

**SCHOOL BOARD OF BROWARD COUNTY**  
**Review of the**  
**SW Area Bus Parking Facility, Pembroke Pines**  
**Project No. 9335-91-01**

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## TABLE OF CONTENTS

<b><u>REPORT SECTION</u></b>	<b><u>PAGE</u></b>
<b>I. EXECUTIVE SUMMARY.....</b>	<b>1</b>
Objective.....	1
Methodology.....	1
Summary of Issues .....	2
Background .....	2
Consultant .....	2
General Contractor .....	3
<b>II. SCOPE OF SERVICES.....</b>	<b>4</b>
<b>III. DETAILED OBSERVATIONS .....</b>	<b>6</b>
1.0 Payment and Performance Bond Riders.....	6
2.0 Builder’s Risk Insurance .....	7
3.0 Authorization To Proceed (ATP’s).....	8
4.0 Change Order and Amendment Document Processing.....	9
<b>IV. ADMINISTRATIVE RESPONSES.....</b>	<b>10</b>
<b>V. PHOTOGRAPHS .....</b>	<b>12</b>

# *Harvey, Branker, & Associates LLC*

March 14, 2008

The School Board of Broward County, Florida  
600 S.E. Third Avenue  
Fort Lauderdale, Florida 33301

To The School Board of Broward County, Florida  
Office of the Chief Auditor

We at Harvey, Branker & Associates L.L.C. appreciate the opportunity to work for The School Board of Broward County, Florida

We conducted a review of the contracts for the design and construction of the SW Area Bus Parking Facility, Pembroke Pines (Project No. 9335-91-01). The review focused on the contract deliverables provided by the Consultant (ACAI Associates, Inc.) for the original agreement and its five amendments for invoices dated from March 4, 2002 through September 4, 2007 and the General Contractor (Bergeron Land Development, Inc.) for their agreement, its eleven change orders and one amendment for pay applications from April 30, 2005 through August 25, 2007. We look forward to the continuance of performing all monitorings over the next six months.

This report is intended solely for the information and use of the SBBC and is not intended to be and should not be used by anyone other than those specified parties.

Please feel free to contact me if you have any questions. I can be reached at 954-966-4435.

Best Regards,

*Roderick Harvey CPA*

Roderick Harvey, CPA  
Managing Partner

## **I. EXECUTIVE SUMMARY**

Harvey, Branker & Associates, L.L.C. conducted a review of the contracts for the design and construction of the SW Area Bus Parking Facility, Pembroke Pines (Project No. 9335-91-01). The review focused on the contract deliverables provided by the Consultant (ACAI Associates, Inc.) for the original agreement and its five amendments for invoices dated from March 4, 2002 through September 4, 2007 and the General Contractor (Bergeron Land Development, Inc.) for their agreement, its eleven change orders and one amendment for pay applications from April 30, 2005 through August 25, 2007.

### **Objective**

The objectives of the review were to determine if the General Contractor and Consultant complied with contract terms and provisions regarding:

- Contract deliverables and services;
- Insurance and bonding requirements;
- M/WBE requirements;
- Payment Requests and
- Payment and Performance Bonds.

### **Methodology**

To accomplish our objectives, we reviewed:

- Consultant and General Contractor agreement and amendments,
- Supporting documentation for pay applications submitted on this project for the Consultant and General Contractor,
- Certificates of Insurance for the Consultant and General Contractor,
- Change Orders #1 through #11 to the General Contractor agreement,
- Authorization to Proceed (ATP) for Consultant,
- Notice to Proceed (NTP) for Contractor,
- Plan Review comments,
- Permits.

In addition to the review of the documents listed above we:

- Contacted the BCPS Facilities & Construction Management Project Manager, Capital Payments staff and the Risk Management Department, Insurance agents, the Attorney-in-fact, and
- Conducted interviews with the Facilities and Construction Management Division (F&CM), the Risk Management Department, the Supplier Diversity and Outreach Office (M/WBE) staff, and
- Applied other auditing procedures as deemed necessary.

## Summary of Issues

Our review disclosed several contract administration and contract compliance issues regarding the issuance of bond riders and builder's risk insurance policies, the processing of change orders, contract amendments and consultant ATP's. We have included recommendations to strengthen contract administration, implement improvements to future contracts and address our specific findings.

We summarized our observations below:

1. Payment and Performance Bond Riders were not provided by the contractor with each change order/amendment as required by the agreement. (see page 6)
2. The contractor did not provide Builder's Risk insurance coverage at the time contract amendment #1 was approved by the Board. (see page 7)
3. Consultant ATP's were issued without completion dates. (see page 8)
4. Change orders and contract amendment were not timely processed for Board Approval. (see page 9)

## Background - South West Bus Parking Facility

### Consultant

On January 16, 2001, the School Board of Broward County approved the Professional Services Agreement for ACAI Associates, Inc. to reuse the West Central Bus Complex<sup>1</sup> construction documents for the South West Area Bus Parking Facility in Pembroke Pines. The new 30 acre project; planned to have an Administration Building, Garage/Maintenance Building and Bus Wash/Fueling Station,<sup>2</sup> was to include complete site development and be completed by July 2003. Consequently, the reuse of 20 acre bus complex construction documents for a 30 acre facility, created problems for the F&CM project management staff such as:

- Insufficient project funds due to rising construction costs and increased project size.
- Building facilities needed to be modified to accommodate additional bus drivers and buses.

The initial project budget was \$8,528,677 with a Fixed Limit of Construction Costs<sup>3</sup> of \$6,500,000.

For the next two years the design of the facility progressed gradually while F&CM project management staff attempted to secure additional project funds. However, as the design developed, changes were made and by April 2003, the professional services agreement was amended by \$54,000 to include the design of two diesel permanent standby generators, offsite improvements and temporary facility changes.

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<sup>1</sup> The West Central Bus Complex is a 20 acre facility.

<sup>2</sup> Project Scope – Professional Services Agreement Attachment 2

<sup>3</sup> The Professional Services Agreement defines the Fixed Limit of Construction Costs as the total dollar value of the sum of the project's anticipated base bid (the project's essential scope) including design contingency.

Approximately ten months later in February 2004, BCPS administrative staff made the decision to bid the civil site work separately and to have the remaining work, which included moving six portables to serve as temporary facilities and expand/construct driver's administration building, to be completed in phases. On December 16, 2004 the bid for the Site Improvements at the SW Area Bus Facility project was opened. Over the next three years, several more design changes were made and the PSA was amended four times increasing the contract by \$731,484 for a total contract of \$1,223,936. The table below identifies the changes made to the Professional Services Agreement for ACAI Associates, Inc. over the past seven years.

<b>Bd. Date</b>	<b>Description</b>	<b>Amount</b>
01/16/01	Approve PSA with ACAI Associates, Inc. (Includes Supp. Services)	\$492,452
04/29/03	Additional Basic and Supplemental Services for the design of a permanent standby emergency generator, offsite improvements, unanticipated work and design delays, and liability insurance premium increase.	\$53,900
11/14/05	Additional Supplemental Services due to increased construction activities.	\$75,000
01/16/07	Additional Basic and Supplemental Services for the design and coordination of the Administration Building, Vehicle Maintenance, Fueling, and Bus Wash and the extension of construction administration by 19 months.	\$216,968
04/24/07	Additional Supplemental Services for the design and construction administration of the interior of the 'Repair and Maintenance Building'.	\$300,712
08/07/07	Additional Supplemental Services for project specific professional liability insurance.	\$84,904
	<b>ACAI Associates, Inc. Total</b>	<b>\$1,223,936</b>

As of November 21, 2007 the F&CM Division has expended \$940,751 of the \$1,223,936 appropriated to ACAI Associates, Inc. for Design Services.

### **General Contractor**

On February 1, 2005 the School Board of Broward County approved the contract for Bergeron Land Development, Inc. to complete the Site Improvements at the South West Are Bus Facility project for the lump-sum bid<sup>4</sup> amount of \$4,066,413. Having only 150 consecutive calendar days to complete the project, the contractor was required to be substantially complete no later than September 8, 2005. Due to unanticipated changes, a contract amendment, and weather delays, the schedule was amended to add 1,056 calendar days. The facility is now scheduled for substantial completion in July 2008. In the past seven years the SW Area Bus Facility project budget has grown to \$12,624,452 with construction costs estimated at over \$10.8 Million. The table below identifies the changes made to the contract for Bergeron Land Development, Inc. over the past three years.

<sup>4</sup> Five bidders submitted pricing on this project. • 1<sup>st</sup> Bergeron Land Development, Inc \$4,066,413 • 2<sup>nd</sup> The Redland Company, Inc. \$4,164,870 • 3<sup>rd</sup> Hewett-Kier Construction, Inc. • 4<sup>th</sup> Williams Paving Co. Inc. \$5,800,575 • 5<sup>th</sup> JCI International, Inc.

<b>Bd. Date</b>	<b>Description</b>	<b>Amount</b>
02/01/05	Approve award of contract to Bergeron Land Development, Inc.	\$4,066,413
06/07/05	Change Order 1 - Remobilization and connection of electrical pump station	\$4,464
11/14/05	Change Order 2 - Modification for water, sewer, and drainage	\$66,803
12/13/05	Change Order 3 - Hurricane/Rain excusable non-compensable	\$0
03/07/06	Approve Amendment - Add Building #2 & #3 plus coordination and site supervision	\$2,919,688
04/18/06	Change Order 4 - Flume installation and curb revision; replace corbels and rebuild top	\$6,775
11/14/06	Change Order 5 - Replace telemetry radio, antenna and mast	\$5,366
12/12/06	Change Order 6 - Change from Interlean to Washtronics	\$99,568
05/08/07	Change Order 7 - Add 3' flow channel and reconfigure Admin. & Maintenance Bldgs.	\$18,988
06/19/07	Change Order 8 - Change to underground utilities due to bldg. size changes	\$75,517
08/07/07	Change Order 9 - Add Fencing, card reader entrance, pavement, landscaping and asphalt	\$993,706
10/02/07	Change Order 10 - Add lighting protection system for Administration Building and Hard rock excavation for 15 column footings	\$27,238
11/14/07	Change Order 11 - Change the source of power to the FPL transformer in lieu of the Maintenance Building and incorporate changes for connection to emergency generator	\$29,601
	<b>Bergeron Land Development Total</b>	<b><u>\$8,314,127</u></b>

As of November 21, 2007 the F&CM Division has expended \$4,186,636 of the \$8,314,127 appropriated to Bergeron Land Development, Inc. for Construction.

## **II. SCOPE OF SERVICES**

The period for review was the fiscal year ending September 30, 2007 for Construction Services related to the SW Area Bus Parking Facility, Pembroke Pines Project No.9335-91-01.

**Audit Scope.** We reviewed the funding and expenditures for The School Board of Broward County agreement with Bergeron Land Development, Inc as of and for the period ended.

- Identify control-related matters that would be of particular concern to management.
- Develop constructive recommendations for management, related to the Construction Services.

- Interview District staff, Project Consultant (A/E), General Contractor (GC) and other project personnel (as necessary) to obtain an understanding of the policies and procedures designed to help ensure that Broward County School Board directives are carried out.
- Evaluate design and implementation of the controls identified in the Construction Services.
- Review contract documents (ie: project correspondence, plans and specifications, certificates of insurance) as necessary.
- Review, sample and analyze GC and A/E agreement deliverables and validate services rendered through the review of supporting documentation for:
  - Authorization to Proceed,
  - Change Orders, and
  - Contract amendments.
- Provide schedules identifying all GC and A/E contract expenditures.
- Review the proposed budget related to project/construction costs and compare to actual costs by reviewing payment documentation.
- Review, sample and analyze GC and A/E invoices to determine compliance with contract, scope of services, and cost of work.
- Review, sample and analyze GC and A/E agreements for compliance with project requirements for:
  - bonding and insurance requirements (as applicable),
  - substantial and final completion of work and liquidated damage requirements (as applicable), and
  - M/WBE participation requirements (as applicable).
- Issue a report of findings and recommendations and a report on expenditures to date.
- Perform additional procedures as requested and agreed to by the District and HBA.

### **III. DETAILED OBSERVATIONS**

The following sections provide detailed information regarding observations made during this review.

#### **1.0 Payment and Performance Bond Riders**

##### **Observation**

During our review, we noted that Payment and Performance Bond riders were not provided by the contractor with each change order/amendment as required by the agreement. Without a properly executed Payment and Performance Bond rider in accordance with the contract requirements, the School Board can be exposed to additional costs associated with the performance of the contract and payment of contractor provided labor and materials. The oversight was realized during our review and the contractor took the required action. A Payment and Performance Bond rider was issued on December 20, 2007 for the revised contract amount of \$8,314,127.

##### **Background**

Article 7.02 of Agreement Form (Document 00520) with the General Contractor requires that the Contractor provide bonds, for one hundred per cent (100%) of the Contract price guaranteeing the performance and payment of all persons providing labor and materials in connection with the contract. In addition, Article 33.02.04 of General Conditions of the Contract (Document 00700) requires that the Contractor notify and obtain consent and approval from Contractor's surety with reference to all change orders.

##### **Recommendation**

We recommend that the Facilities and Construction Management Division strengthen procedures for the review and retention of Payment and Performance Bond riders during the entire contract term. This procedure should ensure that contractors submit corresponding Payment and Performance Bond riders reflecting the revised contract amount whenever a contract change is made to protect the School Board's assets throughout the construction of the project as required by the contract.

##### **Administrative Response**

See Section IV (page 10) for administrative responses.

## **2.0 Builder's Risk Insurance**

### **Observation**

During our review, we noted that the Contractor did not provide Builder's Risk insurance coverage for contract amendment #1 approved by the Board on March 7, 2006. Without a Builder's Risk insurance policy in accordance with the contract requirements, the School Board can be exposed to additional risks associated with the perils of fire, vandalism, and malicious mischief. The oversight was realized during our review and the F&CM project manager took the required action. A Builder's Risk insurance policy was issued on November 13, 2007 for the value of the structures in amendment #1.

### **Background**

Builder's Risk insurance is specialized property insurance covering losses to building structures during construction. Article 42.05 of General Conditions of the Contract (Document 00700) requires that "the Contractor shall carry at no additional expense to the Owner, Builders' Risk Insurance for the perils of fire, vandalism, malicious mischief and those included in extended coverage in the amount of one hundred per cent (100%) of the values at risk. Such policies shall be written to protect the Contractor and the Owner as their interest may appear." Since the original contract awarded by the Board was for site work only, a Builder's Risk insurance policy was not required. However, the subsequent award of Amendment #1 on March 7, 2006, adding two buildings to the project, required the procurement of a Builder's Risk policy by the contractor.

### **Recommendation**

We recommend that the Facilities and Construction Management Division strengthen procedures for the review and acceptance of Builder's Risk Insurance policies during the construction contract term. This procedure should ensure that contractors submit proof of Builder's Risk insurance coverage for the respective contract value prior to the start of construction thereby mitigating the School Board's risk of financial loss.

### **Administrative Response**

See Section IV (page 10) for administrative responses.

### **3.0 Authorization To Proceed (ATP's)**

#### **Observation**

During our review, we noted that 4 out of 22 (18%) of the ATP's sampled did not have completion dates as required by the Professional Services Agreement. Without a properly executed ATP in accordance with the contract requirements, the School Board of Broward County and Consultant's are exposed to respective risks associated with project delays and consultant errors and potential litigation.

#### **Background**

Article 1.3 of the Professional Services Agreement with the Consultant defines the Authorization to Proceed as "a document issued by the Owner to the Project Consultant authorizing the performance of specific professional services, and stating the time for completion and the amount of fee authorized for such services."

#### **Recommendation**

We recommend that the Facilities and Construction Management Division strengthen procedures for the completion and processing of consultant ATP's during the construction contract term. This procedure should ensure that all future consultant ATP's include the contractually required details regarding the work to be performed (i.e. scope of work, time for completion and fee authorized).

#### **Administrative Response**

See Section IV (page 10) for administrative responses.

## **4.0 Change Order and Amendment Document Processing**

### **Observation**

During our review, we noted that 4 out of 12 (33%) change orders/amendment (CO#2, CO#3, Amendment #1 and CO#9) were not timely processed and the final completion date expired prior to the contract change being approved by the Board. Without a timely executed change order (contract amendment) in accordance with the contract requirements, the School Board can be exposed to respective risks associated with project delays and/or liquidated damages and may not be able to recover damages associated with same. It is important to note that our review of the supporting documentation for the four change orders/amendments revealed that two change order requests were processed prior to the final completion date expired.

### **Background**

Article 33.04 B of General Conditions of the Contract (Document 00700) requires that “all change orders will require prior Board approval, except in emergency cases as declared by the Superintendent, or where the change order in question would be in the form of a credit, thereby reducing the adjusted contract amount.”

### **Recommendation**

We recommend that the Facilities and Construction Management Division strengthen procedures for the completion and processing of change orders and amendments during the construction contract term. This procedure should ensure that all contract change orders/amendments are processed timely for approval by the School Board.

### **Administrative Response**

See Section IV (page 10) for administrative responses.

**IV. ADMINISTRATIVE RESPONSES**

*The School Board Of Broward County, Florida*  
**Facilities & Construction Management**  
**Michael C. Garretson**  
**Deputy Superintendent**

March 14, 2008

TO: Patrick Reilly  
Chief Auditor

FROM: Michael C. Garretson *Signature on File*  
Deputy Superintendent

SUBJECT: SW AREA BUS PARKING FACILITY AUDIT

**1.0 PAYMENT AND PERFORMANCE BOND RIDERS**

**RECOMMENDATION:**

**We recommend that the Facilities and Construction Management Division strengthen procedures for the review and retention of Payment and Performance Bond riders during the entire contract term. This procedure should ensure that contractors submit corresponding Payment and Performance Bond riders reflecting the revised contract amount whenever a contract change is made to protect the School Board’s assets throughout the construction of the project as required by the contract.**

**ADMINISTRATIVE RESPONSE:**

*We agree with the observation. As a result of this audit, staff has met with the Risk Management Department and implemented reporting changes between the two departments to correct this oversight. The Risk Management Department will be notified immediately of all changes to the contract scope of work and sum. The contractor will be required to provide proof at each progress payment, that bonds have been adjusted accordingly to reflect the current contract scope of work and contract payment.*

**2.0 Builder’s Risk Insurance**

**Recommendation:**

**We recommend that the Facilities and Construction Management Division strengthen procedures for the review and acceptance of Builder’s Risk Insurance policies during the construction contract term. This procedure should ensure that contractors submit proof of Builder’s Risk Insurance coverage for the respective contract value prior to the start of construction, thereby mitigating the School Board’s risk of financial loss.**

**Administrative Response:**

1700 SW 14<sup>th</sup> Court – Ft. Lauderdale, FL 33312  
Phone: 754-321-1517 Fax: 754-321-1681

# SW AREA BUS PARKING FACILITY AUDIT

March 14, 2008

Page 2

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*We agree with the observation. The Construction Contract was awarded for "Site Work", which didn't require Builders Risk Insurance. Vertical Construction was added by Contract Amendment 1, on March 7, 2006. The construction contract will be revised to require proof from the contractor that increased insurance coverage has been obtained at each payment requisition. Additionally, the Risk Management Department is being copied on all change order letters to better coordinate insurance coverage.*

### **3.0 Authorization to Proceed (ATP's)**

#### **Recommendation:**

**We recommend that the Facilities and Construction Management Division strengthen procedures for the completion and processing of consultant ATP's during the construction contract term. This procedure should ensure that all future consultant ATP's include the contractually required details regarding the work to be performed (i.e. scope of work, time for completion and fee authorized).**

#### **Administrative Response:**

*We agree with the observation. Additional staff training has been implemented to ensure all Authorizations to Proceeds for consulting work include a well defined scope of work, schedule and a "Not to Exceed Cost" or agreed upon lump sum.*

### **4.0 Change Order and Amendment Document Processing**

#### **Recommendation:**

**We recommend that the Facilities and Construction Management Division strengthen procedures for the completion and processing of change orders and amendments during the construction contract term. This procedure should ensure that all contract change orders/amendments are processed timely for approval by the School Board.**

#### **Administrative Response:**

*We agree with the observation. Whenever possible, the Facilities and Construction Management Department endeavors to process all change orders by the next available board meeting. This procedure will be re-addressed with staff and re-enforced to minimize project delays.*

MCG/JR/sat

cc: Juana Romaniuk, Project Manager III

**PHOTOGRAPHS**



July 7, 2007 – Administration Building



July 7, 2007– Administration Building



July 7, 2007 - Fueling



March 12, 2008 – Administration Building



March 12, 2008 – Administration Building



March 12, 2008 - Fueling