

**Approve the Rejection of all Proposals for RFP 16-072F Design/Build Services for Northeast High School, and Reject the Proposal of The Morganti Group, Inc. (“Morganti”) as non-responsive**

**PROJECT OVERVIEW:**

<b>Type of Contract:</b>	<b>Design/Build Services</b>
<b>Architect:</b>	<b>N/A</b>
<b>Notice to Proceed Date:</b>	<b>N/A</b>
<b>Budget:</b>	<b>N/A</b>

**GENERAL OVERVIEW:**

The intent of this item is to obtain Board approval of Qualification Selection Evaluation Committee recommendations to reject all proposals (including the non-responsive proposal received from The Morganti Group) and to terminate Request for Proposal RFP 16-072F Design/Build Services for Northeast High School. A Request for Qualifications (RFQ) for Professional Design Services utilizing the CM@Risk delivery method will be brought to the May 3, 2016 Board Meeting.

**SUMMARY EXPLANATION AND BACKGROUND:**

On November 3, 2015, the School Board unanimously approved agenda items J-1, J-4, and J-5 to authorize the advertisement for Design/Build services for SMART renovation projects at Blanche Ely, Stranahan, and Northeast High Schools respectively.

During the Board’s deliberation of these items, there was considerable discussion regarding the Design/Build delivery method being employed for executing these three renovation projects. Staff clearly articulated the motivation for delivering the projects in the Design/Build form was threefold:

1. Design/Build had been the contemplated delivery method to execute the majority of projects within the SMART Program up to that point in time because of the District’s previous track record with the Construction Management at Risk (CMAR) delivery method;
2. Design/Build had been successfully utilized recently to deliver other projects within the District Educational Facilities Plan; and
3. Employing Design-Bid-Build as the delivery method to execute these projects would not have allowed the District to honor previous commitments regarding the timeline to start construction at the schools.

At that time, staff also voiced its commitment to continue reviewing delivery methods throughout the implementation of the SMART Program, particularly given the fact the District was in the process of sourcing a new Chief Facilities Officer and the District’s new Owners’ Representative (Heery International) was in the process of mobilizing.

Later that month, Proposer Conferences were held for two of these projects. During these conferences, potential proposers expressed concern the evaluation criteria (particularly as it related to cost) would result in the lowest cost proposal becoming the highest ranked; and the evaluation would potentially minimize the qualifications and experience of prospective proposers. Additionally, there was some concern expressed over the time provided to prepare and submit proposals, given the winter and New Year holidays.

In response to these concerns, staff submitted agenda items to the Board on December 8, 2015 recommending a modification to the evaluation criteria. Specifically, Category G: *Costs of Service* of the evaluation criteria was modified to include five individual components: Cost of Construction (G1), Design Fees as a Percentage of the Cost of Construction (G2), Preconstruction Fees (G3), General Condition Costs (G4), and General Contractor Fees as a Percentage of the Cost of Construction (G5). This modification would preclude the proposed Cost of Construction from being weighted too heavily in the evaluation of proposals. Additionally, the deadline to submit proposals was extended to provide potential proposers ample time to consider the scoring criteria modifications and submit proposals. The School Board voted to approve these recommended changes.

Meetings were subsequently scheduled to have all submitted proposals reviewed and evaluated by the District's Qualifications Selection and Evaluation Committee (QSEC). The dates for the QSEC evaluations of proposals were as follows:

- Stranahan High – February 4, 2016
- Northeast High – February 4, 2016
- Blanche Ely High – February 5, 2016

All three evaluations resulted in the recommendation to award each project to The Morganti Group.

On February 12, 2016 a second QSEC meeting was held for the Northeast and Blanche Ely projects. The purpose of these meetings was to correct technical scoring errors related to the scoring of the *Supplier Diversity & Outreach Program* and *Costs of Service* sections for these projects. For Northeast, QSEC members were advised the *Supplier Diversity & Outreach Program* point allocation for one of the proposers was being recommended for change because it had been determined the proposer qualified for additional points after further review of their proposal. Additionally, QSEC members were advised the point allocation for the *Costs of Service* category was recommended for change because the allocation for Design Fees (G2) and General Contractor Fees (G5) were to be calculated on a percentage of the proposer's Cost of Construction; and they had inadvertently been calculated on a percentage of their proposed Initial Guaranteed Maximum Price (IGMP). Although these scoring corrections resulted in modified total scores for the impacted proposers, it is most important to note that the scoring modifications did not change the outcome of the highest ranked proposer. The Morganti Group remained the highest ranked proposer even after the modifications to scoring.

For Blanche Ely, QSEC members were advised the RFP for this project had outlined a different point allocation for the five *Costs of Service* categories within the evaluation criteria. The point allocations for Cost needed further update because the allocation for Design Fees (G2) and General Condition Fees (G5) were to be calculated on a percentage of the proposer's Cost of Construction; and they had inadvertently been calculated on a percentage of their proposed Initial Guaranteed Maximum Price (IGMP). As in the case of the rescoring of the Northeast proposals, the scoring modifications did not change the outcome of the highest ranked proposer. The Morganti Group remained the highest ranked proposer even after the modifications to scoring.

Outlined below are the Proposers, Initial Guaranteed Maximum Prices (IGMPs), and awarded points by QSEC for each of the proposals.

<b>Summary of Proposals for Stranahan, Northeast, and Blanche Ely Projects</b>			
<b>Project: Stranahan High</b>		<b>Advertised Project Budget: \$ 16,004,650</b>	
<b>Proposer</b>	<b>Initial Guaranteed Maximum Price</b>	<b>Awarded Points by QSEC</b>	<b>Recommended Awardee</b>
The Morganti Group, Inc.	\$ 16,004,650	680.00	*
FHP Tectonics Corp.	\$ 27,700,000	456.00	
<b>Project: Northeast High</b>		<b>Advertised Project Budget: \$ 13,801,600</b>	
<b>Proposer</b>	<b>Initial Guaranteed Maximum Price</b>	<b>Awarded Points by QSEC</b>	<b>Recommended Awardee</b>
The Morganti Group	\$ 13,801,600	714.67	*
JWR Construction Services	\$ 13,801,600	685.00	
FHP Tectonics Corp.	\$ 25,957,000	549.01	
<b>Project: Ely High</b>		<b>Advertised Project Budget: \$ 14,795,436</b>	
<b>Proposer</b>	<b>Initial Guaranteed Maximum Price</b>	<b>Awarded Points by QSEC</b>	<b>Recommended Awardee</b>
The Morganti Group	\$ 14,795,000	754.39	*
State Contracting (SCEC)	\$ 14,784,676	678.24	
FHP Tectonics	\$ 14,777,000	504.00	

RFP Recommendations and Tabulations were subsequently posted in the Procurement and Warehousing Services Department and on Demandstar, noticing an intent to award all three RFPs to The Morganti Group. A protest of the recommended award of the Blanche Ely RFP was filed by State Contracting (SCEC) within the 72-hour period following the posted intent to award. It is important to note the District is precluded from proceeding with an award of an RFP until all protests to a posted intent to award are resolved. This resolution process can be six months or more pending a ruling from an Administrative Law Judge.

In final review and preparation of the agenda items to award the three RFPs to The Morganti Group, a document titled, "Assumptions and Clarifications" was discovered within each of its three cost proposals. The document, in essence, qualified The Morganti's Group's proposals to limit the project scope following design to align to their proposed Costs of Service. This information was immediately reviewed with the General Counsel's Office to seek legal advice as to the process moving forward. It was recommended the District's Owner Representative (Heery) contact The Morganti Group to seek clarification of the document to determine their responsiveness to the RFP. This effort affirmed their proposals to be non-responsive to the three RFPs because they included impermissible qualifications to their Costs of Service proposal.

It was then recommended Heery contact the second highest ranked proposer for each of the RFPs to seek clarification of their proposals as well to determine whether they were viable alternatives for moving forward. In at least one case, the second highest ranked firm clarified their proposed scope of work on the project was limited to their Costs of Service proposal. Additionally, the second highest ranked proposer for the Stranahan High project was significantly higher than the advertised project budget and updated cost projections calculated by the District's Cost and Program Controls business partner (Atkins).

This information was discussed in consultation with the Office of the General Counsel. In addition to the pending protest by SCEC on the Blanche Ely project, staff considered the high potential for a bid protest by Morganti should the District

modify its intent to award posting on these projects to award to another proposer. Again, a protest on any or all of the three projects could delay the project for six months or more pending legal resolution.

In consideration of all of these factors, it was recommended the District reconvene each of the three separate QSEC committees to: reconsider their previous recommendations to award each Design/Build Agreement to Morganti; reject all proposals in order to permit the school district to issue a revised competitive solicitation containing a revised program scope and utilizing a different program delivery method; and recommend that the proposals of Morganti be rejected as non-responsive pursuant to Sections 6.22.2 and 6.22.2.3 of the RFP due to the inclusion within Morganti's proposal of "Cost of Services/Attachment P – Assumptions and Clarifications" which precluded its proposal from conforming to the rules or requirements of the RFP and caused its proposal to be conditional in nature.

Accordingly, each of the three separate QSEC committees were reconvened on March 31, 2016 for the purpose of considering these recommendations. Ultimately, QSEC voted to support staff's recommendations. The revised RFP Recommendations and Tabulations were posted in the Procurement and Warehousing Services Department and on Demandstar on April 6, 2016. The projects are now being recommended by the District's Program Manager, Heery International, Inc. to be re-advertise utilizing the CM @ Risk delivery method.

Given information above, Board approval of this item is necessary in order to proceed with approval of Agenda Item J-10.-RFQ 16-166C Professional Design Services for Northeast High School.

**SMART Program Pre-Construction Facility Needs:**

During a project's pre-construction phase of the SMART Program, facility needs at these schools and all other schools are being addressed by Physical Plant Operation (PPO). Examples of the needs that have been addressed at Northeast High include the following:

- Replacement of four (4) Building #1 penthouse AC unit drain pans
- Replacement of over 30,000 square feet of ceiling tiles
- Installation of new Fire Alarm control panel located in Building #1
- Improvements to site storm drainage – Cleaning of lines and regraded around yard drains
- Resurfacing of outdoor asphalt basketball court
- Resurfacing and repair of tennis courts
- Resurfacing of track including site drainage improvements
- Resurfacing of selective areas of asphalt drives and portions of student parking
- Replacement of exterior doors
- Replacement of damaged drywall
- Planned items for Summer 2016 include pruning all trees and refurbishment of the front lawn