

**EXECUTIVE SUMMARY**

**Award of Contract  
Program Management Services  
RFQ No. 2014-31-FC**

**PROJECT OVERVIEW:**

<b>Type of Contract:</b>	<b>Open End Services Agreement</b>
<b>Architect:</b>	<b>Not Applicable</b>
<b>Contractor:</b>	<b>URS Corporation Southern</b>
<b>Notice to Proceed Date:</b>	<b>Year to Year, Maximum of Three (3) Years</b>
<b>Contract Amount:</b>	<b>\$1,750,369 per year, not to exceed</b>

**GENERAL OVERVIEW:**

This item awards a Professional Services Agreement (PSA) to URS Corporation Southern (URS) for the provision of program management services in support of the Office of Facilities Design and Construction function. The services are enumerated in Attachment 1, Scope of Work to the PSA, and include services related to:

1. Pre-Programming
2. Project Planning, Selection, and Design
3. Pre-Construction and Construction
4. Facility Opening and Project Close-Out
5. Other Basic Services
6. Annual Report

Prior to commencing the provision of specific services, staff and URS must negotiate the terms of those services based upon the negotiated fees as indicated in Article 5 of the PSA. The fee structure is prescribed in terms recommended by McGladrey LLP to the Board in its audit dated June 21, 2012.

Once the terms have been negotiated, an Authorization to Proceed (ATP), in the form of Attachment 4 to the PSA, shall be presented to the Board for approval in accordance with Article 1.1.2. When approved, the ATP shall be issued to URS in accordance with Articles 4.3.1 and 5.1.4, of the PSA by the Chief Facilities & Construction Officer (Approve Authorization to Proceed, Program Management Services, JJ-1, 1/22/14 Board Meeting).

The term of the PSA is year to year, with a maximum of three (3) years and \$1,750,369 in fees per year.

The Board approved the Request for Qualifications on June 25, 2013, and approved the PSA on July 23, 2013. The selection of URS was conducted by the Qualification Selection Evaluation Committee (QSEC) in accordance with Ch. 287.055, Florida Statutes, Board Policy 7003, and the RFQ. Several concerns were expressed during the selection process, including the attached memo, dated October 18, 2013.

To respond to these concerns, staff from Supply Management & Logistics met with representatives from the Legal and Audit Departments to address each item. After evaluating all concerns, it was determined that the process that was followed was valid, and that based on the events, there would be no basis for not moving forward with the selection.

Although the item is progressing forward for approval, staff is cognizant of areas where the process can be strengthened, and has made, or is in the process of effecting changes that will

clarify or enhance the process. The concerns and recommended improvements are outlined below:

**1. Tie Vote in the Ranking of the Proposers**

The RFQ indicated that provisions of Policy 3320 would apply in the event of a tie vote. The RFQ required that ranking of the top-ranked proposer be determined by each voting member's highest scoring proposer. Policy 3320 anticipates scoring based on total points, rather than a single vote cast for the top scoring proposer.

As a result of the incongruence between the RFQ and Policy 3320, staff consulted with the General Counsel's Office and requested a recess of one week to conduct a complete and diligent review of the issue.

During this recess, one of the tied proposers breached the Cone of Silence by contacting a District staff person and was deemed non-responsive. The proposer's non-responsiveness resulted with only one proposer in the top ranked position, thereby eliminating the tie.

Staff has incorporated language within the RFQ form for future use that clearly identifies how a "tie" is to be broken, in the event there is more than one firm having the most first place rankings among QSEC members.

**2. Cone of Silence**

The RFQ prohibited contact with District staff other than the person identified to be contacted by the proposers. This is consistent with Board Policy 3320, which states, "All communications regarding the solicitation shall be directed to the designated staff member..." and with Board Policy 1100B, which states, "A LOBBYIST (AS DEFINED HEREIN) FOR A PROPOSER IS PROHIBITED FROM HAVING ANY COMMUNICATIONS CONCERNING ANY SOLICITATION FOR A COMPETITIVE PROCUREMENT WITH ANY SCHOOL BOARD MEMBER, THE SUPERINTENDENT OF SCHOOLS, ANY EVALUATION COMMITTEE MEMBER, OR ANY EMPLOYEE OF THE SCHOOL BOARD (OTHER THAN THOSE INDIVIDUALS SPECIFIED WITHIN THE TERMS AND CONDITIONS OF THE SOLICITATION)."

Staff is in the process of improving the alignment of language within the various procurement documents (construction and general procurement) to applicable policies, particularly the Cone of Silence in Policies 3320, 1100B, and 7003.

**3. Objectivity of the Scoring**

The RFQ was structured in accordance with Section 287.055, Florida Statutes, which is structured as a qualifications-based selection process. Evaluations of RFQs are by nature subjective. Subjectivity does not cause a scoring decision to be arbitrary or improper.

Section 287.055, Florida Statutes, states in part, "In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to

meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency...".

The requirements stated in the RFQ, including the selection process, conforms to the statutory requirements and is consistent with RFQs prepared by three separate agencies reviewed by staff during the preparation of the RFQ.

Staff shall continue to explore opportunities to make the scoring of select portions of an RFQ more objective. Recognizing each procurement is unique, there may still be opportunities to standardize the scoring of select portions of an evaluation in similar fashion to how we score cost or M/WBE in other procurements.

#### **4. Vendor Knowledge of the Cone of Silence**

The RFQ included the provisions of the Cone of Silence in two separate locations. During the pre-bid conference, staff read the Cone of Silence provisions aloud to the audience, which included representatives of all four proposers. The QSEC Chair reads the Cone of Silence provisions aloud at the commencement of every QSEC meeting, including the meetings relating to the selection of the Program Manager. Despite such efforts, two proposers breached the Cone of Silence and were deemed non-responsive.

Staff will continue to seek ways to enhance the awareness among the vendor community of the Cone of Silence provisions of an RFQ and emphasize that all communications relative to procurement must only be directed to the appropriate purchasing agent. Additionally, staff shall make vendors better aware that issues of concern associated with terms and conditions of a particular RFQ need to be presented during the applicable protest window.

#### **5. Composition of QSEC**

In accordance with Board Policy 7003 and the QSEC by-laws, staff and the Chair ensure that a quorum of the members exists prior to commencing committee business. Two meetings were conducted in the course of the selection process and one (1) member not present at the first meeting for the short listing attended the second meeting for the final selection. A third meeting was conducted after the final selection meeting was recessed in order to present staff's recommendation to the QSEC.

Although the District is not required to do so, staff and the Chair consulted with the General Counsel's Office and confirmed that a proper quorum exists and the committee business could proceed.

Staff shall strive to maintain the same composition of QSEC members throughout the entire process of any given procurement, particularly for those considered "high profile."

#### **6. Roles of the Auditing and Legal Departments**

Staff recognizes the appropriate roles of the Auditing and Legal departments during the QSEC process. Both serve as technical advisors and can provide input to QSEC during its meetings. Audit may ask questions and offer comments as a technical assistant,

recognizing that the Chair retains the discretion to lead the meetings and set direction.

**7. Legal Counsel Attendance at QSEC**

The General Counsel's Office should be in attendance as a technical assistant, particularly for "high profile" procurements.

The Office of the General Counsel is available to attend QSEC meetings when needed.

**8. Breaches to the Cone of Silence**

In the event of any future breaches to the Cone of Silence, QSEC members shall be fully informed of the circumstances involved with such breaches.

**9. QSEC Members' Abstention**

During the third meeting in the selection of the Program Manager, staff presented its recommendation in the form of the attached Bid Tabulation (Exhibit 2). When a vote to accept staff's recommendation was taken, one (1) member abstained from voting. Subsequently staff inquired as to the abstention and the member indicated a conflict did not exist.

QSEC members shall not be allowed to abstain from any vote, unless a voting conflict of interest exists under Chapter 112, Florida Statutes. Every effort shall be made to review the circumstances associated with a conflict and educate the QSEC member as to why there is or is not such a conflict. QSEC members should identify conflicts of interest to District staff in advance of any meeting.

Staff shall present an abstaining member with the attached Form 8B Memorandum of Voting Conflict.

1.8.14

Written by: Denis Herrmann/12/6/13  
& Shelley Meloni/12/10/13

Approved by: \_\_\_\_\_



Date: \_\_\_\_\_

1/8/14



DATE: October 18, 2013

TO: Robert W. Runcie  
Superintendent of Schools

FROM: Patrick O. Reilly, Chief Auditor *PR*  
Office of the Chief Auditor

SUBJECT: RFQ -- Program Management Services RFQ No. 2014-31-FC

Pursuant to our discussion on October 16, 2013, I am providing several observations and recommendations to improve the selection process, evaluation and scoring criteria for the selection of architects, engineers, design builders, construction managers, total program managers, and to ensure that the QSEC Committee is functioning according to the QSEC by-laws, School Board Policies, Sunshine Law and Robert's Rules of Order. The role of the Chief Auditor on the QSEC Committee is as a non-voting member to serve in an advisory and support role. When we observe questionable practices or areas that may need improvement, we provide that information to the Office of the General Counsel. I have attached the most recent memo from the Office of the Chief Auditor to the General Counsel's Office dated September 27, 2013, and the Office of the General Counsel's response dated October 10, 2013. (See Attachment A)

Based on QSEC meetings held on August 28, 2013, September 18, 2013, and September 25, 2013, below is a list of observations and recommendations that you may wish to consider to improve the vendor selection processes:

**Procedures outlined in School Board Policy 3320 -- Purchasing Policies should be available at the QSEC meeting in the event of a tie.**

Currently, School Board Policy 3320, Section AA provides the process when two or more proposers receive identical points (tie). It should be noted regarding the Program Management RFQ, that although both proposers were tied on first place votes, the second criteria, points scored by the Committee score sheets showed that one vendor had more points than the other. The Committee should have Policy 3320 available and review it prior to the beginning of the voting process. When a vote is taken, the awardee should be determined at that meeting and not be delayed or postponed. As stated previously, we believe the General Counsel should be present or available to assist in the interpretation of the tie-breaking process. Delaying the results of the vote for a week is unnecessary and can cause complications, such as what occurred at the September 18, 2013 proposer selection process for the Program Management Services where an awardee was not determined. RFQ Section VIII, H, 8.5 states "*The Selection Process Administrator shall combine the evaluation scores submitted by all QSEC members and determine the QSEC's ranking of the short-listed firms based upon the total scores assigned to*

Office of the Chief Auditor  
Telephones: 754-321-2400 Fax: 754-321-2719  
Broward County Public Schools Is An Equal Opportunity/Equal Access Employer

*each firm for the presentation stage. If the ranking results in a tied score for the number one or two ranked firms, the tie will be broken in accordance with Policy 3320." Policy 3320 Section II-AA states "In a competitive procurement utilizing a Request for Proposals ("RFP") process, when an evaluation committee assigns points to the proposals received resulting in two or more proposals receiving identical points and all other factors are equal, priority for award shall be given to vendors in the following sequence:"*

The facts are that even though two firms were tied with five (5) first place votes each, they did not have identical points per the Final Selection Score Sheet. As the RFQ required the tie is to be broken per Policy 3320 Section II-AA. The Policy 3320 states "when an evaluation committee assigns points to the proposals received resulting in two or more proposals receiving identical points" there is a priority sequence for identifying the awardee. In this case one proposer had more points than the other which resulted in breaking the tie in first place votes and establishing the awardee.

**Revise the Statement Regarding Sunshine Law for All QSEC Meetings that is read at the beginning of each QSEC meeting to emphasize the requirements of the QSEC Committee members' responsibilities to comply with QSEC by-laws, School Board Policies, Sunshine Law and Robert's Rules of Order.**

A paragraph should be added to the existing statement read by the Chair regarding the need for Committee members to recuse themselves if they have a conflict of interest on any item on which they will be voting.

The fourth paragraph of the statement that is read also should reference School Board Policy 3320. The line that states "If any proposer, consultant or any individual lobbies any district personnel, School Board Member or members of this Committee on behalf of a proposer or consultant regarding a procurement during the times just described, such action will result in the rejection or disqualification of the proposal submitted by that proposer or consultant" should be revised since it is in conflict with Policy 3320 Cone of Silence, which only mentions "...Any proposer, or lobbyist for a proposer...".

**Develop notification procedures when there has been a violation of the Cone of Silence.**

We recommend that QSEC Committee members be provided adequate information as to the details of the violation for purposes of transparency. The Committee should be informed as to what occurred that triggered a violation to the Cone of Silence, so that they can understand what the violation was in order to proceed with the selection process to select a vendor to recommend to the School Board. In addition, the General Counsel should provide a written explanation and opinion pertaining to the violation and present that to the Committee members.

**Revise the RFQ, Section G, Final Selection**

Clarify the language on the Selection of the Proposer by specifically stating that the proposer with the most First Place Votes will decide the awardee. If there is a tie on first place votes, the awardee will be the vendor with the most points, according to the points assigned by the voting members. If there are identical points then the tie will be broken in accordance with Policy 3320. In addition, to simplify the scoring system, the total point distribution should total 100 points, rather than 125 points.

**School Board Policy 3320 -- Purchasing Policies, Section HH, Cone of Silence, should be amended.**

This Section is limited to proposers and lobbyists. We recommend that it be expanded to include sub-consultants and sub-contractors of the proposers. For the Program Management Services RFQ, it was my understanding that in one instance, it was neither the proposer nor the lobbyist who contacted a Board member's assistant. This change can help clarify possible violations of the Cone of Silence.

**Revise School Board Policy 7003, and/or QSEC's by-laws, so that the voting QSEC members in attendance are identical from one meeting to another (shortlist meeting, presentation by vendors for final selection and voting)**

I recommend that the same individuals who are present at the shortlist meeting and have the proposers' submittal documents should also attend the vendors' presentations in order to properly evaluate the vendors prior to voting to select a vendor to recommend to the School Board. This allows for a better process that supports that all proposers were properly evaluated. This item was discussed with the Deputy General Counsel on October 1, 2013. His position is that there is no requirement under School Board Policy 7003, QSEC by-laws or Robert's Rules of Order that voting QSEC members in attendance be identical from one meeting to another. Mr. Vignola stated in his response *"The only restriction that this Office has communicated regarding the identity of persons voting on competitive solicitations arises with regard to requests for proposals or similar procurements in which the evaluation scoring criteria includes a scoring component for presentations by proposers. In such circumstances, this Office has advised that it is necessary that each evaluation committee member submitting a score sheet be present to hear each of the presentations by proposers in order to have received the information necessary to submit a score sheet that includes evaluation of that presentation component."*

**The Chair should address individuals who choose to abstain from voting.**

An effort should be made to clear any obstacles that would cause an individual to abstain. In the instance regarding the Program Management RFQ, the individual who abstained did so because he did not believe that he had sufficient information. This item needs to be reviewed by the Office of the General Counsel, since our preliminary research of the Sunshine Law states that the individual can only abstain if they have a conflict of interest.

**Revise the Contractor Pre-Qualification Application Form (School Board Policy 7003.1)**

The first and last page of this form includes multiple individuals who are no longer with the District or working in the Contracts Section of the Office of Facilities and Construction. (See Attachment B) This form should be updated.

If you would like to discuss this memo, please call me.

cc: J. Paul Carland II, General Counsel  
Robert P. Vignola, Deputy General Counsel  
Jeffrey Moquin, Chief of Staff

Office of the Chief Auditor  
Telephone: 754-321-2400 Fax: 754-321-2719  
*Broward County Public Schools Is An Equal Opportunity/Equal Access Employer*

# FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE
MAILING ADDRESS	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:
CITY	<input type="checkbox"/> CITY <input type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY
DATE ON WHICH VOTE OCCURRED	NAME OF POLITICAL SUBDIVISION:
	MY POSITION IS: <input type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE

## WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies equally to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing the reverse side and filing the form.

## INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which inures to his or her special private gain or loss. Each elected or appointed local officer also is prohibited from knowingly voting on a measure which inures to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent organization or subsidiary of a corporate principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

\* \* \* \* \*

### ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

**PRIOR TO THE VOTE BEING TAKEN** by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

**WITHIN 15 DAYS AFTER THE VOTE OCCURS** by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

\* \* \* \* \*

### APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you otherwise may participate in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

**IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:**

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on other side)



**APPOINTED OFFICERS (continued)**

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

**IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:**

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

**DISCLOSURE OF LOCAL OFFICER'S INTEREST**

I, \_\_\_\_\_, hereby disclose that on \_\_\_\_\_, 20 \_\_\_\_\_;

(a) A measure came or will come before my agency which (check one)

- Inured to my special private gain or loss;
- \_\_\_ Inured to the special gain or loss of my business associate, \_\_\_\_\_;
- \_\_\_ Inured to the special gain or loss of my relative, \_\_\_\_\_;
- \_\_\_ inured to the special gain or loss of \_\_\_\_\_, by whom I am retained; or
- \_\_\_ Inured to the special gain or loss of \_\_\_\_\_, which is the parent organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

\_\_\_\_\_  
Date Filed

\_\_\_\_\_  
Signature

**NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.**