

ORANGE COUNTY  
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: June 24, 2013

AGENDA ITEM No. 13-06-(2)-11

ACTION ITEM: (Y/N) Y

SUBJECT: Bid Award: A.L. Stanback Middle School Track Rehab

INFO. CONTACT: Pam Jones, Interim Exec. Director Aux. Svcs. PHONE: (919) 732-8126

ATTACHMENTS: 1. Bid Tabulation  
2. Contract

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**PURPOSE:** To consider awarding a bid and approving a contract to Fred Smith Company in the amount of \$70,150 for complete rehab of the A.L. Stanback Track; and authorizing a Capital Fund Balance appropriation in the amount of \$6,950 to fund this project.

**BACKGROUND:** The running track at A.L. Stanback Middle School was built in 1995. Later modifications were made to extend the track to meet competition criteria. Since then the track has deteriorated and safety concerns have rendered the track unusable.

The original project estimate was for resurfacing only; no subsurface work was contemplated. However, core samples and additional analysis by Summit Design and Engineering indicated significant inconsistencies throughout the track in both paving and subsurface rock thickness. In order to ensure the longevity of the track, a more complete rehab is required.

Bids were received from four bidders on June 18, 2013, with the Fred Smith Company submitting the lowest responsible bid in the amount of \$70,150. Although this bid is significantly below the other bids submitted, Fred Smith Company has confirmed the bid as valid and will honor the price. This bid, therefore, is recommended for award. The entrance work to the new UNC Hospital off Old Highway 86 was constructed by this company as a reference to their quality of work.

**FINANCIAL IMPACT:** The Board of Education and County Commissioners approved repurposed funds in the amount of \$75,000 in February, 2013 to fund what was then believed to be the project cost. A design contract in the amount of \$10,800 paid through this account brings the available balance for the rehab work to \$64,200. It is recommended the remaining \$6,950 required for this contract be appropriated from the Capital Fund Balance.

**RECOMMENDATION:** The Superintendent recommends the Board award a bid and approve a contract to Fred Smith Company in the amount of \$70,150 for rehab of the A.L. Stanback Track; and direct the Finance Officer to prepare a budget amendment appropriating \$6,950 from Capital Fund Balance for approval by the Board at a subsequent meeting.



Letting Date: June 16, 2013 at 3:00 pm

Item	Description	Quantity	Unit	Engineers Est.		Fred Smith Co.		Ruston Paving		Raleigh Paving	
				Unit Price	Amount Bid	Unit Price	Amount Bid	Unit Price	Amount Bid	Unit Price	Amount Bid
1	Mobilization	1	LS	\$ 15,000.00	\$ 15,000.00	\$ 2,900.00	\$ 2,900.00	\$ 1,000.00	\$ 1,000.00	\$ 4,500.00	\$ 4,500.00
2	Removal of Existing Asphalt Track	1	LS	\$ 21,500.00	\$ 21,500.00	\$ 10,400.00	\$ 10,400.00	\$ 12,560.00	\$ 12,560.00	\$ 13,000.00	\$ 13,000.00
3	Subgrade Preparation and Repair	1	LS	\$ 20,000.00	\$ 20,000.00	\$ 15,400.00	\$ 15,400.00	\$ 24,490.00	\$ 24,490.00	\$ 16,000.00	\$ 16,000.00
4	Asphalt Paving	1	LS	\$ 60,000.00	\$ 60,000.00	\$ 33,500.00	\$ 33,500.00	\$ 44,700.00	\$ 44,700.00	\$ 46,727.00	\$ 46,727.00
5	Track Lane Striping	1	LS	\$ 4,000.00	\$ 4,000.00	\$ 2,400.00	\$ 2,400.00	\$ 4,400.00	\$ 4,400.00	\$ 5,000.00	\$ 5,000.00
6	Grading & Drainage Improvements	1	LS	\$ 2,500.00	\$ 2,500.00	\$ 5,550.00	\$ 5,550.00	\$ 7,000.00	\$ 7,000.00	\$ 12,000.00	\$ 12,000.00
				\$ 123,000.00		\$ 70,150.00		\$ 94,150.00		\$ 97,227.00	

Item	Description	Quantity	Unit	Asphalt Experts		Unit Price	Amount Bid	Unit Price	Amount Bid	Unit Price	Amount Bid
				Unit Price	Amount Bid						
1	Mobilization	1	LS	\$ 4,514.85	\$ 4,514.85		\$ -		\$ -		\$ -
2	Removal of Existing Asphalt Track	1	LS	\$ 17,415.00	\$ 17,415.00		\$ -		\$ -		\$ -
3	Subgrade Preparation and Repair	1	LS	\$ 25,155.00	\$ 25,155.00		\$ -		\$ -		\$ -
4	Asphalt Paving	1	LS	\$ 42,570.00	\$ 42,570.00		\$ -		\$ -		\$ -
5	Track Lane Striping	1	LS	\$ 5,175.00	\$ 5,175.00		\$ -		\$ -		\$ -
6	Grading & Drainage Improvements	1	LS	\$ 9,920.15	\$ 9,920.15		\$ -		\$ -		\$ -
				\$ 104,750.00			\$ -		\$ -		\$ -

*R. E. O'Connell*  
Engineer's Certification

## CONTRACT

THIS AGREEMENT is made this 24<sup>TH</sup> day of June, 2013 by and between the Orange County Board of Education (herein referred to as the "Owner"), whose mailing address is 200 E. King Street, Hillsborough, North Carolina 27278 and Fred Smith Company (herein referred to as the "Contractor"), whose mailing address is 6105 Chapel Hill Road, Raleigh, NC 27607. Correspondence, submittals, and notices relating to or required under this contract shall be sent in writing to the above addresses unless either party is notified in writing by the other of a change in address.

### WITNESSETH:

WHEREAS, it is the intent of the Owner to obtain the services of the Contractor in connection with the A.L. Stanback running track rehabilitation, pursuant to bids submitted on June 18, 2013 hereinafter referred to as the "Project" or the "Work")

WHEREAS, the Contractor desires to perform such construction in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable consideration, the following terms and conditions are hereby mutually agreed to, by and between the Owner and Contractor:

1. Scope of Services.

The Contractor shall perform the Work in accordance with the terms of this Agreement, in accordance with any plans and specifications prepared for this project, and as specifically identified and described in Attachment 1 attached hereto, all of which are incorporated into and made a part of this Agreement. The Contractor shall provide and pay for all materials, tools, equipment, and labor, and shall perform all other acts and supply all other services and things necessary to fully and properly perform and complete the Work as required by this Agreement.

The Contractor shall perform the Work in compliance with all governmental laws and regulations, including all applicable local, state and federal rules and regulations.

2. Time. The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed, the date of this Agreement, or such other date as may be established by the Owner. Time is of the essence. The Contractor shall perform work in a timely manner.

3. Insurance. The Contractor shall obtain and maintain in effect during the term of this Agreement, general liability and automobile liability insurance in which the Owner and the Contractor shall each be named as insured parties, which insurance shall protect the Owner and the Contractor from claims in an amount not less than \$1,000,000 for personal injury, including death, to any one person and in an amount not less than \$1,000,000 for any one occurrence, and from claims for property damages in an amount of not less than \$1,000,000 for each occurrence arising from any act or omission of Contractor, its agents, employees or subcontractors. The Contractor shall obtain and maintain in effect during the term of this Agreement, a policy of workers compensation liability insurance in which the policy shall protect the Owner and the Contractor from claims in an amount not less than the statutory amount.

The Contractor shall promptly furnish to the Owner certificates of insurance evidencing such insurance coverage. Insurance required hereunder shall be maintained by insurance companies properly licensed by the Insurance Department of the State of North Carolina and rated A or better by Bests Insurance Guide.

4. Hold Harmless. The Contractor shall indemnify and hold the Owner harmless from an against any and all losses, liabilities, claims, lawsuits, judgments, and demands whatsoever, including costs of investigation (including reimbursement of reasonable legal fees and all costs) which may arise out of or be caused by any negligent act or omission or intentional wrongdoing of the Contractor or its agents, employees or subcontractors, or which may arise out of or be caused by the maintenance, presence, use, location or removal of any equipment or other property owned or operated by the Contractor or its agents, employees or subcontractors. The Owner shall not be responsible for any damage to the Contractor's property, business, agents or employees, unless said damage is due solely to the negligence of Owner.
5. Payments. Provided that the Contractor shall strictly and completely perform all of its obligations under this Agreement, the Owner shall pay to the Contractor the sum of seventy thousand one hundred fifty Dollars (\$70,150.00) (herein referred to as the Contract Sum). No compensation shall be paid for any additional work that is not approved in advance by the Owner.
6. Progress Payment. One progress payment, if any, may be made by the Owner to the Contractor only after certification that the Work is complete and will be based upon the completion of the identified interim work agreed to by the Owner. Under no circumstances will the Owner make more than one interim payment. The Owner will retain five percent (5%) of the amount of any progress payment and/or the Contract Sum until all of the Work is finally completed and accepted, whether or not the Owner has occupied any or all of the Project before such time.
7. Warranties. The Contractor guarantees and warrants to the Owner all Work as follows: that all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified; that all Work will be of good quality in accordance with the industry standards for reputable contractors; that the Work will be free of omissions and faulty, poor quality, imperfect and defective material or workmanship; that the Work, including but not limited to, mechanical and electrical machines, devices and equipment, shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care; and that the products or materials incorporated in the Work will not contain asbestos.

If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by this Agreement, any of the Work is found to be defective, not in accordance with this Agreement, or not in accordance with the guarantees and warranties specified in this Agreement, the Contractor shall correct it within five (5) working days or such other period as mutually agreed, after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. For items which remain incomplete or uncorrected on the date of Substantial Completion, the one year warranty shall begin on the date of Final Completion of the Work.

8. Termination for Convenience. The Board may terminate this Agreement at any time in its complete discretion upon twenty (20) days written notice. In the event of a termination for convenience, all finished or unfinished work and materials pursuant to this Agreement shall be turned over to the Board and become its property. If the Agreement is terminated by the Board in accordance with this section, the Board shall only be responsible for paying Contractor for all Work performed and accepted and all materials delivered to the site as of the date of termination.
  
9. Termination by the Owner for Cause. The Owner may terminate the Agreement upon five (5) days written notice if the Board is dissatisfied with the quality or timeliness of the Work performed. If the Owner becomes dissatisfied with the Work, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor five days' written notice, terminate employment of the Contractor and may:
  1. Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
  2. Accept assignment of any subcontracts; and
  3. Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

If the owner terminates the whole or any part of the Work, the Owner may procure, upon such terms and in such manner as the Owner may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

When the Owner terminates the Contract, the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's and legal services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect and this obligation for payment shall survive this Agreement.

10. Lunsford Act/Criminal Background Checks. The Provider shall conduct at its own expense sexual offender registry checks on each of its employees, agents, ownership personnel, or contractors ("contractual personnel") who will engage in any service on or delivery of goods to school system property or at a school-system sponsored event, except checks shall not be required for individuals who are solely delivering or picking up equipment, materials, or supplies at: (1) the administrative office or loading dock of a school; (2) non-school sites; (3) schools closed for renovation; or (4) school construction sites.. The checks shall include at a minimum checks of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry ("the Registries"). For the Provider's

convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public Website at <http://www.nsopw.gov/>. The Provider shall provide certification (Attachment 2) that the registry checks were conducted on each of its contractual personnel providing services or delivering goods under this Agreement prior to the commencement of such services or the delivery of such goods. The Provider shall conduct a current initial check of the registries (a check done more than 30 days prior to the date of this Agreement shall not satisfy this contractual obligation). In addition, Provider agrees to conduct the registry checks and provide a supplemental certification before any additional contractual personnel are used to deliver goods or provide services pursuant to this Agreement. Provider further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. Provider shall not assign any individual to deliver goods or provide services pursuant to this Agreement if said individual appears on any of the listed registries. Provider agrees that it will maintain all records and documents necessary to demonstrate that it has conducted a thorough check of the registries as to each contractual personnel, and agrees to provide such records and documents to the school system upon request. Provider specifically acknowledges that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. Failure to comply with the terms of this provision shall be grounds for immediate termination of the Agreement. In addition, the school system may conduct additional criminal records checks at the school system's expense. If the school system exercises this right to conduct additional criminal records checks, Provider agrees to provide within seven (7) days of request the full name, date of birth, state of residency for the past ten years, and any additional information requested by the school system for all contractual personnel who may deliver goods or perform services under this Agreement. Provider further agrees that it has an ongoing obligation to provide the school system with the name of any new contractual personnel who may deliver goods or provide services under the Agreement. The school system reserves the right to prohibit any contractual personnel of Provider from delivering goods or providing services under this Agreement if the school system determines, in its sole discretion, that such contractual personnel may pose a threat to the safety or well-being of students, school personnel or others.

11. Governing Law. This Agreement and the relationship of the parties shall be governed by the laws of the state of North Carolina.
12. Entire Agreement. All of the representations and obligations of the parties are contained herein, and no modification, waiver or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party unless in writing signed by that party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Agreement.
13. Severability. If any section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of the Agreement or the application of the same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Owner has caused these presents to be signed and the Contractor has caused these presents to be signed by a person with the authority to enter this Agreement, as hereinafter attested, all as of the day and year first above written.

**ORANGE COUNTY BOARD OF EDUCATION**

\_\_\_\_\_(Seal)  
Donna Coffey, Chair

Attest:

\_\_\_\_\_  
G. Patrick Rhodes, Superintendent

\_\_\_\_\_(Contractor)

\_\_\_\_\_, President/Owner

Attest:

\_\_\_\_\_(Seal)  
Corporate Secretary

R0864982

**Attachment 2**

**Sexual Offender Registry Check Certification Form**

Check the appropriate box to indicate the type of check:

- Initial
- Supplemental
- Annual

I, \_\_\_\_\_ (insert name), \_\_\_\_\_ (insert title) of \_\_\_\_\_ (insert company name) hereby certify that I have performed all of the required sexual offender registry checks required under this Agreement for all contractual personnel (employees, agents, ownership personnel, or contractors ) who may be used to deliver goods or provide services under this Agreement, including the North Carolina Sex Offender and Public Protection Registration Program, the North Carolina Sexually Violent Predator Registration Program, and the National Sex Offender Registry. I further certify that none of the individuals listed below appears on any of the above-named registries and that I will not assign any individual to deliver goods or perform services under this Agreement if said individual appears on any of the sex offender registries. I agree to maintain all records and documents associated with these registry checks, and that I will provide such records and documents to the school system upon request. I specifically acknowledge that the school system retains the right to audit these records to ensure compliance with this section at any time in the school system's sole discretion. I acknowledge that I am required to perform these checks and provide this certification form before any work is performed under the Agreement (initial check), any time additional contractual personnel may perform work under the Agreement (supplemental check), and at each anniversary date of the Agreement (annual check).

**Contractual Personnel Names**

**Job Title**

- |    |       |       |
|----|-------|-------|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |

(attach additional page(s) if needed)

I attest that the forgoing information is true and accurate to the best of my knowledge.

\_\_\_\_\_  
\_\_\_\_\_ (print name)  
\_\_\_\_\_ (title)

\_\_\_\_\_  
\_\_\_\_\_ (signature)  
\_\_\_\_\_ (date)