

**Bond Accountability Commission 2, Inc.**  
**Report of Summer Project Processes**

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Introduction:

An analysis of the many projects that Cleveland Municipal School District has undertaken with the bond funds generated by Issue 4 and Issue 14 as well as other sources, the BAC determined that a review of the funds spent on summer projects may be a worthy project due to:

- The OFCC does not have any oversight over these expenditures.
- All 003 dollars spent on the summer projects are not matched by the 68% state funding.
- The resolution used to approve these projects has raised questions as to how they were determined to be “urgent” projects.
- Have we made any improvements since 2013 on tracking the inclusion numbers for these types of projects?

A sample of 16 summer projects were selected from the Board Meeting minutes from February and March of 2017, February of 2018 and March of 2019. Several emails were exchanged with the Operations Department to help determine the best way to gather data and who could provide the information required for this study. A spreadsheet was created detailing each project and the initial data points to be reviewed. The Procurement Department shared their most recent (2019) request for proposal (RFP) for the Trades Term Agreements that is sent out annually to secure quality vendors in advance of summer projects.

A meeting was held with the Operations Department, the construction owner’s agent firm - OHG, and a member of the finance department on February 10, 2020 to review the spread sheet and to come up with a plan. As the Bond Accountability Commission, we wanted to stay in our lane and only review projects that utilized the (003) bond funds. It was noted in previous discussions that the summer projects were funded by the (003) bond fund, the (034) maintenance fund and the (001) general fund. The OHG team recognized 6 projects that they were involved in and offered to gather the documents they had in their files. They submitted most of this documentation within the next 2 or 3 days. The member from the finance department stated that

they could provide the funding information after a list of projects and Board Resolution numbers was submitted.

Up to this point the summer project review was moving slowly however steadily forward. The list of projects and resolution numbers were submitted to the finance department the next day. However, the response that was due Friday was delayed and another week was requested. The following Friday the response never arrived. Several emails were sent inquiring as to when the information may be received. There were no responses to these emails and the information needed for the project was not provided as of the BAC meeting on March 9<sup>th</sup>. Shortly after that date the Covid-19 virus caused the Governor to close all schools in Ohio and the information required to review the summer projects could not be obtained as non-essential District employees were complying with the stay-at-home order.

Due to the Governor's Stay-at-Home order, a new way of working with CMSD on the summer project review had to be worked out. Several emails were sent in March and April to several CMSD employees regarding gathering the needed information. The unanswered questions were as follows:

- Did the District involve an engineer or an architect to design these projects?
- Does the District have specifications and general requirements that were used for each contractor submitting a bid or quote?
- Did the District have multiple bids for each project?
- Did the District track the required inclusion data for each project?
- Did the cost estimates and the budgeted amount line up with the bids or quotes?

Additionally, a site review of each project should have been performed by the BAC to verify the work completed. The CMSD staff produced as much of the documentation as they could, the site visits will be deferred at this time.

### **Inclusion Plan**

In 2013 the Bond Accountability Commission provided an update regarding the efforts of the Cleveland Schools efforts to comply with the District's Community Inclusion Plan and the Board of Education's Resolution 2001-159(B), approved April 23, 2001 which has been regarded as containing promises to the public before voter approval of Issue 14 on the May 2001 ballot.

As a result of Board of Education resolutions, the District compiled a “Community Inclusion Plan Program Statement,” which stipulates CMSD goals for workforce participation and DBE contracting. It states:

**To facilitate community involvement in the construction portion of the Project, the Board of Education has authorized the development of a Community Inclusion Plan. To facilitate a portion of the Community Inclusion Plan the District has adopted a Diversity Business Enterprise Program and Workforce Participation Program.**

The Board of Education has established the Diversity Business Enterprise (“DBE”) Program for the purpose of promoting equal business opportunity for all minorities and women doing business with the Cleveland Municipal School District. The DBE Program aspires to achieve the following goals: DBE participation of fifteen percent (15%) in service contracts, twenty percent (20%) in contracts for goods and supplies and thirty percent (30%) in contracts for construction provided that the District may adjust those percentages based upon data gathered relating to the percentage of DBEs available to work on the Project. All prime contractors and subcontractors are required under the DBE Program to use Good Faith Efforts to subcontract portions of the work to DBEs and to otherwise achieve the goals of the DBE Program.

The Workforce Participation Program aspires to achieve the following goals: participation by minorities of twenty percent (20%), female participation of five percent (5%) and Cleveland Municipal School District resident participation of twenty percent (20%) of all project hours worked. contractors are required by the Workforce Participation Program to use Good Faith Efforts to employ minorities (minorities includes African Americans, Hispanic Americans or Latino Americans, Native Americans, Asian-Pacific Islander Americans, Subcontinent-Asian Americans or Native Hawaiian), females and District residents to supply services in connection with the Project and to otherwise achieve the goals of the Workforce Participation Program.

It was reported in 2013 that the District did not report any Inclusion data for the smaller projects and that this data was only tracked for the OFCC school building projects. The report implied that this data was tracked for the District by the contracted Owner’s Agent firm of Ozanne-Hammond-Gilbane (OHG). It was the intent of the 2013 report that inclusion data should have been tracked for all bond dollars spent, not just dollars spent on new construction.

For the current study documentation from 6 of the projects had been provided. In this documentation there were no records of inclusion data.

### **Summer Project Funding and Oversight**

As mentioned previously, the summer projects are fully funded by CMSD without state matching dollars. This is due to the OFCC provides funding for new construction and complete renovation of school facilities. They do not fund major repair work for school or administration buildings. Therefore, when the District decides to spend bond funds on school building repairs such as roof replacements or new parking lots, 100% of these dollars come from the District funds. If these same funds were spent on new construction the state would contribute 2 dollars for every 1 of the local dollars.

The Board Agenda does not indicate funding for the selected summer projects, however of the \$73 million dollars approved for summer projects from 2013-2019 if we assume \$50 million were bond funds the CMSD could have built several additional school buildings with the state matching funds added to the CMSD funds. This statement is not to say that CMSD spent these dollars incorrectly. It is simply pointed out to emphasize the importance of spending these funds wisely and prudently with the full knowledge that these repairs are important enough to forego the matching funds. It is for that very reason the BAC has decided to review several summer projects to ensure the funds were managed well. Our standard for being professionally managed is a competitively bid process that has complete specifications from an architect and a construction process that follows professional standards such as proper inspections, warranted work, and an acceptable closeout procedure.

Of the 17 projects pulled for review, the documentation showed only 11 projects used 003 funding. The 001 fund projects and the 034 fund projects are outside of the scope of the BAC. It should also be noted that a few projects were not performed from the list of approved projects due to unforeseen issues. Much of the documentation that was provided came from the Owner Agent firm (OHG). This information is appreciated; however, the District is responsible for having this data. When the Owner Agent is no longer under contract with the District, who will be able to pull information regarding the construction process? This question will be explored in greater detail in the next report from the BAC.

## **The “Urgent Necessity” Resolution**

On May 24<sup>th</sup>, 2016 and in the years preceding, the CMSD approved a resolution like the resolution below authorizing work to be completed on a variety of summer projects.

Authorizing The Chief Executive Officer Or His Designee To Retain Professional Design Services As Needed, And Award Contracts For Necessary Repairs To Refresh And/Or To Implement Strategic Design Projects To Prepare Schools For Academic Programs And Other Facility Requirements At Various Schools In An Amount Not To Exceed \$12,680,000.00 And Authorizing An Addition To The Contingency Fund In An Amount Not To Exceed \$634,000.00 For A Total Authorized Amount Of \$13,314,000.00 And Authorizing The CEO To Declare An **Urgent Necessity** To Ensure The Required Work Is Completed When Required

This language is specifically stated as an exception to the bidding requirements in the Ohio Revised Code under ORC 3313.46 (Contract bidding process; exceptions) and under ORC 3375.41 (Contracts over fifty thousand dollars to require bidding procedure). With the approval of the Urgent Necessity certain aspects of the bidding requirements are waived. This allows the District to get vendors under contract quicker and to start the work sooner. This is a time saver and allows more time to complete complex projects during the 10-week summer break.

Since 2017 the following language has been used:

Motion to Approve Resolution for Authorizing The Chief Executive Officer To Retain Professional Design Services And Award Contracts For Operations Division For Necessary Repairs And/Or To Implement Strategic Design Initiatives To Prepare Schools For Academic Programs And Other Facility Requirements At Various Schools From April 2017 Through June 2018 That Are

Not Co-Funded By The Ohio Facilities Construction Commission In An Amount Not To Exceed \$12,635,490

The District has been constructing new schools since 2002 and that scope of work along with the continuing building maintenance workload created a need to find methods to save time and still get as much work completed as possible. The District did not break any rules, although the annual urgent necessity resolution did give the appearance that the summer projects were not following the ORC.

### **Conclusion**

1. The 2013 BAC report exposed several perceived flaws with the process for managing the summer projects that utilized the Bond Funds (003). Since that time the District did change the language used to approve the work. The previous language was not incorrect, it simply raised questions about urgent necessity and what that term really implied.
2. The review for records for 11 summer projects approved in 2017, 2018 and 2019 including architectural designs, bid results tabulations, contracts, site inspections, warranty certificates, change orders, and close out documentation found:
  - a. 5 projects which ranged in cost from \$1.2 million to \$6.4 million could not produce the project specifications that are essential for vendors to use when developing their price for the work.
  - b. 1 project did not indicate the use of an architect/engineer for the renovation of the Bump Taylor stadium locker rooms and rest rooms costing \$343,543.

**The BAC recommends** that summer project data be filed in such a manner as to facilitate retrieval of this information quickly in case of warranty or workmanship issues in the years following the completion of the contract. Without this sort of data, the District may be on the hook to pay for repairs and related work that is the responsibility of the contractor who performed the substandard work in the first place. The taxpayer is ultimately paying twice in this situation.

3. The tracking of inclusion data for all bond fund expenditure could not be produced and leaves this review with several questions about the full implementation of the Community Inclusion Plan. The Bond funds from issues 4 and 14 were approved by the residents of Cleveland. Without their support the much-needed

reconstruction of the District facilities would not have happened. It seems that the District could at least ensure that the community received some direct benefit from the \$1.2 Billion project in the form of jobs and dollars pumped directly back into the community. This may have happened, however since the District failed to produce the requested information there is no evidence of their effort to ensure the Community Inclusion Plan was followed as intended.

**The BAC recommends** that all remaining 003 funds be spent prudently and following the intent of the Community Inclusion Plan, regardless of the size of the project. The goals of the Community Inclusion Plan are modest and meeting these inclusion goals should be a priority of each 003 funded project.

### **COVID-19 Response**

The BAC has witnessed the devastating effects of the Covid-19 virus on the health of many Americans as well as the severe economic impact of the pandemic. We have also witnessed the efforts of CMSD to keep feeding and educating the students in our District. This is not an easy task given the “new normal” CMSD must face each day. Therefore, the following suggestion is not meant to burden the District so much as to offer some information that may be helpful with the facilities and keeping our students and staff safe and healthy as we move forward.

Attached to this report is a pamphlet from the International Well Building Institute which includes 8 strategies to support in the fight against Covid-19. These may be used to assist in the design of new facilities or to modify current processes or daily routines in our current buildings. Please use this report as you see fit.

The State of Ohio is still working on guidance for schools on how and when they may reopen this coming fall. Several ideas are being discussed; however, each District will have their own unique challenges to address with the reopening.