

**Board of Directors Special Meeting**

**Tuesday April 6, 2021, 7:00 a.m.**

**Location: Idaho Falls Auditorium District Office/Zoom Videoconference**

<https://zoom.us/j/8694715148>

**467 Constitution Way, Idaho Falls, Idaho 83402**

**Attendees: Terri Gazdik, Bob Nitschke, Steve Vucovich, Mike Carpenter, Rob Spear, Mark Fuller, Mike Clements, Blake Davis, Mark Shell, Kathy Wheadon (joined late), Ben Rogers, Chad Hammond, Rebecca Casper, Kevin Greene, Chris Nations**

**Agenda**

1. **Action Item** - Call to Order 7:00 am
2. **Action Item** - Accept the Agenda. Vucovich moved to accept the agenda. Carpenter seconded. Motion passed.

1. **Discussion Item** –Public Comment (Any member of the public is welcome to take three minutes and share concerns or questions with the Board). Mark Shell of Intermountain Erectors Inc. (IEI) addressed the Board and provided some background about IEI. Shell emphasized the experience of his company and that they are locally based and utilize local people. Shell discussed the importance of having an ACSE certification and IEI’s willingness to provide some value engineering (VE) ideas.
2. **Discussion Item** – To discuss CRSA recent performance issues, changes of personnel and path forward. Gazdik introduced the topic and explained the how the large turnover of personnel at CRSA has impacted the project. Spear explained that Nitschke asked for the item to be placed on the agenda. Spear said in discussions with Chris Nations, they discussed the possibility of Perkins Will (PW) assuming most of the construction administration (CA) responsibility. Currently CRSA has 90% of the responsibility and PW 10%. Because PW has its name associated with the project, they are wanting more of a role in CA. Spear said in conversations with CRSA they expressed some concern with this because CRSA’s stamp is on the drawings. Spear said because PW has been involved with the project since its inception, it may be in the Board’s best interest to have PW assume most of the CA, especially with the turnover within CRSA. Nations said that CRSA has lost the two individuals who were involved with the project since the beginning. Nations said while CRSA has talented architects, they don’t have anyone who knows the Mountain America Center plans. Nations said PW has the knowledge of the project and that PW reached out to Nations to express their concern about CRSA not having anyone with any prior background working on the project. Nations said it is in the best interest of the project to flip the CA percentages with 90% going to PW and 10% to CRSA. Nations said Bateman Hall/Hogan will need quality and timely responses to keep the project on schedule because schedule is the biggest risk factor in the project.

Gazdik said with the speed with which the project is moving it is important to have timely responses. Spear reminded the Board that they approved a rebidding fee with CRSA, and the scope was very specific in that CRSA would ensure all addendums and all previously accepted VE items were incorporated into the bid documents. Spear said some bid specs included VE items and some didn’t. Spear said the District should not pay for the remainder of the rebidding services charges because CRSA failed to deliver on the agreed upon scope.

Carpenter suggested that the Board strongly consider moving in another direction and asked Fuller to comment. Fuller said this was a discussion item and no action can be taken today and that he would like to hear from Nitschke who placed the item on the agenda. Fuller said once the Board has a consensus, he will go back to CRSA and force their hand and the Board can take action for the next meeting. Fuller said he does not recommend canceling the contract and believes the duties should be realigned. Fuller agreed with Spear that any further payments relating to the rebidding services should be withheld.

Nitschke said what precipitated this is the Executive Director report that outlined the shortcomings of the Board’s current relationship with CRSA. Nitschke said he has always had concerns with CRSA, specifically their lack of a formal set of design requirements. It also is troubling that as we are going through the most critical point of this project, it is important that any value engineering items don’t compromise the design. It should be very difficult to change the design at this point and not having that contribution from the design team is high risk. Nitschke said if he were the constructor on this, he would be worried about having a partner that is inadequate, unresponsive, and not knowledgeable. Nitschke said he is worried about not having a competent design team as part of the project and we must mitigate this issue as soon as possible.

Gazdik asked Nations what his recommendation would be. Nations said he would need to review the contract but that CRSA should be willing to accept any changes in CA administration. Nations said when most architectural firms change architects, they will go the extra mile to make things right. Up to this point CRSA has not done that. Nations did not recommend that the contract be cancelled but suggested Spear have the conversation with CRSA and change the percentages for CA with PW assuming more responsibility.

Gazdik asked if a contract amendment would need to be completed. Nations and Fuller both agreed that a contract amendment outlining the CA percentage changes be developed. Fuller stated that PW has been with the project since the inception and has much more experience than CRSA. There have been problems with CRSA’s principle assigned to this project and having PW assume more CA work could benefit the project in the long run. Fuller said if this issue can’t be resolved informally then a contract addendum should be initiated.

Kathy Wheadon joined the meeting. Gazdik suggested that Spear and Nations contact Kathy Wheadon and discuss a path forward and then provide a summary back to the Board. Carpenter stated that it may be feasible to have multiple solutions and take something to the Board for a vote next week.

Spear asked who from PW would take control and if PW had the capacity. Nations said Mike Harvey would be the lead and would be assisted by Jon Williams. Nations said he believes PW has the capacity to assume more CA.

Spear asked Clements and Davis to comment. Clements said he is comfortable with moving toward PW. Clements said there were a number of issues with CRSA that created additional work by many. Clements said it is important to have someone respond to Requests for Information (RFI’s) when in the field and he is comfortable with Harvey and Williams. Clements said withholding further payment to CRSA regarding rebidding is justified. Clements said they need consistency moving forward.

Gazdik asked Kathy Wheadon to comment about bringing on PW to assist with CA. Wheadon apologized for the inconvenience caused by DeKold’ s departure. She said CRSA has assigned Danny Carmen and two additional senior architects to the project. Wheadon said they are committed to make the project a success and acknowledged that she had conversations with Spear and others about limiting CRSA’s time in CA. Wheadon said it is important to understand that CRSA’s stamp is on the project and that they have the experience with the shell, exterior, mechanical systems while PW is experienced with the arena component. Wheadon said CRSA has made an offer to PW on taking a greater percentage of CA.

Gazdik said that Spear and Wheadon need to discuss and bring a recommendation back to the Board for the next meeting.

1. **Action Item** – Review and accept Hunden report on future Transient Room Tax Projections. Gazdik asked Spear to review the modifications to the report. Spear communicated to the Board the following changes:

3-30-21 Revisions

* Included three scenarios: pessimistic, base, and optimistic
* Corrected any reference to minor league
* Clarified the 11.5% of 6% sales tax goes back to counties/cities
* Updated Cost of project to $67M
* Grammatical changes
* Provided sources that Hunden used

4-1-21 Revisions

* Clarified that when Hunden Strategic partners is listed as the source they form their individual assumptions from multiple sources/comps/experiences/local market realities.
* Explained ImPlan is an industry standard for indirect and induced spending.

4-5-21 Revisions

* Page 57 – Projections of new Room Nights and Hotel Revenue. Spear said this sentence was added: “Assumptions for strength of schedule by category as well as attendance were drawn from interviews of stakeholders in the market and past comparable projects.”
* Corrected grammatical mistake 65%
* Updated References – Added the following
  + Performance of Comparable Projects (Operating Statistics & Ratios)
  + National & City Specific Hotel Statistics

4-5-21 (2) Revisions

* Changed the minor league reference in table 4.6

Carpenter asked if the reference to 946,000 on page 3 was corrected to add a 0. Spear reviewed the most recent draft and confirmed it was not corrected.

Nitschke said he had quite a few comments that have not been addressed previously. Nitschke thought it was important that his suggestions were at least acknowledged. Nitschke said the original report garbled up the reference to base, likely, conservative. Then the next report jumped too pessimistic, base, and optimistic. Nitschke wondered how the base was derived. Nitschke also wondered why the base in the CSL study and Centennial Management wasn’t utilized. Nitschke said in the analysis, Hunden just magically came up with a number of how many people would stay the night after attending an event. Nitschke said they needed to define how they arrived at that number and said the report statement that 70% of the people attending a hockey game would be from out of town seems excessive. Nitschke said he would have liked Hunden to describe the differences between this new analysis and their original report. Nitschke also questioned the 580,000-population number in a 120-mile radius and said that number needs to be validated. Nitschke felt the number was excessive.

Spear said Hunden told him the 580,000 number came from the US Census Bureau. Nitschke responded that was too vague and its like saying you got it from Google and said the professional response would be to at least acknowledge his question.

Nitschke said he would like Hunden to provide another draft that incorporates all of his comments.

Gazdik asked Spear if he was the only one who discussed changes with Hunden and asked if he communicated all the requested changes to Hunden. Spear said that he forwarded the exact questions and request for changes that he received from Nitschke and Fuller. Gazdik said we don’t have time to go back and have Hunden make updates.

Carpenter said we should accept the report contingent on corrections discussed in today’s meeting being made. Carpenter then made a motion. Vucovich seconded. Gazdik said while the document may not contain everything the Board has asked for, it needs to be released to Raymond James to support the financing process. Nitschke said the way the report is now the Board should have just paid Chip Schwarze to swear on a stack of Idaho Falls Magazines and that would have sufficed. Nitschke said that when you start identifying pessimistic, base, optimistic, you owe the reader a description of exactly what that means. Nitschke said the Board must understand the data and be able to defend it.

Spear said that as part of a reasonableness test, he reviewed the 2017 Hunden study and found that it was “spot on” for what Hunden predicted for 2019. Nitschke said that Spear just took one point and finds that what happened was more coincidental. Nitschke claimed that the market-place facilitator revenue was a factor. Spear pointed out that Hunden had no knowledge of market-place facilitator revenue in 2017 and that the District did not start collecting that revenue until 2020. Nitschke said we paid Hunden to do something, and he feels Hunden fell short.

Gazdik asked if Raymond James and Laura Lewis are awaiting the report. Spear confirmed that both are anxiously awaiting the report. Fuller stated that he had advised Raymond James and Lewis that the Board is considering the approval during today’s meeting and stated that there is no more time to revise the report. Fuller said the Board either needs to accept the report or reject the report in its current status.

Vucovich said if Lewis has questions about the report then the Board could consult with Hunden. Vucovich said the base of the report stands strong. Gazdik agreed that if Lewis had questions, the Board could convene a meeting with Rob Hunden.

Carpenter stated validity of the report is solid and moved to amend his motion to approve the document as is for immediate release. Spear said there is already a motion to accept the report pending the changes discussed are made.

Gazdik called for the vote. Gazdik, Vucovich, Carpenter voted in favor. Nitschke opposed. Motion passed 3-1.

1. **Action Item** – Review and approve bid packages for rejection and rebidding. Spear said there are three packages to consider for rebidding: finishings, steel erection, and fire suppression. Spear invited Clements and Davis to comment. Clements said because of the budget constraints it is important to get the best price. Clements said the sole finishings package was extremely high and Davis has done a deep dive and has estimated a rebid would reduce the amount by almost $500k. Fire suppression had a late bid that was not accepted that could help the bottom line and steel erection has two competent bidders, but the current specs do not allow acceptance of the low bidder. This is a $200K difference. Clements said the GMP includes the estimated rebid numbers.

Clements said the intent of the steel erection package was to include a certification to ensure only high-quality firms, capable of doing the job, bid. This greatly reduced the competition. The current low bidder does not currently have the certification but is in the process of securing it.

Gazdik asked about the risks associated with the rebidding process. Davis said there is the risk that everyone could raise their price, however he does not expect that to happen. Davis thought there could be more bidders and said the spec package for finishings was filled with ambiguity and was not clear. Gazdik asked if the bidder on finishings was going to rebid and if there would be more bidders. Davis expected up to four bidders. Clements said he expected they would be at least two deep on the other packages. Gazdik asked about timing. Clements said the rebidding process should be complete by the end of April and said these packages are not front-end packages. The fire suppression package will require the waterline to be put into the building up front, but that Bateman Hall has covered that $7500 cost. Clements said these rebids will not impact schedule.

Carpenter said the GMP shows the number we are looking for and asked if the rebid could lower the GMP. Clements said that was a possibility. Davis said he expects the GMP to come down. Fuller said if the Board accepts the GMP that Bateman Hall Hogan is guaranteeing the GMP listed and noted the savings estimated from the rebidding packages are included in that number. Clements and Davis agreed. Davis said there also will be some reengineering that could reduce the GMP more but that can’t take place until the subcontracts are issued.

Carpenter asked Nations to comment. Nations said there is no risk to the Board on accepting the GMP and agreed that the three packages should be rebid. The GMP before the Board will not increase because of the rebid. Nations said the Board is in a unique position because this project has been bid twice and everyone knows what the costs are going to be and who should be bidding on the packages.

Fuller asked what a steel erector does and why initially the requirements required 10 years’ experience and a certification. Clements said a steel erector is responsible for installing the steel backbone of the facility. Clements said it was important for the arena area and the high trusses being installed that you have experienced erectors. Clements said there are only two certified companies in the state that can do this work. Clements said the proposed company has only been in existence for 2 1/2 years but has individuals with over 10 years of experience.

Fuller asked about having local companies involved in the project and whether the Barin Company is local. Clements said any company from Eastern Idaho is considered local. Clements said Barin is regional.

Nitschke said that he is concerned the requirements are being reduced and wanted to know what CRSA’s opinion is and the opinion of the structural engineer. Lessoning the requirements because the bid was high is wrong. Clements explained that they visited with the structural engineer, Thornton Tomasetti (TT) and discussed these issues before considering a rebid. Clements said they vetted Barin’s employees and have documentation that Barin has applied for certification. Clements said this was not done haphazardly. Clements said if Barin remains low that the project will not be getting a lessor contractor. Wheadon said the team has done its due diligence and she has had conversations with TT.

Nitschke said the Board is not getting a GMP for what it is today but rather what it is going to be in the future. Clements said that is true and is not unusual. Nitschke asked if the bid packages come back lower who gets that money. Clements said if they come back lower a credit change would be issued back to the owner. Davis said they would do a change order to reflect the price decrease. Nitschke said he wants to understand what happens when items are pulled out from the GMP. Gazdik said that is a discussion for the GMP.

Vucovich asked about the COVID emergency clause. Clements said that is a new clause and that the world has changed but that should be discussed in the GMP.

Nitschke asked if legal issues could arise from the rebidding. Clements said it would not. Fuller said Idaho Statute allows a rebid process.

Vucovich made a motion to rebid all three packages. Carpenter seconded. Motion passed unanimously.

1. **Action Item** – Review the Guaranteed Maximum Price (GMP) provided by Bateman Hall/Hogan and accept contingent upon the District adopting a finance plan. Gazdik emphasized the GMP would be adopted only if financing is achieved. Gazdik asked Clements to summarize the two additional clauses in the GMP. The COVID‐19 NATIONAL HEALTH EMERGENCY CLAUSE and the MATERIAL INSTABILITY CLAUSE. Clements said these might also be covered under the force majeure clause.

Because of current supply chain issues the materials instability clause was added. Clements said because the Board acted early on some of the early submittals, it got ahead of the curve.

Vucovich asked if the 6% fee would be added to any increased material costs and asked if Architectural and Engineering fees (A&E) were included. Clements said because the big material items are already ordered the likelihood of these clauses coming into play are minimal. Clements cited the example of oil escalation when parking lots would be paved at the end of the project.

Nations said it is not uncommon for these clauses to be added. Nations said from a GMP standpoint the project is in a good position.

Fuller said the COVID clause would likely not impact cost but could jeopardize schedule. Fuller said construction workers were considered essential during the COVID shutdown. As for the materials clause Fuller said it is intended to cover significant price increases exceeding 10% from the acceptance of the GMP. Fuller asked if these provisions are also in the subcontracts. Clements said he has not included the clauses in the subcontracts but has addressed in the general conditions. Clements said subcontractors could reference the force majeure clause. Fuller thought the clauses could nullify the force majeure. Clements thought they would not have to use the clauses.

Nitschke thought 10% was low. Nations said he was more accustomed to 25%. Nations said he would not include the materials clause in the subcontracts. Nations felt the process to resolve any material cost increases was more important. Clements stated that the materials clause might only come into play in the mechanical area. Possibly fixtures.

Nitschke asked where 10% came from. Clements asked Nitschke what he thought the percentage should be. Nitschke thought 10% was low and said he just wants to avoid any seasonal type increases. Nations said whether the clause exists or not it is important to resolve the problems when they happen. A subcontractor will need to understand that they assumed some level of risk.

Clements thought 25% was high and offered to remove the entire clause and would rely on the force majeure clause. Davis said 10% was more common in government contracts and that the bonding companies would pull its bond if it increased beyond 10%. It was agreed to eliminate the clause.

Fuller asked about the Idaho Falls Power line item and if that was the $100K cost. Clements said the original cost was $100K but it will now be closer to $60K.

Davis clarified for Vucovich that A&E fees are outside of the current GMP. Vucovich asked that if material costs go up, would the A&E and Contractor fee increase? Nations said the A&E fees would not go up if the material costs increase. Wheadon agreed and indicated there is no indication from CRSA or the consultants that the A&E costs would go up. Gazdik stated that CRSA’s contract would need to increase by more than 10% in order for any A&E costs to increase. Fuller agreed.

Vucovich asked if General Condition costs were in the GMP? Davis said General Conditions and contingency were included in the GMP.

Nitschke asked for the sum of the items that are not included in the GMP. Spear detailed the amounts for the following:

A/E Design Fees = $425k

Owner's Rep - Nations Group – Budgeted per contract

Special Inspections & Testing – Clements estimated $225k

Builders Risk – No number yet

IF Power Transformer Set – previously discussed and now is $57,954

Building Permit and Hook Up Fees - $383k budgeted

Owner/Design Contingency – budgeted at $800k

Commissioning Agent or Agency – not sure of this amount

Concrete Damage from ASR – in the base bid

FFE Packages by Owner – estimated at $4M. Spear said he is looking at an equipment lease. Spear said he has prepared a cash flow analysis that indicates the board can cash flow the project.

Unload/Receiving/Dumpsters/Coordination for FF&E (other than Food Service Eq) – not budgeted but not sure if it is needed

Convention Center Tables and Chairs – in FF&E

Camera for Progress Photos/Video - TBD

Hazardous Materials – not budgeted because site work is done

Property Tax – issue has been discussed and we are not planning on paying any. Spear referenced the amount the District already invested in roads

Off-Site Improvements – unclear what this means as there are no offsite improvements.

Roadway Repairs to Pioneer Drive and/or Event Center Drive – may need to repair roads after construction

City of Idaho Falls Fiber – plan to ask for donation

Supply and Install of Deferred Submittal Items in support of Precast Bowl - Plate, Stiffeners, supports (TT does not think there will be any)

Window Blinds (none shown or specified) – unclear on this item

Emergency Radio Amplifier/Repeater System (if needed after testing) (testing only included in GMP) (approx. $125k-$200k) – Clements stated the testing is covered. The testing will determine if a radio repeater is needed. Spear said contingency should cover.

No Walk Pad Included on the Roof (none shown)

Spear said the biggest risk relates to schedule moving forward. Because site development is already done, that mitigates a lot of the risk. Spear said it is important that the GMP is approved for financing. If financing is closed according to the schedule, April 23, then the contracts to the subcontractors can be issued and material prices locked in. Clements said a lot of subcontractors want to lock in prices now and Clements agreed that this must be done during the last week in April.

Spear said he looks forward to sharing the cash flow analysis with the Board. Nitschke said he is concerned that when items are pulled out of the GMP he wonders if there is enough money to cover the entire project. Nations said that all the items are in the overall project budget. The items listed as not covered by Bateman Hall are not unusual and Nations said the Board does not have to require them. Nitschke asked about the allowances the District is carrying. Spear said the District is not carrying any allowances but there is an $800k contingency reflected in the cash flow analysis.

Gazdik said the question is whether the Board will accept the GMP contingent on the Board adopting a financing plan. Nitschke said philosophically he is uncomfortable accepting a GMP without knowing if there are enough funds available. Gazdik reiterated that nothing is final until a financing plan is set. This is accepting a price from the bids we authorized Bateman Hall to go out and get. Nations said the Board authorized the contractor to go out and bid the project and deliver a GMP number by a certain date. Spear said if the GMP is not approved, then the District cannot proceed with the financing plan.

Carpenter made the motion to accept the GMP contingent upon the financing plan. Vucovich seconded. Nitschke said he would like to see the rest of the cost information before deciding and doesn’t understand why he needs to make a decision today. Spear said again that if a GMP is not approved, the Board can’t proceed with the financing plan and that he looks forward to sharing cash flow information with the Board. Nitschke said he had not seen the schedule that required the GMP to be approved today. Gazdik stated approving the GMP was the purpose of today’s meeting. Nitschke wanted to have schedule developed that laid out things that needed to be approved. Gazdik again said the primary reason for meeting was to take the GMP issued by Bateman Hall/Hogan and either approve or disapprove. If the GMP is not approved, then we would need go back through the bidding process. It is not a decision to continue unless we get the financing.

Gazdik called for the vote. Gazdik, Vucovich and Carpenter voted in favor. Nitschke abstained. Motion passed.

C**alendar and Announcements**

1. Upcoming IFAD Meeting – **Next Meeting on April 13, 2021**
2. **Discussion Item** - Announcements and Minor Questions
3. **Discussion Item** - Agenda Items for April 13, 2021 meeting

Carpenter proposed meeting every two weeks instead of the present schedule of twice a month at least while so much is going on. Spear suggested the establishment of a Finance Committee to review and approve 250 pages of documents. Spear said a process to move forward is important. Spear said he would contact Stephanie Bonney to see if she could review the documents with the Board on April 13th. Gazdik said she has the authority to establish a sub-committee. Gazdik said herself, the Executive Director, Fuller and one other Board member would make up the subcommitee.

Meeting adjourned 9:22 a.m.