



August 17, 2009

MEMORANDUM

TO: District Board of Trustees
FROM: William D. Law, Jr., President
SUBJECT: Advanced Manufacturing Training Center (AMTC)

Item Description:

At our meeting of June 22, 2009 we considered at some length my proposal for us to proceed with the establishment of the Advanced Manufacturing Training Center, supported by significant federal funding for start and operating costs for the initial years. As the project will be funded in a manner not previously used by the college, I wanted to be sure that the entire project was outlined for you and that the subsequent work done with legal counsel was available to you prior to a final vote on the project

Specifically, I feel the need to document our awareness of and observance to pertinent Florida Statutes that guide the key provisions of the establishment of the AMTC.

Overview:

The College's efforts in supporting economic development opportunities for our region evidenced a severe lack of a specialty facility that could serve to organize ongoing education and training programs in support of manufacturing and related employment;

The College has worked with the Economic Development Council's Manufacturer's Roundtable over several years to determine the need for such training and how it might be best organized to meet the needs of a variety of smaller employers;

The College had been successful in securing federal grants to support the development and operation of an Advanced Manufacturing and Training Center; these grants have come through the Department of Defense (DOD) and have required a great deal of effort to clarify the supportable/ non-supportable expenditures allowed by the grants;

The College had researched several options to identify a significant amount of space on campus (approximately 15,000 square feet, minimum) that could be renovated and retrofitted to support the very specialized labs needed for the AMTC; in every case, the estimated price tag for such renovation exceeded \$2M, an amount that became unattainable once the recession hit the nation's economy;

During the last 6-8 months, we were also able to clarify that the federal funds could NOT be used for facilities renovation at the level we would need; the funds could, however, be used to lease appropriate space, in accordance with federal DOD guidelines;

We were also advised by the DOD that the funds would need to be under contract not later than September 30, 2009 or that the funding would be subject to recall and would not be available to the college;

As soon as we realized that we would only be permitted to lease space with federal funds, we began to explore options for identification of suitable, proximate, affordable space that might meet our needs;

All of our efforts led us to the creation of a carefully crafted plan that would a) permit the creation of the AMTC on TCC's campus, b) expend federal dollars in compliance with relevant guidelines, c) move forward with this critical jobs development initiative during the very difficult economic cycle, and 4) observe both the letter and spirit of Florida Statutes;

Salient Facts:

Past Actions:

Future Actions:

Funding/Financial Matters:

The creation of the AMTC has required a series of careful interwoven steps to allow for each part of the plan to meet state law and for the final project design to be highly cost effective and economical.

In light of the absence of available and economical space proximate to the campus, the College identified one of its on-campus warehouse-type facilities in need of substantial renovation as available for long-term lease to a private developer; the developer agreed to make a substantial investment in the facility, raising it to a fully usable, energy-efficient, industry standard manufacturing facility; the investment of private funds in this facility to give it a new useful life of more than 20 years is of obvious and verifiable benefit to the college, and consequently the long-term lease is fully supported by Florida Statute;

Investigation of the proximate real estate market did not evidence any other facilities that could be suitable to the college's needs; the AMTC needs to be proximate to the full range of student support (Counseling, advising, Career Center, learning Commons, etc.) available to all TCC students;

The optimum means for the creation, operation, and funding of the AMTC was for the College to lease back the facility for a time certain period; paramount in this decision is the need to take timely action in light of the DOD's refusal to allow funds to be used for renovation and with a 'use it or lose it' deadline of 9/30/2009; the potential loss of funds would total more than several millions of dollars; additionally, no other options exist for the creation of the AMTC, resulting in a substantial loss of hundreds of jobs in our community.

Given the specific language of the statute, referencing the "other substantial loss" clause as a means for identifying qualified providers, it becomes clear that the AMTC in the configuration presented to the Board of Trustees meets both federal and state statutory restrictions and flexibilities.

I have shared all of the above information with Mr. Mabile for his review. His comments are included for your reference.

In addition, we have prepared a rendering of the façade for the facility. Pursuant to the Board's guidance, we have crafted an appearance that will conform to the college's existing style and will assure that the facility is an amenity to the campus and the community.

Staff Resource:

John Chapin

Recommended Action:

The Board is being asked to approve the plan to create the Advanced Manufacturing Training Center. This approval will allow us to execute the necessary lease agreements for the facility, in line with the details above, will allow us to execute the necessary financial contracts with the Department of Defense to draw down the funds for the project and will permit the college to make necessary changes to our facilities inventory with the Florida Department of Education.

Motion: Authorize the president to proceed with the necessary contractual and legal processes needed to establish the Advanced Manufacturing Training Facility at Tallahassee Community College.

ANDREWS, CRABTREE, KNOX & ANDREWS

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August 7, 2009

Dr. William D. Law, Jr., President
Tallahassee Community College
444 Appleyard Drive
Tallahassee, FL 32304-2895

RE: *Advanced Manufacturing Training Center (AMTC)*

Dear Bill:

I have reviewed in detail your correspondence of August 4, 2009 regarding the establishment of the Advanced Manufacturing Training Center (AMTC). Your correspondence notes the need to document the college's awareness of and observance to pertinent Florida Statutes that provide guidance for the establishment of the AMTC. You have requested my guidance in assuring compliance with relevant statutes.

Based on my review of preliminary steps involved in the establishment of the AMTC and my earlier discussions with you, I understand that certain facts are important to the establishment of the AMTC and to the statutes and rules under which the AMTC may be established. The significant facts are:

- There is a lack of a specialty facility for education and training in support of manufacturing employment;
- TCC and the Economic Development Council's Manufacturer's Roundtable have determined that there is a need for such training;
- TCC has secured Department of Defense (DOD) grants for development and operation of the AMTC;

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- TCC reviewed on-campus options for space that could be renovated or retrofitted for the specialized labs for the AMTC and the estimated costs for such renovation exceeded \$2 million;
- TCC was notified that the DOD grant funds could not be used for facilities renovation but the funds could be used to lease appropriate space;
- DOD has advised the funds would need to be under contract by September 30, 2009 and if not under contract by that date, the funding will be subject to recall and would not be available to TCC;
- Having been advised by DOD that the grant funds would only be permitted to lease space, TCC began to explore options to find suitable space to meet the needs of the AMTC.
- TCC's efforts have led to the creation of an on-campus AMTC where the grant funds will be spent in compliance with DOD guidelines and the program will move forward with jobs development initiative while observing both the letter and spirit of Florida law.

The above process and understandings led to the creation of the AMTC and to its presentation to the District Board of Trustees of TCC at its regular meeting on June 22, 2009. The critical provisions in the plan include identification of an unused on-campus warehouse that could be renovated for long-term lease to a private developer; the identified developer has agreed to make a substantial investment in the facility which will result in an industry-standard manufacturing facility; the facility will have new life of more than 20 years of benefit to the college and the long-term lease is supported by Florida Statute.

Further, the college should see a significant savings because the rate that the facility will be leased back to the college is below market rates. There was no other facility near campus suitable to the college's needs.

In summary, the critical factors leading to the decision to pursue the AMTC plan was DOD's refusal to permit funds to be used for renovation and the looming deadline of September 30, 2009 with potential loss of funds totaling more than several million dollars with a potential substantial loss of hundreds of jobs in the community if the AMTC is not brought online.

Legal Analysis

TCC may lease the building to the private developer. The relevant statute is §1013.15(1), Fla. Stat., which in pertinent part states:

“A board may lease any land, facilities, or educational plants owned by it to any person or entity for such term, with such rent, and upon such terms and conditions as the board determines to be in its best interests; Prior to entering into or executing any such lease, the board shall consider approval of the lease or lease-purchase agreement at a public meeting, at which a copy of the proposed agreement in its final form shall be available for inspection and review by the public, after due notice as required by law.”

The above-cited statute is consistent with the general authority of the Board of Trustees to lease real property to others in the best interest of the community college. §1001.64(37) states:

“Each Board of Trustees may purchase, acquire, receive, hold, own, manage, lease, sell, dispose of, and convey title to real property, in the best interest of the Community College.”

Further, the Board of Trustees is responsible for cost-effective policy decisions appropriate to TCC’s mission. §1001.64(1). Also, the Board of Trustees is responsible for the use, maintenance, protection, and control of community college owned or community college controlled buildings and grounds. §1001.64(5), Fla. Stat. Of specific importance to this analysis is that the Board of Trustees is authorized to contract for the purchase, sale, lease, license or acquisition in any manner....for goods, materials, equipment, and services required by TCC. §1001.64(26), Fla. Stat.

The above authorities provide the TCC Board of Trustees with the authority to lease the subject property to a private developer and to obtain a lease back of the property. The general authority includes obtaining the services for renovation by the private developer. This authority is subject to any rules provided by the State Board of Education. The Florida Legislature intends that community colleges as political subdivisions of the state, will be operated by the Boards of Trustees and that other than the State Board of Education, no department, bureau, division, agency, or other subdivision shall have any responsibility or authority to operate the community college. §1004.67, Fla. Stat.

It should be recognized that the AMTC is a unique project. The project not only serves TCC and its students, but also serves the community’s need for workers trained in manufacturing technology. The loss of the DOD funds on September 30, 2009 with the loss of the project, loss of service to TCC and its community will result in a substantial loss to the State which requires

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immediate action. It has long been the State of Florida's position that where there is a potential immediate substantial loss to the State that action must be taken and that the agency or department involved may proceed with the procurement of services without going through the competitive bid process. Loss of funds, loss of program, and loss of service to the community and state supports proceeding now without competitive bidding.

Therefore, in order to waive the solicitation requirements, there should be a finding that there will be a substantial loss to the State if the DOD funding is lost and consequently the project and its service to the community is also lost. The finding should be in writing and should be from your office. Because the establishment of the AMTC also involves a lease to a private developer, the final version of the lease should be included with the agenda for a regular Board meeting and the lease should be presented to the Board for its review and approval.

Please let me know if you have any questions.

Very truly yours,

ANDREWS, CRABTREE, KNOX & ANDREWS, LLP



William R. Mabile
For the firm

WRM/wbt