

ND STATE BOARD OF HIGHER EDUCATION

Minutes—August 22, 2007

Conference Call

The State Board of Higher Education met August 22, 2007, via conference call. The Board president called the meeting to order at 10 a.m. CT. Members participating:

Mr. John Q. Paulsen, president	Ms. Pam Kostelecky
Mr. Richie Smith, vice president	Mr. Nate Martindale
Ms. Sue Andrews	Mr. Grant Shaft
Mr. Jon Backes	Dr. Tom Barnhart, faculty advisor
Mr. Duaine Espegard	

Presidents, campus deans, and campus representatives participating:

Mr. Gordy Binek, BSC	Dr. Lee Vickers, DSU
Dr. Joe McCann, WSC	

Staff members participating:

Mr. Bill Goetz, chancellor
Dr. Michel Hillman, vice chancellor for academic & student affairs
Ms. Laura Glatt, vice chancellor for administrative affairs
Dr. Marsha Krotseng, vice chancellor for strategic planning/executive director of CTEC
Mr. H.P. Seaworth, general counsel/executive secretary
Ms. Debra Anderson, public affairs director
Ms. Sheila Tibke, SBHE administrative secretary/financial aid assistant

LRSC Presidential Search

It was moved by Smith and seconded by Kostelecky to hire Bob Gette to assist with the LRSC presidential search and to approve the consulting contract as presented. Andrews, Backes, Espegard, Kostelecky, Smith, and Paulsen voted aye. Martindale was absent. The motion carried. Exhibit A.

DSU Presidential Search

It was moved by Andrews and seconded by Martindale to approve the proposed timeline for the DSU presidential search. Andrews, Backes, Espegard, Kostelecky, Martindale, Smith, and Paulsen voted aye. The motion carried.

Mr. Shaft joined the meeting at this time.

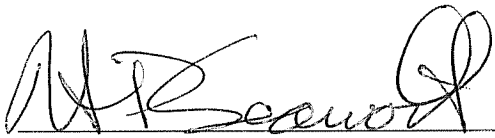
It was moved by Andrews and seconded by Martindale to approve the proposed profile for the DSU presidential search. Andrews, Backes, Espegard, Kostelecky, Martindale, Shaft, Smith, and Paulsen voted aye. The motion carried.

Centers of Excellence Commission

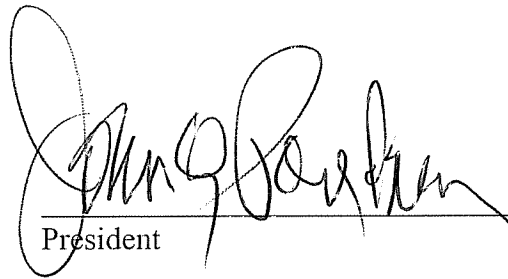
President Paulsen said the Centers of Excellence Commission requested the SBHE appoint an alternate member to the commission in the event that Ms. Kostelecky, Mr. Espegard, or President Paulsen is not able to attend a meeting. President Paulsen recommended Mr. Backes as an alternate member.

It was moved by Smith and seconded by Espegard to appoint Mr. Backes as an alternate member to the Centers of Excellence Commission. Andrews, Backes, Espegard, Kostelecky, Martindale, Shaft, Smith, and Paulsen voted aye. The motion carried.

The meeting adjourned at 10:22 a.m. CT.



Executive Secretary



President

9/20/07

Date

CONSULTING CONTRACT

This Contract is made this 22nd day of August 2007 between the North Dakota State Board of Higher Education (BOARD) and Bob Gette (CONTRACTOR).

1. SCOPE OF SERVICE

CONTRACTOR, in exchange for the compensation paid by the BOARD under this contract, agrees to provide consulting services in connection with the search for the next president of Lake Region State College (LRSC). CONTRACTOR shall provide the following services as directed by the BOARD, including its search committee and chancellor, to assist the LRSC search committee and BOARD with completion of this search:

1.) Organize and facilitate search process

- Work with search committee chair and chancellor to develop a comprehensive search process and corresponding timeline for submission to and approval by the BOARD
- Work with campus on development of web site presence for search process
- Draft correspondence for all phases of the search
- Work with search committee chair to develop meeting agendas and distribute materials in advance of meeting
- Review draft meeting minutes for accuracy and completeness
- Work with campus human resource department and system legal counsel to ensure compliance with state and federal laws, including open records and open meetings requirements
- Participate in all search committee meetings
- Ensure appropriate search process records are maintained

2.) Analyze institutional needs:

- Complete on-campus interviews, as determined by committee chair and chancellor
- Review campus publications and reports
- Work with search committee chair and chancellor to develop an institutional needs analysis, to be presented to the search committee, including: a.) strengths and challenges; b.) statement of priorities and needs; c.) specific leadership characteristics sought in the successful candidate
- Assist the committee with development of an institutional/position profile featuring comprehensive information about the position, the University, the governance system, and the community, for submission to and approval by the BOARD

3.) Recruit strong candidate pool

- Develop national advertisement
- Develop strategies to recruit highly qualified candidates
- Follow up with nominated candidates

4.) Candidate List

- Compile applicant materials for distribution to the search committee
- Evaluate applications to ensure candidates meet minimum requirements
- Assist search committee on completing reference checks and due diligence on most promising candidates
- Assist campus search coordinator in development of schedule and arrange for campus visits
- Gather and summarize feedback from all who meet the candidates and provide to search committee
- With campus coordinator, provide guidelines to candidates for campus visits, including spouse
- Maintain contact with finalists to gauge and enhance their interest in the position

5.) Appointment of Candidate

- Work with committee chair to develop search committee report and recommendation for submission to the SBHE
- Provide chancellor salary and benefit requirements for finalists
- Facilitate communication between finalists and chancellor and SBHE.

Services shall be provided and CONTRACTOR shall at all times act in a manner consistent with the BOARD Core Values stated in SBHE Policy 100.5.

As stated in Section 12 of this CONTRACT, documents relating to this search, including documents generated or in possession of CONTRACTOR, are subject to North Dakota's open records laws. Once an application or nomination is received (whether by BOARD or CONTRACTOR), it is subject to North Dakota's open records laws and therefore CONTRACTOR may not assure candidates that their interest in a position will remain confidential if an application or nomination is received. CONTRACTOR is not authorized to screen candidates who have submitted applications or for whom nominations have been received and CONTRACTOR shall forward all applications and nominations to the search committee.

2. TERM OF CONTRACT

The term of this contract begins on the date signed by both parties and ends upon successful completion of the search.

3. COMPENSATION

BOARD shall pay CONTRACTOR for all services provided a fixed sum of \$17,000, plus allowable expenses. Fees and expenses are payable within 30 days following submission of billing statements by CONTRACTOR. Fee statements shall be submitted as follows: \$5,666.66 following execution of this contract by both parties; \$5,666.67 on or about November 1, 2007; and \$5,666.67 upon satisfactory completion of the search. "Satisfactory Completion" means CONTRACTOR has timely completed each of CONTRACTOR's tasks to the BOARD's satisfaction and the search is successfully completed with an offer extended and accepted and employment contract executed. This fixed sum shall be payment for all services provided by

CONTRACTOR, including services provided by agents, independent consultants or third parties retained by CONTRACTOR, excluding only third party fees for background checks of finalists and other defined expenses.

BOARD shall reimburse CONTRACTOR for the following expenses: reasonable travel expenses, including travel to and from Devils Lake, including mileage at the rate established for state employees and reasonable hotel and meal reimbursement; direct expenses for telephone, advertising, printing, postage; and, third party fees for background checks. Total reimbursement for all expenses may not exceed \$3,000.00, except with BOARD's prior written approval. Payment of expenses shall be made within 30 days of receipt of billing statements, including itemization and verification of travel and other expenses.

CONTRACTOR billing statements shall be submitted to NDUS Vice Chancellor for Administrative Affairs Laura Glatt, who shall forward the statements to LRSC for payment by that institution directly to CONTRACTOR.

4. TERMINATION OF CONTRACT

a. Termination without cause. This contract may be terminated by mutual consent of both parties, or by either party upon 14 days' written notice.

b. Termination for lack of funding or authority. The BOARD may terminate this contract effective upon delivery of written notice to the CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:

- 1) If funding from federal, BOARD, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
- 2) If federal or BOARD laws or rules are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
- 3) If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Any termination of this contract under subsection a. or b. shall be without prejudice to any obligations or liabilities of either party already accrued prior to termination. Upon such termination, CONTRACTOR shall be entitled to the fixed fee paid to date, plus a portion of the remaining fixed fee calculated on a pro rata basis for the time elapsed relative to scheduled total time to anticipated completion of services, and expenses incurred to date of termination.

c. Termination for cause. The BOARD by written notice of default (including breach of contract) to the CONTRACTOR may terminate the whole or any part of this contract:

- 1) If the CONTRACTOR fails to provide services called for by this contract within the time specified or any extension agreed to by the BOARD; or

- 2) If the CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from the BOARD, fails to correct such failures within ten days or such longer period as the BOARD may authorize.

The rights and remedies of the BOARD provided in the above clause related to defaults (including breach of contract) by the CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

5. FORCE MAJEURE

CONTRACTOR shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the CONTRACTOR's reasonable control and the CONTRACTOR gives notice to the BOARD immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

6. MERGER AND MODIFICATION

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be waived, altered, modified, supplemented, or amended, in any manner, except by written agreement signed by both parties.

7. SEVERABILITY

If any term or provision of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term or provision.

8. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without the express written consent of the BOARD. CONTRACTOR agrees to be solely responsible for the performance of any subcontractor. CONTRACTOR shall not have the authority to contract for or incur obligations on behalf of the BOARD.

9. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

10. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify BOARD of all potential claims that arise or result from this contract. CONTRACTOR shall take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the BOARD the opportunity to review and inspect the evidence, including the scene of an accident.

11. ALTERNATIVE DISPUTE RESOLUTION

The BOARD does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to legal action to enforce available remedies.

12. COMPLIANCE WITH PUBLIC RECORDS LAW

CONTRACTOR understands that, except for CONTRACTOR's trade secret and proprietary, commercial, or financial information protected by law and clearly labeled as confidential, BOARD must disclose to the public upon request any records it receives from CONTRACTOR under this contract. CONTRACTOR further understands that any records which are obtained or generated by the CONTRACTOR under this contract, except for records that are confidential under applicable federal or North Dakota state law, may be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact the BOARD immediately upon receiving a request for information under the open records law and to comply with BOARD instructions on how to respond to the request.

13. WORK PRODUCT, EQUIPMENT AND MATERIALS

All work product, equipment or materials created or purchased under this contract belong to the BOARD and must be delivered to BOARD upon request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to BOARD all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable BOARD to protect its rights under this section.

14. INDEPENDENT ENTITY

CONTRACTOR shall perform as an independent entity under this contract and not as an employee of the BOARD for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR will retain sole and absolute discretion in the manner and means of carrying out the CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

15. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

16. BOARD AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

17. TAXPAYER ID

CONTRACTOR's federal ID number is: _____. (If CONTRACTOR does business as an individual, using a Social Security Number, submit CONTRACTOR's SSN on a separate, confidential document.)

18. EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

CONTRACTOR:

Bob Gette

BOARD:

John Q. Paulsen, President

Attest:

H. Patrick Seaworth, General Counsel/Secretary