

MINUTES OF THE 500th MEETING OF THE OHIO TURNPIKE COMMISSION

February 23, 2004

Pursuant to the bylaws, the Ohio Turnpike Commission met for a special meeting at the Commission's Administration Building at 10:07 a.m. on February 23, 2004, with members of the staff: Jerry Pursley, Deputy Executive Director; Daniel Castrigano, Chief Engineer; James Steiner, CFO/Comptroller; Noelle Tsevdos, General Counsel; W. R. Fleischman, Assistant Chief Engineer; Tim Ujvari, Maintenance Engineer; Anne Fornshell, Director of Human Resources; Kathleen Weiss, Director of Contracts Administration; Dave Miller, Chief Auditor; Dick Morgan, Director of Information Systems; William Keaton, Telecommunications Manager; Kerry Ferrier, Traffic Engineer; Dick Lash, Director Safety Services; Bob Gahr, Asst. Director Safety Services; Fred McFall, Customer Services Manager; Lauren Hakos-Dehrmann, Manager, Public Affairs; Heidi Jedel, Crickett Jones, Tracy Cowley and Diane Pring.

The Vice-Chairman called the special meeting to order.

Vice-Chairman Noe asked the Assistant Secretary-Treasurer to please call the roll.

Present: Mr. Noe, Mr. Dixon, Mr. Balog, Mr. Darwish and Rep. Buehrer

Absent: Senator Schuring

The Vice-Chairman said the Ohio Department of Transportation's Director, Gordon Proctor, is not here today, but his representative, Deputy Director Mo Darwish, is here and authorized to vote for him. Welcome and glad to see you, Mo.

The Vice-Chairman said we have a number of guests here today, so I'd like everyone to introduce themselves: Eric Erickson, Fifth Third Securities; Dennis Albrecht, Dan Sokol, Dick Corporation; Tony Yacobucci, HNTB; Mike Burgess, URS Corporation; Brett Neff, R. E. Warner Co.; Steve Szanto, Public Finance Management; John Petty, Nat City Investments; Frank Lamb, Huntington Bank; Allan V. Johnson (retired from OTC); Don Glosser, Lichtenstein Eng.; Howard O'Malley, B & P Express; Capt. Robert Ferguson, OSHP; Rich Exner, (Cleveland) Plain Dealer; Kevin Redden, Gladieux Corporation; Floyd Jeffries, Jeff Milum, Operating Engineers, Local 18; Stefan Holmes, First Merit Bank and Glenn Stevens, Stevens Associates.

The Vice-Chairman said this is the 500th meeting of the Ohio Turnpike Commission, and we are meeting here in the Commission's headquarters as provided for in the Commission's Code of Bylaws for a special meeting. (This is a special meeting because we could not meet on the normal third Monday of the month because of the Presidents' Day holiday.) Various reports will be received and we will act on several resolutions, draft copies of which have been previously sent to Members and updated drafts are also in the Members' folders. The resolutions will be explained during the appropriate reports.

The Vice-Chairman asked for a motion to adopt the Minutes of the January 26, 2004 meeting.

Commissioner Dixon moves and Commissioner Balog seconds. All members voted in the affirmative and the minutes were adopted.

The Vice-Chairman said we'll proceed with the report of the Secretary-Treasurer, Mr. Dixon.

The following items have been sent to the members since the last regularly scheduled meeting of the Commission on January 26, 2003:

1. Minutes of the January 26, 2004 Commission Meeting
2. Traffic & Revenue Report, January, 2004
3. Total Revenue by Month & Year, January, 2004
4. Investment Report, January, 2004
5. Financial Statements, January 31, 2004 *
6. Traffic Crash Summary Report, January, 2004 *
7. Various News Releases

* in Commission Members' folders

Vice-Chairman Noe thanked Mr. Dixon for his report. He asked if the Executive Director had a report.

Director Suhadolnik replied no report, Mr. Vice-Chairman.

Vice-Chairman Noe asked for a report from Chief Engineer, Dan Castrigano. He welcomed Dan back from his recent absence. Mr. Castrigano said he had four resolutions for the Commission's consideration this morning.

The first resolution is entitled, "Resolution to increase the Executive Director's authority to purchase additional sodium chloride (rock salt) under Invitation No. 3947." You may recall on July 21, 2003 Resolution No. 30-2003 was approved awarding the Commission's requirements for sodium chloride or rock salt for this winter season to four bidders. The estimated quantity for that contract was approximately 55,500 tons. Unfortunately, this winter is living up to expectations again – almost but not quite as bad as last winter, although I saw on the news that in Cleveland we are within ten inches again of getting to the top 10 snowiest winters on record. That being said, we have exceeded the estimated quantity for rock salt on this contract. To date on this contract we have spent an additional \$146,340.60 on rock salt. The Executive Director's spending authority is \$150,000.00 for the purchase of materials without going to the Commission. What we would like to do is authorize the Executive Director to purchase the required amounts of rock salt to get us through this winter. The contract provisions do provide for 150% of the total estimated quantity to be furnished by the bidders. It is not a problem; the material is available under the contract. This is just a matter to keep us in accordance with the Bylaws. If the General Counsel would read the Resolved please.

General Counsel read the "Resolved" as follows:

"RESOLVED that the authority originally granted to the executive director and director of contracts administration under Resolution No. 30-2003 shall include authority, as deemed appropriate, to purchase additional quantities of rock salt from the above-mentioned four (4) companies awarded contracts under Invitation No. 3947, as such needs are dictated by the remainder of the 2004 snow and ice season, up to 150% of the originally estimated contract quantities; and

"FURTHER RESOLVED that the executive director of the Ohio Turnpike Commission shall report to the Commission at a subsequent Commission Meeting as to the total additional amount expended for rock salt under Invitation No. 3974."

The Vice-Chairman asked, is there a motion to adopt this resolution?

Commissioner Noe moves and Deputy Director Darwish seconds.

The Vice-Chairman asked, are there any questions? Please call the roll.

The "Resolution to Increase the Executive Director's Authority to Purchase Additional Sodium Chloride (rock salt) under Invitation No. 3947" was moved for adoption as follows:

RESOLUTION NO. 5-2004

"WHEREAS, pursuant to Resolution No. 30-2003 adopted on July 21, 2003, the executive director was authorized to execute contracts with four (4) bidders: (The Detroit Salt Company; North American Salt Company, Cargill, Inc.- Deicing Technology and Morton Salt Company) to furnish to the Commission its requirements for sodium chloride (rock salt) estimated at approximately 55,500 tons for the 2003-2004 winter season; and

"WHEREAS, the Commission's purchasing agent has recently advised the executive director that the Commission has already spent an additional \$146,340.60 and will soon exceed the executive director's contracting authority for the purchase of rock salt under Invitation No. 3947; and

"WHEREAS, pursuant to the Commission's bylaws, additional purchases procured beyond 10% of the original purchasing authority granted by the Commission to the executive director require Commission approval unless, among other exceptions, the increase is a result of "circumstances that would create a life, safety or health-threatening situation;" and

"WHEREAS, it is anticipated that the current inclement winter season will require additional purchases of rock salt to provide the safest driving conditions on the Ohio Turnpike for its customers during the anticipated heavy snow and ice season for 2004; and

"WHEREAS, although this scenario could be viewed as one that could create a "life, safety or health-threatening situation," the executive director feels there is sufficient time to apprise the Commissioners of the anticipated need to exceed his contracting authority to purchase rock salt by more than 10%, and to seek their approval to order quantities beyond those previously approved as dictated by the remainder of the 2004 snow and ice season; and

"WHEREAS, all four (4) of the rock salt vendors have previously agreed to a contract obligation maximum of 150% of estimated quantities, and they will honor orders for the supply of up to 150% of the sum of the estimated quantities of rock salt for all delivery destinations; and

"WHEREAS, the Commission desires to delegate authority to the executive director to take action on behalf of the Commission concerning purchases of rock salt pursuant to the terms and conditions of Invitation No. 3947 in excess of the originally approved contract amounts.

"NOW, THEREFORE, BE IT

"RESOLVED that the authority originally granted to the executive director and director of contracts administration under Resolution No. 30-2003 shall include authority, as deemed appropriate, to purchase additional quantities of rock salt from the above-mentioned four (4) companies awarded contracts under Invitation No. 3947, as such needs are dictated by the remainder of the 2004 snow and ice season, up to 150% of the originally estimated contract quantities; and

"FURTHER RESOLVED that the executive director of the Ohio Turnpike Commission shall report to the Commission at a subsequent Commission Meeting as to the total additional amount expended for rock salt under Invitation No. 3974."

The resolution was adopted with all Members voting in the affirmative. The resolution was identified as No. 5-2004.

The Chief Engineer said the second resolution I'd like to address this morning is a "Resolution Awarding Contract No. 59-04-02." This is the first of three resurfacing contracts on our capital budget for this year. This is for resurfacing the eastbound and westbound roadways from Milepost 168.6 to Milepost 172.0 in Cuyahoga and Summit Counties. We received three bids in response to this contract. The apparent lowest responsive and responsible bid was submitted by the Shelly Company of Twinsburg, Ohio in the amount of \$1,572,319.20. This bidder has satisfactorily performed work of this nature for the Commission in the past. The total amount bid is below the engineer's estimate. As we have been doing for the past 1-1/2 years, this resolution also includes provisions for Quality Control Inspection, Inc. of Bedford, Ohio to perform the construction inspection services on this contract and H. C. Nutting Company of Middleburg Heights, Ohio for the performance of material testing services on this contract. If the General Counsel would read the Resolved please.

General Counsel read the "Resolved" as follows:

"RESOLVED that the bid of **The Shelly Company** of Twinsburg, Ohio, in the amount of **\$1,572,319.20**, for the performance of Contract No. 59-04-02 is, and is by the Commission, determined to be the lowest responsive and responsible bid received for the performance of said contract, and is accepted, and that the chairperson and executive director, or either of them, hereby is authorized (1) to execute a contract with said successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; (2) to direct the return to the other bidders of their bid security, when appropriate, and (3) to take any and all action necessary or proper to carry out the terms of said bid and of said contract; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **Quality Control Inspection, Inc.** of Bedford, Ohio, to Contract 59-04-02 for the purpose of performing construction inspection. Such assignment shall be in accordance with the 2003-2004 Engineering Services Agreement between the Ohio Turnpike Commission and Quality Control Inspection, Inc.; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **H. C. Nutting Co.** of Middleburg Heights, Ohio, to Contract 59-04-02 for the purpose of performing materials testing. Such assignment shall be in accordance with the 2003-2004 Engineering Services Agreement between the Ohio Turnpike Commission and H.C. Nutting Co.; and

"FURTHER RESOLVED that Project No. 59-04-02 is designated a System Project under the Commission's 1994 Master Trust Agreement."

The Vice-Chairman asked, do we have a motion?

Deputy Director Darwish moves and Commissioner Balog seconds.

The Vice-Chairman asked, is there any discussion?

Commissioner Balog asked if the Shelly Company was the successor to Northern Ohio.

The Chief Engineer said yes.

The Vice-Chairman asked the Assistant Secretary-Treasurer to call the roll.

The "Resolution Awarding Contract No. 59-04-02" was moved for adoption as follows:

RESOLUTION NO. 6-2004

"WHEREAS, the Commission has duly advertised according to law for bids upon a contract for repairs and resurfacing of its eastbound and westbound roadways from Milepost 168.60 to Milepost 172.02 in Cuyahoga and Summit Counties, Ohio, herein designated Contract No. 59-04-02; and

"WHEREAS, the Commission has received bids from three bidders for the performance of said contract; and

"WHEREAS, said bids have been reviewed and analyzed by the Commission's chief engineer, and he has submitted a report concerning such analysis and his report is before the Commission and the Commission's executive director has made his recommendation to the Commission predicated upon such analysis; and

"WHEREAS, all bids for said contract were solicited on the basis of the same terms and conditions and the same specifications, and the bid of the Shelly Company of Twinsburg, Ohio, in the amount of \$1,572,319.20 for the performance of Contract No. 59-04-02 has been determined by the Commission to be the lowest responsive and responsible bid received; and

"WHEREAS, the Commission has been advised by its director of contracts administration that said bid conforms to the requirements of Section 5537.07, Section 9.312 and Section 153.54, all of the Revised Code of Ohio, and that a performance bond with good and sufficient surety has been submitted by The Shelly Company.

"NOW, THEREFORE, BE IT

"RESOLVED that the bid of **The Shelly Company** of Twinsburg, Ohio, in the amount of **\$1,572,319.20**, for the performance of Contract No. 59-04-02 is, and is by the Commission, determined to be the lowest responsive and responsible bid received for the performance of said contract, and is accepted, and that the chairperson and executive director, or either of them, hereby is authorized (1) to execute a contract with said successful bidder in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; (2) to direct the return to the other bidders of their bid security, when appropriate, and (3) to take any and all action necessary or proper to carry out the terms of said bid and of said contract; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **Quality Control Inspection, Inc.** of Bedford, Ohio, to Contract 59-04-02 for the purpose of performing construction inspection. Such assignment shall be in accordance with the 2003-2004 Engineering Services Agreement between the Ohio Turnpike Commission and Quality Control Inspection, Inc.; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **H. C. Nutting Co.** of Middleburg Heights, Ohio, to Contract 59-04-02 for the purpose of performing materials testing. Such assignment shall be in accordance with the 2003-2004 Engineering Services Agreement between the Ohio Turnpike Commission and H.C. Nutting Co.; and

"FURTHER RESOLVED that Project No. 59-04-02 is designated a System Project under the Commission's 1994 Master Trust Agreement."

The resolution was adopted with all Members voting in the affirmative. The resolution was identified as No. 6-2004.

Mr. Castrigano said the third resolution is a "Resolution Awarding a Contract for Engineering and Consulting Services to Mannik & Smith Group, Inc." On December 11, 2003, the Commission issued a Request for Proposals for engineering design services for bridge deck replacements on four structures in Fulton and Lucas Counties. We received twelve responses from firms interested in performing these services to the Commission. Myself, the Assistant Chief Engineer and the Staff Construction Engineer reviewed the proposals and concluded that Mannik & Smith Group, Inc. of Maumee, Ohio submitted the best proposal in response to the RFP. This contract is split into two separate contracts. The Shiloh-Whiteville Road and Scott Road structures are scheduled to be constructed in 2004. Mannik & Smith Group submitted a proposal in a "not to exceed" amount of \$114,116.00 to perform engineering design on these two structures. The Fulton-Lucas and Cass Road structures are to be constructed in 2005. The total fee to do design work on these two structures is in a "not to exceed" amount of \$146,104.00. If General Counsel would please read the Resolved.

General Counsel read the Resolved as follows:

"RESOLVED that the Commission hereby selects **Mannik & Smith Group, Inc.** as most qualified to perform the services required under the above-mentioned RFP and authorizes the executive director and the director of contracts administration to execute the engineering services agreement with Mannik & Smith Group, Inc., all in accordance with the terms and conditions of the Commission's Request for Proposals and its responses thereto."

The Vice-Chairman asked, is there a motion?

Deputy Director Darwish moves and Commissioner Balog seconds.

The Vice-Chairman asked, are there any questions? Please call the roll.

The "Resolution Awarding a Contract for Engineering and Consulting Services to Mannik & Smith Group, Inc." was moved for adoption as follows:

RESOLUTION NO. 7-2004

"WHEREAS, on December 11, 2003, the Commission advertised its Request for Proposals (RFP) for engineering, design and certain construction inspection services pertaining to the following bridges located in Fulton and Lucas Counties, said services to include deck replacements/structure rehabilitation:

Shiloh-Whiteville Road Bridge over Ohio Turnpike at Milepost 44.4

Fulton-Lucas Road Bridge over Ohio Turnpike at Milepost 48.4

Scott Road Bridge over Ohio Turnpike at Milepost 49.4

Cass Road Bridge over Ohio Turnpike at Milepost 60.3

and responses were received from twelve (12) firms confirming their interest in serving the Commission; and

"WHEREAS, the Commission's chief engineer, assistant chief engineer and staff construction engineer have reviewed the proposals submitted and concluded, on the basis of the proposals, that Mannik & Smith Group, Inc. of Maumee, Ohio was most qualified to perform the above-mentioned services and recommends that a contract be awarded to Mannik & Smith Group, Inc.; and

"WHEREAS, on January 27, 2004, Mannik & Smith Group, Inc. submitted its Fee Proposal for complete plan development for the Shiloh-Whiteville Road and Scott Road structures in the "not-to-exceed" amount of **\$114,116.00**; and

"WHEREAS, on February 3, 2004, Mannik & Smith Group, Inc. submitted its Fee Proposal for the Fulton-Lucas Road and Cass Road structures in the total "not-to-exceed" amount of **\$146,104.00**; and

"WHEREAS, the Commission has been advised by its director of contracts administration that said RFP selection process and the selection of Mannik & Smith Group, Inc. conforms with the requirements of Ohio Revised Code Sections 153.65 to 153.71; and

"WHEREAS, the executive director has also reviewed the proposals submitted and concurs in the recommendation of the chief engineer, assistant chief engineer and staff construction engineer that a contract be awarded to Mannik & Smith Group, Inc on the basis of their superior technical rating and favorable negotiated fees; and

"WHEREAS, the Commission has duly considered such recommendations.

"NOW, THEREFORE, BE IT

"RESOLVED that the Commission hereby selects **Mannik & Smith Group, Inc.** as most qualified to perform the services required under the above-mentioned RFP and authorizes the executive director and the director of contracts administration to execute the engineering services agreement with Mannik & Smith Group, Inc., all in accordance with the terms and conditions of the Commission's Request for Proposals and its responses thereto.

The resolution was adopted with all Members voting in the affirmative. The resolution was identified as No. 7-2004.

Mr. Castrigano said the final resolution this morning is a "Resolution Awarding Contracts Nos. 53-03-01 and 53-03-02." This pertains to the reconstruction of the Commission's Blue Heron and Wyandot Service Plazas located at Milepost 76.9 in Sandusky County. This contract incorporated provisions for separate contract awards to be bid as the individual four trades packages or a single combination award for the complete project. We received eleven bids for performance of the work. The apparent low bids were received as individual packages for performance of the individual trades as follows:

<u>Bid Package</u>	<u>Bidder</u>	<u>Amount</u>
1 - Site Work/Gen. Trades	Mosser Construction, Inc. (Fremont, OH)	\$20,844,400.00
2 - HVAC/Mechanical	Warner Mechanical, Inc. (Fremont, OH)	1,634,775.00
3 - Plumbing	Dimech Services, Inc. (Toledo, OH)	819,000.00
4 - Electrical	Vaughn Industries (Carey, OH)	<u>1,533,000.00</u>
	Total Awards	\$24,831,175.00

Although the total amount was approximately 4.5% above the engineer's estimate, it is within the 10% range as required by the Commission's Bylaws. Furthermore, Mosser Construction, Inc. and Warner Mechanical, Inc. have both performed satisfactorily in the past with the Commission. Although Dimech and Vaughn Industries have not had a prime contract with the Commission in the past, our construction manager on this project, Dick Corporation, has contacted references for both Dimech and Vaughn with favorable results.

Again, this resolution also includes provisions for materials testing and environmental services as follows: materials testing shall be performed by Solar Testing Labs of Cleveland, Ohio; environmental services shall be performed by TTL Associates, Inc. of Toledo, Ohio and as you may recall in August of 2003, Dick Corporation was part of Resolution No. 36-2003 and was assigned to construction management for this project. Would General Counsel please read the Resolved.

General Counsel read the Resolved as follows:

"RESOLVED that the above-mentioned bids in the total amount of **\$24,831,175.00**, for the performance of Contract Nos. 53-03-01 and 53-03-02, are determined by the Commission to be the lowest responsive and responsible bids received for the performance of said contract, and are accepted, and that the chairperson and executive director, or either of them, hereby is authorized: 1) to execute a contract with each of the four (4) successful bidders in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; 2) to direct the return to the other bidders of their bid security, when appropriate; and 3) to take any and all action necessary or proper to carry out the terms of said bid and of said contracts; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **Solar Testing Labs** of Cleveland, Ohio, to Contracts 53-03-01 and 53-03-02 for the purpose of performing materials testing. Such assignment shall be in accordance with the 2003-2004 engineering services agreement between the Ohio Turnpike Commission and Solar Testing Labs; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **TTL Associates, Inc.** of Toledo, Ohio, to Contracts 53-03-01 and 53-03-02 for the purpose of providing environmental services. Such assignment shall be in accordance with the 2003-2004 engineering services agreement between the Ohio Turnpike Commission and TTL Associates, Inc.; and

"FURTHER RESOLVED that pursuant to Resolution No. 36-2003 adopted on August 18, 2003, **Dick Corporation** of Brecksville, Ohio has been assigned to Contracts 53-03-01 and 53-03-02 as the construction manager for the purposes of providing construction management and inspection services. Said assignment is in accordance with the agreement of December 3, 2003 between the Ohio Turnpike Commission and Dick Corporation; and

"FURTHER RESOLVED that Project Nos. 53-03-01 and 53-03-02 are designated a System Project under the Commission's 1994 Master Trust Agreement."

Mr. Castrigano said Mr. Vice-Chairman I believe you and other members of the Commission received a letter from the International Brotherhood of Electrical Workers, Local 8 regarding one of the bidders on this contract. This report was investigated, and I believe General Counsel you have a brief summary of that investigation.

General Counsel Noelle Tsevdos said included in the Commission Members' packets is a copy of a letter which all the Members may have received in the mail, including a copy of my written report regarding the allegations in the letter. Over the course of the last few business days, Assistant Chief Engineer Rob Fleischman and myself, along with Dick Corporation, conducted an

investigation into the allegations in the letter. We also reviewed the attachments that came with the letter which were not received until late Thursday afternoon or Friday morning. Just to give you an overview of the investigation, I'd like to state the following:

The first allegation suggests that the Union included a document or book on Vaughn Industries. Based upon a review of the letter and the enclosures, we could not find any document or book on Vaughn Industries that would suggest they were not qualified. I can tell you that it is our practice that before we even make a recommendation to the Commission that the Engineering Department and the construction manager assigned to the project check the references of the companies for the bidder in question. After receiving the letter, Rob Fleischman requested Dick Corporation to report on what references were checked. Four different references were obtained – one from Ruscilli Construction, Gilbane Construction and University of Findlay. All of these references reported favorably on Vaughn Industries. Nobody reported any problems. In addition, the company that is the apparent low bidder on the contract for general trades work, Mosser Construction, also provided a favorable reference for Vaughn Industries. None of these initial four identified any problems with their work performance on any other public improvement job. Because the letter also refers to problems with Vaughn Industries at the Blanchard Valley Hospital project, Dick Corporation contacted Jim Gilgenbach who is the Facilities Service Manager for the Blanchard Valley Health Center. Mr. Gilgenbach did state that Vaughn performed satisfactorily on that project. There were some problems on that project which dealt more with the project coordination amongst the trades working on the project. We inquired whether or not the public authority required that project coordination drawings or plans be prepared or required for this project which generally facilitates how the trades work on the project as far as schedules, construction and all trades working together. They did not require project coordination plans for this project which may have eliminated or avoided some of the problems that were experienced.

The Assistant Chief Engineer confirmed that coordination plans are required for our project for the reconstruction of the Blue Heron and Wyandot Service Plazas. It is our opinion that this should not be a problem on our project.

General Counsel said the references do not suggest any problems with the qualifications of this bidder.

Ms. Tsevdos said the second allegation in the letter refers to a newspaper article in the Akron Beacon Journal and correspondence. It refers to the fact that the City of Akron decided not to select or award a bid to Vaughn Industries. It refers to a quote from a former official of the City of Akron. The Assistant Chief Engineer was unable to contact that particular city official as he no longer works for the City of Akron. However, he did contact an engineering firm that developed the plans for that particular project. He spoke with Ralph Hendrick who is the Vice-President of GPD, who indicated that they would recommend Vaughn Industries and that the decision not to award Vaughn had nothing to do with their competence or prior job performance. Based upon the information that we do have available to us, I don't think the second allegation contained in the Union letter forms a basis for the Commission to reject this bidder.

The third allegation in the letter references OSHA-type issues against Vaughn Industries. I did verify there are a proposed citation and a fine pending against Vaughn Industries that was related to a fatal accident which occurred on the project on May 7, 2003. The proposed fine at this time is in the amount of \$192,150.00. There are proposed citations also. However, Vaughn has contested the citations and the penalties that are proposed. Under the guidelines, OSHA is required to go through an administrative hearing at this point. The parties, both OSHA and Vaughn, are involved in litigation and there has been no final determination regarding the 2003 citations. There were other minor citations issued against Vaughn – one from July 2003 and other citations and fines that were paid by settlement during the period from 1986 to 1994. A lot of these citations are what we consider very remote in time and I don't think the older citations should form the basis for

rejecting this company as a bidder. However, because of the recent possible action against Vaughn Industries by OSHA which is currently pending, it is my recommendation that the Commission authorize the Chief Engineer to meet with Vaughn Industries to discuss their safety record and discuss the particulars of the OSHA citation and proposed fine. And further, that the Director of Safety Services also meets with Vaughn to go over their safety plans, procedures and protocols along with Dick Corporation, as construction manager. If they are satisfied that the pending citations are not a concern to them, then the resolution which has been drafted and included in your packet which I have just read authorizes the Executive Director to enter into a contract with Vaughn Industries.

Ms. Tsevdos said the fourth allegation is related to litigation before the National Labor Relations Board (NLRB). It deals with a dispute between Union Local 8. The author of the letter referenced actions that were taken against certain employees of Vaughn Industries. It is my opinion that the litigation before NLRB is an internal labor dispute and does not form the basis for rejecting this company.

Ms. Tsevdos said the fifth allegation in the letter refers to a decision in federal court relating to litigation between employees of Vaughn Industries and Vaughn Industries' retirement benefits plan under the terms of the ERISA statute which is a federal retirement income security statute. I also don't consider this litigation, which is ongoing and on appeal in the United States Court of Appeals Sixth Circuit, to be the basis for the Commission rejecting Vaughn. It dealt with the right of the employees to obtain information regarding their retirement benefits plan. It does not go to the qualifications of this particular bidder.

Ms. Tsevdos said the sixth allegation relates to a determination from 1994 issued by the State of Ohio, Department of Industrial Relations regarding prevailing wage violations which are also what I would consider to be not relevant. All contractors that work on a public improvement project are required to comply with Ohio's prevailing wage statute whether they are a union or non-union shop. We don't have any indication from the State of Ohio that there are any current citations or determinations that have been rendered against Vaughn Industries. At this point, in regard to allegation No. 6, I don't believe there is a basis for the Commission to reject this company.

General Counsel said in summary, I would recommend that the Chief Engineer and Dick Corporation sit down with Vaughn Industries prior to the execution of the contract to go over any safety issues or concerns based on the information that we have available to us and review their safety program/protocol to make sure that they are a qualified bidder. If they are satisfied with the information obtained, they should advise the Executive Director and he can then enter into a contract with Vaughn Industries to perform the electrical work on this project.

Mr. Castrigano thanked General Counsel for her report and further recommended that the Commission adopt this resolution.

Vice-Chairman Noe said it is my understanding that we are going to adopt this resolution with the exception of Vaughn and upon the determination of the Executive Director and Dick Corporation that everything is cool then that will be done at that time. Is that what we're saying?

General Counsel said no. The way the resolution has been drafted it doesn't direct the Executive Director to enter into a contract. It **authorizes** the Executive Director and the Director of Contracts Administration to enter into a contract. What we would recommend is that once the meeting is held if everyone is satisfied that there are no safety issues with regard to this project, that the contract be executed. As the resolution has been drafted, it merely authorizes the Executive Director to execute a contract. If they determine not to recommend executing the contract, we can report back to the Commission at the next meeting.

Vice-Chairman Noe said but the other three, we will enter into a contract with them, correct? I'm just making sure that everyone understands this before we get the motion on the table. OK, I'll entertain a motion for approval.

Commissioner Balog moves and Deputy Director Darwish seconds.

Vice Chairman asked if there was any discussion.

Commissioner Dixon said yes, a couple things in two different areas. I am very happy and excited about the efforts that the Commission under the leadership of Noelle and Kathy and Jerry have made in trying to change the culture here as far as minority and doing business with small companies. I haven't approached this at the last couple of meetings because I know this takes time. I am a little disappointed today with this contract in particular. The FBE, who is Mosser Construction -- I'm sorry, I mean Western Reserve, I apologize. Do you know who that is? Mosser Construction is using Western Reserve Interiors as a sub on this contract for \$1.4 million.

Mr. Castrigano said that's correct. Personally, I don't know this firm.

Commissioner Dixon said then we have \$8,000.00 or another \$9,000.00 on a contract for \$25 million.

Mr. Castrigano said this is by no means the entire subcontracted amount of this \$24 million project. These are only the subcontractors that have been identified to date. There can be subcontractors added to this contract throughout the term of the construction.

Commissioner Dixon said the qualifying words are "can be," and you are asking me just like I'm going discuss another area to vote on a "can be." Okay, I need to know it "will be" before I am satisfied on the contract.

Commissioner Dixon said on another matter, what you are asking us to do on this resolution is to give away our authority. You are asking us to allow you to do this contract after you have done your work. You are supposed to bring the contract to us when the work is done and you're asking us to give up our part of the concept. And to trust you -- which we do trust you -- but this is a \$25 million contract. You are asking us to step out of our participation in this contract and give you the authorization after you have done your due diligence. I don't sign blank checks.

Vice-Chairman Noe said, Mr. Dixon, with all due respect, I think the only issue is, do we have any concerns about Vaughn Industries. I think regarding the other three contractors, the due diligence is done. They felt the due diligence was done on Vaughn Industries until there was a letter received in opposition to the awarding of that contract. I second your feeling that Noelle, the staff, and Rob did a tremendous job in a short period of time because they had actually four days including the weekend to put together this report for this meeting. I think the point made is to do more due diligence to make sure that everything they learned is accurate. I think that's what it is all about -- just in regard to Vaughn Industries -- not the other three. I think if you want to talk about Vaughn Industries, that may be the issue but as far as the other three I think everything was done in accordance to everything we have ever done on any contract.

Commissioner Dixon said, Mr. Acting Chairman, in all due respect, I understand what you are saying, but if the work is incomplete, the work is incomplete. We have some concerns. Again, the concern is only with \$1.5 million out of a \$25 million contract, but \$1.5 million is \$1.5 million. Does that have a consequential action on the other parts of the contracts? I don't know. I'm not sure, but again it is my feeling that we are being taken out of the loop. When we authorize things to be done later on such a large contract, I think we're asking for trouble. Quite frankly, if I was in

Administration, I wouldn't do it because I would want the Commission behind me by backing me up on that vote and saying the Commission voted for this.

Executive Director Suhadolnik said I would echo the comments that Vice Chairman Noe has made. When we did our evaluation of the four lowest bidders, everything seemed to be appropriate. We had some information in the eleventh hour which is why I asked legal counsel to draft a report, and I realize folks did not have ample opportunity, but that was the timing of events which is why I aired it in a public meeting so that everyone would know all the information that we had. There was no attempt to hide anything, dismiss anything, or cover anything up. We put everything out in the public arena. It was the best information that we had. Again, if the majority of the Commissioners were to vote for approval of the resolution to authorize us to do that because we would like to get moving on the service plazas. We have already notified the vendors at the service plazas that are currently on those sites that they need to vacate them. We need to get going so that a year from now we'll have new buildings and facilities there. We are anxious to get going on it. We are where we are. I wish everything worked out in a timely manner, but the information was received late, and we did the best we could. If you are uncomfortable, obviously you'll have to take other action. In terms of Vaughn Industries, I believe we have done the best we could have done with the time constraints we had.

Commissioner Dixon asked what happens if we wait a month on the contract.

Vice-Chairman Noe said first of all there is a motion and a second on the floor so I think we need to move on.

Commissioner Dixon said this is still in discussion unless you call point.

Vice-Chairman Noe said I understand that. I'm not going to call point, but I wanted to make sure you are heard fully. But the issue I feel is the Executive Director, Noelle and the staff did a good job in doing their homework. I think by giving the Executive Director and Dick Corporation the ability to go in and feel comfortable that everything is fine in accordance with Noelle's report, we need to move forward. I think if the Executive Director comes back and said there is an issue, we will see it in a month. We'll have to look at the second lowest bidder and re-open the electrical trade again. I don't think that's the issue right now. As it is, we need to move forward on this, and the Executive Director and Noelle felt this was the best way to move forward and that's why it's on the agenda the way it is.

Commissioner Dixon said please forgive me, I don't mean to be argumentative, but I have been doing this a long time. Often times staffs bring things to Boards or Commissions or whatever and make it seem like the world is going to end if we don't approve something right then and there. I just sit back and ask that same question - what's going to happen if we just wait a month? What's going to happen if it snows today and it continues to snow and we can't work on that project. Are we going to close down the Turnpike? No, we will not. The same thing is going to happen if we wait a month and get the full information. I'm only one vote. If the majority of the members tell me we should go forward on this then that's fine. I'll be cooperative and we'll walk out that door and we'll all be focused and we'll say this is the greatest thing that ever happened to the Commission. But right now, at this time, we can have open discussion. I'm simply saying to you that the legal staff, our lawyer, has told us that there are some concerns that we need to look at. I'm saying that I want to get more information on how many minorities we are using on this \$25 million we are about to spend. Okay? I'm telling you that there are a couple things we need to look at and I would hope we could wait a month, or if you want to call another special meeting for tomorrow and get it tonight, but I'm just saying we need more research and more due diligence on this.

Mr. Castrigano stated I think that's the way we have to go. We'd have to have a special meeting tomorrow or Wednesday. These buildings are scheduled to close on March 1st. It's a very

tight schedule. If we delay this project a month, there is no way we are going to get them re-opened by Memorial Day of 2005 when the heavy traffic starts.

Commissioner Dixon said, what's going to happen if it snows?

Mr. Castrigano said snow will not affect demolition of the buildings at all.

Commissioner Dixon said, bad weather will not affect the demolition at all? I'm not an engineer, but I know better than that. All kinds of contingencies have to be built in for things happening and a month is not going to be the demise of this project.

Vice-Chairman Noe asked if there was any more discussion.

Deputy Director Darwish stated that I concur with Dan. Most of the demos we do in the winter season – almost all of the demos. So the weather won't affect it.

Commissioner Dixon said that's, right but there are contingencies built in for bad things that might happen and might slow the project. But once I vote on this, I can never come back and say -- I can ask the question but there won't be any wiggle room. Once we vote on this, it's a done deal.

Deputy Director Darwish asked Dan if there were any liquidated damages in the contract.

Mr. Castrigano said there are liquidated damages in this contract for all four contracts for specific milestones on the contract.

Deputy Director Darwish said, so if we're behind in the schedule, there may be a claim against the contractor by the Turnpike Commission?

Mr. Castrigano said, yes that's correct. That becomes especially important when you're dealing with multiple contracts. We go through it all the time.

Commissioner Dixon said that's great, but why do you wait until the last minute to bring a contract before the Board? Okay, let's say that everything you say is absolutely positively correct, why do you wait so I have to vote right here and right now without having this discussion to vote on this contract? Since you want to nail me in the corner, I'm going to ask you that question. I've taken into consideration that you have been ill and I appreciate that, but there are other people here and you are telling me right here and right now that I have to vote on this contract or that we won't be able to proceed and it's going to cost us a lot of money. You can't tell me how many minorities are going to participate in a \$25 million expenditure, but the world is going to end if I don't vote on it today. It's not right.

Vice-Chairman Noe said if we would not have received the letter last week from IBW-8 this would have been a normal contract that we have done in every service plaza and it is my understanding going back to a lot of service plazas. I have complete confidence in legal counsel's ability to look at this. I think that the conclusion they made and I'll read it again, "if the Executive Director is satisfied that Vaughn Industries is a qualified bidder after this review has been conducted, he should be authorized by the Commission to execute a contract with this bidder." I think we need to move forward. Obviously, your opinion is welcome and needed and it just gets to a point where we need to vote on this so we can keep this thing moving forward.

Commissioner Dixon said he understands that. I appreciate your indulgence.

Vice-Chairman Noe said, any other comments on this? If not, will the Assistant Secretary-Treasurer please call the roll.

The "Resolution Awarding Contracts No. 53-03-01 and 53-03-02" was moved for adoption as follows:

RESOLUTION NO. 8-2004

"WHEREAS, the Commission has duly advertised according to law for bids upon a contract or contracts for the construction of the Ohio Turnpike **Blue Heron** and **Wyandot Service Plazas** located at Milepost 76.9 in Sandusky County, herein designated as **Contract Nos. 53-03-01 and 53-03-02**, and

"WHEREAS, the subject project was divided into bid packages representing four (4) individual trades: Bid Package 1 (site work & general trades), Bid Package 2 (HVAC/Mechanical), Bid Package 3 (plumbing) and Bid Package 4 (electrical), and bidders were given the option to submit a single bid for one trade or a combination bid for all four (4) trades under Bid Package 5; and

"WHEREAS, the Commission received bids from eleven bidders for the performance of said contract or contracts; and

"WHEREAS, said bids have been reviewed and analyzed by the Commission's chief engineer and the director of contracts administration, and both have submitted a report concerning such analysis and their reports are before the Commission; and

"WHEREAS, the Commission's executive director has made his recommendation to the Commission predicated upon such analysis; and

"WHEREAS, all bids for said Contracts were solicited on the basis of the same terms and conditions and the same Specifications, and the following bids for the performance of Contract Nos. 53-03-01 and 53-03-02 have been determined by the Commission to be the lowest responsive and responsible bids received; and

<u>Bid Package</u>	<u>Bidder</u>	<u>Amount</u>
1 - Site Work/Gen. Trades	Mosser Construction, Inc.	\$20,844,400.00
2 - HVAC/Mechanical	Warner Mechanical, Inc.	1,634,775.00
3 - Plumbing	Dimech Services, Inc.	819,000.00
4 - Electrical	Vaughn Industries	<u>1,533,000.00</u>
	Total Awards	\$24,831,175.00

"WHEREAS, the Commission has been advised by its director of contracts administration that said bids conform to the requirements of Section 5537.07, Section 9.312 and Sections 153.50 through 153.54, all of the Revised Code of Ohio, and that a performance bond with good and sufficient surety has been submitted by each company.

"NOW, THEREFORE, BE IT

"RESOLVED that the above-mentioned bids in the total amount of **\$24,831,175.00**, for the performance of Contract Nos. 53-03-01 and 53-03-02, are determined by the Commission to be the lowest responsive and responsible bids received for the performance of said contract, and are accepted, and that the chairperson and executive director, or either of them, hereby is authorized: 1) to execute a contract with each of the four (4) successful bidders in the form heretofore prescribed by the Commission pursuant to the aforesaid bid; 2) to direct the return to the other bidders of their bid security, when appropriate; and 3) to take any and all action necessary or proper to carry out the terms of said bid and of said contracts; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **Solar Testing Labs** of Cleveland, Ohio, to Contracts 53-03-01 and 53-03-02 for the purpose of performing materials testing. Such assignment shall be in accordance with the 2003-2004 engineering services agreement between the Ohio Turnpike Commission and Solar Testing Labs; and

"FURTHER RESOLVED that the Commission hereby authorizes the executive director and the chief engineer to assign **TTL Associates, Inc.** of Toledo, Ohio, to Contracts 53-03-01 and 53-03-02 for the purpose of providing environmental services. Such assignment shall be in accordance with the 2003-2004 engineering services agreement between the Ohio Turnpike Commission and TTL Associates, Inc.; and

"FURTHER RESOLVED that pursuant to Resolution No. 36-2003 adopted on August 18, 2003, **Dick Corporation** of Brecksville, Ohio has been assigned to Contracts 53-03-01 and 53-03-02 as the construction manager for the purposes of providing construction management and inspection services. Said assignment is in accordance with the agreement of December 3, 2003 between the Ohio Turnpike Commission and Dick Corporation; and

"FURTHER RESOLVED that Project Nos. 53-03-01 and 53-03-02 are designated a System Project under the Commission's 1994 Master Trust Agreement."

The resolution was adopted with the following Commission Members voting in the affirmative: Mr. Balog, Deputy Director Darwish and Mr. Noe.

Mr. Dixon voted nay.

The resolution was identified as Resolution No. 8-2004.

Vice-Chairman Noe asked the Executive Director to give the Commission Members a report on his findings just for the record so we know what's happened as far as the negotiations.

Commissioner Dixon asked for a report on any additional minority participation on this project.

Vice-Chairman Noe said I'm sure there's no problem with that request.

Mr. Castrigano said that concludes my report.

Vice-Chairman Noe said thank you. Any other questions for Dan? Great. Mr. Steiner, do you have a report?

Mr. Steiner stated that January was another record month for traffic on the Ohio Turnpike. The first line graph of his power-point presentation shows monthly passenger traffic volumes for the past two years. The most current months from February 2003 through January 2004 is represented by the red line and the prior 12 months from February 2002 through January 2003 is represented by the blue line. For most of the past twelve months, our passenger car traffic has been running slightly ahead of the volume from the prior period. This trend did continue in January, 2004, with 2.6 million passenger cars traveling the Turnpike beating the previous all-time record for the month set in 2003 by 48,000 cars or 1.9%.

Commercial traffic over the last twelve months was slightly behind the volumes from the prior twelve months up until September when the situation reversed itself. Commercial traffic in

December 2003 exceeded the volume from December 2002 by 6.7%, however, the traffic volume in January 2004, which totaled 680,000 vehicles, fell short of the volume from 2003 by 8,000 vehicles or 1.2%. This large swing from December to January was due in large part to a timing issue as I will illustrate in just a minute. Commercial traffic is much heavier weekdays than on weekends and in December 2003, we had one more weekday than December 2002 and January 2004 had one less weekday than January 2003. This graph shows the total traffic volumes for the past two years which is fairly comparable up until the last quarter of 2003 when the traffic volumes began to show growth. 3.3 million vehicles traveled the Turnpike in January 2004 exceeding the previous record set in 2003 by 41,000 or 1.2%.

As I mentioned earlier, our traffic varied significantly by the day of the week and I thought it might be interesting to take a look back at our daily traffic for 2003. This graph shows the daily passenger car traffic by the day of the week. I admit the graph is a little busy, but you can see the passenger car traffic ranges from a low of about 80,000 vehicles a day in January and February to about double that number on Fridays and weekends in July and August. You can also see that Friday is represented by the red line and is the busiest day of week for passenger cars. Tuesday represented by the green line is generally the slowest day of the week for car traffic. The all-time record date for passenger car traffic was the Wednesday before Thanksgiving and, Wednesdays are represented by the black line.

To make the graph a little easier to read I eliminated all but three days of the week. Again, Friday, represented by the red line, is consistently the busiest day of the week for passenger cars. Note the traffic on Sundays, represented by the blue line, is normally the second busiest day of the week except in the winter months when it was actually the slowest day of the week. This illustrates a very high recreational use of the Ohio Turnpike particularly during the warmer weather months. Saturday, which is not shown here, is also a very busy day for passenger car traffic other than during the winter season. Tuesday, represented by the green line, is generally the slowest day of the week for car traffic followed closely by Mondays and Wednesdays. Thursdays are usually a little busier.

In contrast to passenger cars, the level of commercial traffic is much more consistent throughout the calendar year. It increases only slightly during the summer months. It is also very apparent that weekday traffic is much higher than the weekend traffic. Again, to make the graph easier to read, I eliminated a few days of the week. Commercial traffic averages between 30,000 and 35,000 vehicles per day on Wednesdays and Thursdays, which are represented by the black and gray lines respectively. Traffic volumes on Tuesdays and Fridays, which are not shown here, are not far behind these levels. Commercial traffic on Mondays, also not shown here, is somewhat lower averaging about 25,000 vehicles per day.

In stark contrast, commercial traffic on Saturdays and Sundays represented by the pink and blue line, respectively, average less than 15,000 vehicles per day.

Finally, this graph shows 2003 traffic by day of the week, total traffic, and with passenger car traffic highest on Fridays and the weekends and commercial traffic highest during the week, our toll collectors are kept busy throughout the entire week.

Mr. Steiner said, Mr. Vice-Chairman, that concludes my report and I'd be happy to respond to any questions.

Vice-Chairman Noe said thank you, Jim. It's easy to see when Thanksgiving is by these graphs; it's amazing. Any additional reports – Mr. Erickson?

Mr. Erickson stated that Mr. Steiner and he are in the beginning stages of developing a new Investment Policy for the Commission. The one that you have now and are working under is ten

years old. We just want to update it and provide you something to look at either at the next meeting or the meeting thereafter. Perhaps, we could adopt it at that point. Any questions? Thank you.

The Vice-Chairman asked, is there a report from our general consultant?

Mr. Yacobucci said no report.

The Vice-Chairman asked, is there a report from our trustee, Mr. Lamb?

Mr. Lamb said no report.

The Vice-Chairman asked, is there a report from Captain Ferguson of the OSHP?

Captain Ferguson said no report.

The Vice-Chairman asked, is there a report from our General Counsel, Noelle?

Ms. Tsevdos said no report.

The Vice-Chairman said you've done enough work in the last five days. Any other questions or comments? Steve Buehrer, want to add anything to the record?

Representative Buehrer said I'm just pleased to be here in your presence.

The Vice-Chairman said, I'll accept a motion to adjourn the meeting until Monday, March 15, 2004.

Deputy Director Darwish moves and Commissioner Balog seconds. All Members voted in the affirmative to adjourn at 11:00 a.m.

Approved as a correct transcript of the proceedings of
the Ohio Turnpike Commission



George F. Dixon, Secretary-Treasurer