



COMMONWEALTH of VIRGINIA

Office of the Governor

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August 1, 2004

Via E-Mail

The Honorable Mark R. Warner
Governor, Commonwealth of Virginia

The Honorable John H. Chichester, Chairman
Virginia State Senate Finance Committee

The Honorable Vincent F. Callahan, Jr., Chairman
Virginia House of Delegates Appropriations Committee

Dear Gentlemen:

RE: Library of Virginia Building

Chapter 4, 2004, Virginia Acts of Assembly, Special Session #1 (The Appropriation Act), Item 58 requires that, “in consultation with the Secretary of Education, the Office of the Attorney General and third party professional engineers with experience in the field of building environmental controls,” I report to you “*plans, including a schedule of steps and events, which are to be implemented with a view toward corrective actions addressing remaining design and construction issues associated with the maintenance and operation of the Library of Virginia building in Richmond . . .*”

History

1991—1997

Design work for the building began in 1991. Construction commenced in 1993, and the Library moved in during 1996.

The Department of General Services (DGS) contracted for design and engineering services with the internationally known architectural firm of Skidmore Owings & Merrill (SOM) as well as Richmond based architects, Glave Newman Anderson (Glave). Omni Construction, Inc. (later The Clark Construction Group, Inc.) was the general contractor.

The Library occupied the building before it was completed.

The Honorable Mark R. Warner
The Honorable John H. Chichester
The Honorable Vincent F. Callahan, Jr.
August 1, 2004
Page 2

1998—2001

The building's five distinct, complex climate control systems did not function properly from the outset. The engineering firm of Hankins and Anderson was hired by the architects to design the HVAC systems. The Hankins firm returned time and again in an apparently unsuccessful attempt at remediation. DGS subsequently began separate efforts to fix the problems and since then has expended nearly \$2 million creating systems that now deliver the criteria called for by the Library. Much of that money was spent repairing systems that appear to have been designed improperly. Some funds were expended for upgrades and enhancements. According to the Librarian, the HVAC systems now work.

In June 1996, shortly after completing its work, the general contractor demanded reimbursement for significant unplanned costs, which the company claimed were the result of delays caused by "others." Omni (Clark) subsequently sued DGS in a series of lawsuits that ultimately claimed approximately \$5.9M. The Commonwealth counterclaimed, and the matter was settled between the parties in January 2001, with the Commonwealth's payment of \$1.1M to Omni (Clark). The architects and engineers tell us they were not part of the negotiations that resulted in settlement, despite the fact that many of the delay claims by Omni (Clark) were based upon allegations of design errors and omissions.

2002—Present

In the summer of 2003, the continued dissatisfaction of the Library tenant was brought to the attention of my office. A comprehensive review of the design and construction history of the building was conducted. It was clear that past efforts to make effective contact with SOM had not been successful. Deputy Secretary Richard Zorn was tasked to undertake more assertive efforts to bring the design team to the table for the purpose of addressing and resolving the Library's complaints.

In September 2003, Mr. Zorn contacted SOM and Glave, both of which agreed to work together to address our concerns. Subsequently representatives of the two architectural firms, joined at their request by their HVAC engineer, Hankins and Anderson, were in weekly contact with Mr. Zorn by email, regular mail, conference calls, and face-to-face meetings.

In March 2004, SOM/Glave/Hankins were presented an outline of the Commonwealth's claims that served as the format for discussions from that point forward. The Commonwealth has also provided significant documentation in support of its positions to SOM/Glave/Hankins, and inventories of all of these materials have been regularly provided to the Attorney General. During this period, additional diagnostic testing was also conducted and data gathered, with SOM et.al. receiving notice and opportunity to be present during all testing. Test results and data have been provided to these parties.

On July 27 and 28, 2004, nearly two full days of meetings provided the engineers and architects on both sides of this claim opportunity to work through their respective technical positions and

The Honorable Mark R. Warner
The Honorable John H. Chichester
The Honorable Vincent F. Callahan, Jr.
August 1, 2004
Page 3

discuss their views of the design, construction, and operation of the Library building. When these meetings concluded, we were assured that SOM, et.al. would notify us very shortly as to how they propose to resolve these matters.

On behalf of the Commonwealth, we have asked for reimbursement of monies already spent to remedy what our consultants advise are design errors and omissions. In addition to reimbursement, we have requested that SOM et.al. replace the windows and correct any remaining problems with the building at their expense. Our claim, therefore, is not for money alone.

Future Plan(s)

This office intends to continue a significant commitment of resources through this summer. We are optimistic a settlement proposal will result. In the event our efforts are not successful, either as measured by the value of an offer or the absence of one, we will examine our alternatives, including litigation.

If settlement efforts should fail and litigation were our choice, we are advised to anticipate litigation related costs of as much as \$800,000. We would also need to consider the time it would take our staff and the courts to work through any litigation, as well as the uncertainty of the outcome. Last December, the Attorney General designated key staff to handle potential litigation of this important and complex matter, informing my office that he would be unable to guarantee continued availability of staff after July 1. We appreciate the Attorney General's continued support of our efforts to reach settlement and avoid litigation.

At this time, the building's HVAC systems are working. The windows and some aspects of the exterior wall systems do not function properly. DGS has a plan to replace the windows and repair the walls but, obviously, hopes our negotiations will address these matters without further expenditure of Commonwealth funds.

If you require additional information or clarification, I remain at your call to provide it. We shall keep you apprised as events progress and appreciate your continued understanding and support for the efforts underway.

Sincerely,

Sandra D. Bowen

c: The Honorable Jerry Kilgore
The Honorable Belle Wheelan