

**MINUTES
OF
THE BOARD OF REGENTS
OF
THE TEXAS STATE UNIVERSITY SYSTEM**

Special Called Board Meeting

January 14, 2010

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I. CALL TO ORDER

The special called telephonic Board of Regents meeting of the Texas State University System was called to order on Thursday, January 14, 2010 at 3:00 p.m. CST by Chairman Ron Blatchley.

II. ATTENDANCE

Present

Chairman Ron Blatchley
Vice Chairman Charlie Amato
Regent Ron Mitchell
Regent David Montagne
Regent Michael Truncale
Regent Trisha S. Pollard
Regent Donna Williams
Regent Greg Wilkinson
Student Regent William Patterson

Absent

Regent Kevin Lilly

Also Present:

Chancellor Charles R. Matthews; Dr. Fernando Gomez, Vice Chancellor & General Counsel; Dr. Kenneth Craycraft, Vice Chancellor for Academic Affairs, Dr. Roland Smith, Vice Chancellor for Finance, Mr. Peter Graves, Vice Chancellor for Contract Administration, Ms. Carole Fox, System Auditor, Ms. Diane Corley, Executive Director of the TSUS Foundation, and Ms. Kelly Wylie, Executive Assistant to the Chancellor.

III. AGENDA ITEMS

Chairman Blatchley called upon Mr. Peter Graves, Vice Chancellor for Contract Administration to present agenda item 2010-65.

2010-65 LU: Change in Source of Funds and Increase Project Funding for Cherry Engineering

Upon motion of Regent Truncale, seconded by Regent Wilkinson, with all Regents voting aye, it was ordered that the approved project cost for the Cherry Engineering Addition at Lamar University be increased from \$7,829,500 to \$8,500,000 due to the change in the sources and amounts of available funding.

Chairman Blatchley called upon Chancellor Matthews to explain agenda item 2010-66.

2010-66 TSUS: Settlement of Outstanding Rita Claims

Upon motion of Regent Amato, seconded by Regent Pollard, with all Regents voting aye, the Board makes the following findings and issues the following order:

1. In September of 2005, four Texas State University System components—Lamar University, the Lamar Institute of Technology, Lamar State College -Orange, and Lamar State College-Port Arthur were devastated by *Hurricane Rita*, sustaining a monetary loss estimated at \$42,855,891.
2. In May, 2006, the Texas legislature came to the assistance of those institutions, making an emergency appropriation of \$34,000,000.
3. In 2009, the Texas Auditor's Office issued an audit report that found that approximately \$17,500,000 was owed to the state regarding those institutions' spending of emergency appropriations; and, in 2010 (in concert with the Legislative Budget Board, the Texas Comptroller's Office, and the Texas Higher Education Coordinating Board); it was later determined that an over-appropriation had been made to Lamar University in the final sum of \$1,970,052. No over-appropriations were found as regards the other three Lamar Components.
4. The Comptroller's Office now informs the System and Lamar University that it will initiate the transactions necessary to reduce, from funds available for the University's 2010-2011 biennial appropriation, the collective, total and final sum of \$1,970,052.

Chairman Blatchley called upon Mr. Peter Graves, Vice Chancellor for Contract Administration to present agenda item 2010-67.

2010-67 TSUS: Engagement of Energy Consulting Firm

Upon motion of Regent Wilkinson, seconded by Regent Williams, with all Regents voting aye, it was ordered that the Chancellor be authorized to issue a Request for Qualifications for an energy consulting firm to analyze electricity usage and costs for the System's component institutions, negotiate lower rates and/or develop alternatives to reduce the cost of electricity supplied to the components, and that the Chancellor be further authorized to select a firm to provide such services and negotiate and execute a contract with the selected firm, on such terms and conditions as he may determine to be appropriate.

Chairman Blatchley called upon Mr. Peter Graves, Vice Chancellor for Contract Administration to present agenda item 2010-68.

2010-68 TSUS: Approval of Indefinite Quantity Contract Renewal between TSUS and Broaddus & Associates, Inc.

Upon motion of Regent Wilkinson, seconded by Regent Williams, with all Regents voting aye, it was ordered that the System enter into an indefinite quantity consulting services contract with Broaddus & Associates, Inc., as described in the following explanation.

Explanation

In the fall of 2009, the System issued a Request for Qualifications for an indefinite quantity services contract for consulting, program management, project management and related services. This solicitation was necessitated by the impending expiration of

the current contract with Broaddus & Associates. Twenty-two firms responded to the solicitation. After evaluation of the qualifications submitted, five firms were short-listed and invited to make presentations at the system office on January 5, 2010. After evaluation of those presentations, the top-ranked firm was Broaddus & Associates.

The proposed contract has a term of three years, but is subject to early termination by either party upon sixty days' notice. Under the contract, TSUS would have no obligation to seek or pay for any minimum quantity of services. By way of example, the current year's budget for services provided to the system office under the original contract with Broaddus is \$225,000.

The kinds of services that may be requested and delivered from time to time under the proposed contract include the following:

1. Consulting services provided directly to the system office in support of its role in the planning and construction of system facilities;
2. Project management services provided directly to a component at its request, which services would normally be paid for out of the project budget;
3. Other related services as needed by the System or a component.

Neither the proposed contract nor TSUS policy require that a component utilize services under this contract; in other words, the contract does not create an exclusive provider for facilities planning and construction-related services for TSUS member institutions. It does provide an additional source from which such services may be expeditiously procured as needed.

A draft contract containing the proposed terms has been reviewed by the Vice Chancellor and General Counsel and is attached for your review. The final form of contract will be negotiated between the parties and approved by the Vice Chancellor and General Counsel prior to execution and delivery by the Chancellor.

INDEFINITE QUANTITY CONSULTING SERVICES CONTRACT

This Indefinite Quantity Consulting Services Contract is entered into by and between The Texas State University System ("TSUS") and Broaddus & Associates, Inc., a Texas corporation ("Consultant").

TSUS is a public university system existing under the laws of the State of Texas, presently comprising eight institutions of higher education ("Components" or, individually, a "Component"). TSUS is responsible for the administration of planning and construction activities at each of the Components, and desires to engage the services of Consultant to provide construction audit and related services for various facilities projects undertaken on the Component campuses. Consultant has expertise in providing such services for institutions of higher education in the State of Texas, and is willing to provide such services, on the terms and conditions set forth in this Contract.

In consideration of the mutual promises and agreements contained herein, TSUS and Consultant agree as follows:

1. Consulting Services to System Office. Consultant agrees to provide the services of at least one experienced consultant, as needed and requested by TSUS, to perform the following services:
 - (a) Consult with TSUS System Office personnel regarding the maintenance, modification and implementation of policies governing the planning and construction activities of TSUS and its Components;
 - (b) Consult with TSUS System Office personnel regarding the negotiation and administration of contracts with design professionals, contractors, construction managers and others involved in the planning and construction of improvements at the Components; and
 - (c) Consult with TSUS System Office personnel generally on matters related to planning and construction activities.
2. Project Management Services. Consultant agrees to provide project management services on a project-by-project basis, as required and requested by TSUS, for Component projects. Consultant shall assign such personnel as may be agreed upon by TSUS and Component to such projects, with the precise nature and duration of such services as may be mutually agreed by the parties.
3. Additional Services. Consultant agrees to provide such other services as may be reasonably requested by TSUS that are related to the facilities planning and construction program of TSUS.
4. Project Initiation. Each undertaking other than the services described in paragraph 1 project shall be initiated by notice from TSUS to Consultant specifying the services that are requested for a particular facilities project. Consultant and TSUS shall agree upon the scope of services required and the Component (or TSUS, if such services are to be provided directly to the System Office) shall issue a purchase order directly to Consultant. Consultant shall deliver to TSUS one copy of each purchase order, together with the agreed scope of services for the project, which

shall include a schedule with milestones mutually acceptable to both Consultant and the Component.

5. Reports. Consultant shall submit a monthly report to TSUS detailing the status of all ongoing projects other than services described in paragraph 1.

6. Payments to Consultant. Consultant shall invoice for its services as follows:

(a) For services rendered pursuant to paragraph 1 of this Contract, Consultant shall invoice TSUS on an hourly basis, based on the fee schedule attached hereto as Exhibit "A". The rates in Exhibit "A" shall be subject to change by Consultant upon sixty (60) days' prior written notice to TSUS, effective as of January 1 of any year during the term of this Contract. Any increase in fees will be limited to 25%.

(b) For services rendered pursuant to paragraphs 2 and 3 of this Contract, Consultant shall invoice the appropriate Component (or TSUS, if such services are to be provided directly to the System Office) directly on an hourly basis, unless another basis for payment is agreed upon between the Component and Consultant, based on the fee schedule attached hereto as Exhibit "A." A Component shall be solely responsible for the payment of any such fees for services rendered directly to such Component.

5. Term of Agreement. This Contract shall commence on the date of the last party to sign, and shall terminate on the third anniversary of such date. This Contract may be terminated earlier by either party upon at least sixty (60) days' written notice to the other party.

6. Indefinite Quantity Contract. TSUS is not required to request any particular quantity of services under this Contract; the quantity of services to be provided hereunder is indefinite and dependent upon the needs and desires of TSUS.

7. Relationship of Parties. Consultant shall be an independent contractor of TSUS, and shall have no authority to bind TSUS in any way. No employee or agent of Consultant shall be deemed to be an employee of TSUS for any purpose.

8. Dispute Resolution. In the event of any dispute arising under this Contract, the parties agree to follow the procedures set forth in Chapter 2260 of the Texas Government Code.

9. No Waiver. Nothing in this Contract shall be construed as a waiver of any of the statutory or common law defenses or privileges of either party.

10. Assignment and Delegation. This Contract may not be assigned by either party without the written consent of the other party. The duties of Consultant hereunder are non-delegable; however, Consultant may engage a subconsultant to render particular services under this Contract under the supervision of Consultant as needed on specific projects with the prior consent and approval of TSUS.

11. Notices. Notices required or permitted under this Contract shall be given in writing, and delivered by postal mail, overnight delivery, courier or facsimile, and addressed as follows:

If to TSUS:

Peter E. Graves
Vice Chancellor for Contract Administration
200 East 10th Street, Suite 600
Austin, Texas 78701
Phone # (512) 463-1808
Fax # (512) 463-1816

If to Consultant:

Phone #
Fax #

12. State Auditor's Office. Consultant understands that acceptance of state funds under this Contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. Consultant further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Consultant will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt and transcribe any pertinent books, documents, working papers and records of Consultant relating to this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract as of the effective date set forth above.

THE TEXAS STATE UNIVERSITY SYSTEM

By: _____ Date: _____, 2010
Charles R. Matthews, Chancellor

CONSULTANT

BROADDUS & ASSOCIATES, INC.

By: _____ Date: _____, 2010
James W. Broaddus, President

EXHIBIT "A"

Hourly Rate Schedule

IV. RECESS TO EXECUTIVE SESSION

Chairman Blatchley recessed the Board to Executive Session at 4:07 p.m. in accordance with *Chapter 551* of the *Texas Government Code* to discuss legal, real estate and personnel issues.

V. RECONVENE IN OPEN SESSION

The Board reconvened in open session at 4:36 p.m.

VI. AGENDA ITEMS, CONTINUED

2010-69 TSUS: Appointment of Interim Chancellor

Upon motion of Regent Montagne, seconded by Regent Pollard, with all Regents voting aye, it was ordered that, effective February 1, 2010 through April 30, 2010, Dr. Kenneth R. Craycraft be appointed as Interim Chancellor, exercising any and all duties of such office as articulated in the Texas State University System *Rules and Regulations*. Be it further ordered that Dr. Craycraft be compensated at the same level as the incumbent Chancellor, such compensation to exclude housing and automobile allowances.

VII. ADJOURNMENT

Upon motion of Regent Pollard, seconded by Montagne with all regents voting aye, the meeting was adjourned at 4:57 p.m.

Charles R. Matthews
Chancellor and Secretary to the Board