Office of the Secretary
1000 SW Jackson, Suite 500
Topeka, KS 66612

Kansas
Department of Administration

Phone: 785-296-3011
Fax: 785-296-2702
www.admin.ks.gov

Sarah L. Shipman, Acting Secretary

Sam Brownback, Governor

February 11, 2016

Joint Committee on State Building Construction

Department of Administration Discussion

Sarah L. Shipman, Acting Secretary

Madam Chair and Members of the Committee:

Thank you for allowing me to continue the discussion of the new energy center and the potential Docking demolition. As you know, the Department of Administration entered into a contract to construct the new energy center and the municipal lease to finance the transaction on December 29, 2015, the eve of the expiration of our 2.32 percent interest rate.

Since that time, I learned of the concerns of this committee and other members of the Legislature. In an effort to address and attempt to resolve those concerns, on January 28 the Governor requested that we suspended all work on the project. In the interim there have been meetings with members of this committee and others to find a way forward. Rep. Hutton has proposed an alternate plan that DOA had not considered in depth. His proposal would selectively demolish Docking down to the first floor and renovate it and upgrade the energy center in the basement. This would allow DOA to have approximately 40,000 rentable square foot in that building. He has presented preliminary cost estimates and we have shared those with our current contractor in an effort to validate the estimate. I believe that spreadsheet has been shared with you; if not, I can supply it for you. The caveat from McCarthy is that they have not been in the Docking building, nor participated in a demolition of this kind and have no way to confirm that the demolition estimates are accurate. Based on the spreadsheet, Rep. Hutton and McCarthy estimate that the alternate project will cost between $17.5 - $20 million. As you recall, our cost for the energy center construction is $16.6 million and the implosion an additional $3.5 million. Thus the estimated total cost for the one floor Docking option is similar to the hard bid total cost of the DOA plan, but we are still reviewing the spreadsheet and discussing with Rep. Hutton to make sure we are comparing apples to apples.

I was asked to make a recommendation as to the Department's preferred plan to proceed. I am unable to make that recommendation today for a variety of reasons. First, the cost estimate provided by Rep. Hutton does not include the $3.5 million it will take to finish the first floor for occupancy. I realize that we can recover those costs in the rent we will charge, but the dollars will have to be expended up front and we need further discussion on this issue. Second, our initial cost estimate presented to this committee in January 2014 was $9.1 million to construct the energy center, while our total cost estimate for the whole project was $17.7 million. Ultimately the cost of the energy center itself, when put out for bid, came in at $16.6 million with the total project costs right around $20 million. Estimates are only that, estimates and I need to make sure we have included everything in the Hutton plan. Lastly, we have not yet received the final termination numbers from Bank of America or McCarthy, though we have preliminary numbers from McCarthy. I know that there was discussion in this committee about an estimated Bank of America number at approximately $400,000.

What has not been discussed is the cost to terminate the construction contract with McCarthy. As in every construction contract executed by the DOA in the last 10-15 years, there is a termination for convenience clause. That clause states that the contractor is entitled to recover expenses, which includes material, subcontractor costs, labor, etc. Additionally the contractor is entitled to expected profits not to exceed 10 percent of the contract price. In this case, that 10 percent is approximately $1.7 million. For comparison of the termination language, I reviewed the Topeka Public Building Commission contracts for the construction of both the Curtis building and the KBI Forensic Lab. The termination for convenience clause is virtually identical except there was not a cap on expected profits. I also reviewed the LCC contract for the renovation of the statehouse, and again, the same language appears but no cap. This is not an unusual measure of contract damages and has been included in the American Institute of Architects standard form contract. In this case, the preliminary review of expenses and expected profits is $2 million.

I believe there needs to be a decision as soon as possible as the cost for delay is approximately $10,000 per day but can be as high as $20,000 depending on what was scheduled to occur. Until we have a firm understanding of the total cost of the Hutton plan and the final termination costs, I cannot make a recommendation for the Governor to consider.

I stand for questions.