

Memorandum

To: Diego "Woody" Rodriguez, General Counsel

CC: Members of the School Board
Ronald Blocker, Superintendent

From: Linda J. Lindsey, CPA, Senior Director, Internal Audit

Date: January 10, 2011

Re: Inquiry Regarding Electrical Subcontractor Bids for Oak Ridge HS

At your request on behalf of the School Board, I reviewed the bid books and related documents on file at Contracts Administration related to the Oak Ridge High School project being managed for the school district by Wharton Smith. I also spoke with Kay Syed, Roberto Pacheco and David Wheeler of Contracts Administration and Ron Masten of Facilities. Mr. Masten is the district's owner's authorized construction representative for this project.

The bid book contains bids submitted by subcontractors to Wharton Smith (the construction manager, or CM, for the project) and bid tabulation forms that summarize the results of the bid process.

Wharton Smith's bid opening for this project was at 2:00 p.m. on June 29, 2010. Representatives of the district's Contracts Administration and Facilities departments were present at the bid opening.

Subsequent to the bid opening, three addenda to the plans and specifications for the project were issued to Wharton Smith by OCPS. Wharton Smith made these addenda available to the subcontractors that had bid on the project. An opportunity to submit revised bids was offered after the third addendum.

The bid book shows that seven electrical contractors submitted bids on June 29, 2010. Five of these seven contractors submitted revised bids to Wharton Smith on July 15, 2010 after the third addendum had been issued. Wharton Smith's bid tabulation indicates that it accepted the lowest final bid – that being from Tri-City Electrical.

Mr. Pacheco told me that when he learned that SAC had filed a bid protest, he requested information about the matter from Wharton Smith. David Lewis of Wharton Smith responded to his request by email, indicating that all bidders were advised of the post-bid addenda and offered an opportunity to revise their bids accordingly. Mr. Pacheco indicated that he made this inquiry to satisfy his concern that all bidders had been offered a chance to revise their bids. Mr. Lewis added a

comment at the end of his response stating that he received an unsolicited revised bid from SAC on July 19 which was not acknowledged because it was late. Nothing related to this second revised bid by SAC was in the bid book. SAC has informed the School Board that it believes its second revised bid was submitted on time. The conflicting information regarding the time of this last submittal is a fact in dispute in the litigation between SAC and Wharton Smith. Orange County Public Schools has not been named in that litigation.

Mr. Pacheco and Mr. Masten both stated that they had no involvement in the bidding process and have no knowledge of anything about this particular bidding process that was irregular or unusual.

The District's standard construction manager contract, including the one executed with Wharton Smith, contains a requirement that the CM, known as the Construction Contractor in the contract document, "...shall develop in writing subcontract bidding procedures for Owner's review and approval. Once those procedures have been approved by Owner, Construction Contractor shall not deviate from such procedures without obtaining Owner's prior written consent."

No one with whom I spoke at Contracts Administration or Facilities had knowledge of any such written subcontract bidding procedures on file in their respective offices. Had this provision of the contract been adhered to by both parties, it might be possible to make further determinations about how this particular bid situation was conducted procedurally.

In conclusion, I noted nothing in the district's documents and records related to this matter that appears out of the ordinary from other similar projects. Staff interviews and the documentation reviewed both indicate that the electrical work in Division 16 of the Oak Ridge High School project was awarded to the lowest final bidder. However, the District would be well advised to review its existing contract provisions regarding subcontract bidding to determine what provisions best meet current business requirements.