

February 22, 2017

Mr. David M. Williamson  
Executive Director  
Ohio Facilities Construction Commission (OFCC)  
30 W. Spring St., 4th Floor  
Columbus, Ohio 43215

**RE: ACEC/AIA Joint OFCC Liaison Committee  
Partnering Proposal and Position Paper**

Dear Executive Director Williamson:

On behalf of the “Joint ACEC/AIA OFCC Liaison Committee,” we want to thank you for your willingness to meet with our group to continue the efforts that were started several years ago under your predecessors. It is our hope that through our joint efforts, we can address some of the issues that have been identified and develop solutions that are mutually acceptable to all.

By way of review, in late 2014 and again in 2015, representatives of ACEC, AIA, and OFCC met to both discuss various issues identified by all parties and develop potential solutions to improve the “working relationship” between our respective groups. A few of the issues identified at that time include, but were not limited to:

- ♦ OFCC professional services contract timelines
- ♦ Outstanding industry concerns with OFCC contract documents
- ♦ OFCC concerns with industry performance
- ♦ Construction Manager At-Risk

Although progress was being made, the process stalled in late 2015/early 2016.

In September of last year, the ACEC Public Works Committee was revived for the purpose of picking up the efforts started in 2014. As part of the process, ACEC conducted a survey of its member firms to identify their top three (3) issues/concerns associated with the OFCC process. Concurrent with that effort, we held a joint meeting with representatives of AIA to get their perspective on the process that had occurred previously between our respective groups and OFCC. The outcome of the survey and discussions were that ACEC and AIA believed that a joint effort should be initiated to meet with your agency to mutually work on improving the process and relationship between our industry and OFCC.

To facilitate the process, we formed the “ACEC/AIA Joint OFCC Liaison Committee,” comprised of three representatives from each organization; two members each, and the

President of ACEC Ohio and Executive Vice President of AIA Ohio respectively. Our group has been charged with developing this partnering proposal and position paper for your review. The following is a brief description of the three items, in no particular order, that have been identified for mutual discussion, including a brief explanation of the concerns and potential solutions for consideration.

#### Item 1 - Procurement Process

The project delivery methods adopted by the Ohio Construction Reform have certainly been beneficial to the construction industry. The new methods of CM Agency, CM at Risk and Design Build are definitely better options than the multiple prime contracts. As with any change, there are always opportunities to make the process even better.

The issues that we would like to address with the OFCC related to the Procurement process are as follows:

**Design Build** – Under the current system of Design Build project selection, it appears that the Design Build team that has the lowest cost of work is selected a majority of the time. The selection of the Design Professionals is left up to the lead contractor of the Design Build team. With the emphasis on cost in many cases these lead contractors are “bidding” out the professional services without regard to Quality Based Selection (QBS). We would like to see this process revised so that QBS remains part of the design professional selection process, even under the Design Build project delivery model.

**Design Assist** – The current law allows Design Assist within the Design Build and CMR procurement process. We believe that the Design Assist process definitely provides better project outcomes for the owner. We would like to see OFCC emphasize the use of this process, or at least allow it as an option, on projects so that more owners, contractors and design professionals become familiar with it. As more entities become familiar with this process, we would like to see the law change to allow for target based budgeting. This will allow the Design Assist contractor to become more vested with the team at the early stages knowing that he will be awarded the project if he meets the target budget established by the team.

#### Item 2 – Consulting Fees

**A/E Fee Guidelines Need to be Updated** - The practices and procedures that are utilized today by the A/E community that provides professional services to OFCC are significantly different than those that were used when the fee guidelines were developed; yet it has been decades since they have been updated. The lines between what are considered Basic Services, Additional Services, and Reimbursables have been drastically blurred; and need to be reevaluated.

When the construction Reforms were debated, decided, and enacted a few years ago; it was anticipated at that time, that the OFCC Fee Guidelines would be updated as well. New contracts and procedures have been prepared in the interim and OFCC has asked for input and review on those documents and processes from the A/E community. To that point, as an industry, we are ready to work with OFCC to help create fair and equitable fee structure guidelines so that all K–12 school and University systems, and State agencies can be operating on an even playing field. As it stands currently, new OFCC fees are not reflective of the current scope and values that exist in the public sector and in other states and at the Federal level.

We in the A/E community want to work with OFCC to adjust this situation and help Ohio to be competitive and proactive in the market.

### **Item 3 – Contract Issues**

Extreme Length of Time for Contract Execution - On many projects with OFCC and the user agency, the final execution of the Design Professional's contract has been delayed for months. Since the contract form is predetermined, the primary professional and the user agency can usually execute the contract within a couple of weeks. Design work begins immediately upon verbal notice. If the final signature by the OFCC representative is not obtained for many months, the Design Professional has progressed far without a final executed contract. Consequently, the A/E cannot invoice and receive fee for service performed to date. We are requesting that the OFCC internal procedure provide for execution of these contracts within two or three weeks after the other parties have signed.

Early Project Investigation – Currently, OFCC folds into the Design Professional's contract, services for site and investigation, environmental assessments, testing, demolition and others; and the Design Professionals are required to estimate the cost of these additional services before the project begins. Without adequate project information, there is no reasonable basis for accuracy, especially testing. Even though the estimated cost of these extra services is reimbursable, the responsibility and liability remains with the primary design professional. As dictated before, these services should be definitely removed from the primary A/E and reside with the Owner or Construction Manager as direct project costs.

Hire Design Professional Early - For K-12 schools, the issue of time is important for the bond issue passage through design and construction. Schools need the space or improvements. OFCC policy now only permits the selection of a Design Professional after bond issue passage. Before design starts, investigation begins to determine site conditions, agency restrictions, program needs, etc. This preliminary work takes time, perhaps several months and must be done before design development by the A/E with a contract. The process needs to be changed to allow the selection of the Design Professional by the school and OFCC before passage of the bond issue. Even though

the A/E might not be paid for this "up front" work, the pre-design issues can be accomplished early and save many months and cost for the school.

A/E Cannot Guarantee Completion Within Budget – Revise Article 1.10 of the Professional Services Agreement to state; "The A/E shall perform its services *in an effort* so that project is completed within budget."

Project Delivery Method Selection Should Involve the Design Professional – It is our belief, based on experience that an early decision by OFCC on a delivery method is not always in the best interest of the client. We feel that the A/E, OFCC, and the client should have an equal voice and input into determining which delivery method is best suited for the specific project.

Our initial goal is, that upon review of the above and the addition of OFCC input; that our liaison committee can meet with you and your key designated representatives (the core committee) to discuss the issues and mutually agree upon a process moving forward. To that end, we would propose for consideration, a partnering process similar to that employed between ODOT and ACEC's Transportation Committee. The process involves the "core committee" reaching an "initial consensus" on which issues are to be studied. Subsequently, task forces are formed, comprised of representatives from each group with expertise in the respective subject, to study and develop solutions for their respective assignment. This may include researching other state's policies and procedures, and how they deal with these matters. To ensure accountability, reasonable reporting and completion dates would be established for the various task forces. Results would be reviewed by the core committee and then distributed among our member firms and OFCC for comments and input. The process will hopefully result in mutually agreed solutions that can be implemented to improve the process and relations between our respective organizations. The ultimate goal would be to eventually hold a "partnering conference" on an annual basis, attended by industry and OFCC personnel, to continue the process to help break down barriers and build trust and cooperation between our respective groups through open dialogue on mutual concerns.

If you have any questions on the above, please do not hesitate to contact us. Thank you in advance for your consideration and we look forward to meeting with you and your staff to begin the process towards improving the communication and relationship between us.

Sincerely,

Joint ACEC/AIA OFCC Liaison Committee.

cc: Craig Weise, Chief of Projects, OFCC