

AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

MEETING DATE	2018-11-07 10:05 - School Board Operational Meeting
AGENDA ITEM	ITEMS
CATEGORY	J. OFFICE OF FACILITIES & CONSTRUCTION
DEPARTMENT	Facilities Construction

Special Order Request <input type="radio"/> Yes <input checked="" type="radio"/> No
Time
Open Agenda <input type="radio"/> Yes <input checked="" type="radio"/> No

ITEM No.:
J-2.

TITLE:
Fifth Amendment of Program Manager - Owner's Representative Services Agreement - CBRE | Heery, Inc.

REQUESTED ACTION:
Approve the Fifth Amendment of Program Manager - Owner's Representative Services Agreement, CBRE | Heery, Inc.

SUMMARY EXPLANATION AND BACKGROUND:
See Executive Summary (Exhibit 1) for details.
This Amendment has been reviewed and approved as to form and legal content by the Office of the General Counsel.

SCHOOL BOARD GOALS:
 Goal 1: High Quality Instruction Goal 2: Continuous Improvement Goal 3: Effective Communication

FINANCIAL IMPACT:
This Fifth Amendment of the Program Manager - Owner's Representative Services Agreement has no financial impact. Funding for the Program Manager - Owner's Representative Services Agreement is included in the individual SMART Program project budgets and the Adopted District Educational Facilities Plan (September 5, 2018).

EXHIBITS: (List)
(1) Executive Summary (2) Fifth Amendment

BOARD ACTION:
APPROVED
(For Official School Board Records Office Only)

SOURCE OF ADDITIONAL INFORMATION:

Name: Frank Girardi, Task Asg'd.Exe.Dir.Cap.Prog.	Phone: (754) 321-1525
Name: Shelley N. Meloni, Director	Phone: (754) 321-1515

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
Senior Leader & Title

Leo Bobadilla - Chief Facilities Officer

Signature
Frank L. Girardi
10/31/2018, 2:40:23 PM

Approved In Open Board Meeting On: **NOV 07 2018**
By: *Mona Ruppert*
School Board Chair

EXHIBIT 1

EXECUTIVE SUMMARY

Background

The attached Fifth Amendment to the Agreement for Program Manager – Owner’s Representative Services between The School Board of Broward County, Florida and CBRE | Heery, Inc. incorporates language which addresses concerns raised by the School Board during discussions of agenda item JJ-5 at the October 16, 2018 Regular School Board Meeting, as well as additional language for recovery of expenses from FEMA for disaster recovery work.

The Fifth Amendment specifically addresses the following items:

Not-To-Exceed Fees: Clarification that Fees is the amount of \$44,321,299 as indicated in the Fee Analysis, Exhibit 4 to the Fourth Amendment to the Agreement, include amounts for all additional services which CBRE | Heery, Inc. currently provides, and which have been provided to date. Fees associated with any potential, new additional services shall be brought to the Board for approval prior to CBRE | Heery, Inc. performing such work.

M/WBE Participation: Modification of Article 2.06 of the Agreement to include a commitment for M/WBE participation during Option Year 1 by using BACH Real Estate LLC (2% of Option Year 1 Fees), Dickey Consulting Services, Inc. (1% of Option Year 1 Fees), De Zayas-Bitar Construction Co. (11% of Option Year 1 Fees), Garth Solutions, Inc. (11% of Option Year 1 Fees), and Keith and Associates, Inc. (7% of Option Year 1 Fees).

Quarterly Evaluations: Future evaluations shall be conducted by RSM US, LLP and the Assigned District Staff on a quarterly basis to measure performance. These evaluations are to be shared with CBRE | Heery, Inc. to identify areas for betterment and shall be used as a basis for continuous improvement.

FEMA Requirements: Proposed recommendations from Donley Consulting Services LLC for the recovery of costs for potential disaster recovery work (via reimbursement from the Federal Emergency Management Agency (FEMA)) are incorporated into the CBRE | Heery, Inc. Agreement.

EXHIBIT 2

FIFTH AMENDMENT TO AGREEMENT FOR PROGRAM MANAGER/OWNER'S REPRESENTATIVE SERVICES

between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

and

CBRE | HEERY, INC.

THIS FIFTH AMENDMENT to the Program Manager/Owner's Representative Services Agreement by and between The School Board of Broward County, Florida ("SBBC") and CBRE | Heery, Inc. ("CBRE") dated August 18, 2015 (the "Agreement"), is hereby entered into this 7th day of November 2018.

WHEREAS, SBBC and CBRE acknowledge and agree that the Agreement is in full force and effect as revised by the First Amendment dated May 2, 2017, the Second Amendment dated April 24, 2018, the Third Amendment dated August 7, 2018, the Fourth Amendment dated October 16, 2018 and this Fifth Amendment; and

WHEREAS, on October 10, 2018, the District received a report prepared by Donley Consulting Services LLC which evaluated the Agreement for compliance with FEMA requirements for reimbursement, and recommended additional clauses required by the Super Circular, 2 C.F.R. 200.318 – 200.326 and other FEMA sources; and

WHEREAS, on October 16, 2018, after thoughtful discussion of the proposed Fourth Amendment to the Agreement, the School Board approved the Fourth Amendment contingent upon the inclusion of specific additional terms and conditions; and

WHEREAS, the SBBC and CBRE desire and agree to incorporate the terms identified in the report prepared by Donley Consulting Services LLC, as well as the specific additional terms and conditions identified by the School Board into the Agreement as more specifically contained herein.

NOW THEREFORE, in exchange for the mutual covenants and promises set forth herein and other good and valuable consideration, the parties agree as follows:

1. The recitals contained herein are true and correct and are incorporated herein by reference.
2. **FEMA Requirements.** Recommendations proposed by Donley Consulting Services LLC, attached hereto as **Exhibit "A,"** are hereby incorporated into the Agreement. The terms attached as Exhibit "A" apply only to Program Manager – Owner's Representative's services performed related to disaster recovery work.
3. **NOT-TO-EXCEED FEES.** Fees in the amount of \$44,321,299 as set forth in the "CBRE | Heery – Owner's Representative Services – Fee Analysis" attached as "EXHIBIT 4" (Document 5) to the Fourth Amendment to Agreement include amounts for all additional services

which CBRE currently provides and which have been provided to date. Fees associated with any potential, new additional services shall be brought forward for Board approval prior to CBRE performing such work.

4. Article 2.06 M/WBE Participation of the Agreement is amended by insertion of the following:

VENDOR shall provide for M/WBE participation during its performance of services under the Second Renewal Period of this contract agreement by using BACH Real Estate LLC (2%); Dickey Consulting Services, Inc. (1%); De Zayas-Bitar Construction Co. (11%); Garth Solutions, Inc. (11%); and Keith and Associates, Inc. (7%).

5. **Quarterly Evaluation.** An evaluation shall be conducted by RSM US LLP and the Assigned District Staff on a quarterly basis to measure performance. Such evaluation shall be communicated to CBRE to identify areas for betterment and shall be used as basis for continuous improvement.

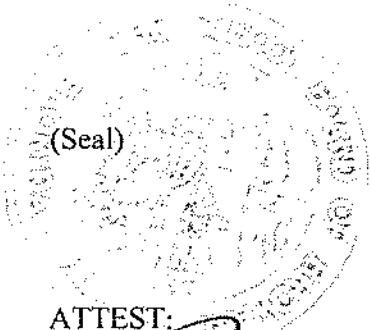
6. **Other Provisions Remain in Force.** All other terms and conditions of the Contract shall remain in full force and effect. Except as expressly provided herein and as may have been previously amended, all other portions of the Agreement remain in full force and effect.

7. **Order of Precedence among Agreement Documents.** In the event of conflict between the provisions of the Agreement and the provisions contained herein, the provisions of the following documents shall take precedence in this order:


- a) this Fifth Amendment to Agreement; then
- b) the Fourth Amendment to Agreement; then
- c) the Third Amendment to Agreement; then
- d) the Second Amendment to Agreement; then
- e) the First Amendment to Agreement; then
- f) the Agreement.

5. **Authority:** Each person signing this Fifth Amendment on behalf of either party warrants that he or she has full legal power to execute this Fifth Amendment on behalf of the party for whom he or she is signing it to bind and obligate such party with respect to all provisions contained in this Fifth Amendment.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Fifth Amendment to Agreement on the day and year first above written.



ATTEST:

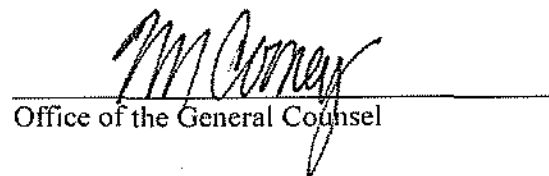

Robert W. Runcie, Superintendent of Schools

FOR SBBC

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

By 
Nora Rupert, Chair

Approved as to Form and Legal Content:


Office of the General Counsel

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FOR CBRE

CBRE | HEERY, INC.

ATTEST:

[Signature]
Secretary

By [Signature]
Robert Chomiak, Senior Managing Director

-or-

WB

Witness

Witness

The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF GEORGIA

COUNTY OF FULTON

The foregoing instrument was acknowledged by for me this 23 day of October, 2018, by ROBERT CHOMIAK of CBRE | HEERY, INC. on behalf of the corporation or agency, who is personally known to me and did/did not first take an oath.

My commission expires: 11/1/20

[Signature]
Signature – Notary Public

Elissa K Ryan
Printed Name of Notary

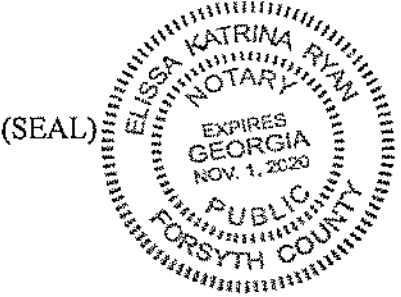


Exhibit "A"

The following provisions are hereby incorporated into the Program Manager - Owner's Representative Services Agreement (the "Agreement") between The School Board of Broward County, Florida and CBRE | Heery, Inc. pursuant to paragraph 2 of the Fifth Amendment to the Agreement.

ADD 3.27 **Recovered/Recycled Materials.** Offered products will make maximum use of recovered/recycled materials, but if not available, then materials used for the manufacture or construction of any supplies, materials or equipment covered by this RFP shall be new unless otherwise specified. Product(s) offered that have not been previously used in any way and are being actively marketed by the manufacturer will be accepted. Minor parts within the product(s) may have remanufactured components. If recovered/recycled materials are not available, the items bid must be new, the latest model, of the best quality and highest-grade workmanship as needed for the particular procurement.

Note, however, that if a proposed recovered/recycled material has been determined to be unsafe for children in the schools, then only new material shall be used.

ADD 3.04.01 **Equal Employment Opportunity Clauses.** Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The following is hereby incorporated into the Agreement for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: During the performance of this contract, CBRE | Heery (the "contractor") agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to

post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible

for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontractor purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant [School Board] and CBRE | Heery agree that to assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

ADD 3.28 **Contract Work Hours and Safety Standards.** CBRE | HEERY will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

AMEND Attachment F, Section 3.28 of RFP as follows:
VENDOR [CBRE | HEERY] agrees to comply with all School Board Policies, local, state and federal laws, **including, but not limited to, the federal Clean Air Act and Clean Water Act.**

ADD 3.29 **Energy Efficiency.** CBRE | HEERY must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

ADD 3.30 **Rights To Inventions Made Under A Contract Or Agreement.** Any invention developed during the performance of work under a federal award or grant shall provide for a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

ADD To Section 7.55 of RFP as follows:
Contractors applying or bidding for an award of \$100,000 or more must file the required certification: Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

ADD The following to Section 7.12 of the RFP ADVERTISING: A contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.