

7-10-1964

Board of Trustees Minutes, July 10, 1964

Eastern Washington State College

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Eastern Washington State College

MINUTES OF MEETING OF BOARD OF TRUSTEES

Friday, July 10, 1964

Spokane

The Board of Trustees of Eastern Washington State College met in special session at 12:00 noon in the Terrace Room of the Ridpath Hotel, Spokane, with Mr. Erickson, chairman; Mrs. R. R. Morrison and Mr. Joe M. Smith, members, and Fred S. Johns, secretary, present. Others in attendance were Mr. Henry Koslowsky, Director of Public Information, Dr. Robert F. Bender, president of Faculty Organization, and Mr. Robert Blair, special assistant to the Attorney General.

AMENDMENT TO LOAN AGREEMENT WITH HHFA

Mr. Johns and Mr. Blair presented an amendment to the Loan Agreement dated June 17, 1964, by the college and Housing and Home Finance Agency, increasing the loan from \$1,266,000 to \$1,384,000. This increase had been authorized by the board at the June 19 meeting to permit the awarding of the construction contract.

Mr. Smith moved the adoption of the attached resolution approving the amendment. The motion was seconded by Mrs. Morrison and carried.

APPEAL FROM ADSCO CONSTRUCTION COMPANY

Mr. Johns reported that an appeal had been received from T. Malott, attorney for AdSCO Construction Company, claiming that AdSCO's bid for the construction of an addition to Tawanka Commons should have been considered the low bid because it included sales tax. After discussion it was moved by Mr. Smith that the board reconsider its action at the last meeting in awarding the contract to the Sceva Construction Company in the interest of assuring construction of the project at the lowest possible cost and that the matter of the low bid be referred to the Attorney General for a formal opinion and that the board award the contract to whichever bidder the Attorney General rules is low bidder under the circumstances. The motion was seconded by Mrs. Morrison and carried.

ARRANGEMENT FOR MRS. STREETER'S VISIT

The board discussed arrangements for the visit of Mrs. Ruth Cheney Streeter, granddaughter of Benjamin P. Cheney, to the campus on July 27-28. It was moved by Mrs. Morrison and seconded by Mr. Smith that suitable entertainment expenses for Mrs. Streeter's visit be paid from college entertainment funds. Motion carried.

July 10, 1964

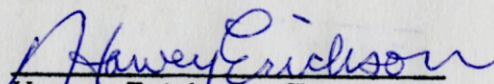
AWARDING OF DEGREES

Mrs. Morrison moved and Mr. Smith seconded the motion that Mr. Voorhees be invited to award degrees at the summer quarter Commencement on August seventh. Motion carried.

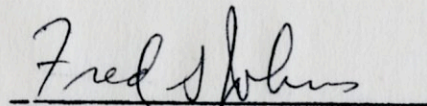
ADJOURNED

The meeting was adjourned at one-thirty .

APPROVED



Harvey Erickson, Chairman



Fred S. Johns, Secretary



HOUSING AND HOME FINANCE AGENCY

OFFICE OF THE REGIONAL ADMINISTRATOR

REGION VI AREA OFFICE

450 Federal Office Building
Seattle, Washington 98104

July 7, 1964

Mr. Fred S. Johns
Comptroller
Eastern Washington State College
Cheney, Washington 99004

Dear Mr. Johns:

Subject: Project No. CH-Wash-66(DS) Eastern Washington State
College, Cheney, Washington, Contract No. H-602-3307,
Amendment No. 1

Transmitted herewith are two copies of the Amendatory Loan Agreement dated as of July 1, 1964, between the College and the Government, together with Resolution and Certificate.

If, after due consideration, these instruments are satisfactory to your Board of Trustees, kindly have both copies executed and returned to this office. They will then be signed on behalf of the Government and a fully executed copy will be returned to you.

Very truly yours,

Clarence E. Lott
Area Counsel

Enclosures

RECEIVED
JUL 8 1964
EASTERN WASHINGTON STATE COLLEGE
COMPTROLLER'S OFFICE

Project No. CH-Wash-66(DS)
Eastern Washington State College
Cheney, Washington
Contract No. H-602-3307
Amendment No. 1

AMENDATORY LOAN AGREEMENT

THIS AMENDATORY LOAN AGREEMENT, dated as of July 1, 1964, by and between Eastern Washington State College, a public educational institution of higher learning, located at Cheney, Washington (herein called the "Borrower") and the United States of America (herein called the "Government"), WITNESSETH:

WHEREAS, the Government has approved the request of the Borrower for an increase in the amount of the loan contemplated by the Loan Agreement dated June 1, 1964 and Waiver No. 1 dated June 17, 1964, between the Government and the Borrower from \$1,266,000 to \$1,384,000 in order to revise the estimated cost of the Project to permit the award of construction contracts.

NOW, THEREFORE, for and in consideration of the mutual benefits flowing to the Government and the Borrower, the aforesaid Loan Agreement dated June 1, 1964, is hereby amended as follows:

1. In Section 1, delete the figure "\$1,266,000" and insert in lieu thereof "\$1,384,000"; and delete the figure "\$1,344,000" and insert in lieu thereof "\$1,462,000".

2. In Section 2, delete subsections (c), (g), (h) and (l) and insert in lieu thereof the following:

"(c) Principal Amount: \$1,384,000

"(g) Maturities: April 1, in years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1967	\$19,000	1993-95	\$45,000
1968-74	20,000	1996-97	50,000
1975-79	25,000	1998-2000	55,000
1980-84	30,000	2001-02	60,000
1985-88	35,000	2003-04	65,000
1989-92	40,000		

"(h) Numbers: 1 upwards, in direct order of maturity.

"(l) Redemption Provisions: Bonds maturing April 1, 1967 through April 1, 1974 inclusive, to be non-callable. Bonds maturing April 1, 1975 through April 1, 1999 inclusive, to be callable at the option of the Borrower prior to the stated maturities thereof, in whole or in part and in inverse numerical order on any interest payment date after April 1, 1974 upon at least thirty (30) days' prior notice at the principal amount thereof, plus accrued interest to the date of redemption and a premium for each bond as follows:

- 3% if redeemed October 1, 1975 through April 1, 1980, inclusive;
- 2-1/2% if redeemed October 1, 1980 through April 1, 1985, inclusive;
- 2% if redeemed October 1, 1985 through April 1, 1990, inclusive;
- 1-1/2% if redeemed October 1, 1990 through April 1, 1995, inclusive;
- 1% if redeemed after April 1, 1995.

Bonds maturing April 1, 2000 through April 1, 2004 inclusive, to be callable at the option of the Borrower in whole or in part and in inverse numerical order on any interest payment date during the entire life of the loan, upon at least thirty (30) days' prior notice, at par plus accrued interest to the date of redemption.

Priority as to call shall extend to bonds maturing April 1, 2000 through April 1, 2004 inclusive over bonds maturing April 1, 1975 through April 1, 1999, inclusive.

3. Section 6, Special Conditions, is hereby amended as follows:

- (A) In paragraph (a), delete the figure "\$83,516" and insert in lieu thereof "\$91,272" and, delete the figure "\$128,725" wherever it appears and insert in lieu thereof "\$140,088".
- (B) In paragraph (b), delete the figure "\$128,725" and insert in lieu thereof "\$140,088".
- (C) In paragraph (d), delete all but the first sentence.
- (D) In paragraph (f), add subparagraph (6) as follows:

"(6) Section 20, Insurance During Construction, is modified by deleting all of the first sentence thereof and substituting therefor the following:

'The Borrower shall require that each of its contractors and all subcontractors shall maintain during the life of his contract, Workmen's Compensation Insurance, Public Liability, Property Damage, and Vehicle Liability Insurance in amounts and on terms satisfactory to the Government.'

THIS AMENDATORY LOAN AGREEMENT shall become effective as of the date hereof, and all of the provisions of the original Loan Agreement and Waiver No. 1, except as hereby amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Amendatory Loan Agreement has been executed in the name and on behalf of the United States of America, Housing and Home Finance Administrator, by the undersigned Director for Northwest Operations, and in the name and on behalf of Eastern Washington State College by the undersigned official, and under its official seal, attested by its Secretary.

(SEAL)

EASTERN WASHINGTON STATE COLLEGE

ATTEST:

By _____

By _____

Title _____

Title _____

UNITED STATES OF AMERICA
Housing and Home Finance Administrator
Community Facilities Commissioner

_____ Date

By _____

L. R. Durkee
Director for Northwest Operations

RESOLUTION APPROVING AMENDATORY LOAN AGREEMENT

WHEREAS, the Board of Trustees of Eastern Washington State College has heretofore approved and executed a Loan Agreement dated June 1, 1964, with the United States of America, acting by and through the Housing and Home Finance Administrator, for a loan to provide a dormitory to house approximately 244 women students, including a guest room, director's apartment, lounges, offices and storage; and, an addition to Tawanka Commons to seat approximately 550 additional students; all with necessary appurtenant facilities at Eastern Washington State College, Cheney, Washington, (Project No. CH-Wash-66(DS)); and

WHEREAS, the Board of Trustees of Eastern Washington State College has requested that the amount of the loan be increased in order to revise the estimated cost of the Project to permit the award of construction contracts; and

WHEREAS, the United States of America, acting by and through the Housing and Home Finance Administrator, has tendered an Amendatory Loan Agreement for the purpose of increasing the amount of the loan as requested and for other purposes; and

WHEREAS, said Amendatory Loan Agreement has been duly read in open meeting, fully considered in accordance with all pertinent rules of procedure and legal requirements, and made a part of the records of the Board of Trustees; and

WHEREAS, it is deemed advisable and in the public interest that said Amendatory Loan Agreement be approved and its execution authorized;

NOW, THEREFORE, be it resolved by the Board of Trustees of Eastern Washington State College that said Amendatory Loan Agreement be and the same is hereby approved without reservation or qualification.

BE IT FURTHER RESOLVED that _____, the
Chairman of the Board of Trustees of Eastern Washington State College, be and
he is hereby authorized to execute said Amendatory Loan Agreement, and
_____, the Secretary thereof, be and he is hereby
authorized to attest the execution of said Amendatory Loan Agreement.

Approved and adopted this _____ day of _____, 1964.

(SEAL)

ATTEST:

Chairman

Secretary

RECORDING OFFICER'S CERTIFICATE

I, the undersigned, the duly qualified and acting Secretary of the Board of Trustees of Eastern Washington State College, Cheney, Washington, and the keeper of the journal of proceedings of said Board (herein called the "Governing Body"), do hereby certify:

1. That the attached resolution (herein called the "Resolution"), is a true and correct copy of a Resolution as finally adopted at a meeting of the Governing Body held on the _____ day of _____, 1964, and duly recorded in my office;

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; and a legal quorum was present throughout the meeting, a legally sufficient number of members of the Governing Body voted in the proper manner and for the adoption of said Resolution; that all other requirements and proceedings incident to the proper adoption or passage of said Resolution have been duly fulfilled, carried out, and otherwise observed; and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of Eastern Washington State College this _____ day of _____, 1964.

Secretary

(SEAL)

THOMAS MALOTT
ROBERT A. SOUTHWELL
PHILIP J. THOMPSON

LAW OFFICES
THOMAS MALOTT
415 SPOKANE AND EASTERN BUILDING
SPOKANE, WASHINGTON 99201

TELEPHONE
AREA CODE 509
MADISON 4-0159

June 24, 1964

RECEIVED
JUN 25 1964

EASTERN WASHINGTON STATE COLLEGE
COMPTROLLER'S OFFICE

Harvey Erickson, President
and
Fred H. Johns, Secretary
Board of Regents
Eastern Washington State College

Re: Food Service Center
Bid Opening, June 18, 1964

Gentlemen:

I represent ADSCO, which bid last Thursday for both the Women's Dormitory and the Food Service Center.

Their bid for the Women's Dormitory did not include state sales tax but their bid for the Food Service Center specifically stated that it included state sales tax. The bid for the Food Service Center, after deducting state sales tax, would be approximately \$2,000 lower than that of Sceva Construction Company. I am informed that someone from the Tax Commission advised Mr. Johns that this constituted an illegal bid and, accordingly, the Board of Regents, at its meeting held the next day, rejected the same. Under the circumstances, I am instructed to lodge with you a protest to such a ruling.

Any confusion appears to be the result of the wording of the bid proposals on the Women's Dormitory and the Food Service Center. On the second page of the proposal on the Women's Dormitory it is stated:

"The Washington state sales tax is not included in the proposal.

The confusion, however, arises from the wording relative to the Food Service Center, wherein it is stated:

"The above unit price shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, et cetera, to cover the finished work of the several kinds called for."

Harvey Erickson, President
Fred H. Johns, Secretary
June 24, 1964
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As a lawyer it is a little difficult for me to fathom or guess what one means when he says "et cetera" and I surmise that my clients, who are not lawyers, may have had equal difficulty. In any event, bearing in mind the fact that in the case of the Women's Dormitory state sales tax was specifically excluded, they had the foresight to anticipate possible ambiguity in the interpretation of the word "et cetera" and to avoid possible confusion and to be explicit (which certainly the drafter of the call for bids was not), they elected to clarify the item and state that the bid price would and did include Washington state sales tax of four per cent. The secretary of the Tax Commission, as I understand it, has advised you that this constitutes an illegal bid in view of Section 82.08.120 RCW, which provides:

"Whoever, excepting as expressly authorized by this chapter, refunds, remits, or rebates to a buyer, either directly or indirectly and by whatever means, all or any part of the tax levied by this chapter, or makes in any form of advertising, verbal or otherwise, any statements which might infer that he is absorbing the tax or paying the tax for the buyer by an adjustment of prices, or at a price including the tax, or in any other manner whatsoever shall be guilty of a misdemeanor. The violation of this section by any person holding a license granted by the state or any political subdivision thereof shall be sufficient grounds for the cancellation of the license of such person upon written notification by the tax commission to the proper officer of the department granting the license that such person has violated the provisions of this section. Before any license shall be canceled hereunder, the licensee shall be entitled to a hearing before the department granting the license under such regulations as the department may prescribe."

I cannot see how the above statute has any bearing on the present problem. In the first place, the statute is a criminal statute. Secondly, ADSCO certainly did not offer to "refund, remit or ~~rate~~ rate" any part of the sales tax, nor did it make "any statements which might infer that it is absorbing the tax or paying the tax for the buyer by an adjustment of prices or at a price including the tax." If a bidder were to bid a job at \$100 plus sales tax of four per cent, or \$104 including sales tax of four per cent, or \$100 plus \$4.00 tax, for a total of \$104, the result is identical.

Harvey Erickson, President
Fred H. Johns, Secretary
Page 3
June 24, 1964

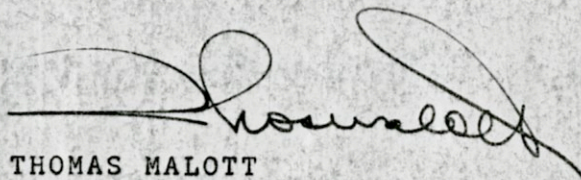
I have before me the complete breakdown of the bid for labor, materials and subcontractors, which I believe Mr. Johns has already seen. This includes the basic bid of \$144,683, plus sales tax of \$5,787, for a total of \$150,470. At the last minute prior to bid letting, certain doors were added at a cost of \$280, bringing the total to \$150,750. If sales tax is deducted therefrom, obviously ADSCO is the low bidder by approximately \$2,000. If the bid of Sceva Construction Company, however, is accepted, it will end up with a cost increase to your Board of approximately \$2,000.

In view of the variance in language used in the case of the Women's Dormitory and the Food Service Center, coupled with the use of that will-of-the-wisp, wily word, "et cetera", I respectfully submit that ADSCO had good reason to believe that "et cetera" was intended to cover Washington state sales tax.

If personal presentation of this matter would be of assistance to you, my clients can appear before you.

I am,

Yours very truly,



THOMAS MALOTT

TM:GN