

TaxWatch Recommendations & Staff Responses

SMART Program Quarterly Report Review for the Quarter Ended June 30, 2019

SECTION 1 --- TECHNOLOGY SBBC SCHOOLS

N/A

SECTION 2 --- TECHNOLOGY CHARTER SCHOOLS

N/A

SECTION 3 --- MUSIC & ART EQUIPMENT

N/A

SECTION 4 --- ATHLETICS

RECOMMENDATION 1: Florida TaxWatch recommends that, at the September 9, 2019 Bond Oversight Committee meeting, the Chief Portfolio Services Officer brief the Committee on the reasons for terminating Gilbane as the Construction Manager, and on the status of procuring a new Construction Manager.

Response: The Construction Manager (Gilbane) was terminated from the Primary Renovation project on June 25, 2019, due to an inability to reach an agreement on the Guaranteed Maximum Price (GMP). After the close of the quarter, the Board approved a Construction Agreement with Pirtle Construction Company to replace Gilbane as the Construction Manager on August 13, 2019.

SECTION 5 --- FACILITIES

RECOMMENDATION 2: Florida TaxWatch recommends that, at the September 9, 2019 Bond Oversight Committee meeting, the Executive Director, Capital Programs, brief the Committee on design firm contracts terminated to date, including reasons for termination and the schools where these firms were working.

Response: To date, only one design firm has been terminated. LIMCO Engineering Inc., was experiencing significant delays in the preparation of design documents for five (5) of their six (6) assigned projects. In an effort to mitigate further delays, the District, program management team, and Procurement & Warehousing Services (PWS) met with LIMCO several times to resolve concerns. After multiple meetings between the parties, no improvement had been realized. As a result, it was determined that the best course of action for both parties would be to terminate the five (5) projects



for convenience in lieu of cause, conditioned upon specific terms set forth in the Termination Agreement.

On April 23, 2019, the Board approved the Termination Agreement.

Included below are the list of schools that were assigned to LIMCO along with their current status:

SCHOOL NAME	CURRENT STATUS
Wilton Manors Elementary	Board approved a PSA with Rodriguez Architects, Inc. on 06/25/2019
Tequesta Trace Middle	Board approved a PSA with LIVS Associates, LLC on 9/4/2019
Indian Trace Middle	Board approved a PSA with LIVS Associates, LLC on 9/4/2019
Hollywood Hills Elementary	Board approved a PSA with The Tamara Peacock Company Architects of Florida, Inc. on 08/20/2019
North Andrews Gardens Elementary	Board approved a PSA with The Tamara Peacock Company Architects of Florida, Inc. on 08/20/2019

RECOMMENDATION 3: Florida TaxWatch recommends that, at the September 9, 2019 Bond Oversight Committee meeting, the Executive Director, Capital Programs:

- Brief the Committee on the number of current PSAs that include no enforceable financial penalties against non-responsive design firms, including the schools where these firms are working;

Response: ALL PSAs have enforceable damages/financial penalties and a termination clause for non-responsive firms. Professional service agreements issued in the early years of the program include enforceable damages for delays, however they do not include specific language about financial penalties. The District and Project Management team is working with legal to determine how to best recover damages, beyond termination, for early PSAs.

Included below is the contract clause from the early professional service agreements:

- *3.1.6. Should the Design Professional fail to commence, provide, perform or complete any of the Services to be provided hereunder in a timely manner, in addition to any other rights and remedies available to the Owner hereunder, the Owner may withhold any payments due and owing to the Design Professional related to the delay until such time as the Design Professional provides a satisfactory Recovery Schedule and resumes performance of its obligation hereunder in such a manner so as to establish to the Owner's satisfaction that the Design Professional's performance is or will be shortly back on schedule.*
- Brief the Committee on enforcement actions taken to date, including contract termination, against non-responsive design firms and contractors, including the schools where these firms are working; and



Response: Except for the termination of Limco Engineering, Inc., no action has been taken against any design firm or contractor for non-responsiveness, however letters have been sent out to notify design firms of multiple resubmittal processes and penalties. Letters are also being issued to firms with the later PSA agreements that have completed design to notify them of the evaluation process of their performance. The District and project management team will evaluate each project to determine appropriate financial penalties if delays are identified.

- Provide and discuss the liquidated damages/financial penalties provisions contained in the new PSAs with design firms.

Response: Professional service agreements issued in the early stages of the program include enforceable damages for delays, however they do not include specific language about financial penalties. Later agreements include specific language outlining penalties for missing the contracted completion date and multiple resubmittals for permitting.

Included below are the contract clauses from later PSAs pertaining to delays and multiple resubmittals:

- **2.1.7 Penalty for Non-Conforming Design Documents:** Should the Project Consultant submit drawings, plans, specifications or other documents or materials for review as required herein that are deemed unacceptable as defined by the terms "Revise and Resubmit" by the plan review authority (Building Department, Design Services Department, Peer Plan Review Consultant), the costs, as solely determined by the Owner, for all subsequent reviews after the second review for that Phase shall be borne by the Project Consultant and the Owner will deduct such costs from the Project Consultant's Basic Services Fee.
- **10.1.3 Time for Performance:** The Project Consultant agrees to start all work hereunder upon receipt of an Authorization to Proceed issued by the Chief Facilities and Construction Officer or his designee and to complete each Phase within the time stipulated in the Authorization To Proceed (Attachment 6 to this Agreement ("ATP")) and as required by the Project Schedule (Attachment I to this Agreement). The Project Consultant acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and will be responsible for same. The Consultant agrees that Owner is entitled to recover no less than One Hundred Dollars (\$100) per consecutive calendar day of unexcused delay caused by the Consultant's failure to comply with the times set forth in the fully executed ATP. Owner shall have the right to deduct such amounts from payments due and owing to the Consultant.

RECOMMENDATION 4: Florida TaxWatch recommends that the current PSAs that include no enforceable financial penalties against non-responsive design firms be amended to include enforceable liquidated damages provisions.



Response: ALL PSAs have enforceable damages/financial penalties and a termination clause for non-responsive firms. The District and Project Management team is working with legal to determine how to best recover damages, beyond termination, for early PSAs. Any amendment added to current PSAs require an agreement from the designer prior to including additional detailed language.

RECOMMENDATION 5: To promote even greater transparency, Florida TaxWatch recommends that, beginning with the Q1 2019-20 Facilities Construction Report, the Executive Director, Capital Programs, identify actions taken by the District to enforce the terms and conditions of contracts with design firms, vendors, and contractors. This should include the name of the vendor, the action(s) taken, and the reason for the action(s).

Response: Once action has been taken and approved by the Board, it will be included in the next quarterly report.

SECTION 6 --- BUDGET ACTIVITY

RECOMMENDATION 6: Florida TaxWatch recommends that, at the September 9, 2019 Bond Oversight Committee meeting, the Chief Financial Officer brief the Committee on the District's contingency plan for additional reserve funds needed to address the potential impacts of the updated \$436 million risk assessment.

Response: Of the risk amount identified, the District previously set aside a \$225 million SMART Reserve to mitigate SMART Program construction cost risks and there is currently \$40 million in capital unallocated reserves. Additionally, over the next five years there is \$73.5 million set aside for charter school millage sharing; if the State continues fully funding charter school capital outlay these dollars will move to the capital reserves. Furthermore, in the outer years of the 5-year District Educational Facilities Plan, there is an additional \$223 million estimated available capital unallocated reserves. The funds needed to address the updated construction risk assessment and complete the SMART Program is having a significant impact on the District's overall capital program. The Finance and Facilities Departments are continuously working together to identify additional resources, review other methods to mitigate costs pressures, and assess scheduling impacts based on market conditions, saturation of construction work in the marketplace, and available funding. *Additional allocations into the SMART Program require the School Board's approval* and all future amounts are subject to change based on economic conditions and the results of annual legislative action. It is also important to note there are other capital outlay needs to consider when deciding how to allocate these additional dollars.

SECTION 7 --- SUPPLIER DIVERSITY OUTREACH

N/A

SECTION 8 --- COMMUNICATIONS

N/A

