

MINUTES OF THE CITY OF WICHITA
WICHITA AIRPORT ADVISORY BOARD

Monday, June 4, 2012

Present: Dave Bayouth, Charles Fletcher, U.L. Gooch, Dwight Greenlee, Steve Harris, Willis Heck, John Hennessy, Thomas Pryor, Dr. Thom Rosenberg, Bill Ward, Brent Wooten, Kurt Yowell

Absent: None

Airport Staff: Victor White, Kathryn Keathley, John Oswald, Linda Turley, Valerie Wise, Jean Zoglman

City Staff: Jay Hinkel, Deputy City Attorney
Branden Hall, Budget Analyst, Finance Department

Others: Pete Meitzner, Wichita City Council, District II
Michael O'Donnell, Wichita City Council, District IV
Pat McCollom, Program Manager, AECOM
Jim Armstrong, Foulston Siefkin
Wyatt Hoch, Foulston Siefkin
Mark Gehrler, Key Construction
Larry Goarley, Key Construction
Rick McCafferty, Key Construction
Cindy Nolte, Stucky Nolte

Chairman Rosenberg called the meeting to order at 2:30 p.m.

Approval of Minutes

Motion by Heck, second by Greenlee, to approve the minutes of the May 7, 2012, Wichita Airport Advisory Board meeting. Motion carried unanimously.

Director's Report

Director of Airports Victor White informed the Board of recent business developments for the Airport. Two contracts for new hangar construction were approved over the last month. LeaseCorp Financial, Inc. will build two 10,000 sq. ft. commercial hangars at Mid-Continent Airport. The initial term on the agreement is 20 years, and will create an additional \$15,000 a year in revenue for the Airport. Mann Aviation, the second new hangar contract, has begun the construction of a new corporate hangar at Jabara Airport. EagleMed is expanding its business at Mid-Continent, and has leased an additional 4,300 sq. ft. of space in the Mid-Continent Executive Suites building, as well as some space in the south cargo building, commonly known

as the DHL building. The parking lot construction for the *Learjet 85* program expansion is underway, and will continue throughout the summer. Last week, the FlightSafety Cessna Maintenance Facility construction was completed. It is a \$7 million hangar, office, and classroom facility on the east side of the Mid-Continent campus, next to the Cessna Citation Service Center.

The Airport Authority approved adoption of Chapter 9.35 of the City Code relating to airport operation practices and standards, which the Board reviewed and also approved at the March 5 meeting. The new code will go into effect and be published shortly after the first of July. The Airport Authority also approved the rental car customer facility charge (CFC), effective July 1, at which point the CFC revenue collection will begin at \$4 per contract day. The rate was determined to be appropriate for the required project revenue and reasonably compared to CFC rates in competing markets. The CFC revenue is expected to fully fund rent-a-car related expenses, e.g. the rent-a-car floor of the parking garage. The other parts of the parking garage will be funded with General Obligation bonds.

The Board was provided the Stucky Nolte monthly marketing/advertising campaign report.

During the third week of May, the City of Wichita hosted a delegation from Ghana. As part of the visit, the group toured Jabara Airport and had a luncheon at the Airport Administration Offices one afternoon. The King of Ghana is interested in creating an airport in his region of Ghana, so the visit to the Airport was focused on gathering information about setting up an airport organization. There will likely continue to be interaction with the group from Ghana, the Kansas World Trade Center, and the Airport as follow-up to this visit.

A committee from the City will be developing requests for proposals for possible oil and/or natural gas drilling on City properties, which includes Airport properties. Interest in this type of opportunity was mentioned at a previous Board meeting. If there is interest from drilling companies, there is the potential of substantial revenue creation for the Airport.

As a result of requests from the Airport, the Transportation Security Administration (TSA) will be expanding the passenger security checkpoint at Mid-Continent. There will be four screening queues, two on each side of the corridor leading to the concourses, as well as updates to the security screening equipment. The project will require construction work to re-position partitions and locate communications and screening equipment in the proper places. Most of the work will be done in the evenings after airline traffic is finished for the day, beginning the end of July and being complete in early August. The improvements will reduce screening times during high passenger volume windows.

The Airport was recognized by the American Association of Airport Executives (AAAE) this month as one of only 57 airports in the country to receive an Excellence in Airport Training Award. The Airport received this award in 2011, as well. Airport employees in the Maintenance, Operations, and Police and Fire Divisions qualified the Airport for this award by completing online training classes offered through the AAAE.

Air Service and Business Development Manager Valerie Wise will be participating in a marketing conference in Sacramento later this week. She will meet with five airlines to discuss new air service opportunities for Mid-Continent.

Chairman Rosenberg brought to the Board's attention that the AirTran Airways station at Mid-Continent was awarded the Silver Cup Award, which recognizes excellence in customer service among AirTran markets across the nation.

ACT 3 Project Update and Approval of Package 12 Contract

Mr. White explained the actions taken in the Package 12 – Terminal Construction bid opening and construction contractor selection process. The bids for Package 12 were opened on February 24, 2012. At that time, the presumptive low bidder was the Dondlinger/Hunt joint venture, at a bid price of \$99,370,542. The project is funded in large part by Federal Aviation Administration (FAA) grants, which requires compliance with grant assurances and federal regulations as a condition of acceptance of the FAA grant funds. Those conditions were all made a part of the bid specification documents that were advertised and made known to all the bidders. One of the conditions identified was that the selected contractor had to use state-certified minority and women-owned subcontractors, i.e., the Disadvantaged Business Enterprises (DBEs). The minimum DBE contract goal for each bid submitted for this project was 7.11 percent of the total contract value, or in failure to meet that goal at bid opening, to show “good faith efforts” at attaining that goal prior to bid opening, as that term is defined by federal regulation. Those good faith efforts were required to be documented and submitted with the bid. The Dondlinger/Hunt team failed to meet the DBE contract goal at bid opening, and they failed to show good faith efforts as of bid opening that had the quality, quantity, and intensity necessary to meet the standard established in federal regulation. Dondlinger/Hunt was notified in early March by the Airport's DBE review committee that additional information was required to review its good faith effort, and Dondlinger/Hunt provided all their proposed evidence of good faith efforts. The review committee evaluated this additional submission, and still found it lacking under the federal regulatory standard. Dondlinger/Hunt was notified on April 2, 2012, that their bid was not responsive due to its failure to meet the DBE goal, and was given the opportunity to request administrative reconsideration within 30 days, as required by the Airport's federally approved DBE program. A hearing was held with the Airport's reconsideration official, Victor White, on May 4, 2012, at which time Dondlinger/Hunt provided testimony and information regarding its DBE good faith efforts. Mr. White, who played no role in the DBE review committee's prior decision, issued a ruling May 31, 2012, that he was upholding the decision of the DBE committee, which originally determined that the Dondlinger/Hunt joint venture bid was non-responsive. Following that, on June 1, 2012, the FAA concurred with the WAA evaluation process of the Dondlinger/Hunt good faith efforts, and noted that the Reconsideration Official's decision is not further appealable to the FAA. Also, on that date, the FAA concurred with the Wichita Airport Authority (WAA) staff analysis that the second lowest responsive bidder, the Key/Walbridge joint venture, did meet the DBE good faith effort goal at the time of the bid opening, and acknowledged the Dondlinger/Hunt finding of non-responsiveness. Also, on June 1, the FAA concurred in the recommendation to award the contract to Key/Walbridge with a bid

price of \$101,500,542. This morning, the City's Board of Bids voted unanimously to recommend to the WAA to award the Package 12 contract to Key/Walbridge.

Chairman Rosenberg opened the floor to questions from the Board. No questions were brought forth.

Motion by Fletcher, second by Heck, to recommend to the Wichita Airport Authority that the Package 12 contract be awarded to Key/Walbridge at the bid price of \$101,500,542.

Chairman Rosenberg asked the Board if any further discussion on the motion was desired. John Hennessy stated he would like to discuss the motion further, because he understood that neither the first lowest bid, nor the second lowest, met the DBE requirement. Deputy City Attorney Jay Hinkel affirmed that neither the first nor the second bid made the contract goal by actual attainment. The determination of the review committee was that the first bidder did not show good faith efforts as required by regulation, but the second lowest bidder did meet that standard. The bid submitted by Key/Walbridge has been deemed by the FAA to have met the DBE contract goal. Mr. White added that the DBE percentage calculations were based on the base bid as well as the allowances. These allowances amount to approximately \$13 million in additional identified work for building furnishings that have not been designed yet, e.g., furniture, furnishings, loading bridge installation, and information technology equipment. In the reconsideration hearing process, Dondlinger/Hunt objected to the DBE participation calculation being made with the allowances included. Upon this suggestion, as Reconsideration Official, Victor White calculated the DBE participation percentage of all bidders only upon the base bid package (without the allowances). The resulting calculation showed that the Dondlinger/Hunt percentage would slightly increase, but still would be significantly short of the DBE contract goal. However, by making this change for all bidders, many of their participation percentages would increase more significantly, including raising the Key/Walbridge percentage above the DBE contract goal. Using this suggested calculation, Key/Walbridge would have met the DBE contract goal by actual attainment.

Chairman Rosenberg asked again if any further discussion on the motion was desired. Jim Armstrong of Foulston Siefkin, representing the Dondlinger/Hunt joint venture, addressed the Board stating that, while neither the first nor the second bidder met the goal on bid day, Dondlinger/Hunt demonstrated in the reconsideration hearing that it was prepared to meet the goal on bid day. The only documentation that was lacking were certifications from the Kansas Department of Transportation (KDOT) for two of the DBE contractors that the joint venture intended to use. The letters of intent and the KDOT certification applications were included on bid day. Mr. Armstrong asserted that those two DBE contractors are now KDOT certified, and were at the time of the reconsideration hearing on May 4. Mr. Armstrong stated that with those two contractors included in the calculations, Dondlinger/Hunt now meets the DBE contract goal. Dondlinger/Hunt strongly feels that the process has not been played out correctly, and is considering other protest options, including litigation. Dondlinger/Hunt has communicated with the Law Department of the City of Wichita that Dondlinger/Hunt would accept binding arbitration or a re-bid process to avoid litigation. Mr. Armstrong concluded that

Dondlinger/Hunt is eager to work on the ACT 3 construction, and has proven they can complete a project of this scale with its recent work on the Intrust Bank Arena.

There were no questions or comments from the Board in response to Mr. Armstrong's statement. Mr. Hinkel advised, in response to a question, that the motion currently under Board consideration was to recommend the Key/Walbridge partnership for the ACT 3 construction contractor. The evaluation team made the determination that Dondlinger/Hunt did not meet the requirements on bid day. Mr. White took a much more extensive look at that and came to the same conclusion. The Board's vote today is a recommendation only to the Airport Authority, without binding effect. The Board was advised to make its decision based upon the information presented in today's meeting.

Additional discussion among board members followed regarding the FAA and KDOT DBE regulations, the bid submission and opening process, and how adherence to federal regulations is essential to securing grant funds for the ACT 3 project. Mr. Hennessy then proposed a substitute motion regarding the construction contract award.

Motion by Hennessy to recommend that the City Council move forward with the project, and consider taking the bid acceptance dispute to arbitration with Dondlinger and with Key. Second by Bayouth. Motion passed seven to three.

Other Business

The next WAAB meeting will be Monday, July 2, 2012 at 2:30 p.m.

Meeting adjourned at 3:13 p.m.

Kathryn Keathley, Clerk