



SCHOOL BOARD ACTION REPORT

DATE: October 26, 2017
FROM: Dr. Larry Nyland, Superintendent
LEAD STAFF: Dr. Lester Herndon, Associate Superintendent, Facilities and Operations
(206) 252-0644, ltherndon@seattleschools.org

For Introduction: November 1, 2017
For Action: November 15, 2017

1. TITLE

BTA IV: Award Construction Contract K5078, Bid No, B08705 to Forma Construction Company for the Magnolia Elementary School Renovation and Addition Project

2. PURPOSE

This Board Action Report provides authorization for the Superintendent to enter into a construction contract for the Magnolia Elementary School Renovation and Addition Project.

3. RECOMMENDED MOTION

I move that the School Board authorize the Superintendent to execute construction contract K5078 to Forma Construction Company for the Magnolia Elementary School Renovation and Addition Project, in the amount of \$26,217,500 (including Alternates 1B: Automatic Temperature Controls for \$690,500; Alternate 2: South Addition Build-out for \$1,077,000; and Alternate 3: Linoleum Flooring for \$0.00), plus Washington State sales tax, in the form of the draft agreement attached to the Board Action Report, with any minor additions, deletions, and modifications deemed necessary by the Superintendent, and to take any necessary action to implement the contract. In addition, I move that the School Board authorize the transfer of \$5,000,000 from BTA IV Program Contingency to the Magnolia Elementary School Renovation and Addition Project budget.

4. BACKGROUND INFORMATION

a. Background

The Magnolia Elementary School Renovation and Addition Project is funded through the BTA IV Capital Levy Funds passed by the voters on February 9, 2016, the School Construction Assistance Program (SCAP) Funding, and Distressed School Grant.

The Magnolia Elementary School Renovation and Addition project was publicly bid on May 16, 2017, with a total of two (2) bids being received. The lowest bid was \$4,939,080 over the maximum allowable construction cost. This overrun amount plus contingency and sales tax would have necessitated the transfer of \$5,709,823 from BTA IV Program Contingency to the project budget. It was proposed, and the Superintendent agreed, that the two bids be rejected, cost reduction strategies be identified and implemented, and the project be rebid in the fall to attract more bidders and more

competitive bids. With the revised bid schedule, re-opening of Magnolia Elementary School will be delayed until fall 2019.

The project was publicly bid again on October 25, 2017. Compared to when the project bid in May:

- There was more competition with a total of three (3) bids received.
- All three bids were very close with a spread of \$1,009,100 between the low and high bidders compared to a spread of \$5,034,430 between the low and high bidders when the project bid in May.

It bears noting the project scope included an alternate bid to construct two additional learning commons spaces. This alternate was not selected, but can be added for \$250,000. The project scope also included an alternate bid to construct a cover over the play area. This alternate was not selected, but can be added for \$250,000 as well.

This motion allows the District to execute a construction contract with Forma Construction Company who was the lowest responsive responsible bidder. The consulting architect, Mahlum Architects, recommends acceptance of the bid. 31 firms requested bid documents.

b. Alternatives

Deny the motion. If the motion is denied, the District will not be able to execute the contract to start construction on the Magnolia Elementary School Renovation and Addition project.

c. Research:

Meng Analysis Facility Assessment Report dated August 2014
Seattle Public Schools Technical Building Standards dated December 2012
School Design Advisory Team
Coordination meetings with district facilities and other stakeholders throughout the design process.

5. FISCAL IMPACT/REVENUE SOURCE

The project budget for this work is \$34,596,493. The revenue source for this motion is Buildings, Technology and Academics/Athletics (BTA) IV Capital Levy Funds, ~~including School Construction Assistance Program (SCAP) Funding of approximately \$2,238,199, and the Distressed Schools Grant of \$5,048,000. The~~ a transfer of \$5,000,000 ~~transfer~~ from BTA IV Program Contingency will increase the project budget to \$39,596,493. The current balance in the BTA IV Program Contingency is \$12,487,499, subtracting the \$5,000,000 budget transfer will leave a balance of \$7,487,499, ~~the School Construction Assistance Program (SCAP) Funding, and the Distressed Schools Grant.~~

Expenditure: One-time Annual Multi-Year N/A

Revenue: One-time Annual Multi-Year N/A

6. COMMUNITY ENGAGEMENT

With guidance from the District’s Community Engagement tool, this action was determined to merit the following tier of community engagement:

- Not applicable
- Tier 1: Inform
- Tier 2: Consult/Involve
- Tier 3: Collaborate

The development of the BTA IV projects list underwent extensive community engagement. This process included a public comment period for the Programmatic Environmental Impact Statement.

7. EQUITY ANALYSIS

This motion was not put through the process of a full racial equity analysis. The list of projects to be funded in the BTA IV Levy was developed with the goal of providing equitable access to school facilities across the District.

8. STUDENT BENEFIT

It is the goal of the District to continue the process of implementing the BTA and BEX Capital Levy programs and provide students with safe and secure school buildings.

9. WHY BOARD ACTION IS NECESSARY

- Amount of contract initial value or contract amendment exceeds \$250,000 (Policy No. 6220)
- Amount of grant exceeds \$250,000 in a single fiscal year (Policy No. 6114)
- Adopting, amending, or repealing a Board policy
- Formally accepting the completion of a public works project and closing out the contract
- Legal requirement for the School Board to take action on this matter
- Board Policy No. _____, [TITLE], provides the Board shall approve this item
- Other: Office of Superintendent of Public Instruction application process for state assistance funding.

10. POLICY IMPLICATION

Per Board Policy No. 6220, Procurement, any contract over \$250,000 must be brought before the Board for approval.

11. **BOARD COMMITTEE RECOMMENDATION**

This motion was discussed at the Operations Committee meeting on May 18, 2017. The Committee moved this item forward to the full board with a recommendation for consideration.

12. **TIMELINE FOR IMPLEMENTATION**

Anticipated Notice to Proceed Date	January 8, 2018
Anticipated Construction Date	January 8, 2018
Substantial Completion Date	May 31, 2019

13. **ATTACHMENTS**

- ~~None~~ Draft Agreement

Magnolia Elementary School Renovation and Addition

This Agreement ("Agreement"), effective as of _____, 2017, is made by and between SEATTLE SCHOOL DISTRICT NO. 1 ("Owner"), and FORMA CONSTRUCTION COMPANY ("Contractor"). Owner and Contractor are individually referred to as "Party" and collectively referred to as the "Parties".

Owner and Contractor agree as follows:

ARTICLE 1. THE CONTRACT

- 1.01 Contractor shall perform all of the Work required by the Contract Documents for Magnolia Elementary School Renovation and Addition and more fully described in the Specifications, Section 01 10 00 (Summary of Work), and Section 01 11 00 (Summary of Hazardous Materials Work).
- 1.02 Contractor shall perform all obligations in accordance with the provisions of this contract, which consists of the following documents (references are to provisions of the Magnolia Elementary School Renovation and Addition Project Manual) dated September 26, 2017:
- a. This Agreement.
 - b. Addenda Nos. 1 and 2, dated October 25, 2017.
 - c. Supplemental Conditions, Section 00 73 00 and 00 73 20 if any.
 - d. Section 00 72 00, AIA Document A201 General Conditions for the Seattle School District, Magnolia Elementary School Renovation and Addition ("General Conditions") dated January 19, 2017.
 - e. Specifications, Sections 01 10 00 through 01 91 00.
 - f. Specifications, Sections 02 01 00 through 33 40 00.
 - g. Drawings, as set forth in Section 00 01 15.
 - h. Contractor's Performance and Payment Bond, Section 00 61 13.
 - i. Executed Bid Form, Section 00 41 13, together with Attachments 1, 2, 3 & 4.
 - j. Available Project Information, Section 00 30 00.
 - k. Safety Procedures, Section 00 73 19.
 - l. Wage Rates, Section 00 73 43.
 - m. Instructions for Bidders, Section 00 21 13.
 - n. Advertisement for Bids, Section 00 11 00.
 - o. The following forms, as applicable and as fully executed: Sections 0062 20 through 00 62 70.

All of the foregoing, together with all other documents issued pursuant to or made a part of this Agreement, are sometimes collectively referred to as the "Contract" or "Contract Documents".

All capitalized terms not defined herein shall have the same meaning given them in the General Conditions.

ARTICLE 2. STATEMENT OF THE WORK

- 2.01 Subject to paragraph 3.03 below, Contractor shall prosecute and complete the Work in accordance with the schedule and as more fully described in Section 01 10 00, paragraphs 1.13 and 1.14.
- 2.02 Owner may occupy premises during the entire construction period for conduct of normal operations. Contractor shall cooperate with Owner in scheduling operations to minimize conflict and to facilitate Owner's usage on the basis of the completion dates on the indicated schedule based on the Owner's occupancy of areas. See Section 01 10 00.
- 2.03 The Contractor specifically acknowledges that it has read and understands the requirements of the General Conditions, Section 00 72 00, relating to Changes and Time, including the requirements to provide timely notice, keep daily records, and submit documentation. Contractor further acknowledges that failure to comply with any of these requirements will result in rejection of claims as set forth in the General Conditions.

General Contractor's Initials _____

ARTICLE 3. TIME OF COMMENCEMENT, COMPLETION, AND LIQUIDATED AND ACTUAL DAMAGES

- 3.01 Subject to paragraph 3.02, Contractor shall prosecute and complete the Work in accordance with the Work Completion Dates and Liquidated Damages provisions set forth below. By executing this Agreement, Contractor acknowledges the reasonableness of the Work Completion Dates.
- 3.02 Contractor shall not commence performance of any Work under this Contract until Contractor's receipt of a written notice to proceed from Owner (the "Notice to Proceed") and satisfaction of all conditions stated therein. Owner's failure to issue the Notice to Proceed within ninety (90) days after bid opening shall be treated as a change within the provision of Article 7 of the General Conditions of the Contract for Construction. The Notice to Proceed will authorize Contractor to start performance under the Contract.
- 3.03 The Owner will provide Contractor with a separate authorization to commence construction at each site if this project includes multiple sites. Dates for the Work to be performed under this Contract are as follows:

Notice to Proceed Date: On or about January 8, 2018

Substantial Completion: May 31, 2019

Completion of Punch List: Not more than 30 days later than Substantial Completion.

Final Completion: Not more than 45 days later than Substantial Completion

- 3.04 Time is of the essence in this Contract. Owner will suffer serious and substantial damages if the Work is not completed in accordance with paragraph 3.03. However, it would be difficult if not impossible to determine precisely the amount of such damages. The Contractor therefore agrees that, from the compensation otherwise to be paid, or as a reimbursement if compensation was already paid, for each calendar day of delay beyond the aforementioned Substantial Completion Date, the following liquidated damages amounts shall apply:

<u>Building</u>	<u>Liquidated Damages Amount</u>
Magnolia Elementary School	\$2,500/ calendar day

These sums are agreed upon as the liquidated damages which the Owner will sustain in the case of the failure of the Contractor to achieve Substantial Completion within the Contract Time, and this sum is not construed as a penalty, but as a reasonable estimate of the Owner's actual damages.

- 3.05 The above provision for liquidated damages is intended to be in lieu of Contractor's liability for delay damages sustained by Owner by reason of Contractor's delay in reaching Substantial Completion on the date set for Substantial Completion. This provision shall not relieve or release Contractor from liability occasioned by other breaches or defaults under this Contract, nor shall it limit Owner's rights to terminate the Contract for cause pursuant to the General Conditions or to pursue any other remedy, under the Contract or otherwise.
- 3.06 In addition to the foregoing provisions for liquidated damages regarding failure to achieve timely Substantial Completion and any other rights of Owner hereunder or by law, it is agreed that Owner may recover its actual damages (including direct architectural, administrative and other related costs attributable to the Project), as a result of any delay by Contractor in reaching Final Completion within the time specified in Paragraph 3.03 above.
- 3.07 The fact that Contractor is liable for liquidated damages does not give Contractor an option to pay such damages in lieu of progressing with the Work on a reasonable, expeditious basis. Failure to make reasonable progress, at any time, is a basis for termination for cause. Election by the Owner not to terminate shall not affect Owner's right to assess liquidated damages and/or to terminate the Contract at a later time.

ARTICLE 4. ARCHITECT, CONSTRUCTION MANAGER AND REPRESENTATIVES

- 4.01 The Architect (“Architect” or “A/E”) for the Project is Mahlum Architects or such other as Owner may designate. The A/E’s address is 71 Columbia, Floor 4, Seattle, WA 98104.
- 4.02 The Owner’s Construction Manager (“Construction Manager”), if used, is to be determined by Owner.
- 4.03 The Owner may delegate duties to the Architect or the Construction Manager in writing from time to time, including duties designated for the Owner’s Representative as such term is defined in the General Conditions.
- 4.04 The Owner’s and Contractor’s designated Representatives are identified in Article 7. Any notice or Claim required or permitted under the Contract Documents shall be addressed to the designated Representative identified in Article 7.

ARTICLE 5. CONTRACT SUM

- 5.01 As full compensation for satisfactory performance of all Contractor’s obligations under this Contract, Owner shall pay Contractor the sum (the “Contract Sum”) of **TWENTY-SIX MILLION, TWO HUNDRED SEVENTEEN THOUSAND, FIVE HUNDRED DOLLARS (\$26,217,500.00)** plus Washington State and local sales taxes. The contract is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: Alternate Nos. 1B, 2, and 3.
- 5.02 Subject to retention as provided in the General Conditions, Section 00 72 00, Owner shall make progress payments to Contractor as provided for in Article 9 of the General Conditions.
- 5.03 Unit prices, if any; these descriptions are summary in nature, and the scope of this work is described in the Contract Documents:

Item	Units	Price per Unit
1. Imported Structural Fill (delivered and placed)	Cubic Yards (CY)	\$36.00
2. Excavation of Unsuitable Soils (disposed off site)	Cubic Yards (CY)	\$26.00
3. Replacement of Wet or Damaged Plywood Roof Sheathing	Square Feet (SF)	\$5.75
4. Asbestos Chalkboard/Tackboard Mastic	Square Feet (SF)	\$6.50
5. Petroleum Contaminated Soils (PCS)/Backfill	Tons	\$150

- 5.04 Allowances included in the Contract Sum, if any:

Item	Price
N/A	

ARTICLE 6. BONDS AND INSURANCE

- 6.01 Concurrently with Contractor’s execution and delivery of this Agreement, Contractor shall deliver to Owner performance and payment bonds in form and content acceptable to the Owner and as required by the General Conditions, executed by a surety authorized to issue such bonds in the State of Washington. Such bonds shall be for an amount equal to the Contract sum plus applicable sales tax. In addition, if requested in writing by the Owner, Contractor shall furnish to Owner, at such times and in such amounts, form and content as Owner may in writing request, such other surety bonds issued by a surety acceptable to Owner, in which case the premium for such other bonds shall be paid by Owner.
- 6.02 Prior to commencing Work, Contractor shall furnish Owner all certificates of insurance required the General Conditions, Section 00 72 00.

ARTICLE 7. NOTICES

7.01 All correspondence, requests, notices, and other communications to the Owner, in relation to this Agreement, shall be sent electronically through the e-Builder Project Management software, or if by mail to:

Jeanette Imanishi, RA
Project Manager
Capital Projects Department

Location: Seattle School District No. 1
2445 Third Avenue South
Seattle, WA 98134

U.S. Mail: Mail Stop 22-332
P.O. Box 34165
Seattle, WA 98124-1165

7.02 All correspondence, requests, notices, and other communications to Contractor, in relation to this Agreement, shall be electronically sent via e-Builder Project Management software, or if mailed, deliver to:

Andrew Phillips
Principal
Forma Construction Company
P.O. Box 11489
Olympia, WA 98508-1489

7.03 Either Party may change such address or individual by giving notice to the other Party in accordance with the provisions of this Article.

ARTICLE 8. AUTHORITY

8.01 Each individual executing this Agreement represents that he or she is authorized to execute this Agreement on behalf of the Party for whom he or she is executing and that this Agreement is valid and enforceable against such Party in accordance with its terms.

FORMA CONSTRUCTION COMPANY

Name _____
Title _____
Date _____

SEATTLE SCHOOL DISTRICT NO. 1

Name Dr. Larry Nyland
Title Superintendent
Date _____

END OF AGREEMENT BETWEEN OWNER AND CONTRACTOR SECTION