

ORANGE COUNTY
BOARD OF EDUCATION

AGENDA ITEM ABSTRACT

Meeting Date: April 14, 2014

AGENDA ITEM No. 14-04-11

ACTION ITEM: (Y/N) Y

SUBJECT: Bid Award: C.W. Stanford Middle School Canopy Replacement

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

ATTACHMENTS:
Bid Tabulation
Contract

PURPOSE: To consider awarding a bid and approving a contract for the replacement of specified canopies at C.W.Stanford Middle School to L.A. Downey and Son in the amount of \$224,037.

BACKGROUND: The canopy system at C.W. Stanford has deteriorated over time and requires replacement. This bid includes replacement of the canopy at the front of the building, as well as creating a connection between the auditorium and the existing canopy at the rear of the building. Replacement of additional canopies on the campus will be programmed through the Capital Investment Plan as funding allows.

Bids were solicited from six contractors, with three responding. Bids ranged from \$264,830 to \$224,037. The lowest responsible bid that was responsive was submitted by L.A. Downey and Son in the amount of \$224,037 and is recommended for award. The Board may recall that L.A. Downey and Son completed the Orange High School front entrance work in 2013.

Completion of the work will be accomplished during the summer break.

FINANCIAL IMPACT: Funding to support this contract is currently available in the 2013 Capital Improvement Plan.

RECOMMENDATION: The Superintendent recommends the Board award a bid and approve a contract for the replacement of specified canopies at C.W.Stanford Middle School to L.A. Downey and Son in the amount of \$224,037; and authorize the Chair to sign on behalf of the Board.

**Bid Tabulation for C. W. Stanford Middle School Front Canopy Replacement
Orange County Schools**

Project No. 1327

Bids Received: March 25, 2014

Single-Prime General Contractors	Lic. #	Add. Recd.	Base Bid
W. L. Bishop Construction			Did not bid.
Central Builders Inc. of Mebane			Did not bid.
L. A. Downey and Son	1774	■	\$224,037.00
H. M. Kern Corporation			Did not bid.
S and S Building and Development, LLC	61690	■	\$235,150.00
D. W. Ward Construction Co.	7244	■	\$264,830.00

Bids as shown above, received at 3:00 pm, Tuesday, March 25, 2014, have been checked, validated and are hereby certified as correct.

Kenneth E. Redfoot AIA.

Kenneth E. Redfoot, AIA



OWNER-CONTRACTOR AGREEMENT

THIS AGREEMENT is made this 14th day of April, 2014 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 L.A. Downey and Son (herein referred to as the "Contractor"), whose mailing address is 810 Ramseur Street, Durham, North Carolina 27702. Correspondence, submittals, and notices relating to or required under this Agreement 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 C.W. Stanford Middle School Front Canopy Replacement: and

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 following work in accordance with the terms of this Agreement, any plans and specifications prepared for this project, and the bid documents for project number 1327 upon which award of this Agreement was based, all of which are incorporated into and made a part of this Agreement (hereinafter referred to as the "Project" or the "Work").
 - a. 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.
 - b. The Contractor shall perform the Work in compliance with all governmental laws and regulations, including all applicable local, state and federal rules and regulations.
 - c. The Contractor shall perform the work included in the base bid for this Project. No alternates were bid.
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 AAA or better by Best's Insurance Guide.

4. Hold Harmless. The Contractor shall indemnify and hold the Owner harmless from and 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) caused solely by any negligent act or omission or intentional wrongdoing of the Contractor or its agents, employees or subcontractors, or caused solely 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 parties agree that this indemnification clause is an "evidence of indebtedness" for purpose of N. C. Gen. Stat. § 6-21.2. 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. Materials, Equipment And Employees.
 - a. The Contractor shall, unless otherwise specified, supply and pay for all labor, transportation, materials, tools, apparatus, lights, power, fuel, sanitary facilities, and incidentals necessary for the completion of his work, and shall install, maintain and remove all equipment of the construction, other utensils or things, and be responsible for the safe, proper and lawful construction, maintenance and use of same, and shall construct in the best and most workmanlike manner, a complete job and everything incidental thereto, as shown on the plans, stated in the specifications, or reasonably implied therefrom, all in accordance with the Agreement documents.
 - b. All materials shall be new and of quality specified, except where reclaimed material is authorized herein and approved for use. Workmanship shall at all times be of a grade accepted as the best practice of the particular trade involved, and as stipulated in written standards of recognized organizations or institutes of the respective trades except as exceeded or qualified by the specifications.
 - c. Products are generally specified by ASTM or other reference standard and/or by manufacturer's name and model number or trade name. When specified only by reference standard, the Contractor may select any product meeting this standard, by any manufacturer. When several products or manufacturers are specified as being equally acceptable, the Contractor has the option of using any product and manufacturer combination listed. However, the Contractor shall be aware that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Substitution of materials, items or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such

approval or disapproval shall be made by the architect or engineer prior to the opening of bids.

- d. If at any time during the construction and completion of the work covered by these Agreement documents, the conduct of any workman be adjudged a nuisance to the Owner or considered detrimental to the work, the Contractor shall order such parties removed immediately from the Owner's property.
- e. The Contractor shall designate a foreman/superintendent who shall direct the work.

6. Codes, Permits and Inspections.

- a. The Contractor shall obtain the required permits, give all notice and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the work under this Agreement. If the Contractor observes that the drawings and specifications are at variance therewith, he shall promptly notify the architect or engineer in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, codes, rules and regulations, and without such notice to the Owner, he shall bear all cost arising therefrom.
- b. All work under this Agreement shall conform to the North Carolina State Building Codes and other state and national codes as are applicable.

7. Safety Requirements.

- a. The Contractor shall be responsible for the entire site and the construction of the same and provide all the necessary protections as required by laws or ordinances governing such conditions and as required by the Owner, architect or engineer. He shall be responsible for any damage to the Owner's property or that of others on the job, by himself, his personnel or his subcontractors, and shall make good such damages. He shall be responsible for and pay for any claims against the Owner arising from such damages.
- b. The Contractor shall adhere to the rules, regulations and interpretations of the North Carolina Department of Labor relating to Occupational Safety and Health Standards for the Construction Industry (Title 29, Code of Federal Regulations, Part 1926 Construction and Part 1910 General Industry).
- c. The Contractor shall provide all necessary safety measures for the protection of all persons on the work, including the requirements of the AGC Accident Prevention Manual in Construction as amended, and shall fully comply with all state laws or regulations and North Carolina State Building Code requirements to prevent accident or injury to persons on or about the location of the work. He shall clearly mark or post signs warning of hazards existing, and shall barricade excavations and similar hazards. He shall protect against damage or injury resulting from falling materials and he shall maintain all protective devices and signs throughout the progress of the work.

8. Cleaning Up. The Contractor shall keep the sites and surrounding area reasonably free from rubbish at all times and shall remove debris from the site from time to time or when directed to do so by the Owner. Before final inspection and acceptance of the Project, the Contractor shall thoroughly clean the sites, and completely prepare the Project and site for use by the Owner.

9. Contractor-Subcontractor Relationships. The Contractor agrees that the terms of these Agreement documents shall apply equally to a subcontractor as to the Contractor, and that the subcontractor is bound by those terms as an agent of the Contractor.
10. Utilities. Temporary electricity and water shall be arranged by the Contractor at the Contractor's expense.
11. Payments. Provided that the Contractor shall strictly and completely perform all of its obligations under this Agreement, the Owner shall pay the Contractor the amount of two hundred twenty-four thousand thirty-seven dollars (\$224,037.00) (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.
12. Progress Payment. Not later than the fifth (5th) day of each calendar month the Contractor shall submit to the Owner's Representative, generally the architect if an architect is retained on the Work, a Request for Payment for work done during the previous calendar month. The Request for Payment shall be in form of a standardized invoice or AIA Document G702-703. 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. Final payment will be withheld until the Contractor's North Carolina sales and use tax report is received. The report shall accurately list any and all sales and use tax paid on materials for the entire Project.
13. Warranties. The Contractor guarantees and warrants to the Owner all Work as follows: that all materials and equipment furnished under this Agreement 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; that the products or materials incorporated in the Work will not contain asbestos; and that all agents or employees of Contractor who will provide services under this Agreement will be fully qualified, possess any requisite licenses, and otherwise be legally entitled to perform the services provided; and that the person(s) executing this Agreement on behalf of Contractor have authority to do so as an official, binding act of Contractor.

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.

14. 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.

15. 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 Agreement to the extent not terminated hereunder.

When the Owner terminates the Agreement, 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.

16. Lunsford Act/Criminal Background Checks. The Contractor 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 Contractor'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 Contractor shall provide certification 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 Contractor 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, Contractor 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. Contractor further agrees to conduct annual registry checks of all contractual personnel and provide annual certifications at each anniversary date of this Agreement. Contractor 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. Contractor 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. Contractor 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, Contractor 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. Contractor 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 Contractor 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.

17. Governing Law. This Agreement and the relationship of the parties shall be governed by the laws of the state of North Carolina.
18. 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.
19. 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.

20. Compliance with Applicable Laws. Contractor shall comply with all applicable laws and regulations in providing services under this Agreement. In particular, Contractor shall not employ any individuals to provide services to the Owner who are not authorized by federal law to work in the United States. Contractor represents and warrants that it is aware of and in compliance with the Immigration Reform and Control Act and North Carolina law (Article 2 of Chapter 64 of the North Carolina General Statutes) requiring use of the E-Verify system for employers who employ twenty-five (25) or more employees and that it is and will remain in compliance with these laws at all times while providing services pursuant to this Agreement. Contractor shall also ensure that any of its subcontractors (of any tier) will remain in compliance with these laws at all times while providing subcontracted services in connection with this Agreement.

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

By: _____ (Seal)
DONNA COFFEY, CHAIR

Attest: _____ (Seal)
DR. GERRI MARTÍN, SUPERINTENDENT

L.A. DOWNEY AND SON

By: _____ (Seal)
W. ALLEN DOWNEY JR. – PRESIDENT/OWNER

Attest: _____ (Seal)
CHERYL D. DOWNEY

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act.

Orange County Finance Officer

Date: _____

R01004186

Attachment _____

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)