



SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

Meeting Date: 10/19/2016

Purpose: Report Only Recognition Discussion/ Possible Action

Presenter(s): Dr. Abelardo Saavedra, Superintendent

Item Title:

Consultation with attorney and discussion and possible action regarding the TEA Special Accreditation Investigation #2014-01-010 Forensic Audit Report.

Description:

To be discussed in Executive Session

District Goal:

Goal 6 We will promote and ensure a safe and secure learning environment for all students.

Funding Budget Code and Amount:

CFO Approval

None

APPROVAL ROUTE

SIGNATURE

DATE

Principal/Director:

Executive Director:

Chief Administrator:

Superintendent:

Jesus Salas
Abelardo Saavedra

10-10-16
10-10-2016

**SUPPLEMENTAL
REPORT**

**SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT
FORENSIC ACCOUNTING PROJECT**

2016 RFQ #2016-02

Prepared For:

**SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT
5622 RAY ELLISON DRIVE
SAN ANTONIO, TEXAS 78242**

Attention:

**MR. JESUS G. SALAZAR
CHIEF FINANCIAL & BUSINESS
OPERATIONS OFFICER**

SEPTEMBER 23, 2016

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Section I

INTRODUCTION

This is a supplemental report to RSM's June 22, 2016 Forensic Accounting Report (June report) to South San Antonio Independent School District (SSAISD). SSAISD requested the services of an external forensic auditor to review procurement of public works contracts, purchases, transactions, policies and procedures under SSAISD's 2010 bond program. The request is in response to Texas Education Agency's (TEA) Notice of Corrective Action Plan (The Plan) issued on November 6, 2015.

The June report summarized six findings. An addendum to the June report was issued on July 29, 2016 provided additional information regarding compliance with the key financial operational areas (July report).

Subsequent to issuing the June report, RSM presented its findings to the SSAISD school board on June 27, 2016. Following the board presentation, SSAISD was to provide the RSM June report and time to respond to the critical issues raised in the June report to (1) Garza Bomberger & Associates (GBA), the Architectural Engineer; (2) Joeris General Contractors (Joeris), the Construction Manager at Risk; (3) Parsons Commercial Technology Group (Parsons), the second project manager; and, (4) Amador Garza, the first project manager.

On August 11, 2016 a meeting was held at SSAISD with GBA, Joeris and Parsons' representatives in attendance to discuss the June report with SSAISD representatives. During the meeting, Joeris representatives stated that it had accumulated additional documentation in support of areas criticizing Joeris' submitted charges. In response to Joeris' supplemental documentation, SSAISD instructed HSSK to analyze the additional information and update the findings of the June report accordingly.

This report is in response to the analysis of Joeris' additional documents discussed in the August 2016 meeting with the effect of additional Joeris representative interviews.

Specifically, an amount of \$5,375,246 was noted in the June report as exceptions to the bond disbursements for the High School construction project (2010 Bond Program). These items in summary are restated as follows:

1. Items 4a – Joeris' Construction Cost - \$4,584,407
2. Items 4b – Joeris' Construction Manager's Fee - \$465,072
3. Item 2 – GBA fees; The effect of the exception on payments to GBA are a reduction of fees in the amount of \$325,767.

Section II

SUMMARY OF FINDINGS

1. Item #4a Joeris Construction Cost - \$4,584,407. The following discusses the subsequent analysis:
 - a. Subcontractor change orders previously not provided to RSM during the initial investigation were analyzed. There are two main types of change orders (1) change orders initiated by owner (SSAISD) or construction manager (Joeris) that requires approval from owner; and, (2) change orders between subcontractor and construction manager that requires approval only from Joeris should funds be available within the GMP.¹
 - b. About 450 subcontractor change orders were analyzed in response to \$3,877,644 in exceptions noted in the June report. We find the provided subcontractor change order documentation sufficient.
 - c. Included in the 450 subcontractor change orders and supplemental documentation were explanations for owner/construction manager change orders and adjustments to allowances. We find the provided subcontractor change orders and additional information sufficient.
 - d. Included in the supplemental information was support for the concrete exception amount of \$1,170,045. Documentation related to "Exclusions" by JLG Concrete in its submitted bid was sufficient to warrant upward adjustments by Joeris. After additional analysis by Joeris, JLG Concrete's bid was within \$153,356 of the Joeris bid for SPW.² As stated by Joeris, Joeris favored its own bid due to questions about JLG Concrete's ability to perform and complete the project. Thus, Joeris accepted its own bid which was \$153,353 higher than the lowest bid.

¹ Guaranteed Maximum Price

² Self-Performed Work – Work performed by the Construction Manager - Joeris

- e. Allowances and contingencies in the GMP totaled about \$1.9MM. Additionally, Joeris submitted GMP costs for approval in excess of \$2.8MM of the initial subcontractor contract amount.³ The effect of the above, Joeris had the flexibility to enter into almost if not more than \$4.0MM⁴ in subcontractor change orders.
- f. In general, the determination of the GMP cost submitted by Joeris was as follows:
 - i. Bid amounts were solicited and received including SPW bids by Joeris.
 - ii. Bids were analyzed and adjusted accordingly for possible “exclusions” or work out of scope. Some bids were incorrectly adjusted upwards for duplicative items, however, these adjustments did not impact the subcontractor’s acceptance. Thus, initial bids may have been different than the GMP amount.
 - iii. Joeris, per Joeris representative(s), listed the amount on the GMP that gave the owner the best value and that protected itself financially from worst case scenarios. SPW amounts may be included with subcontractor amounts or listed separately. Regardless, Joeris’ position is that the amount on the GMP is the budget amount notwithstanding of the subcontractor’s names associated with the GMP amounts. Thus, GMP may include more items than just the corresponding subcontractor’s bid amount.
 - iv. After GMP approval, Joeris would negotiate a contract amount with subcontractors. Usually, the contract amount was lower than the GMP amount. Thus, contract amounts may not equal the corresponding bid amount or GMP amount.

The above assists in explaining the reason for finding item #5 in the June report **“The subcontractor bidding process by Joeris’ was inconsistent in awarding subcontractor work”** and item #6 **“Joeris’ documentation of subcontractor costs was inconsistent with Bids and Amendments.”**

- 2. A limited analysis of SPW was performed. This analysis was performed in response to exceptions to Joeris’ submitted costs in the June report and the

³ Together with the allowances and contingency, total available funds for change orders was about \$4.7MM.

supplemental information provided. The analysis indicated (1) possible duplicative charges and (2) charges for work that may not have been performed by Joeris. The results of the analysis were submitted to Joeris allowing Joeris the opportunity to investigate this area and respond accordingly.

- a. The analysis was not an audit or accounting of the construction managers records as may be allowed by contract. Rather, the analysis was a limited comparison of reported SPW bids to both the Joeris contract and the Subcontractors' contracts.
- b. Joeris' contract stipulated a 1.98% fee for overhead. The 1.98% fee included items listed on "Schedule A" of the contract. Inclusion of items on the GMP for items also listed on "Schedule A" were identified and discussed with Joeris representatives.
- c. Contracts for subcontractors listed material and services to be performed. SPW with the same or similar material and services to be performed were identified and discussed with Joeris representatives.
- d. SPW for installation of material where material was subsequently excluded from the GMP is identified and discussed with Joeris representatives.
- e. SPW amounts included in the final cost either through (1) submission in the GMP or (2) through adjustment where no supporting bid was provided for review were identified and discussed with Joeris representatives.
- f. SPW bids/contracts that contained questionable items exceeded \$1.5MM and were discussed with Joeris representatives. Joeris representatives have agreed to **\$23,425** in adjustments (**Attachment A**). The balance of the \$1.5MM were considered as:
 - i. Items not at issue but were included in the base bid total;
 - ii. Supported by change order or other supplemental information; and,

⁴ Some submitted costs by Joeris that were subcontractor change orders were not disputed in the June report for reasons such as supported by analysis of other change order(s) and offsets by allowances.

iii. Other work that would be supported by the drawings or by an architect.

3. Construction manager's fee applied to Self-Performed Work by Joeris.

- a. The opinions stated in the June report remain unchanged. Thus, accepting no other changes, fees applied to SPW are overstated by **\$288,791 (Attachment B)**. This amount was stated as \$252,495 in the June report. The \$36,296 increase amount reflects the effect of previously disputed SPW in the June report.
- b. Joeris is disputing the \$288,791 amount and has stated that Article 2.3.2 is for "additional Construction Manager's fees."
- c. This report and the June report consider the "additional" as more than the submitted bid, thus, the exception remains.⁵
- d. Joeris is citing Article 6.3⁶ of the contract which as interpreted by Joeris contradicts Article 2.3.2 regarding Construction Manager's fees.

4. Calculation of Joeris Construction Manager's Fee. (Attachment B)

- a. Joeris recognizes that between **\$27,946** and **\$38,813** in submitted costs are overstated related to Construction Manager's Fees. This range is based upon Joeris' understanding of the Request for Proposal and Article 5 of the contract. (Attachment B)
- b. This report and the opinion of the June report remain unchanged. Assuming no other adjustments to the submitted cost of construction, this report considers the Construction Manager's Fee overstated by \$66,530, which excludes fees applied to SPW. The June report considered an overstatement amount of \$87,423; however, a change order had applied

⁵ Article 2.3.2 "the self-performed work shall be paid to the Construction Manager, ... but the Construction Manager shall not receive an additional Construction Manager's fee for self-performed work."

⁶ "The Construction Manager's compensation for such Subcontract Work performed shall be based on the amount of the bid or proposal, rather than "actual cost" as provided elsewhere in Article 6 of this Agreement. Costs paid to the Construction Manager for such Work shall be treated only as "subcontract costs" for the purpose of computing the allowable costs and fees payable to the Construction Manager."

a credit in the amount of \$21,339 to the final costs for both a correction to Construction Manger's Fee and changes in Final Costs – Cost of Work.⁷

- c. The difference between "a" and "b" above are the interpretations of "as a percentage of the 'Cost of Work'." GBA, by example in a letter⁸ to SSAISD, applied 1.98% for General Conditions/Overhead and 0.75% for Contractor Fee to the Cost of Work. GBA continued this practice in the Amendments. Thus, per GBA, the Construction Manager's Fees are applied to all other costs of construction. Contrary to this application, Joeris is interpreting the fee to be included in and part of the Cost of Work.⁹ Thus, the 1.98% is 2.0355% and the 0.75% is 0.77%¹⁰ of the total other construction costs and Cost of Work is assumed to be 100.00% of the cost.

5. The opinions expressed in the June report remain unchanged regarding GBA's fee. GBA was properly paid based upon the payment applications amount; however, GBA was overpaid after considering adjustments for exceptions noted above for construction related disbursements. Thus, fees should be reduced by \$24,619 or 6.5% of exceptions. **(Attachments A and C)**

⁷ It is assumed that change order #28 for cost savings includes the \$21,339 correction.

⁸ August 11, 2010 letter to Mr. Amador Garza

⁹ By example: $1.98 + 0.75 + 97.27 = 100$, 1.98 is 1.98% of 100

¹⁰ $1.98 / 97.27 = .02355$, $0.75 / 97.27 = .77$

ATTACHMENT A

EXCEPTIONS AND RELATED FEES SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT - 2010 BOND ANALYSIS

	Amount	Joeris Adjustments	
		#1 "RFP"	"Article 5"
HSSK/RSM Exceptions			
Construction Cost - Joeris	\$ 23,425 <i>by add</i>	\$ 23,425	\$ 23,425
Construction Manager's Fee - Joeris	355,321	38,813	27,946
Construction Cost Exceptions	Note (A)	652	647
Subtotal - CM Fees	<u>355,321</u>	<u>39,465</u>	<u>28,593</u>
Subtotal - Joeris	<u>378,746</u>	<u>62,890</u>	<u>52,018</u>
A/E Fee - Garza Bomberger	23,096	2,523	1,816
Construction Cost Exceptions	1,523	1,565	1,565
Subtotal- GBA Fees	<u>24,619</u>	<u>4,088</u>	<u>3,381</u>
Total - Joeris and GBA	<u>\$ 403,365</u>	<u>\$ 66,978</u>	<u>\$ 55,399</u>
Note - Factor to be applied to any disputed amount(s)			
Construction Cost - Joeris	100.0000%	100.0000%	100.0000%
Construction Manager's Fee - Gen Conditions	1.9800%	2.0200%	1.9964%
Construction Manager's Fee - Fee	0.7500%	0.7651%	0.7650%
A/E Fee - Garza Bomberger	6.5000%	6.6810%	6.6795%
	<u>109.2300%</u>	<u>106.5000%</u>	<u>106.6810%</u>

Note (A) - Exception applied to SPW - no fees considered

ATTACHMENT B

JOERIS CONSTRUCTION MANAGER'S FEE - EXCEPTIONS SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT - 2010 BOND ANALYSIS

		Construction Cost - Joeris Costs						RSM - Difference from Joeris		
		Joeris Recalculation					HSSK / RSM	Submitted Cost		
Submitted Cost	#1 "RFP"	Amount	"Article 5" Increase	Adjusted	#1 "RFP"	"Article 5"				
Cost of Work		\$ 49,760,414	\$ 49,760,414	\$ 48,600,000	\$ 1,160,414	\$ 49,760,414	\$ 49,760,414	\$ -	\$ -	\$ -
General Conditions Cost of Work	1.98%	985,256	985,256	962,280	22,976	985,256	985,256	-	-	-
General Conditions-other		56,683	19,902	27,720	190	27,910		(56,683)	(19,902)	(27,910)
		<u>1,041,939</u>	<u>1,005,158</u>	<u>990,000</u>	<u>23,166</u>	<u>1,013,166</u>	<u>985,256</u>	<u>(56,683)</u>	<u>(19,902)</u>	<u>(27,910)</u>
Contractors Fee - Cost of Work	0.75%	373,203	380,742	364,500	8,703	373,203	373,203	-	(7,539)	-
Contractors Fee - Other		9,847	276	10,500	174	10,674		(9,847)	(276)	(10,674)
Self Performed Work						-	(288,791)	(288,791)	(288,791)	
Subtotal		<u>383,050</u>	<u>381,018</u>	<u>375,000</u>	<u>8,877</u>	<u>383,877</u>	<u>84,412</u>	<u>(288,791)</u>	<u>(288,791)</u>	<u>(288,791)</u>
Total Construction Manager's Fees		<u>1,424,989</u>	<u>1,386,176</u>	<u>1,365,000</u>	<u>32,043</u>	<u>1,397,043</u>	<u>1,069,668</u>	<u>(355,321)</u>	<u>(316,508)</u>	<u>(327,375)</u>
Subtotal		51,185,403	51,146,590	49,965,000	1,192,457	51,157,457	50,830,082	(355,321)	(316,508)	(327,375)
PreConstruction		35,000	35,000	35,000		35,000	35,000	-	-	-
Total		<u>\$ 51,220,403</u>	<u>\$ 51,181,590</u>	<u>\$ 50,000,000</u>	<u>\$ 1,192,457</u>	<u>\$ 51,192,457</u>	<u>\$ 50,865,082</u>	<u>\$ (355,321)</u>	<u>\$ (316,508)</u>	<u>\$ (327,375)</u>
Difference			<u>\$ (38,813)</u>			<u>\$ (27,946)</u>	<u>\$ (355,321)</u>	<u>\$ (355,321)</u>	<u>\$ (316,508)</u>	<u>\$ (327,375)</u>
Adjustment for Self Performed Work							<u>\$ 10,578,455</u>			
Self Performed Work							\$ 79,338			
Contractors Fee on above	0.75%						\$ 209,453			
General Conditions on above	1.98%						<u>\$ 288,791</u>			

Per Article 2.2, Joeris is not entitled to fees on Self Performed Work (SPW).

ATTACHMENT C

GARZA BOMBERGER & ASSOCIATES FEE ANALYSIS SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT - 2010 BOND ANALYSIS

	Original Submission	#1 "RFP"	"Article 5"	HSSK / RSM
Final Construction Cost - Joeris	\$ 51,220,403	\$ 51,181,590	\$ 51,192,457	\$ 50,865,082
Garza Bomberger Fee	<u>6.50%</u>	<u>6.50%</u>	<u>6.50%</u>	<u>6.50%</u>
Calculated Fee	\$ 3,329,326	\$ 3,326,803	\$ 3,327,510	\$ 3,306,230
Payments	<u>\$ 3,329,326</u>	<u>\$ 3,329,326</u>	<u>\$ 3,329,326</u>	<u>\$ 3,329,326</u>
Difference	<u>\$ -</u>	<u>\$ (2,523)</u>	<u>\$ (1,816)</u>	<u>\$ (23,096)</u>