



**BEX Oversight Committee**

December 09, 2016, 8:30 -10:30 am  
 Conference Room 2750, John Stanford Center  
 2445 3<sup>rd</sup> Avenue South, Seattle, WA 98134

**Minutes:**

1. Call to order: Chair John Palewicz called the meeting to order at 8:33 am.

Committee Attendees:	Present	Absent	Staff	Present	Absent
Fong, Freeman	X		Bath, Chris	X	
Goldblatt, Steve	X		Becker, Eric	X	
Williams, Daniel		X	Best, Richard	X	
Griffin, Duncan	X		Coan, Melissa	X	
Palewicz, John	X		Herndon, Flip		X
Prentke, Richard		X	Kennedy, Mike		X
Schwartz, Ed	X		Kokx, Sherri		X
Stephenson, Robert		X	McBee, Mike	X	
Tatge, Steve	X		Moore, Steve		X
			Morello, Lucy		X
<b>Board Attendees:</b>			Skutack, Mike		X
Rick Burke	X		Wolf, Joe		X
Jill Geary	X				

2. Approval of Minutes (John Palewicz)
  - The November 17, 2016 minutes were unanimously approved.
3. Budget Update (Melissa Coan)
  - The *BEX IV Program Cost Summary –November 2016 (Activity through October 31, 2016)* was reviewed.
  - Melissa stated that because Arbor Heights project was moved forward, the program budget shows a three million dollar deficit. Other BEX and BTA programs provide SPS with funds. The initial plan was to address the cash flow problems bond to keep SPS in the black for the next few years. It was decided by Assistant Superintendent of Business & Finance, JoLynn Berge that we would use the general fund dollars for this purpose this year as the general fund would benefit from the interest payments.

- Richard Best highlighted the addition of two projects in the - *Budget Pressures* document, Cedar Park Elementary School and Decatur Elementary School. These schools were added as there is no identified funding source for the purchase of curriculum, furniture, or technology.
  - Mr. Best also reviewed budget concerns for Horace Mann, Jane Adams, Kimball and Loyal Heights elementary schools as well.
  - The committee expressed concern that the district has used 90% of the program contingency when there is still 50% of the work left to do in BEX IV. Mr. Best stated that projects occupied Fall of 2016 will be returning funds to the Program Contingency including Genesee Hill, Arbor Heights and Thornton Creek.
  - It was requested that the forecast column shown on the budget sheet accurately reflect projected savings. After some discussion it was decided that Melissa Coan will create a special sheet for only BEX Oversight Committee members which includes the forecast column.
4. Project Status Reports/Board Item Reviews (Richard Best)
- Project pictures, renderings and data are available on the BEX IV website: [BEX IV Reports](#)
  - Project pictures of Cascadia, Eagle Staff, Meany Middle School and Olympic Hills were viewed.
  - It was requested by a member that creating spaces which are more flexible (vertical and utilizing more space on site) could be discussed.
5. Modify Claim Waiver Language (Richard Best)
- In a December 2 letter to Superintendent Nyland, AGC and several other contractors' associations requested a revision to the notice provision in SPS's construction contract's general conditions. Mr. Best brought the topic forward for discussion.
  - Steve Goldblatt provided background regarding the importance of notice to public owners and the approach taken by the University of Washington and State Department of Enterprise Services since 1992. Courts have ruled strictly concerning contract language, requiring contractors and subcontractors comply with notice provision or waive their claim/delay rights. Mr. Goldblatt noted that the approach UW and State DES utilizes is that, if the University is not prejudiced by lack of formal notice, they will consider the matter. John Palewicz and Steve Tatge have managed many successful UW projects over the years this way.
  - Mr. Goldblatt noted that it could be argued that the stricter language works against an owner in attracting good contractors to bid its project. It also is a hindrance to developing trust in their relationship.
  - A strict interpretation may result in contractors and subcontractors submitting higher bids. It can also cause contractors to give notice for every potential cost issue on a project, obscuring real claims.
  - Mr. Goldblatt recommended that Richard Prentke be consulted for his opposing viewpoint – based on his long career representing public owners – and that SPS draft a response after consulting with its own legal counsel.
  - Mr. Best concluded he would talk to the AGC group and ask for an extension of time, talk to Mr. Prentke for his feedback, draft a response letter and have the committee review it at the next meeting.

#### 6. Lessons Learned (Richard Best)

- The question of substantiating weather claims by the contractor was discussed. SPS asked the contractor completing project during the Fall of 2015 and Winter of 2016 to substantiate weather claim with the understanding that they will be allowed time but not compensation. He noted that contractors did not submit requests for additional time related to weather a posed the question “Should the Owner be making the weather related delay claim?” He indicated that by schedule analysis it was evident that the contractors were being affected by the weather. Responses included:
  - Some contractors are used to working in the rain.
  - It is good to maintain a good relationship but do not want to take unnecessary risk on this.
  - The UW does a monthly critical paths meeting to evaluate the schedule. It provides a great forum to discuss this problem.

#### 7. Confirm Next Meetings Agenda

- It was determined that the project reports would not be presented at the January meeting.
- Richard Best stated he would like to have a deep dive into the budget in January’s meetings; he requested/John Palewicz approved portables being discussed in February.
- Budget and Lessons learned will be topics of the meeting.

#### 8. Adjournment

- The meeting adjourned at 10:33 am.