

RESPONDENT'S ANSWER

Respondent The Ohio State University ("Ohio State" or "Respondent"), pursuant to S.Ct. Prac. R. 10.5 and Ohio R. Civ. Pro. 8 and 12, responds to Relators' Complaint for Writ of Mandamus (the "Complaint") as follows:

FIRST DEFENSE

1. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint, and therefore denies the same.

2. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint, and therefore denies the same.

3. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint, and therefore denies the same.

4. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint, and therefore denies the same.

5. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Complaint, and therefore denies the same.

6. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint, and therefore denies the same.

7. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint, and therefore denies the same.

8. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint, and therefore denies the same.

9. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint, and therefore denies the same.

10. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint, and therefore denies the same.

11. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, and therefore denies the same.

12. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint, and therefore denies the same.

13. Ohio State admits that this Court has original jurisdiction over Relators' Complaint for Writ of Mandamus, but denies the remaining allegations contained in paragraph 13 of the Complaint.

14. Ohio State admits that Ohio Revised Code Chapter 153 sets forth various requirements for the construction of certain public improvements in Ohio, but denies the

remaining allegations contained in paragraph 14 of the Complaint. Further answering, Respondent states that R.C. Chpt. 153 is not the exclusive governing law for the construction of public improvements in Ohio; that certain provisions in R.C. Chpt. 153 apply only to contracts required to be competitively bid; and that R.C. 153.54, in particular, applies only to persons "bidding for a contract" for a public improvement.

15. Ohio State admits the allegations contained in paragraph 15 of the Complaint.

16. Ohio State admits the allegations contained in paragraph 16 of the Complaint paraphrase a portion of the requirements for a construction reform demonstration project and a portion of the definition of construction manager at risk as set forth in Section 8(C)(1) of Sub. H. B. 318, but states that reference should be made to the law in its entirety to ascertain the intent of the General Assembly and determine its proper application in this case.

17. Ohio State admits the allegations contained in paragraph 17 of the Complaint, subject to the notation that Section 8 of Sub. H.B. 318 does not give any particular emphasis to subsection 8(C)(2)(b).

18. Ohio State admits that a construction project known as "ProjectOne - Core Phases" was designated as a Construction Reform Demonstration Project, admits that at the time of its designation as a Construction Reform Demonstration Project, ProjectOne - Core Phases was estimated to be a \$658.3 million project, but states that the contract between Ohio State and Turner construction specifies that the construction budget for the work to be performed by Turner is \$522,368,925, and denies the remaining allegations contained in paragraph 18 of the Complaint.

19. Ohio State admits that it elected to use a Construction Manager at Risk and entered into a contract with Turner Construction Company to perform that role on ProjectONE.

Ohio State admits that the contract requires Turner to furnish a completed project for a cost not to exceed a guaranteed maximum price, that all payments will be made to Turner by Ohio State, and that the contract does not require Turner to furnish a bond to guaranty performance of the contract and payment of laborers, materialmen and subcontractors who work on the project. Ohio State denies the remaining allegations contained in paragraph 19 of the Complaint.

20. Ohio State admits that it did not require Turner Construction to obtain a bond as a condition of selecting Turner as the construction manager at risk for ProjectONE, that the contract it executed with Turner on July 2, 2010 does not require Turner to post a bond, that construction on ProjectONE has commenced and that it intends to complete ProjectONE without requiring that Turner post a bond, but denies that a bond is required by R.C. 153.54 and Sub. H.B. 318, Section 8(C)(2) as alleged in paragraph 20 of the Complaint.

21. Ohio State admits the allegations contained in paragraph 21 of the Complaint.

22. Ohio State denies the allegations contained in paragraph 22 of the Complaint.

23. Ohio State denies the allegations contained in paragraph 23 of the Complaint.

24. Ohio State denies the allegations contained in paragraph 24 of the Complaint.

25. Ohio State is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph 25 of the Complaint, and therefore denies the same.

26. Ohio State admits that if it does not require a bond from Turner, no surety company will receive the profit, if any, it might otherwise have received or suffer the loss it might otherwise have suffered if Ohio State did require a bond from Turner, but denies the remaining allegations contained in paragraph 26 of the Complaint.

27. Ohio State denies the allegations contained in paragraph 27 of the Complaint.

28. Ohio State denies the allegations contained in paragraph 28 of the Complaint.

29. Ohio State denies the allegations contained in paragraph 29 of the Complaint.

30. Ohio State admits that, if ASA and ASA-Ohio's members choose not to supply labor or materials for use on ProjectONE, they will not receive the income or profit, if any, they might have earned, and will not incur the expenses they would have incurred or losses they might have incurred, had they chosen to furnish labor or materials on ProjectONE, but denies the remaining allegations contained in paragraph 30 of the Complaint.

31. Ohio State denies the allegations contained in paragraph 31 of the Complaint.

32. Ohio State denies the allegations contained in paragraph 32 of the Complaint.

33. Ohio State denies the allegations contained in paragraph 33 of the Complaint.

34. Ohio State denies the allegations contained in paragraph 34 of the Complaint.

35. Ohio State admits the allegations contained in paragraph 35 of the Complaint.

36. Ohio State admits the allegations contained in paragraph 36 of the Complaint.

37. Ohio State denies the allegations contained in paragraph 37 of the Complaint.

38. Ohio State denies the allegations contained in paragraph 38 of the Complaint.

39. Ohio State denies the allegations contained in paragraph 39 of the Complaint.

40. Ohio State denies the allegations contained in paragraph 40 of the Complaint.

41. Ohio State denies the allegations contained in paragraph 41 of the Complaint, and further states that it is protected from the financial risk of a default, defect and/or deficiency in construction attributable to Turner through, among other things, the security provided by a \$20,000,000 Letter of Credit issued by Bank of America on Turner's behalf as requested by Ohio State and Turner's contractual obligations to obtain insurance and provide indemnification.

42. Ohio State denies the allegations contained in paragraph 42 of the Complaint, reiterates the statement contained in paragraph 41 of its Answer, and further states that it is protected from the financial risk of a default, defect and/or deficiency in construction on ProjectONE attributable to subcontractors working under Turner by Subcontractor Default Insurance acquired by Turner in accordance with its contract with Ohio State.

43. Ohio State denies the allegations contained in paragraph 43 of the Complaint, and further states that laborers, subcontractors and suppliers to Turner are protected from the financial risk of payment disputes through the protections of Ohio's public improvement lien law, R.C. 1311.25 *et seq.* and Turner's obligations under its contract with Ohio State.

44. Ohio State denies the allegations contained in paragraph 44 of the Complaint, and reiterates the statement contained in paragraph 43 of its Answer.

45. Ohio State denies the allegations contained in paragraph 45 of the Complaint.

46. Ohio State denies the allegations contained in paragraph 46 of the Complaint.

47. Ohio State denies the allegations contained in paragraph 47 of the Complaint.

SECOND AFFIRMATIVE DEFENSE

48. Relators lack standing to bring this action.

THIRD AFFIRMATIVE DEFENSE

49. Relators' Amended Complaint fails, in whole or in part, to state a claim against Ohio State upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

50. Relators' claims are barred by the doctrines of laches.

FIFTH AFFIRMATIVE DEFENSE

51. Relators' claims are barred by mootness.

WHEREFORE, having responded to Relators' Complaint for Writ of Mandamus, Ohio State prays that the Complaint be dismissed with prejudice and that it recover its costs herein expended.

Respectfully submitted,

RICHARD CORDRAY
OHIO ATTORNEY GENERAL



Kathleen M. Trafford (0021753)
(Counsel of Record)

Ryan P. Sherman (0075081)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
(614) 227-2000 / fax: (614) 227-2100
Email: ktrafford@porterwright.com
rsherma@porterwright.com

*Special Counsel for Respondent
The Ohio State University*

Alexandra T. Schimmer (0075732)
Chief Deputy Solicitor General
30 East Broad Street
Columbus, Ohio 43215
(614) 995-2273 / fax: (614) 466-5087
alexandra.schimmer@ohioattorneygeneral.gov

Jon C. Walden (0063889)
Jerry K. Kasai (0019905)
Assistant Attorney General
Court of Claims Section
150 East Gay Street
Columbus, Ohio 43215-3130
(614) 644-7697 / fax: (614) 644-9957
jon.walden@ohioattorneygeneral.gov
jerry.kasai@ohioattorneygeneral.gov

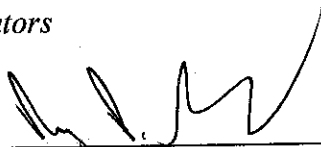
*Counsel for Respondent
The Ohio State University*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing was served via Regular U.S. Mail, postage prepaid, this 21st day of December, 2010, upon the following counsel of record:

John J. Petro, Esq.
Richard A. Williams, Esq.
Susan S. Petro, Esq.
Williams & Petro Co., L.L.C.
338 South High Street, Second Floor
Columbus, Ohio 43215

Counsel for Relators



Ryan P. Sherman

COLUMBUS/1567660v.2