding impact on the state. A bonus point may be awarded for alternative funding (other than donations) that has a timing constraint requiring that state funds be provided in the current budget cycle.

**Capital Development Project
State Funded Request
FY2006**

(Note: In order to facilitate brevity, instructions in italics should be deleted in the submitted document.)

Agency/Institution: _____

Project Name: _____

Agency/Institution Priority: _____

Preliminary Cost Estimate: \$ _____
(Your DFCM project director will work with you to develop the final budget request.)

Total Project Space (Gross Square Feet) _____

New Space (Gross Square Feet) _____
Remodeled Space (GSF) _____
Space to be Demolished (GSF) _____

Increase in State Funded O&M \$ _____
(Estimate the amount, if any, that will be requested beyond current budget levels for state funded O&M. Explain how this amount was determined below. If O&M funding is to come from another source, please explain the funding source below.)

New Program Costs \$ _____
(Estimate the cost of new or expanded programs and services that will result if the project is funded and provide a brief description below. This should include any operating budget increase that will be required, other than O&M, in order to operate the programs that will be housed in the requested facility.)

New FTEs Required _____
(Estimate the number of new employees that will be required if the project is funded and provide a brief description below; i.e., staff for new or expanded programs or to maintain the facility. This includes any FTE that will be paid for from Increased O&M Funding or New Program Costs noted above.)

Other Sources of Funding \$ _____
(Identify other sources of funding such as donations, federal grants, and debt and indicate whether that funding is in hand. If debt is proposed for the project, identify the funding source for its repayment.)

Previous State Funding \$ _____
(Identify state funding previously provided for this project; i.e., planning, land purchase, etc.)

Existing Facility:

(How is the existing program housed? Why is the existing facility not able to meet your needs? What is the proposed use or disposition of the existing facility if your request is funded?)

Project Description:

(Describe the project. Identify areas of new construction versus remodeling as well as any existing facilities to be demolished. Document the programs and services to be offered in the proposed facility. Discuss unique design requirements and program requirements. If the project involves the acquisition of an existing facility, indicate whether an independent appraisal has been obtained and the results of that appraisal.)

Planning/Programming:

(Describe the level of planning and programming that has been completed for the project.)

Site and Infrastructure:

(Estimate the size of site required for the project. If a site has been identified, document its location, size, ownership, and unique characteristics. If the site is not owned by the state, address the availability and cost of purchasing the site and the results of any appraisals that have been performed. Agencies should work with DFCM's real estate staff in addressing potential purchases. Identify any requirements to provide access to the site or to provide for parking. If the site is on an existing campus, address the capacity of the existing campus infrastructure to service the utility needs of the facility. If the site is not on an existing campus, address the degree to which utilities are available to the site.)

Scoring Analysis for Building Board Request Evaluation Guide:

Please provide the following self-scoring and justification to aid the Building Board and DFCM in applying the attached Capital Development Request Evaluation Guide. The Building Board has given conceptual approval to this draft with final action expected in the Board's next meeting on July 14. Any changes will then be distributed so that you can adapt your request information.

1. Existing Building Deficiencies and Life Safety Concerns. Suggested Score ____
(If the request involves the renovation or replacement of an existing state owned facility, provide a summary (one page maximum) of critical life safety and other deficiencies in the existing facility. Address the potential impact and probability of occurrence of life safety deficiencies. Coordinate with assigned DFCM staff to identify the extent to which the project addresses documented deficiencies in the existing facility.)

2. Essential Program Growth Requirements. Suggested Score ____
(Summarize demographic data which justifies the scope of any increased space requested in the project. Attach the source date unless it is generally available, in which case a reference to the source data may be provided. Examples of demographic data that may be used include workload, enrollment, and population changes.)

3. Cost Effectiveness. Suggested Score ____
(Address the expected level of quality and extent of aesthetic/monumental features in light of the purpose and nature of the requested project. If an alternative approach is being suggested that is less costly than a standard approach, demonstrate the immediate and long term savings of the alternative approach. Demonstrate any time constraints associated with the alternative approach.)
4. Improved Program Effectiveness and/or Capacity. Suggested Score ____
(Demonstrate how the requested project will improve the effectiveness and/or capacity of the associated program(s) and thereby improve the delivery of services.)
5. Support to Critical State Programs and Initiatives. Suggested Score ____
(Justify your suggested score by demonstrating the criticality of the program or initiative that will be supported by the requested project. Justify how the requested project will support the program or initiative.)
6. Alternative Funding Sources. Suggested Score ____
(Document, by category, the amount of alternative funding that is in hand, the amount for which enforceable commitments have been obtained, and any additional amount for which alternative funding is being sought. With the exception of donations, identify any timing constraints associated with the alternative funding.)

Photographs and Maps:

(Photographs and other graphics of the project and/or maps showing where the facility will be located are requested to be submitted in electronic format if possible. These should help explain the project and justify why it should be funded.)

Capital Development Requests 2005 Legislative Session

July 22, 2004

College/Department	Project
<u>State Funds:</u>	
UofU	Marriott Library
USU	College of Agriculture Classroom Building
WSU	Replacement of Buildings 1 and 2
WSU	IHC Property Purchase
SUU	Teacher Education Building
UVSC	Digital Learning Center
SLCC	Purchase BYU Salt Lake Center
Dixie	Health Sciences Building
Snow	Library/Classroom Building
CEU	Geary Theatre Replacement
UCAT	UBATC/USU Vernal Campus
UCAT	BATC Bourns Building Purchase
UCAT	DATC High Tech Building
UCAT	MATC New Northern Utah County Center
UCAT	MATC Lease Purchase in Spanish Fork
UCAT	SWATC Cedar City Campus
Multi-Agency	Richfield Regional Center
Corrections	288-Bed Facility at CUCF(Gunnison)
Courts	Washington County Court
Courts	Land Purchases
Board of Education	Deaf & Blind Conner St. Replacement
Board of Education	Buffmire Rehabilitation Center Annex
Human Services	Developmental Center Housing
National Guard	????????????????
Natural Resources	Lone Peak Nursery Facility
Natural Resources	Price Region Office??
Natural Resources	New Campgrounds at 3 Rural State Parks
Fairpark	New Multi-Purpose Facility
Capitol Preservation	State Capitol Renovation Phased Funding
<u>Other Funds:</u>	
ABC	Downtown SLC Wine Store
ABC	Additional Store in Washington Co.
ABC	Additional Store in Southwest SL County
National Guard	????????????????
UDOT	Region 2 Materials Lab
UDOT	Vernal Maintenance Station
UDOT	Heber Maintenance Station
WSU	Union Building Renovation

**Tentative Building Board Meeting & Tour Schedule
September 10, 2004**

Time	Activity
8:00 to 10:00	Joint meeting with the Board of Regents at Weber State
10:00 to Noon	Building Board meeting at Weber State
Noon to 12:45	Lunch
12:45 to 1:15	Tour Weber State Buildings 1 and 2 and related issues
1:15 to 2:15	Travel to Bridgerland ATC
2:15 to 2:45	Tour Bourns Building
2:45 to 3:00	Travel to USU
3:00 to 3:30	Tour USU Agricultural Science Building
3:30 to 4:30	Return to Weber State

**Options for Tour in Central Utah
Date To Be Determined**

- A. Eight-hour tour covering:
 - 1. Snow College Library
 - 2. Gunnison Prison
 - 3. Richfield Regional Office Building

- B. Seven and one half hour tour covering:
 - 1. Snow College Library
 - 2. CEU Geary Theatre

- C. Nine and one half hour tour covering:
 - 1. Snow College Library
 - 2. Gunnison Prison
 - 3. Richfield Regional Office Building
 - 4. CEU Geary Theatre

Indicated times are from the departure from SLC to the return to SLC.

Note that the Palisade State Park could be added to options A or C. This would add about 45 minutes to these tours. This is one of the parks that Parks and Recreation has included in its request for expanded campgrounds at three state parks.



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MEMORANDUM

To: Utah State Building Board
From: F. Keith Stepan
Date: August 4, 2004
Subject: **Litigation Update (Potential Closed Meeting)**

DFCM will provide an update to the Board regarding litigation. This will include efforts to settle the litigation and claims associated with the lease of the OMC Building in Ogden.

It is likely that the Board will vote to close the meeting for this discussion as it involves litigation.

FKS:KEN:sll

Attachment