

MINUTES
STATE BUILDING COMMISSION
Executive Subcommittee
January 21, 2014

The State Building Commission Executive Subcommittee met this day at 10:30 a.m. in House Hearing Room 31, Legislative Plaza, Nashville, Tennessee. Chairman Larry Martin called the meeting to order at 10:32 a.m. and requested action on the following matters as presented by State Architect Peter Heimbach.

STATE BUILDING COMMISSION SUB-COMMITTEE MEMBERS PRESENT

Larry Martin, Commissioner, Department of Finance and Administration
Tre Hargett, Secretary of State
David Lillard, State Treasurer
Justin Wilson, Comptroller of the Treasury

OTHERS PRESENT

Peter Heimbach, State Architect
Georgia Martin, Office of the State Architect
Ann McGauran, Department of General Services
Melinda Parton, Comptroller's Office
Kathy Stickel, Comptroller's Office
Jonathan Rummel, Secretary of State's Office
Joy Harris, Treasurer's Office
Bruce Davis, Legislative Budget Office
Janie Porter, Attorney General's Office
Dick Tracy, Tennessee Board of Regents
Diane Uhler, Tennessee Board of Regents
Ted Hayden, Office of the State Architect
John Webb, Dept of Finance and Administration
Mike Morrow, Dept of Finance and Administration

Crystal Collins, THEC
Steven Gentile, THEC
Kim Adkins, The Capitol Strategy Group
Blake Fontenay, Constitutional Officers
Chloe Shafer, Department of General Services
Cathy Higgins, Legislative Budget Office
Marcos Makohon, Department of General Services
Lauren Ridenour, Department of Finance and Administration
Edie Tinch, Sgt York Patriotic Foundation
Deborah York, Sgt York Patriotic Foundation
Darlene Davis, Sgt York Patriotic Foundation
Gary Boyer, Maffett-Bouton & Associates
Representative Kelly Keisling

CONSENT AGENDA

Approved the following real property transactions, which have been reviewed and recommended for approval by Subcommittee staff:

- A. Agency: Tennessee Board of Regents – Rutherford County
Transaction: Acquisition in fee
Provision: Waiver of advertisement and one appraisal

- B. Agency: Tennessee Board of Regents – Rutherford County
Transaction: Acquisition in fee
Provision: Waiver of advertisement and one appraisal

- C. Agency: Tennessee Board of Regents – Rutherford County
Transaction: Acquisition in fee
Provision: Waiver of advertisement and one appraisal

- D. Agency: Tennessee Board of Regents – Shelby County
Transaction: Acquisition in fee
Provision: Waiver of advertisement and one appraisal

- E. Agency: Department of Agriculture – White County
Transaction: Disposal in fee
Provision: Waiver of advertisement and one appraisal

- F. Agency: Tennessee Wildlife Resources Agency- Decatur County
Transaction: Acquisition in fee
Provision: Waiver of advertisement and one appraisal

- G. Agency: Department of Safety – Davidson County
Transaction: Lease Amendment

- H. Agency: Department of Environment and Conservation – Knox County
Transaction: Modify previous action to waive appraisal

TENNESSEE BOARD OF REGENTS

Middle Tennessee State University, Murfreesboro, Rutherford County, Tennessee

Requested Action: Approval of a revision in project budget and source(s) of funding in order to award a contract

Project Title: College of Education and Behavioral Science Building

Project Description: Construct College of Education and Behavioral Science facility and provide minor modifications and HVAC replacements to the existing LRC for the CoE. Provide new classrooms, new class labs, and new offices for the purpose of consolidating facilities for the CoE program. Demolish non-functional space on south side of LRC.

SBC Number: 166/009-04-2007

Revised Project Budget: \$30,915,000.00

Source of Funding:	<u>Original</u>	<u>Change</u>	<u>Revised</u>			
	\$ 995,000.00	\$ 0.00	\$ 995,000.00	07/08	CurrFunds-CapOutlay	(A)
	6,000,000.00	0.00	6,000,000.00	2007	GOBonds-CapOutlay	(A)
	6,555,000.00	0.00	6,555,000.00	2006	GOBonds-CapOutlay	(A)
	16,330,000.00	0.00	16,330,000.00	2009	GOBonds-CapOutlay	(A)
	1,000,000.00	0.00	1,000,000.00	2010	State Funds	(A)
	0.00	35,000.00	35,000.00		Plant (Non Auxiliary)	(A)
Original Project Budget:	\$30,880,000.00					
Change in Funding:		\$35,000.00				
Revised Project Budget:			\$30,915,000.00			

Comment: Three bids were received on 12/18/13 with PBG Builders, Inc. submitting the low bid. The additional funds will allow award of base bid plus three alternates for a total of \$374,550.00.

Previous Action:

- 07/12/2007 SBC Approved project and issuance of RFP for CM/GC
- 08/16/2007 SBC Selected designer (JV Earl Swensson/Fowlkes & Assoc)
- 12/13/2007 SBC Designer name change JV Earl Swensson/Centric Arch
- 02/14/2008 SBC Revised funding
- 05/08/2008 SBC Approved award to Brasfield & Gorrie as CM/GC
- 01/08/2009 SBC Approved EDP
- 09/10/2009 SBC Revised source of funding
- 09/09/2010 SBC Revised funding
- 01/09/2014 SBC Referred to ESC with authority to act

Minutes: 01/21/2014 ESC Approved a revision in project budget and source(s) of funding in order to award a contract.

TENNESSEE BOARD OF REGENTS

Middle Tennessee State University, Murfreesboro, Rutherford County, Tennessee

Requested Action: Approval of a project, budget, scope and source of funding

Project Title: Demolition – 2310 Louise Street

Project Description: This project provides for the demolition of a storage shed and house located at 2310 Louise Street for the benefit of the MTSU master plan.

SBC Number: 166/009-01-2014

Total Project Budget: \$32,000.00

Source of Funding: \$32,000.00 Plant (Non-Auxiliary) (A)

Comment: This building is less than 50 years old and does not require Tennessee Historical Commission review.

Minutes: 01/21/2014 ESC Approved a project, budget, scope and source of funding.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Fall Creek Falls State Park, Spencer, Van Buren County, Tennessee

Requested Action: Approval of a revision in project budget and source(s) of funding

Project Title: Upgrade Landside Cabins

Project Description: Improve ten landside cabins to include the replacement of roofs, siding, interiors renovations and geothermal HVAC systems using clean energy funds.

SBC Number: 126/036-03-2012

Total Project Budget: \$1,189,250.00

Source of Funding:	<u>Original</u>	<u>Change</u>	<u>Revised</u>			
	\$690,000.00	\$ 0	\$ 690,000.00	12/13	CurrFunds-CapMaint	(A)
	220,000.00	0	220,000.00		CleanEnergyGrant Funds	(A/O)
	0	279,250.00	279,250.00	08/09	CurrFunds-CapMaint	(R)

Original Project Budget: \$910,000.00

Change in Funding: \$279,250.00

Revised Project Budget: \$1,189,250.00

Comment: This project bid over target. Additional funding is required to award the bid to the lowest qualified bidder and to award the base bid. The first lowest bid was rejected. The bids exceeded the bid target due to scope increases that were not accounted for in the designer's probable cost estimate at the Construction Development Phase. Inflation was not accounted for in the original estimate by the agency.

Previous Action:

- 07/12/2012 SBC Approved project
- 07/23/2012 ESC Selected designer (Michael Brady, Inc.)
- 04/11/2013 SBC Revised scope & funding
- 11/14/2013 SBC Revised funding
- 01/09/2014 SBC Referred to ESC with authority to act

Minutes: 01/21/2014 ESC Approved revision in project budget and source(s) of funding.

DEPARTMENT OF CORRECTION

Land Transaction

Requested Action: Approval of disposal in fee with waiver of advertisement and appraisals

Description: Lauderdale County – 2.777+/-acres – Highway 87 & Chapman Rd., Cherry, TN – Trans. No. 13-12-005 (Baugh)

Purpose: Disposal of property by transfer of ownership to Lauderdale Volunteer Fire Department (LVFD).

Estimated Price: No cost – Mutual benefit

Source of Funding: Department of Correction Operating Funds (REM Fees) (A)

Comment: The agency requests to transfer the property by quitclaim deed to the LVFD with a reversionary clause stating the property will revert to the State if no longer used as a fire hall. The LVFD intends to build a fire hall on the property to provide fire protection service for the surrounding community, which includes the West Tennessee State Penitentiary.

Date of last transfer: October 13, 1937
Original Cost to the State: Unknown
Previous Owner: Unknown
Property Assessor's Value: \$0 (5,587.00 acres)
Improvement Square Footage: N/A

Minutes: 01/21/2014 ESC Comptroller Wilson said he thought this was a good idea and restated that, whenever the State transfers property, the benefits to the State should be clearly identified. Subcommittee approved disposal in fee with waiver of advertisement and appraisals.

DEPARTMENT OF EDUCATION

Alvin C. York Institute, Jamestown, Fentress County, Tennessee

Requested Action: Approval to amend the language of the agreement with the Sergeant York Patriotic Foundation

Project Title: Grant to Sergeant York Patriotic Foundation (SYPF)

Project Description: Transfer of property and granting of funds to the SYPF for stabilization and mothballing of the Alvin C. York Agricultural Institute. The State will convey the historic building and the real property on which the building sits to the Foundation by quitclaim deed, and will grant to the Foundation not-to exceed amount of \$500,000.

SBC Number: 168/001-01-2008 (Trans. No. 13-06-001)

Total Project Budget: \$500,000.00

Source of Funding: \$500,000.00 Current Funds Capital Maint (R)

Comment: The grant that was issued for \$500,000, in 2008, was for decommissioning the building until a use could be determined. The grant monies have been expended and no additional monies are being added. Additionally, the conveyance of the property had a reversion agreement stating that the State could reclaim the property if an agreeable use could not be decided upon within five years and six months. **This action extends that term for an additional six months to July 31, 2014** to address comments and concerns regarding the use, easement and building documents, agreements and safety plans with the adjacent school.

Previous Action:

01/10/2008	SBC	Referred to ESC with authority to act
01/22/2008	ESC	Discussion; deferred action 120 days
04/21/2008	ESC	Status report
05/27/2008	ESC	Discussion; referred to special meeting
06/16/2008	ESC	Discussion
06/26/2008	ESC	Discussion
07/10/2008	ESC	Approved transfer of property to Foundation
06/24/2013	ESC	Approved amending agreement language with SYPF

Minutes: 01/21/2014 ESC Approved amending agreement language with SYPF.

DEPARTMENT OF FINANCE & ADMINISTRATION

Statewide

Requested Action: Approval to issue a new contract to the previously selected designer

Project Title: Consultants

Project Description: Consultants to assist the Office of the State Architect in establishing standards for Building Information Modeling (BIM), High Performing Buildings (HPB) and Building Signage.

SBC Number: 900/000-01-2012

Total Project Budget: \$1,375,000.00

Source of Funding: \$ 575,000.00 12/13 CurrFunds-CapImprov (A)
\$ 800,000.00 13/14 CurrFunds-CapImprov (A)

Comment: The contract with Sign Management Consultants for Building Signage expired on 8/9/2013 with a balance of \$13,500 remaining in their \$45,000 contract. This amount will be carried forward and added to the new contract along with the additional approved funding of \$100,000.

Previous Action: 07/12/2012 SBC Approved project
07/23/2012 ESC Selected consultants (SSR; KFA; Sign Management)
07/11/2013 SBC Revised budget & funding; extend contracts for second year
01/09/2014 SBC Referred to ESC with authority to act

Minutes: 01/21/2014 ESC Approved issuing new contract to previously selected designer.

DEPARTMENT OF GENERAL SERVICES

Lease Agreement

Requested Action: Approval to amend lease agreement

Description: Hamilton County 1301 Riverfront Parkway, Chattanooga, TN – Trans. No. 13-01-951 (Iverson)

Purpose: To add square footage to the premises.

Term: 15 years – June 1, 2014 – May 31, 2029 (estimated pending build-out completion)

Proposed Amount: **60,924 Total Rental SF (rsf) representing an additional 12,517 rsf**

First Year Rent:	\$645,794.40	@\$10.60/sf
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Average Annual Rent Cost Includes: Utilities & Janitorial Services	\$1,072,627.94	@ 17.61/sf
***Average Annual Total Cost:	\$1,074,449.00	@17.64/sf
***Includes \$5,463.17 average annual utility cost above average annual rent in years 11-15		

Current Amount: **48,407 Rentable SF:**

First Year Rent:	\$513,114.20	@\$10.60/sf
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Average Annual Rent Cost includes: Utilities & Janitorial Services	\$852,253.64	@ 17.61/sf
***Average Annual Total Cost:	\$853,700.00	@ 17.64/sf
***Includes \$4,314 average annual utility cost above average annual rent in years 11-15		

Type: New lease- advertised- qualifications based

FRF Rate: \$18.00

Source of Funding: FRF Operating Funds

Lessor: Beltline at Howell Mill, LLC

Comment: There are no changes to the terms and conditions of the lease. The additional sq. ft. represents the final Builders Owners Management Association’s calculation of the space, additional sq. ft. for the OIR server room and additional sq. ft. requested by Labor and Workforce. Once programming was complete, STREAM realized this additional space would work well for the OIR server room, and Labor and Workforce expressed a desire to have additional space to further consolidate its operations. The original Jones Lang LaSalle (JLL) commission amount for this lease was \$417,684, with 15% or \$62,652.60 remitted to the State, and the commission for the additional sq ft. is \$108,004.19, for a total commission of \$525,688.83, with 20% or \$105,137.77 remitted to the State.

Department of General Services – continued:

JLL procured this additional space for the State prior to the execution of amendment 7 to JLL's contract with the State, which prohibited JLL from receiving commission on procurements going forward until a conflict of interest mitigation policy is in place.

Previous Action: 09/06/2013 ESC Approved award and lease agreement

Minutes: 01/21/2014 ESC Comptroller Wilson confirmed that this lease amendment was moving forward prior to approval of Amendment #7 of the JLL contract and asked if there were any others in the works, and was told "no". Subcommittee approved the lease amendment as presented.

STATE BUILDING COMMISSION

Minutes of Executive Subcommittee Meeting

- 1) Approved the Minutes of the Executive Subcommittee meeting held on December 16, 2013.

SBC Policy & Procedures

- 1) Comptroller Wilson stated that this policy not only deals with the individual conflicts of interest but with the potential organizational conflicts of interest, and was satisfied that the State now has a fair process. After consideration, Subcommittee approved the following new SBC Policy & Procedures Item 12 regarding *Conflicts of Interest*.

ITEM 12 CONFLICTS OF INTEREST

12.01 Individual Conflicts of Interest

Commission members ("Members"), and the staff of the Commission, the Office of the State Architect, the State Procurement Agencies ("SPAs"), and the User Agencies participating in Commission procurements or contracts (collectively "Staff"), all serve the interests of the State of Tennessee and its citizens, and have a duty to avoid activities and situations which, either directly or indirectly, put personal interests before the professional obligations they owe to the State and its citizens.

It is the expectation of the Commission that its Members and that Staff adhere to the various statutes that exist in the Tennessee Code Annotated (T.C.A.) which are pertinent to individual, potential, or actual conflicts of interest, including but not limited to the following statutory sections, and any successor sections thereto:

- T.C.A. § 8-50-501, Disclosure statements of conflict of interests by certain public officials
- T.C.A. § 12-2-208, Purchase by officer unlawful – penalty for violation
- T.C.A. § 12-2-415, State surplus property disposition regulation
- T.C.A. § 12-2-416, Violation of § 12-2-415
- T.C.A. § 12-2-417, State employee violation – punishment
- T.C.A. § 12-4-101, Personal interest of officers prohibited
- T.C.A. § 12-4-102, Penalty for unlawful interest
- T.C.A. § 12-4-103, Bidding by state employees prohibited
- T.C.A. § 12-4-104, Penalty for unlawful transactions
- T.C.A. § 12-4-105, Grand jury investigations
- T.C.A. § 12-4-106, Prohibition against receiving rebates, gifts, money or anything of value

12.02 Organizational Conflicts of Interest

A. PURPOSE

The purpose of this policy Item 12 is to prescribe ethical standards of conduct applicable to the Members and Staff, and to inform Persons (as hereinafter defined), including Contractors/Consultants (as hereinafter separately defined), entering into State contracts that are subject to Commission approval and oversight, of the ethical standards of conduct applicable to procurements and to resulting contracts and all amendments thereto, all of which serves to:

- Promote full and open competition, integrity, and transparency in the procurement and contracting process;
- Prevent Persons from obtaining an unfair competitive advantage in the procurement and contract process;
- Promote an environment conducive to Contractors/Consultants providing services to the State in an impartial and objective manner;

- Provide guidance to enable Contractors/Consultants to make informed decisions while conducting business with the State; and
- Protect the validity of the State's contracts, protect the State's interests, and protect the State's confidential and sensitive information.

B. POLICY

1. All Members, Staff, and Contractors/Consultants shall at all times conduct and carry out their duties and responsibilities in a manner intended to uphold high ethical standards and to comply with this policy. If a Member, member of the Staff, or Contractor/Consultant has actual knowledge of an Organizational Conflict of Interest (as hereinafter defined, and hereinafter referred to as "OCI"), the OCI shall be disclosed to the State Architect and shall be avoided, mitigated or waived in accordance with Paragraph 4 below.
2. All SPAs must consider potential OCIs during preparation of all procurement solicitation documents, during the evaluation of all offers and proposals, and must disclose the existence of OCIs that become known or discovered at any time during the term of any contract resulting from a procurement. SPAs must include clauses in every procurement solicitation and in every contract resulting from a procurement that would appropriately identify known current and future OCIs. If an OCI is discovered during preparation of the procurement documents, the SPA must include a clause requiring offerors and proposers to make disclosures and representations, and to explain plans to resolve conflicts.
3. All Contractors/Consultants must disclose the existence of OCIs that are known or discovered at any time prior to award and during contract performance, and must, upon request, disclose all facts bearing on the OCI.
4. Upon identification of an OCI, the SPA shall, as soon as reasonably possible, simultaneously notify the State Architect of the OCI and submit to the State Architect a plan to address the OCI, which plan shall include actions and/or agreements necessary to avoid, mitigate, and/or waive the OCI.
 - a. Avoidance generally involves a Contractor/Consultant foregoing a contracting opportunity, or foregoing existing contractual rights, in order to remain eligible for future work, or involves a limitation on future contracting allowing the Contractor/Consultant to perform the initial contract, but precluding the Contractor/Consultant from submitting offers on future contracts. Avoidance may also involve the removal or limitation of an individual member of the Staff's involvement in the procurement, evaluation, and/or management of services performed by a Contractor/Consultant under an initial contract or under future contracts.
 - b. Mitigation may involve specific actions by a Contractor/Consultant and/or an SPA to limit the effect of a conflict, or mitigation may involve more general efforts and /or recognitions when the circumstances are covered by policy of the Commission and/or policy of the Office of the State Architect.
 - c. The SPA may, upon written approval of the State Architect, waive the requirement to resolve an OCI if the SPA determines that resolution is not feasible or is not in the best interest of the State, which determination must be documented in writing and maintained by the SPA.
 - d. No OCI occurs when (i) all material facts of the transaction and the basis for a possible OCI are disclosed and the contract, procurement or transaction is approved or (ii) the contract, procurement or transaction is fair to the State which such determination shall be documented in writing and filed with the State Architect.
 - e. The SPA shall not commence implementation of the plan to avoid, mitigate, and/or waive the OCI required by subparagraphs 4.a., 4.b. or 4.c. until the SPA has documented the basis for the plan in writing and has received written approval of the plan from the State Architect, or until documentation has been filed with the State Architect as required by subparagraph 4.d.
 - f. In all instances where an OCI exists in a procurement or contract in which the State Architect participated, the use of the term "State Architect" in the first sentence of this paragraph 4, and in subparagraphs 4.d. and 4.e above, shall be taken to mean the Commission or its designee[s].
 - g. Any approval or failure to approve by the State Architect pursuant to subparagraphs 4.a., 4.b. or 4.c. may be appealed by any Member to the Commission or its designee(s).

C. DEFINITIONS:

- a. "Affiliate" of a Contractor/Consultant means (i) any member, partner or joint venture member of the Contractor/Consultant; (ii) any shareholder of the Contractor/Consultant having an interest of at least ten percent in any class of stocks; (iii) any Person which directly or indirectly through one or more intermediaries Controls (as hereinafter defined), or is Controlled by, or is under common Control with, the Contractor/Consultant or any of their shareholders, members, partners or joint venture members; and/or (iv) any entity for which ten percent or more of the equity interest in such entity is held directly or indirectly, beneficially or of record by (a) the Contractor/Consultant, (b) any of the shareholders, members, partners or joint venture members of the Contractor/Consultant, or (c) any affiliate of the Contractor/Consultant.
- b. "Biased Ground Rules" means the requirements for a contract or prerequisites for competition for a contract that have been written by a Person who, as a part of its performance of a State contract, directly or indirectly participates in writing statements of work or specifications for another contract for which the Person who established the requirements or prerequisites, or any of its Affiliates, seeks to compete.
- c. "Contractor" means any Person, or its Affiliates or subcontractors, retained by the State to perform program implementation services for the State, or proposing to perform such services.
- d. "Consultant" means any Person, or its Affiliates or sub-consultants, retained by the State to perform Procurement Services and also retained to perform, or proposing to perform, other services for the State, which other services performed or to be performed include, but are not limited to, architecture, safety, quality, information technology, real estate acquisition or disposal, leasing, engineering, environmental, systems integration, land surveying, project management, program management, planning, construction management, or management assistance.
- e. "Control" means the possession, directly or indirectly, of the power to cause the direction of the management of an entity, whether through voting securities, by contract, family relationship or otherwise.
- f. "Impaired Objectivity" means when a Person evaluates proposals or contract performance for its own products or services or for the products or services of competitors. Impaired Objectivity can exist where a contract requires the exercise of judgment, and the economic interests of the Person – as broadly construed- will be harmed through the free and unbiased exercise of that judgment.
- g. "Organizational Conflict of Interest" means, as to contracts or proposed contracts with the State, a circumstance arising out of a Contractor's/Consultant's existing or past activities, business or financial interests, familial relationships, contractual relationships, and/or organizational structure (i.e., parent entities, subsidiaries, Affiliates, etc.) that results in:
 - (i) Impaired Objectivity of a Contractor/Consultant;
 - (ii) An Unfair Competitive Advantage (as hereinafter defined), for any bidder or proposer with respect to a State procurement;
 - (iii) Biased Ground Rules; and/or
 - (iv) A perception or appearance of impropriety, as determined by a Member or the State Architect, with respect to any of the State's procurements or contracts, or a perception or appearance of Unfair Competitive Advantage with respect to a State procurement.
- h. "Person" means any individual, corporation, limited liability company, partnership (general or limited), joint venture, association, joint stock company, trust, government (or any agency or political subdivision thereof), other business entity, or other organization recognized by law.
- i. "Procurement Services" mean services provided by a Contractor/Consultant for the benefit of the State that relate to, but are not limited to any of the following:
 - (i) Development and preparation of procurement documents;
 - (ii) Development of offer/proposal evaluation criteria, processes and/or procedures;
 - (iii) Management of or administration of a procurement;
 - (iv) Evaluation of bidder/proposer submittals;

- (v) Negotiation of a contract;
 - (vi) Advising the State or performing any other services that relate to any aspect of the procurement.
- j. "Unfair Competitive Advantage" exists when a Person competing for the award of a contract has obtained:
- (i) Access to proprietary and/or confidential information, or information that is not available to the public or other competitors, and that would assist the offeror or proposer in responding to a procurement solicitation or in obtaining the contract; and/or
 - (ii) Scoring criteria or points allocation information, or other source selection information, that is relevant to the contract but is not available to all offerors or proposers and that would assist the offerors or proposers in responding to a procurement solicitation or in obtaining the contract.

D. FURTHER POLICIES AND PROCEDURES

The Office of the State Architect may develop policies and procedures that further define requirements to fulfill this policy.

- 2) Subcommittee considered and approved the following new **Item 18.01 Protests** that supercedes and replaces the existing Item 5.04 of the *SBC Bylaws, Policy & Procedures*:

ITEM 18 PROTESTS

18.01 All construction and leasing procurements may be subject to an appeal process. Either The University of Tennessee, The Tennessee Board of Regents, or State of Tennessee Real Estate Asset Management will be the applicable State Procurement Agency (SPA) for these types of procurements.

- A. After a Request for Proposals ("RFP") or a Request for Qualifications ("RFQ") has been released to the public or posted on the SPA's website, a potential proposer must submit any written questions and comments about the solicitation to the SPA no later than the questions and comments deadline set forth in the RFP or RFQ, as applicable. After the SPA responds in writing to any such written questions and comments, the State will allow seven calendar days for consideration of a protest from a potential proposer regarding any defects or ambiguities involving the RFP or RFQ, as applicable, the potential proposer knew or should have known giving rise to a protest. Any issues raised by the protesting party after the seven day period shall not be considered as part of the protest. No pre-proposal protest is allowed before a bid opening for design-bid-build construction projects or before the separate cost proposal phase of best value projects under this paragraph. A potential proposer must comply with the requirements set forth in subsections C through H below.
- B. After opening a procurement file for public inspection, which shall occur at least ten days prior to the date of the State Building Commission Executive Sub-Committee meeting at which approval will be sought, the State will allow seven calendar days for consideration of protests from an actual proposer based on facts the proposer knows or should have known giving rise to the protest. Any issues raised by the protesting party after the seven-day period shall not be considered as part of the protest.
- C. Protests and a protest bond in accordance with Subsection D shall be submitted to the Head of the SPA who will evaluate the merits of the protest. Only written protests shall be acknowledged and considered. Protests shall be addressed to the Commissioner of the Department of General Services, the President of the University of Tennessee, or the Chancellor of the Tennessee Board of Regents, submitted on company letterhead, and be signed by a principal or company officer empowered to bind the proposer to the provisions of the procurement document. At a minimum, a protest shall identify the specific issue[s] and state justification[s] for the protest. If the SPA decides in favor of the protest then (1) the result may be disqualification of the violative bidder[s], cancellation of the procurement or other resolution and (2) the protest bond shall be returned to the proposer. If the SPA denies a protest, then the contract process proceeds unless further appealed under Subsection F.

- D. Upon the filing of a protest by an actual proposer, a stay of award shall automatically be in place. Such stay shall become effective upon receipt by the SPA of the protest and a protest bond that is in accordance with Subsection E. The SPA shall not proceed further with the procurement process or with the award of the contract until the protest has been resolved by the State in accordance with the provisions of this Policy, unless the State Architect makes a written determination that continuation of the procurement process or the award of the contract without delay is necessary to protect substantial interests of the State. It shall be the responsibility of the SPA by written request to seek such a determination by the State Architect.
- E. Neither a protest nor a stay of award shall proceed under this Policy unless the protesting party posts a protest bond. The protesting party shall post with the SPA, at the time of filing a protest, a bond payable to the State in the amount of five percent (5%) of the protester's bid amount, or, if the protest is filed relating to a procurement pursuant to an RFQ or a RFP, the bond shall be payable to the State in the amount of five percent (5%) of the Bid Target, Guaranteed Maximum Price, or other estimated maximum contract liability provided in the construction procurement document. If the protest relates to a lease procurement, the bond shall be in an amount of the greater of the sum of \$40,000 or five percent (5%) of the total value of the lease, calculated by multiplying the applicable current Facilities Revolving Fund Rate by the square footage anticipated in the procurement document, and then by multiplying the resulting number by the shortest lease term in the procurement document, stated in years. The protest bond shall be in form and substance acceptable to the State. The protesting party shall post the protest bond strictly in accordance with all requirements of this paragraph, or the protest shall be summarily dismissed.
- F. A proposer may appeal its denied protest to the Office of the State Architect ("OSA"), for further review within seven calendar days of the SPA's written decision. If after review of the protest through appeal, the State Architect decides in favor of the protest then (1) the result may be disqualification of the violative bidder[s], cancellation of the procurement or other resolution and (2) the protest bond shall be returned to the proposer. If the OSA's review of the appeal concurs with the SPA's decision to deny the protest, then the protest is considered denied and the award process proceeds. The State Architect's written determination of a denial is deemed final.
- G. If a protest is denied (i) by the SPA and the protest is not appealed to the OSA or (ii) by the State Architect, the protest bond penal sum, or any lesser amount agreed to by the State and the protesting party pursuant to G.(3) below, shall be paid to the State upon final determination or after the seven (7) day period for the appeal, conditioned upon a written decision by the State Architect that the denial was a result of:
- (1) The protest being brought or pursued in bad faith; or
 - (2) The protest not stating on its face a valid basis for protest; or
 - (3) The State suffering monetary losses based on the filing of the protest that should be recoverable as reasonably determined by the SPA and approved by the State Architect at the full or lesser amount of the penal sum of the bond provided.
- H. The protesting party must exhaust all administrative remedies provided in this policy prior to the initiation of any judicial review of the protest. Protests appealed to the chancery court from the OSA's written determination of a denial shall be by common law *writ of certiorari*. The scope of review in the proceedings shall be limited to the record made before the OSA and shall involve only an inquiry into whether the OSA exceeded its jurisdiction, followed an unlawful procedure, or acted illegally, fraudulently, or arbitrarily without material evidence to support its action. Notwithstanding the foregoing two sentences, should a protest be received by an SPA or the State subsequent to a contract being completely executed pursuant to a procurement process, the Tennessee Claims Commission has exclusive jurisdiction to determine all monetary claims against the State.

OSA Policy & Procedures – Delivery Methods

- 1) Subcommittee acknowledged a report of the following revision to *Procurement Through Construction Management*:

A. Definition

~~Unless otherwise approved, projects will use the~~ The Construction Manager/General Contractor (CM/GC) model ~~which~~ is a form of construction management in which the owner engages a designer, and engages a qualified construction manager to provide ~~these~~ pre-construction and construction services. The CM/GC provides consulting and estimating services during design phases, and acts as the general contractor during the construction phases, holding the trade contracts and providing the management and construction services. The CM/GC competitively procures the contracts with trade contractors and assumes the responsibility and risk of construction delivery, usually within specified cost and schedule terms, and usually after providing a guaranteed maximum price (GMP) on a defined scope of Work.

Designer Selections

The following designer selections represent projects approved by the State Building Commission and recommended by the State Procurement Agencies. Secretary Hargett stated that, while they used the normal criteria in determining final selections including maintaining the geographical balance, current work capacity, and quality and quantity of workload over past several years, it was still primarily a process driven by the individual agencies.

- 1) **Ellington Agricultural Center**
(Moss Building Fire/Security Upgrades)
Total Project Budget: \$290,000.00
SBC Project No. 100/000-01-2014
Designer: SMITH SECKMAN REID
- 2) **TRICOR**
(New Headquarters Building)
Total Project Budget: \$1,200,000.00
SBC Project No. 150/002-01-2014
Designer: STREET DIXON RICK
- 3) **Pellissippi State Community College**
(Strawberry Plains Renovation)
Total Project Budget: \$1,600,000.00
SBC Project No. 166/032-05-2013
Designer: JOHNSON ARCHITECTURE INC

Other Business

There being no further business, the meeting adjourned at 10:47 a.m.

* * * * *

TENNESSEE BOARD OF REGENTSLand Transaction

Requested Action: Approval to obtain title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal

Description: Rutherford County – 0.29+/- acres – 2505 Middle Tennessee Boulevard, Murfreesboro, TN – Trans. No. 13-12-007 (Maholland)

Purpose: Acquisition in fee to acquire property and improvements consisting of a 4,348 sq. ft. house. The house will be rented until needed for future campus expansion. This property is in Middle Tennessee State University's 2008 Master Plan.

Estimated Price: Fair Market Value

Source of Funding: Plant (Auxiliary-Rental) (A)

Owner(s): Joe B. McCrary

Comment: Date of last transfer: October 1, 1990
Purchase Price: Inheritance
Property Assessor's Value: \$124,700.00
Improvements Square Footage: 4,348

Minutes: 01/21/2014 ESC Approved obtaining title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal.

TENNESSEE BOARD OF REGENTSLand Transaction

Requested Action: Approval to obtain title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal

Description: Rutherford County – 0.41+/- acres – 1105 Ewing Boulevard, Murfreesboro, TN – Trans. No. 13-12-008 (Maholland)

Purpose: Acquisition in fee to acquire property and improvements consisting of a 1,303 sq. ft. house. The house will be rented until needed for future campus expansion. This property is in Middle Tennessee State University's 2008 Master Plan.

Estimated Price: Fair Market Value

Source of Funding: Plant (Auxiliary-Rental) (A)

Owner(s): Joe B. McCrary

Comment: Date of last transfer: March 7, 2002
Purchase Price: N/A
Property Assessor's Value: \$86,200
Improvements Square Footage: 1,303

Minutes: 01/21/2014 ESC Approved obtaining title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal.

TENNESSEE BOARD OF REGENTS

Land Transaction

Requested Action: Approval to obtain title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal

Description: Rutherford County – 0.56+/- acres – 1109 Ewing Boulevard, Murfreesboro, TN – Trans. No. 13-12-009 (Maholland)

Purpose: Acquisition in fee to acquire property and improvements consisting of a 2,280 sq. ft. house. The house will be rented until needed for future campus expansion. This property is in Middle Tennessee State University's 2008 Master Plan.

Estimated Price: Fair Market Value

Source of Funding: Plant (Auxiliary-Rental) (A)

Owner(s): Joe B. McCrary

Comment: Date of last transfer: October 5, 1959
Purchase Price: \$10,000
Property Assessor's Value: \$111,700
Improvements Square Footage: 2,280

SSC Report: 01/13/2014 Dick Tracy summarized the transaction. Staff referred to Executive Subcommittee for consent agenda.

Minutes: 01/21/2014 ESC Approved obtaining title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal.

TENNESSEE BOARD OF REGENTSLand Transaction

Requested Action: Approval to obtain title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal

Description: Shelby County – 0.36+/- acres – 227 Deloach Street, Memphis, TN – Trans. No. 13-12-010 (Maholland)

Purpose: Acquisition in fee to acquire property and improvements consisting of a 2,142 sq. ft. house. The house will be rented until needed for future campus expansion. This property is in The University of Memphis' 2006 Master Plan.

Estimated Price: Fair Market Value

Source of Funding: Plant (Auxiliary-Rental) (A)

Owner(s): Deanna U. Barnwell

Comment: Date of last transfer: August 13, 1985
Purchase Price: \$81,000.00
Property Assessor's Value: \$203,600.00
Improvements Square Footage: 2,142

Minutes: 01/21/2014 ESC Approved obtaining title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal.

DEPARTMENT OF AGRICULTURELand Transaction

Requested Action: Approval of disposal in fee with waiver of advertisement and appraisals

Description: White County – 1.0+/-acres - 2259 East Bethlehem Rd., Sparta, TN – Trans. No. 13-12-006 (Baugh)

Purpose: Disposal in fee as the property is no longer needed and reverting to the owner.

Estimated Price: No cost

Source of Funding: 13/14 Agriculture-Division of Forestry Operating Funds (REM Fees) (A)

Comment: The property was used to house fire-fighting equipment and personnel. Per the reversionary clause in the deed vesting title to the State, the title is to revert to the original owner once the State stops using the property.

Date of last transfer: October 5, 1957
 Original Cost to the State: \$1.00
 Previous Owner: Lillie Sparkman
 Property Assessor's Value: N/A
 Improvement Square Footage: N/A

Minutes: 01/21/2014 ESC Approved disposal in fee with waiver of advertisement and appraisals.

TENNESSEE WILDLIFE RESOURCES AGENCYLand Transaction

Requested Action: Approval to obtain title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal

Description: Decatur County – 2.00+/-acres – Beech River Canal/Wildlife Management Area, Parsons, TN – Trans. No. 13-11-010 (M. Berry)

Purpose: Acquisition in fee for the protection of wetlands and provide water fowl hunting, bird watching and other recreation for the public.

Estimated Price: Fair Market Value

Source of Funding: 13/14 Wetlands Acquisition Fund (A)

Owner(s): Hugh & Vernell Carrington

Comment: This property is on the wetlands priority list.

Date of last transfer: April 21, 2006
Purchase Price: N/A
Property Assessor's Value: \$2,000
Improvements Square Footage: N/A

No additional operating costs are anticipated with this acquisition.

Minutes: 01/21/2014 ESC Approved obtaining title work, appraisal, survey, phase 1 environmental assessment and exercise option to acquire interest, not to exceed appraised value with waiver of advertisement and one appraisal.

DEPARTMENT OF SAFETYLand Transaction

Requested Action: Approval to amend land lease

Description: Davidson County – 31.48+/-acres – 3000 Morgan Rd., Joelton, TN – Trans. No. 02-09-010 (Iverson)

Purpose: Lease amendment to permit the State to construct and operate a communications facility on the premises.

Term: February 1, 2005 – January 31, 2025

Rent: No cost – mutual benefit

Owner/Lessor: State of Tennessee

Lessee: Metropolitan Government of Nashville and Davidson County

Comment: This amendment to the terms of the lease will allow the State to install a communications tower and equipment on land owned by the State that is currently leased, and will continue to be leased, to Metro. The tower is for the Department of Safety and Homeland Security's Statewide Interoperable Communications system, part of approved SBC Project No. 502/001-01-2011. All other terms and conditions of the lease will remain the same. The Metro Park Board approved this lease amendment on December 3, 2013.

Minutes: 01/21/2014 ESC Approved land lease amendment.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Land Transaction

Requested Action: Approval to modify previous action to waive appraisal

Description: Knox County – 393+/-acres – Seven Island Rd & Kelly Lane., Knoxville, TN – Trans. No. 13-08-017 (M. Berry)

Purpose: Acquisition by gift for a tract known as Seven Island Wildlife Refuge (SIWR)

Estimated Price: Gift

Source of Funding: \$50,000 13/14 State Land Acquisition Fund Admin Cost (A)

Owner(s): Knox County

Comment:

<u>Date of last transfer</u>	<u>Property Assessor's Value</u>	<u>Acres</u>	<u>Improvements</u>
December 22, 2010	\$ 0	16.86	None
December 22, 2010	\$101,200	5.06	None
August 31, 2010	\$ 0	13.61	None
December 22, 2010	\$ 0	2.47	None
May 23, 2002	\$ 18,500	2.80	None
May 23, 2002	\$871,300	209.16	2,908sf
January 8, 2004	\$286,220	56.58	1,320sf
October 22, 2001	\$234,640	58.00	1,340sf
December 20, 2000	\$ 28,440	5.71	None
December 20, 2000	\$ 43,630	5.05	None
December 20, 2000	\$ 43,290	5.01	None
December 20, 2000	\$ 43,460	5.03	None
December 20, 2000	\$ 47,000	5.44	None

The properties listed above were received as gifts by Knox County. TDEC wishes to acquire this property to continue to protect the wildlife refuge. This constitutes 393+/- acres of the 423 total acres. TDEC anticipates acquiring the remaining 29.71 acres in the future.

Previous Action: 09/23/2013 ESC Approved waiver of advertisement and one appraisal.

Minutes: 01/21/2014 ESC Approved modifying previous action to waive appraisal.

Approved:



Tre Hargett
Secretary, State Building Commission Executive Subcommittee
Secretary of State