

**SPECIAL MEETING
OF THE BOARD OF TRUSTEES
HOUSTON COMMUNITY COLLEGE**

March 25, 2014

Minutes

The Board of Trustees of Houston Community College held a Special Meeting on Tuesday, March 25, 2014, at the HCC Administration Building, 2nd Floor, 3100 Main in Seminar Room B, Houston, Texas.

MEMBERS PRESENT

Neeta Sane, *Chair*
Christopher W. Oliver, *Vice Chair*
Robert Glaser, *Secretary*
Zeph Capo
Eva Loredo
Sandie Mullins
Carroll G. Robinson
Adriana Tamez
David Wilson

ADMINISTRATION

Renee Byas, Acting Chancellor
Destinee Waiters, Acting General Counsel
Shantay Grays, Chief of Staff
William Carter, Vice Chancellor, Information Technology
Charles Cook, Vice Chancellor, Academic Affairs
Fred Zeidman, Vice Chancellor, Institutional Advancement
Margaret Ford Fisher, President, Northeast College
Fena Garza, President, Southwest College
William Harmon, President, Central College
Irene Porcarello, President, Southeast College
Michael Edwards for Betty Young, President, Coleman College
Janet May, Chief Human Resources Officer
Remmele Young, Associate Vice Chancellor, Governmental and External Affairs

OTHERS PRESENT

Jarvis Hollingsworth, System Counsel, Bracewell & Giuliani
Michelle Morris, Legal Counsel, Rogers, Morris & Grover LLP
Tom Sage, Bond Counsel, Andrews & Kurth
Debbie Townsend, Construction Auditor, R. L. Townsend & Associates
Marvin Daniels, Program Manager, Jacobs
James Smith, Professor Construction Science, Texas A&M University
Michelle Novak, President, Faculty Senate
Ava Cosey, President, COPA
Other administrators, citizens and representatives from the news media

CALL TO ORDER

Mrs. Neeta Sane, Chair, called the meeting to order at 9:16 a.m. and declared the Board convened to consider matters pertaining to Houston Community College as listed on the duly posted Meeting Notice.

BOND CAPITAL IMPROVEMENT PLAN (CIP) WORKSHOP

Motion – Mr. Glaser and Mrs. Sane seconded.

Mrs. Sane acknowledged the Board for its due diligence in analyzing all the bond related matters. She noted that this 2013 bond referendum, which is in the amount of \$425 million dollars, is the largest capital investment done in the history of HCC. She informed that it is a big responsibility on the shoulders of the Board. Mrs. Sane commended the Board members for doing its due diligence and asking all the questions and performing its fiduciary duty in the best interest of the institution, its constituents and students. She apprised that all the questions are genuine and noted that they are asked out of fiduciary duty and they should be respected and answered respectfully.

Mrs. Sane noted that she is proud that the Board is taking time to analyze everything in detail because this is a big decision. She informed that the Board is going to totally analyze the Construction at Risk Manager (CMAR) that has been brought forth by administration for the Board's consideration. She apprised that many hard questions have been asked regarding consideration of all 14 projects and consideration of spending \$373 million at once when the institution has 4 years to spend the money for completion of the CIP as promised to the voters.

Mrs. Sane noted that questions have been asked as it relates to procurement aspect of the bond project. She informed that at this point, she feels that the questions the Board has been asking have to be respected and answered appropriately, so that an informed decision can be made in the best interest of this institution, as that is what the Board is here for.

Mrs. Sane commended the Board members and noted that this is a good moment, a fresh start for HCC, which has never happened before. She informed that she is very proud that each Trustee has taken the time to understand the process and ask the questions before the decision is made that will affect the institution down the road in the next 5 to 10 years. Mrs. Sane apprised that she would appreciate that no negative comments are made towards the Board because they are moving this institution in the right direction at the right time.

Mrs. Sane commented that she hopes everyone respects the Board members and what they bring to the table based on their expertise and experience. Mrs. Sane informed that at this point there are some things that need to be discussed in executive session before the floor is opened for questions to ensure that it is clear as to the type of questions that may be asked in public session and which questions need to be in executive session.

Mrs. Sane requested patience with the Board as they go through the process with integrity and transparency. She noted that there is nothing hanky panky going on in the process.

She informed that everyone needs to be corporative with the efforts of the Board to make the right decision.

Mrs. Sane apprised that during the presentation there might be a request that information not be presented if the data has not already been provided to the Board.

Mr. Wilson thanked Mrs. Sane for her opening comments and noted that he appreciated her remarks. Mrs. Sane informed that she appreciates all the Trustees and the work that they do for the institution. She informed that it is time to discuss the matter in-depth.

ADJOURNED TO CLOSED SESSION

Mrs. Sane adjourned the meeting to Executive Session at 9:21a.m. notice having previously been given and reiterated in accordance with Sections 551.071, 551.072, and/or 551.074 of the Open Meetings Law. Mrs. Sane stated that any final action, vote or decision on any item discussed in Executive Session would be taken up in Open Session or in a subsequent Public Meeting.

Mrs. Sane reconvened the meeting in Open Session at 11:00 a.m. and entertained any motions on pending matters.

(The following Trustees were present: Capo, Glaser, Lored, Mullins, Oliver, Robinson Sane, Tamez, and Wilson)

Mrs. Sane noted that the presentation needs to be brief due to time constraints.

Mr. Tom Sage presented a summary and overview regarding the Internal Revenue Service spending requirements. He noted that all the funds were drawn down and noted that a spend down was required in order to keep the low interest rates. He informed that the recommendation would be to proceed with the projects schedule in order to meet the spending deadlines.

Mr. Sage apprised that the federal government treats tax-exempt bonds for political subdivisions and municipal bonds as a federal subsidy and noted that they are only handed out if the institution complies with certain requirements. He noted that failing to meet the requirements can put the subsidy in jeopardy and expose the district to some very unpleasant situations.

Mrs. Sane inquired if the Board wanted to receive an overview regarding the difference between CMAR and Competitive Sealed Proposal (CSP).

Mr. Robinson recommended that the presentation begin with HCC Staff or the program manager.

Mr. Marvin Daniels with Jacobs provided an overview of the delivery system comparisons as it relates to the advantages and disadvantages. He informed that Dr. James Smith was invited to present insight of what other entities are doing. He apprised that Ms. Debbie Townsend would discuss the auditing piece.

Ms. Townsend provided an overview of the services rendered by R. L Townsend and Associates. She provided a comparison of the CMAR and CSP. Ms. Townsend noted that CMAR projects have an actual cost plus a fee and informed that CSP projects are lump sum projects and often incur more change orders. She apprised that under the CSP, audit rights are limited to change orders and noted that any change to the drawings or design will create a change order.

Dr. James Smith, Texas A&M University, provided an overview of the advantages of the CMAR delivery in comparison to the CSP as follows:

CMAR	CSP
Guaranteed Maximum Price Contract	Lump Sum Contract
Preconstruction Services	Not possible
Reduces Change Orders	Promotes Change Orders
Shortens Duration	Longest Duration
Collaborative	Adversarial

Dr. Smith noted that preconstruction services, which allows for budget control, are possible under the CMAR; however, the preconstruction services are not possible under the CSP.

Dr. Smith informed that there are actually seven delivery systems available and that the current state of the institution strongly suggests that CMAR is how HCC should proceed.

Mr. Capo asked at what point the guarantee maximum prices (GMP) comes into effect and inquired as to the owner interaction. Dr. Smith apprised that the owner is involved in the CMAR preconstruction sessions. He noted that the contractor will provide the GMP when both parties agree that they are ready, typically around the time of the design development stage.

Mr. Capo inquired how many Texas A&M University projects are built through the CMAR process. Dr. Smith informed that there is a mix of CMAR and CSP and the method depends on the particular circumstance of each project.

Mr. Robinson inquired if there will be change orders after the GMP. Dr. Smith apprised that there can be change orders such as unforeseen issues but owner side changes dominate the process.

Mr. Robinson inquired what method should be used to monitor change orders by the owner. Dr. Smith noted that provisions in the CMAR contract state that change orders should be made by the owner. He informed that the standard form of language used in the RFP is good practice language.

Ms. Mullins requested to define owner. Mrs. Byas apprised that the owner is referring to Mr. Winston Dahse and Jacobs. Mrs. Sane noted that the buck stops with the Chancellor.

Mr. Daniels informed that Jacobs' role is agent to the owner and apprised that Jacobs works directly with Mr. Dahse and his team. He noted that there is an owner representative present at all meetings.

Mr. Robinson informed that in his opinion the Board is the owner. He apprised that he asked the question regarding the change orders because under the previous bond there were change orders made for millions of dollars without the Board knowledge. He noted that the program manager, project managers, facilities and the Chancellor are owner representatives.

Mr. Robinson informed that he would like to make certain that change orders over a certain amount will require Board approval.

Mr. Capo apprised that the Board's desire need to be stated and confirmed with a motion. He noted that anything above the approved number would need to come before the Board.

Mr. Hollingsworth informed that the policy states that any change order over 10% would need to come before the Board.

Mr. Daniels apprised that the programming is complete for all the projects except for North Forest, which is in design development and noted that all the projects except for one are in the schematic design. He informed that the timing is perfect to bring the CMAR on board to take full advantage of the collaborative relationship.

Mrs. Sane inquired of the Braes Oaks land. Mr. Daniels apprised that programming is complete and schematic is ready to start.

Mr. Robinson inquired of the land acquisition. Ms. Michelle Morris, Rogers, Morris & Grover LLP, noted that the contract is complete and currently resolving final decisions to work around some wetlands. She informed that once the issue is resolved the college is ready to close.

Mr. Wilson apprised that CMAR is a misnomer because money is given to the construction company and when funding runs out the college is at risk. He noted that the CMAR is a time and material process as opposed to a fixed bid. He informed that due to no design on the front end, the finished product is unknown at the entry point. He apprised that there are pros and cons on both sides and the college is really the one at risk.

Mr. Capo requested information regarding the fees associated with individual contractors for CMAR. Mr. Daniels noted that the pre-construction fee allows the CMAR to come in on the front end to work with the design and development. He informed that the program is set and the architect cannot deviate from the program identified. He apprised that the funding allocated is identified on the front end and there will be checks throughout. Mr. Daniels noted that the GMP will be for the budget price for the building or less. He informed that the only changes will come from HCC.

Ms. Morris informed that the CMAR competes for the project based on three things:

- Pre-construction Services Cost
- Fee over Actual Construction Cost
- General Conditions/Job Cost

Ms. Morris apprised that as the design progresses and both parties have a mutual amount of certainty, the GMP is submitted. She noted that after the GMP is submitted the subcontractors must be competitively bided and if at that point, if the cost is lower, the savings is taken off the top.

Mrs. Sane informed that Board Counsel has researched the policy regarding change orders.

Mr. Robinson apprised that a formal process needs to come before the Board at some point to set change order procedure.

Mr. Hollingsworth noted that policy B.3 states that change orders must be lower than the Chancellor's signature authority and anything approved by the Chancellor under her signature authority needs to be reported to the Board.

Ms. Mullins inquired if Ms. Townsend would be available throughout the entire process. Ms. Townsend informed that she will continuously participate in the entire process.

Ms. Mullins requested to hear from Bond Counsel, Legal Counsel, and Board Counsel regarding legal opinion on the process, the procurement, the methods, and the money as it relates to CMAR.

Mr. Sage apprised the recommendation is to move forward with the process. Ms. Morris noted that her recommendation is to move forward with the approved projects. Mr. Hollingsworth informed that Board Counsel reviewed the process used to procure and recommended that the RFP was procured fairly, equitable and met all legal requirements as well as requirements stipulated in the RFP.

Dr. Tamez requested an overview regarding internships and apprenticeships. Mr. Daniels apprised that input will be engaged from the presidents and HCC regarding the internships. He noted that the effort is to engage the partners and informed that interns will be hired on the professional side beginning in May 2014. Ms. Morris apprised that the CMAR will advertise and sub-contractors will have to compete on qualifications and price. She noted that 10 points are available for participation and there will need to be a commitment regarding the small businesses.

Dr. Tamez requested that Chancellor speak to the process. Mrs. Byas noted that she is comfortable with moving forward.

Mr. Daniels informed that a small business outreach event will be held on June 6, 2014 at West. Loop campus.

Ms. Loredo expressed appreciation to Dr. Smith for his presentation.

BOND CONSTRUCTION MANAGER-AT-RISK SERVICES (PROJECT NO. RFP 14-04)

Motion – Mr. Capo moved and Ms. Mullins seconded.

Mr. Capo inquired of the number of bondholders. Mr. Sage apprised that there are multiple and noted that there is no way to figure out the exact amount.

Mr. Capo inquired if college is liable to the bondholders if the spending requirements are not met. Mr. Sage provided an overview of the possibility.

Ms. Loredo noted that for several years, there has been an effort to work on the procurement process and she informed that she is disappointed that the work is not being spread among the small business. Mrs. Loredo apprised that she was not aware that the evaluation team had so much power regarding the projects. She noted that the effort should be to get the best evaluation team. She informed that this is a large project; however, it is not passed on to the community.

Mr. Wilson apprised that 3.7% to 4.9% interest is being paid monthly and noted that there is a negative arbitrage. He informed that his understanding is that as long as there is a negative arbitrage, the bonds cannot be considered hedge funds and will remain tax-free. He apprised that the worst-case scenario considering money spent to date the spending requirement for year 2 is \$74 million.

Mr. Sage noted that there are separate requirements for arbitrage to be qualified as hedge funds and as long as the bonds meet the spending requirements, there is no penalty. He informed that the spending requirement is cumulative.

Mr. Wilson informed that the project is large and he would prefer to phase the procurement process. Mr. Sage apprised that the original plan was to breakout but the decision was made to draw all the funds at one time due to the low interest rates.

Mr. Wilson inquired if the \$20 million savings for phasing out is greater than the interest savings. Mr. Sage noted that at the time an analysis was conducted and provided to administration.

Mr. Wilson apprised that his preference would be to vote the item down and rebid in smaller pieces.

Dr. Tamez noted that there is a fiduciary responsibility to the community. She informed that counsel apprised that it is a fair and equitable process. She apprised that the internship/apprenticeship pieces as well as the small business concerns have been addressed. She noted that she wanted to reiterate that the efforts are not to place the institution in the path for potential liability.

Houston Community College
Special Meeting – March 25, 2014 - Page 8

Mr. Oliver commented that his community met and voiced some of the same concerns in particular regarding the comments similar to those mentioned by Trustee Loredó. He informed that the community's concern was that they did not receive any benefits.

Mr. Oliver apprised that the community expressed that if the projects are benefitting the community, why is there no local firms involved in the process. He noted that he is being approached because the current as well as the past administration made promises that have not been kept. Mr. Oliver informed that he does not have a problem that the process was legal; but the fair and equitable issue is the concern. He apprised that the Board represents the community.

Vote – The motion failed 3-6 with Trustees Capo, Mullins and Tamez in favor and Trustees Glaser, Loredó, Oliver, Robinson, Sane and Wilson opposing.

ADJOURNMENT

With no further business coming before the Board, the meeting adjourned at 12:01p.m.

Minutes recorded, transcribed & submitted by:
Sharon Wright, Manager, Board Services

Minutes Approved as Submitted: April 17, 2014