

INTERNAL AUDIT REPORT

Review of the Cypress Elementary School Project #1781-24-01/P000346 New Food Service Building, Renovations and Site Improvements

April 2012



**BROWARD COUNTY
PUBLIC SCHOOLS**

The Nation's Sixth Largest School District.



To be presented to the:

**Audit Committee
On June 21, 2012**

**The School Board of Broward County, Florida
On July 24, 2012**



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Superintendent of Schools

April 25, 2012

Members of the School Board of Broward County, Florida
Members of the School Board Audit Committee
Mr. Robert W. Runcie, Superintendent of Schools

Ladies and Gentlemen:

This audit was performed at the request of Superintendent Robert Runcie, to review the Change Order listed in the January 18, 2012 School Board meeting, Agenda item JJ-8, for Cypress Elementary School, Item #011 in the amount of \$198,900 for a 221 day delay that is being requested by the Construction Manager, (Hewett-Kier Construction, Inc.). The audit of the Cypress Elementary Change Order consisted of reviewing the Agreement Between Owner and Construction Manager, Professional Services Agreement, Board Agendas, Construction Meeting Minutes, emails, Consultant Reports, Policies & Procedures, project file documentation, site visits, interviews with District staff, Project Consultant (Architects), Construction Manager and various other individuals involved with the project. The objectives of our audit were to determine if the Construction Manager was entitled to a delay claim (compensation for Extended General Conditions) for 221 days at a cost of \$198,900; to analyze the Change Order to determine if the number of days is reasonable, or if the Construction Manager is entitled to a different number of days, or if additional days should be granted without monetary compensation, to complete the project; and to provide management with recommendations to improve operations, based on our review of the Cypress Elementary Project.

It is the opinion of the Chief Auditor that the Cypress Elementary Project was not properly managed by the Construction Manager, Project Consultant or F&CM staff. The Office of the Chief Auditor, based on our review, recommends that F&CM deny any payment for delay claims (compensation for Extended General Conditions) for 221 days at a cost of \$198,900. Subsequently, the Construction Manager is seeking an additional \$77,350. We also recommend that F&CM should allow the Construction Manager 221 non-compensable days to complete the Cypress Elementary Project. We provided other recommendations to improve operations, based on our review. As of the date of this report, this project has not been completed.

This report was presented to the Audit Committee at its May 17, 2012 meeting and was deferred to the June 21, 2012 meeting and will be presented to the School Board at its July 24, 2012 meeting.

Sincerely,

Patrick Reilly, CPA
Chief Auditor
Office of the Chief Auditor

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EXECUTIVE SUMMARY

Scope and Methodology

This audit was performed at the request of Superintendent Robert Runcie, to review the Change Order listed in the January 18, 2012 School Board meeting, Agenda item JJ-8, for Cypress Elementary School, Item #011 in the amount of \$198,900 for a 221 day delay that is being requested by the Construction Manager, (Hewett-Kier Construction, Inc.). The audit of the Cypress Elementary Change Order (see Exhibit A) consisted of reviewing the Agreement Between Owner and Construction Manager (hereinafter referred to as Agreement), Professional Services Agreement, Board Agendas, Construction Meeting Minutes, emails, Consultant Reports, Policies & Procedures, project file documentation, site visits, interviews with District staff, Project Consultant (Zelch & McMahon, Architects), Construction Manager and various other individuals involved with the project. The objectives of our audit were:

- To determine if the Construction Manager was entitled to a delay claim (compensation for Extended General Conditions) for 221 days at a cost of \$198,900.
- To analyze the Change Order to determine if the number of days is reasonable or if the Construction Manager is entitled to a different number of days, or if additional days should be granted without monetary compensation, to complete the project.
- To provide management with recommendations to improve operations, based on our review of the Cypress Elementary Project.

Our audit was conducted in accordance with generally accepted auditing standards and Government Auditing Standards, issued by the Comptroller General of the United States. The above said standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions regarding the function under audit. An audit includes assessments of applicable controls and compliance with the requirements of laws, rules and regulations when necessary to satisfy the audit objectives.

It is our responsibility to perform the review under generally accepted auditing standards and Government Auditing Standards, as well as report on recommendations to improve operations, strengthen internal controls and ensure compliance with the requirements of laws, rules and regulations in matters selected for review. It is administration's responsibility to implement recommendations, to maintain an internal control environment conducive to the safeguarding of District assets and to preserve the District's resources, as well as comply with applicable laws, regulations and School Board policies.

The procedures used to satisfy our objectives in this audit were:

- To review all project file documents, email correspondence, meeting minutes and construction contract agreements.
- To interview involved parties associated with the project to aid in the creation of a chronology of factual events and site visits.
- To perform other auditing procedures as deemed necessary.

Opinion, Summary of Results and Recommendations

It is the opinion of the Chief Auditor that the Cypress Elementary Project 1781-24-01/P000346 was not properly managed by the Construction Manager, Project Consultant or F&CM staff. We believe the delays were mainly attributable to the following:

- The inability of the Construction Manager to complete the project in the 570 day schedule outlined and agreed to in the Notice to Proceed.
- The Construction Manager's inability to complete the new cafeteria by February 18, 2011, per their project schedule, causing approximately 4 months delay.
- The inability of the Construction Manager to perform all work and services necessary to complete the work in strict accordance with contract documents, specifically as outlined in Article 1 (1.1) of the Agreement The Project Construction Team and Entire Agreement.
- The inability of the District's Project Manager and the Construction Manager to effectively utilize the provisions of Article 27 of the Agreement, Change Orders and Construction Change Directives.
- The Construction Manager failed to comply with Article 42 (42.1.b) of the Agreement Notice of Claim: Waiver of Remedies; No Damages for Delay.

Therefore, the Office of the Chief Auditor recommends that F&CM deny any payment to the Construction Manager for delay claims (compensation for Extended General Conditions) for 221 days at a cost of \$198,900 (request was increased to contract terms amounting to \$276,250).

We also recommend that F&CM should allow the Construction Manager 221 non-compensable days to complete the Cypress Elementary Project.

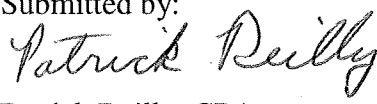
Other Recommendations

We recommend that F&CM not issue Notices to Proceed with the knowledge that permitted plans are going to be revised, thereby reducing the potential for Change Orders and delay claims.

We also recommend that F&CM ensure that the Construction Change Directives are processed in a timely manner to prevent construction project delays.

We would like to thank all District personnel who assisted in the completion of this report.

Audit Performed by:
Joe Wright
Gerardo Usallan
Mark Magli

Submitted by:

Patrick Reilly, CPA
Chief Auditor
Office of the Chief Auditor

BACKGROUND

The following is a chronology of events relating to the Cypress Elementary School Project #1781-24-01/P000346:

On September 6, 2005, the School Board approved Agenda Item JJ-6, which awarded Zelch & McMahon Architects a Professional Services Agreement for Architectural/Engineering plans for a Design/Bid/Build project. The project consisted of a new food service building, renovations and site improvements for Cypress Elementary School Project #1781-24-01/P000346. The new food service building was a re-use of Mirror Lake Elementary School's food service building. On February 16, 2010, the Facilities & Construction Management Division (F&CM) issued a Notice to Proceed for the construction phase of the project to the Construction Manager with a Final Completion date of September 9, 2011. We noted the project is currently planned for completion in May 2012.

On July 25, 2006, the School Board amended the Professional Services Agreement for the Cypress Elementary School project awarded to Zelch & McMahon Architects. Agenda Item J-2 denotes *"The amendment to the Professional Services Agreement provided for the provisions necessary to convert the project from a Design/Bid/Build delivery method to a Construction Management at Risk delivery method in order to align the Project Consultant's responsibilities with those of the Construction Manager."*

On November 14, 2007, the School Board approved Agenda Item JJ-7, awarding Hewett-Kier Construction Company a Construction Management at Risk agreement which included risk service fees of \$1,200,000 for Cypress Elementary School, Kitchen/Cafeteria, Project #1781-24-01/P000346. The project scope included a new kitchen/cafeteria and remodeling of the existing cafeteria. The existing cafeteria included remodeling to add three classrooms, as well as a music lab, itinerant office, textbook storage and PE Office; communications, electrical, mechanical rooms and associated corridors. It also included fire sprinkler protection, replacing fire alarm, installing a new emergency generator; remodeling parent pick up/drop off, constructing two new intermediate playcourts and air cooled chiller plant improvements. The estimated cost of work was \$7,504,000. The Construction Management at Risk fees were \$1,200,000, for a total construction budget of \$8,704,000. The actual Guaranteed Maximum Price of \$8,704,000 was approved on October 6, 2009, approximately 2 years later. We noted the three classrooms were later removed from the project on April 21, 2011, which was 440 days after the Project Consultant's plans were permitted and 562 days after the Guaranteed Maximum Price was approved. A description of site drainage was not listed in Agenda item JJ-7.

On May 1, 2009, the District's Building Department provided the District's Project Manager with a Letter of Recommendation for Permit for Project Consultant's plans for the Cypress Elementary Project 1781-24-01/P000346. The original permitted Project Consultant's plans included the remodeling of the existing cafeteria into three classrooms. The 2001-2006 State Educational Plant Survey, which was extended three additional years through waiver request, allowed the inclusion of the three classrooms. Therefore, the addition of three classrooms was in accordance with the 2001-2006 Plant Survey in place in the 2009 year. On July 21, 2009, the School Board approved the 2009-

2014 State Educational Plant Survey and the Department of Education approved the Plant Survey after the School Board's approval. We noted the new Plant Survey, approved by the Board on July 21, 2009, also showed Cypress Elementary School as having added three classrooms.

After the new Plant Survey was approved, it was revealed that the District had an excess of approximately 32,000 student stations. On September 8, 2009, at the request of the F&CM staff, the Construction Manager provided F&CM staff with a letter detailing a Guaranteed Maximum Price of \$8,448,280, excluding remodeling work in the existing cafeteria (Building #1). We noted that the amount was \$255,720 less than the Guaranteed Maximum Price that was later approved. The Guaranteed Maximum Price approved by the School Board on October 6, 2009 in the amount of \$8,704,000 included the three additional classrooms. The September 8, 2009 letter (see Exhibit B) identified that \$255,720 was the cost value for excluding remodeling work in the existing cafeteria. There was no explanation why the existing cafeteria (Building #1) was not removed from the project.

F&CM staff received a letter dated September 2, 2009 (see Exhibit C) from Zelch & McMahon (Project Consultant), which was listed as Exhibit 3 for the October 6, 2009 Regular School Board meeting (Item No. JJ-3). This letter showed a GMP of \$8,704,000 for the Cypress Elementary Project, which included the three classrooms. F&CM then received a letter dated September 9, 2009 (see Exhibit D), from Zelch & McMahon, which included a paragraph that stated:

“Remodeling of the existing Cafetorium to Classroom has been deleted. The School Board of Broward County intends to renovate, rather than remodel the vacated area. The exact needs and cost will be determined at a later time.”

This letter identified a revised GMP amount of \$8,448,280. This letter was not included in the back-up documentation when the agenda item for the award to Hewett-Kier for a Guaranteed Maximum Price of \$8,704,000 for the Cypress Elementary project was presented to the School Board on October 6, 2009. The letter that was included was the September 2, 2009 letter mentioned above (see Exhibit C) and it excluded the above mentioned paragraph. Subsequent to the Board's approval, F&CM elected to remove the additional classrooms from the project. F&CM reported that the reason the existing cafeteria was no longer going to be remodeled into three classrooms was due to a State of Florida mandate, prohibiting the construction of additional student capacity; however, we noted that this State of Florida mandate did not exist. We later determined from F&CM that they concurred that there was no State of Florida mandate, but they stated that it was a directive from the former Deputy Superintendent of F&CM (see Exhibit E) not to proceed with planned classroom additions; however, there was no written documentation to support this directive. The Department of Education (DOE) informed us that they would not disapprove of additional classrooms that had already been approved under an existing Plant Survey. Regarding the new Plant Survey, the DOE informed us that they would not disapprove of a project that had already entered into a contract and had permitted plans. The remodeling of the existing cafeteria into custodial equipment storage, primary skills lab, and material storage instead of three classrooms was going to result in a credit, per the District's Project Manager; however, an additive Change Order in the amount of \$37,906 was approved for payment on February 22, 2012.

On October 6, 2009, the School Board approved a Guaranteed Maximum Price in the amount of \$8,704,000 to the Construction Manager. We noted that the Guaranteed Maximum Price included the remodeling of the existing cafeteria into three new classrooms, even though the Project Consultant and Construction Manager knew that the F&CM staff had elected to delete the three classrooms.

On November 5, 2009 and December 18, 2009, unseasonal rainstorms occurred, which triggered a modification to the site drainage to address the deflection of neighboring storm run-off at the perimeter areas of the School Board's property. Also, it was decided that the previously accepted underground storm water storage (Rain Tanks) was changed to a combination of Dry Retention and Exfiltration system and improvements to site drainage in the North parking/bus loop area. It was determined that the site drainage issues at Cypress Elementary were known prior to the rain events in November and December of 2009. Rain boots were issued to the teachers by the Safety Department, due to the poor drainage at the school. The site drainage changes and the elimination of three additional classrooms would require redesign of the permitted Project Consultant's plans.

On January 13, 2010, the District's Project Manager sent a letter to the Project Consultant, (Zelch & McMahon) (see Exhibit F) concerning the site drainage redesign as a result of the November 9, 2009 rain event and after the School Board approved the GMP for Hewett-Kier. The District's Project Manager wrote *"As a result of these findings, a redesign of the drainage is required. Until this new site drainage design is permitted, a Notice to Proceed will not be issued to the contractor. The new design is being permitted by the Broward County Environmental Protection Department (EPD)."* The District Project Manager's letter was included with the Phase III 100% submittal to the Building Department on February 3, 2010.

On February 5, 2010, a Building permit was issued to Hewett-Kier by the District's Building Department. This included the three classrooms and original site drainage designs.

On February 16, 2010, the F&CM's administration issued a Notice to Proceed (NTP) (Exhibit G) to Hewett-Kier, (which identified a required performance period of 60 consecutive calendar days. That amount is incorrect and should be 570 consecutive calendar days). We've attached the Board approved Project Schedule (see Exhibit G, page 26), which details the performance period. Therefore, 570 days was agreed to for the entire project with a final completion date of September 9, 2011. It should have been apparent to F&CM that issuing the Notice to Proceed prior to redesign of site drainage and the remodeling of the existing cafeteria into a custodial equipment storage, primary skills lab, and material storage instead of three classrooms, would result in Change Orders for the project. Change Orders for these redesigns were issued several months after the scheduled completion date of the project. Multiple NTPs for the new cafeteria, remodeling of existing cafeteria and other renovations were not the route that the District elected to follow, which would have had more stringent timeframes for completion of each major phase.

On February 22, 2010, a pre-construction meeting was held for the Project. Meeting minutes #1, item #14 stated *"Interior Remodeling: The State of Florida has determined that Broward County cannot build any more classrooms. Zelch & McMahon will provide*

alternative remodeling plans once all is approved and they are directed to proceed.” Although the Construction Manager’s baseline schedule allowed for 367 days to complete the new cafeteria before starting on the existing cafeteria, the Construction Manager did not complete the new cafeteria in the scheduled 367 day time schedule. The Project Consultant, (Zelch & McMahon) obtained approved, revised remodeling plans from the District’s Building Department on April 21, 2011; however, the students could not use the new cafeteria because it was not completed and students had to use the existing cafeteria through June 9, 2011, which was the last day of the school year. Work did not begin on the existing cafeteria until June 13, 2011, which represented an approximate four month delay in the project, from the Construction Manager’s projected scheduled completion date of February 18, 2011 for the new cafeteria (Building #5).

On March 17, 2010, work stopped on the existing cafeteria as noted by Hewett-Kier in a letter dated January 17, 2012 (see Exhibit H). That letter referenced another letter from Hewett-Kier to Zelch & McMahon dated September 8, 2011 (see Exhibit I). The construction meeting minutes of March 23, 2010 made no mention of work stoppage and showed the project being on schedule. Also, on March 17, 2010, the Building Department approved CSI-7/PC-1 (site utilities). The submittal to the Building Department included one letter from the District’s Design Services Department to the District’s Project Manager requesting that Zelch & McMahon submit a proposal for the redesign of the site drainage, due to unforeseen site conditions caused by the flash flooding from the November and December 2009 rain events.

On March 23, 2010, the construction operations commenced as per Zelch & McMahon’s meeting minutes dated March 23, 2010.

On June 1, 2010, Zelch & McMahon’s meeting minutes #2 through #9 stated “*the project is on schedule*”. Zelch & McMahon continued to comment that “Z&MA is waiting on SBBC approval and direction to proceed” with the redesign of the existing cafeteria.

On October 5, 2010, the District amended Zelch & McMahon’s Professional Services Agreement to change the project scope to eliminate the three classrooms and redesign that space to be custodial equipment storage, primary skills lab, material storage, and site drainage redesign. This amendment occurred almost nine months after the District’s Project Manager notified Zelch & McMahon in a letter dated January 13, 2010 that the project would have to be redesigned and four months before the new cafeteria scheduled completion date of February 18, 2011.

On October 29, 2010, an Authorization to Proceed (ATP) from Zelch & McMahon for the redesign of the existing cafeteria and site drainage was received by F&CM for processing. This ATP was approved by the Capital Payments Department and returned to F&CM on November 8, 2010.

On February 4, 2011, the Project Consultant’s Supplemental Instructions No. 12 for the Revised Remodeling of the existing cafeteria was issued by Zelch & McMahon to the District and delivered to the Building Department on February 9, 2011.

On February 18, 2011, the Construction Manager had not completed the new cafeteria in accordance with his baseline project schedule. The students could not begin using the new cafeteria (Building #5); therefore, the existing cafeteria was used to serve meals

through the end of the 2010-2011 school year. Note: Access to the existing cafeteria (Building #1) to begin demolition was delayed until June 13, 2011.

On May 2, 2011, the Building Department approved Project Consultant's Supplemental Instructions 7R, also known as Building Department Plan Change (PC) 7R for Revised Drainage Improvements. On April 21, 2011, the Building Department approved Project Consultant's Supplemental Instructions 12R, also known as Building Department Plan Change (PC) 12R for Revised Interior Remodeling of the existing cafeteria without the three classrooms. In order to keep the project moving, a Change Order or a Construction Change Directive (CCD) should have been issued for the site drainage and classroom revisions. The District issued CCD 5R2 on December 2, 2011 for the site drainage revisions and CCD 4R on December 9, 2011 for the classroom revision in the existing cafeteria. This represents approximately eight months to issue a CCD. The Construction Manager stated the prices were vetted between the District and Project Consultant; however, a Change Order was not issued after the revised plans were provided. During our interview with the District's Project Manager, he stated that he was not to issue CCDs per directives at a February 16, 2010 F&CM staff meeting. The minutes from that meeting stated *"Given the tremendous slow-down in volume of construction projects it would be prudent to almost eliminate the use of Construction Change Directive (CCD) and Contingency Use Directives (CUD). The CCD should only be used in the most extreme cases of project delay or a real dispute regarding cost"*. However, the minutes from the F&CM meeting of March 16, 2010, Item No.3 state that *"Do not hold on to contract changes until the end of the job or until you have a large amount. Changes should be processed as they come in. If you only have one item, then process it. There is no Board Policy that states you need a minimum number of items or a minimum \$ value to submit a Change for processing"*. The Project Manager also stated that the Construction Manager was working on the original scope for the existing cafeteria (Building #1) and did not need a CCD at that time. We asked the Construction Manager why a CCD was not issued by F&CM during the project timeframe, but he could not provide an answer on why it took till December 9, 2011 for the District to issue a CCD.

On June 13, 2011, Construction Manager, Hewett Kier, began demolition work on the existing cafeteria (Building #1). Although the revised remodeling plans were available on April 21, 2011, the work could not be started since the new cafeteria was not completed by the February 18, 2011 project schedule date for use during the latter part of the 2010-2011 school year.

On July 11, 2011, the Substantial Completion date was not met in accordance with the Notice to Proceed issued on February 16, 2010 for the entire project.

On August 20, 2011, the new cafeteria (Building #5) was issued a Certificate of Occupancy. The Construction Manager's projected completion date, per their baseline schedule (Exhibit L), allowed for 367 days for completion of the new cafeteria. The actual time to achieve occupancy for the new cafeteria was 550 days.

On September 8, 2011, Hewett-Kier sent Zelch & McMahon and the District a request for an extension of the contract time, due to delays caused by revised drainage work and revised remodeling of the existing cafeteria (Building #1). This delay claim was presented one day before the entire project was scheduled for completion, per the NTP (See Exhibit I).

On September 9, 2011, the Final Completion Date per the Notice to Proceed was not achieved.

On September 27, 2011, the comments on the F&CM website pertaining to the Cypress Elementary project prepared by the District's Project Manager noted that *"Substantial Completion for café building achieved on August 20, 2011. Phase II remodeling of the existing cafeteria is in progress and forecasted for completion January 30, 2012"*. A review of the District's Project Manager's project comments noted on October 17, 2011 stated that *"the Contractor requested an extension of time for Phase II remodeling of the existing cafeteria, as there was a change in scope of work. Currently, there is a CCD under review in regards to payment of Extended General Conditions for delays attributable to the change. The modified scope was related to the State's mandate in respect to the suspension of building additional student capacity. After the GMP was approved, the Consultant had to redesign the remodeling of the existing cafeteria. The redesign impacted the scheduled completion of the project."* We noted that the review of the Cypress Elementary project documented that the Project Consultant, Construction Manager and District were all aware of the redesigns that were needed on the project prior to the issuance of the NTP on February 16, 2010.

On December 2, 2011, Construction Change Directive 5R2 was issued to the Construction Manager for the revised site drainage work in the amount of \$290,326 (not to exceed) and no days. This CCD was issued approximately three months after the project completion date of September 9, 2011 was not met. It should be noted that the majority of the site drainage work was performed without a Construction Change Directive during the original project schedule.

On December 9, 2011, Construction Change Directive 4R was issued to the Construction Manager for revised remodeling and three classroom elimination in the existing cafeteria in the amount of \$37,906 (not to exceed). This CCD was issued approximately three months after the project completion date of September 9, 2011 was not met.

On January 17, 2012, Superintendent Robert Runcie asked the Office of the Chief Auditor to review the time extension Change Order for Cypress Elementary Project #1781-24-01/P000346.

On January 18, 2012, Change Order #2, Item #11 (Exhibit A), in the amount of \$198,900 for an additional 221 days at the rate of \$900 per day for delays incurred on the Project was withdrawn from the January 18, 2012 School Board meeting, Agenda item JJ-8. The delay claim was due to "owner requested" added scope of work and delays attributed to the redesign of the existing cafeteria (Building #1). This Change Order was citing a Florida State mandate prohibiting the construction of additional student capacity, although it was determined that this mandate did not exist.

On February 22, 2012, Change Order #12 for CCD-4R for CSI-12/PC-12R Revised Remodeling (Building #1) (See Exhibit J) was approved by the School Board (JJ-5) for \$37,906 and no days. Also, Change Order #13R3 for CCD-5R2 for CSI-7R/PC-7R (See Exhibit K) Site Utilities Drainage was approved for \$290,326 and no days by the School Board (JJ-5). Per the Project Consultant, the majority of the site drainage work was performed without a Change Order or Construction Change Directive: therefore, the Construction Manager elected to proceed without formal written authorization. Currently,

the Construction Manager is pursuing a Change Order regarding the delay claim for General Condition fees. The delay is due to the redesign of the existing cafeteria (Building #1) which was triggered by a Florida State mandate that does not exist.

The original Change Order for the delay claims in the amount of \$198,900 has been increased, due to the Construction Manager's reversal of the discounted daily rate of \$900 and the reinstatement of the \$1,250 daily rate, per the Agreement.

It was noted that F&CM hired two firms to review the time extension delays requested by the Construction Manager.

SECTION I

FINDINGS

FINDING #1

OBJECTIVE

To determine if the Construction Manager was entitled to a delay claim (compensation for Extended General Conditions) for 221 days at a cost of \$198,900.

To analyze the Change Order to determine if the number of days is reasonable or if the Construction Manager is entitled to a different number of days, or if additional days should be granted without monetary compensation.

CONDITION

The Construction Manager, the Project Consultant, as well as F&CM staff, did not adequately manage the Cypress Elementary School New Food Service Building, Renovations and Site Improvements Project #1781-24-01/P000346. The project is currently being built under a Construction Management at Risk delivery method. The Construction Manager is requesting an extension of contract time and additional fees per Article 25 (2) of the Agreement, which states *“The Construction Manager shall be paid an additional fee should the duration of the construction stipulated herein for Final Completion extend beyond the approved final completion date, 19 months after the Notice to Proceed, due to no fault of the Construction Manager. The Construction Manager’s additional Construction Phase Fee and General Conditions set forth in Article 7.01 of the Agreement will be \$1,250 per consecutive calendar day, for each day or portion thereof.”* A discount price of \$900 per day was negotiated and agreed to by F&CM and the Construction Manager; however, after the Change Order was withdrawn from the January 18, 2012 School Board meeting, the Construction Manager withdrew the discounted offer and requested the actual contract rate.

The Office of the Chief Auditor disagrees with the Construction Manager’s claim that the Construction Manager was not responsible for the failure to complete the entire project in accordance with the Notice to Proceed document and for which they are requesting a delay claim, citing Article 25 of the Agreement.

CRITERIA

The Agreement between Owner and Construction Manager and the Agreement between the School Board of Broward County and the Project Consultant are integral parts for a successful Construction Management at Risk delivery method. Effective management and adherence to contract terms and requirements determine the success of a project in terms of controlling costs and completion of the project, in accordance with the contract, Guaranteed Maximum Price (GMP) and Final completion date identified in the Notice to Proceed.

CAUSE

After reviewing the Cypress Elementary Project file #1781-24-01/P000346, which included discussions with District staff, Construction Manager, Project Consultant and other individuals, we identified events that contributed to the inability to meet the Final

Completion Date of September 9, 2011 for the project, per the Notice to Proceed documents:

- On October 6, 2009, the School Board approved a GMP in the amount of \$8,704,000 to Hewett-Kier, the Construction Manager for the Cypress Elementary Project (#1781-24-01/P000346). The GMP included the three additional classrooms as part of the remodeling of the existing cafeteria (Building #1).
- On February 5, 2010, a Building Permit was issued to Hewett-Kier by the District's Building Department for the entire project. This Building Permit included the three classrooms.
- On February 16, 2010, a Notice to Proceed for construction was issued by F&CM to Hewett-Kier for 570 calendar days with a final completion date of September 9, 2011 (which identified a required performance period of 60 consecutive calendar days. That amount is incorrect and should be 570 consecutive calendar days). We've attached the Board approved Project Schedule (see Exhibit G, page 26), which details the performance period. There were significant events that occurred that resulted in revisions to the project; however, the NTP was issued, rather than revising the project scope and Project Consultant's plans. There were two events that influenced the inability to complete the project by the September 9, 2011 deadline, according to the Construction Manager.

The first event was the decision by F&CM to eliminate three classrooms from the existing cafeteria (Building #1) remodeling work and add custodial storage.

- The elimination of the three classrooms in the existing cafeteria (Building #1) was based on the F&CM's reference to a Florida State mandate that did not exist, prohibiting the construction of additional student capacity. Project meeting minutes from February 22, 2010 identified that the Project Consultant would be revising the remodeling plans, and once all was approved, they would be directed to proceed. The timeframe for revising the remodeling plans was not critical at that time, because the first phase was to build the new cafeteria with a 367 day schedule, provided by the Construction Manager, which placed the completion date of the new cafeteria on February 18, 2011. The new cafeteria was not completed by this agreed upon scheduled completion date. Subsequently, the Certificate of Occupancy was not issued until August 20, 2011. As a result, the new cafeteria required 550 days to complete (183 days past the Construction Manager's scheduled completion date).
- Per the Project meeting minutes of June 1, 2010, the Project Consultant reiterated that they were waiting for the District's approval and directive to proceed for the remodeling and revisions to Building #1. At that time, the delay in revising the remodeling plans did not affect the critical path, since the new cafeteria was not expected to be completed until February 18, 2011, per the Construction Manager's project schedule.
- On October 5, 2010, the Project Consultant's Professional Services Agreement was amended to change the project scope to eliminate the three classrooms and revise the plans to provide custodial equipment storage. On October 29, 2010, the Project Consultant delivered an Authorization to Proceed (ATP) to the F&CM staff. On November 8, 2010, Capital Payments approved the additional funding for the amended Professional Services Agreement. After review by the District's

Building Department on April 21, 2011, the revised remodeling plans approved by the Building Department were complete and were provided to the Construction Manager. It was noted that per the April 26, 2011 Project meeting minutes, the Construction Manager stated that the new cafeteria was already approximately 65 days behind schedule. A Change Order for the change in scope or a Construction Change Directive (CCD) should have been issued at this time in accordance with Article 27 of the Agreement Change Orders and Construction Change Directives.

- Although the Construction Manager began work on the original scope (i.e. demolition) of the existing cafeteria (Building #1) on June 13, 2011, neither a Change Order nor a CCD was issued for the change in scope until December 9, 2011, taking 179 days to eventually issue a CCD. The entire project was scheduled for completion by September 9, 2011, per the Notice to Proceed. The CCD was issued 91 days after the expected completion date of September 9, 2011. The F&CM staff did not issue a Change Order in a reasonable timeframe, once the approved plans were issued to the Construction Manager, although the Construction Manager stated the pricing for the scope changes for remodeling of the existing cafeteria (Building #1) were vetted. A Change Order was not issued by the F&CM staff, once work had begun on the existing cafeteria. Article 1, Section 1.1 of the Agreement states *"The Construction Manager, Hewett-Kier Construction, Inc. accepts the relationship of trust and confidence established between it and the Owner by this Agreement. It covenants with the Owner to furnish its best skill and judgment and to cooperate with the Project Consultant in furthering the interests of the Owner. It agrees to furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the Owner."* The District is paying \$1,200,000 Construction Manager's fee for their services. Neither the Project Consultant, F&CM staff nor the Construction Manager adhered to Article 27 of the Agreement Change Orders and Construction Change Directives. An attempt to issue a Change Order using multiple ways to determine the cost (i.e. mutual acceptance of a lump sum properly itemized, unit prices, etc.) was not successful; therefore, the contract provides for the issuance of a CCD. Per Article 27 (27.4) of the Agreement *" . . . the cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Construction Change Directive is issued under these conditions, the Project Consultant will establish an estimated cost of the work and the Construction Manager shall not perform any work whose cost exceeds that estimate without prior written approval by the Owner. . . ."* Therefore, the fact that the revised drawings for the elimination of three classrooms and replacement with storage area were provided to the Construction Manager on April 21, 2011, and it took 232 days to issue a CCD, represents mismanagement of the project. This represents a major portion of the delay that the Construction Manager is requesting and we disagree that the delay claim is warranted. It is clear that the delay in the completion of the new cafeteria prevented the start of the existing cafeteria remodeling phase of the project by 115 days. On September 8, 2011, one day prior to the original completion date established per the Notice to Proceed, the Construction Manager requested an extension of contract time due to delays. The Construction Manager should have been aware of the possible delay, due to the issuance of the redesign plans

received on April 21, 2011. The Construction Manager did not adhere to Article 42 (42.1.b) of the Agreement Notice of Claim: Waiver of Remedies; No Damages for Delay *“The Construction Manager must submit a Notice of Claim to Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim.”*

- In addition, the Project meeting minutes of June 28, 2011 stated that the remodeling of Building #1 would be completed closer to mid-November, 2011.

The second event was the redesign of the site drainage system and switching from a Rain Tank system to a Dry Retention and Exfiltration system.

- Prior to the issuance of the Notice to Proceed on February 16, 2010, the permitted drainage design utilizing the Rain Tank delivery method was rejected by F&CM on November 6, 2009 and was redesigned with a combination of Dry Retention and Exfiltration system. There were other improvements to the site drainage in the North parking/bus loop area, as well. It was determined that the site drainage issues at Cypress Elementary were known prior to the rain events in November and December of 2009. In fact, rain boots were issued to the teachers by the Safety Department, due to the poor drainage at the school. We were informed by Cypress Elementary staff that the rain events had been occurring for many years causing severe flooding during major rain storms.
- Also included with the revisions to the existing cafeteria plans, the Project Consultant's Professional Services Agreement was amended on October 5, 2010 to redesign the drainage system and delivery method. An Authorization to Proceed (ATP) was delivered by the Project Consultant on October 29, 2010, and approved by the Capital Payments Department on November 8, 2010. Subsequently, on May 2, 2011, the Building Department approved the revisions to the site drainage for the project and the plans were issued to the Construction Manager. A Change Order for the change in scope or a CCD should have been issued within a reasonable timeframe. Instead, a CCD was issued on December 2, 2011. It took 214 days to issue a CCD to the Construction Manager. Per discussion with the Project Consultant, the majority of the site drainage work was performed without a formal CCD and was basically completed before the CCD was issued and prior to the Board's approving the Change Order in the amount of \$290,326 at the February 22, 2012 School Board meeting. The delay claim on this project, which triggered this audit, was withdrawn from the January 18, 2012 School Board meeting agenda. The agenda item stated that the Change Order for the delay to final completion of this project was due to Owner's Request, added scope of work and delays attributed to the redesign of the existing cafeteria, as a result of a Florida State mandate (which does not exist) prohibiting the construction of additional student capacity. We noted, according to the Change Order document, the delay was due to the remodeling of the existing cafeteria (Building #1) and not related to the site work.

In comparing the site drainage work with the remodeling of the existing cafeteria work, the Construction Manager continued working without a CCD on the revisions to the site drainage work, but ironically, he would not work on the revisions to the existing cafeteria work without a CCD. We verified that he did work on the original

awarded scope of work for the existing cafeteria. When reviewing the Change Order, item #11 (see Exhibit A) for delays amounting to \$198,900, the reason for the delay was only attributable to the redesign of the existing cafeteria (Building #1). As previously stated, there was no Florida State mandate prohibiting the construction of additional student capacity, although this was cited as the reason for the Change Order dated January 18, 2012.

IMPACT

In summary, the Construction Manager, Project Consultant and F&CM staff did not properly manage this project; however, we believe the delays were mainly attributable to the following:

- The inability of the Construction Manager to complete the project in the 570 day schedule outlined and agreed to in the Notice to Proceed.
- The Construction Manager's inability to complete the new cafeteria by February 18, 2011, per their project schedule, causing approximately a 4 month delay.
- The inability of the Construction Manager to perform all work and services necessary to complete the work in strict accordance with contract documents, specifically as outlined in Article 1 (1.1) The Project Construction Team and Entire Agreement which states "*furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the owner.*"
- The inability of the District's Project Manager and the Construction Manager to effectively utilize the provisions of Article 27 of the Agreement, Change Orders and Construction Change Directives which provided a remedy when an attempt to issue a Change Order using multiple ways to determine the cost is not successful. In these situations, the Contract provides for issuance of a CCD. In addition, the F&CM's Guide to Change Orders also states "*If the Consultant and Manager are unable to reach an agreement with the Contractor on the cost or the amount of time required, then a Construction Change Directive is issued so as to not delay the project.*"
- The Construction Manager failed to comply with Article 42 (42.1.b) of the Agreement Notice of Claim: Waiver of Remedies; No Damages for Delay which states "*The Construction Manager must submit a Notice of Claim to Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim.*"

RECOMMENDATION

It is the recommendation of the Office of the Chief Auditor that F&CM should deny the Construction Manager, Hewett-Kier, any payment for delay claims (compensation for Extended General Conditions) for 221 days at a cost of \$198,900 (request was increased to Agreement terms amounting to \$276,250).

We also recommend that F&CM should allow the Construction Manager 221 non-compensable days to complete the Cypress Elementary Project.

MANAGEMENT RESPONSE

FINDING #1

In Finding #1, the Office of the Chief Auditor (OAC) recommended that the Construction Manager, Hewitt-Kier be denied payment for extended General Conditions. Facilities and Construction Management (F&CM), in conjunction with two independent cost and scheduling consultants analyzed the project data, including schedules and pay applications, and concluded that the Construction Manager (CM) is entitled to Extended General Conditions for the following reasons:

Hewitt-Kier was unable to complete the project within the originally scheduled timeframe because the District implemented changes to the scope of work that prevented the CM from meeting the original scheduled date, as identified in the Baseline Schedule and Notice to Proceed (NTP).

One of the changes to the original scope occurred via an oral directive to the Project Management Department by the former Deputy Superintendent, that no additional classrooms were to be constructed, including those that were to be generated from remodeled space. As a result, the Project Manager (PM) overseeing the project during the time of the directive, instructed the consultant to stop Phase II. A new scope had to be developed by the Capital Planning Department and once complete, this information was provided to the consultant.

In addition, and as detailed in the audit report, District staff requested changes to the permitted site drainage design. The drawings were reviewed and permitted by the Environmental Protection and Growth Management Department and the SBBC's Building Department. The drawings were designed incorporating a rain tank system; however, after the rain events of November and December 2009, the District's Senior Engineer requested a change from rain tanks to retention ponds. This necessitated a redesign and re-permitting through the outside agencies. As a result, the PM requested a fee proposal for the remodeling of the existing space and the new drainage design from the consultant.

It should be noted that under the current organizational structure, and in an effort to eliminate this reoccurrence, the Senior Engineer was moved to the Building Department, and now reviews drawings during the permitting process.

On January 14, 2010, the consultant provided the proposal to staff for the revisions to the remodeling work in the existing space and the permitted site drainage. After several months of negotiation, the board item for additional services was approved on October 5, 2010. The Authorization to Proceed (ATP), with the amended scope of work was issued to the consultant on November 12, 2010.

There was an approximate 10-month delay, during which the internal administrative processes of the F&CM Division contributed to the delayed commencement of the design of the proposed plan changes (CSI 7R/drainage and CSI 12R/interior remodeling).

On or about June 5, 2010 the Negotiations for additional design fees was at an impasse as a result of a \$3,300 difference between what was being offered by the owner when compared with the best and final offer by the consultant. The protracted delay in negotiating the design fees and finally the Board approval of the Amendment to the Agreement, a process lasting from January 14, 2010 until October 5, 2010, contributed to the delay in issuing the Authorization to Proceed to the Consultant for the revisions to the Permitted Drawings.

F&CM has in place a procedure to have the intervention of the Deputy Superintendent to make the final determination in resolving any negotiating impasse in the future, which may be cause for delays to the Project Schedule.

On March 17, 2010, the Consultant, Zelch & McMahon issued a letter to the CM directing it to cease programming work on Phase II, due to revisions to the original scope of work for the remodeling of the existing cafeteria. This action resulted in a delay to the commencement of the Phase II scope of work, placing this phase on hold from March 17, 2010 until the drawings were permitted and issued to the CM on April 22, 2011 for Plan Change 12R and May 2, 2011 for Plan Change 7R. Programming and commencement of Phase II work could not begin until this occurred, hence the determination by F&CM and the two independent cost and scheduling consultants that the delay could not be attributed to the Construction Manager.

Although the CM's baseline schedule indicated a completion date of February 18, 2011 for Phase I, the scope of work within this phase was also impacted by the revisions to the site drainage. It should be noted that February 18, 2011 as shown on the baseline schedule was not defined as a contractual obligation, since neither the Agreement, nor the NTP stipulated specific durations and completion dates for any of the phases of the project.

As implied by SBBC's CM Agreement, a baseline schedule is an instrument relevant to the means and methods of the Construction Manager. It was provided to SBBC for information purposes only in the assurance of compliance with the Substantial and Final Completion dates, per the Agreement and NTP. Reference is made to its application in ARTICLE 7.01.05 of the General Conditions of the Contract: *"By providing these Schedules to Owner, Owner does not in any way acknowledge or consent that the Schedules are acceptable or reasonable, but it is simply reviewing same for its own informational purposes."*

With respect to the OCA's statement regarding the District's Project Manager and the Construction Manager to effectively utilize the provisions of Article 27 of the Agreement, Change Orders and Construction Change Directives, F&CM submits that the Agreement specifically establishes the criteria for issuing Construction Change Directives and Construction Change Orders. Per ARTICLE 1.1.34 the criteria for the use of Construction Change Directives is defined:

ARTICLE 1.1.34 “Construction Change Directive (CCD) – A CCD is issued and approved by the owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner’s sole discretion.”

The change order process per Article 27 of the Agreement was in progress and at no time during the process of negotiating the Change Orders for the Plan Changes 7R and 12R, did the Project Team come to an impasse. All costs were scrutinized and validated in the best interest of SBBC. The Construction Manager continued to work on the scope of work in Phase II that was common to the original scope and that of the plan changes.

Regarding the OCA’s statement that the Construction Manager failed to comply with Article 42 (42.1.b) of the Agreement Notice of Claim: Waiver of Remedies; No Damages for Delay, which states that the *Construction Manager must submit a Notice of Claim to the Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim*, F&CM offers that sufficient notice was provided. The Construction Manager advised the team of the anticipated delay claim on February 2, 2011 per the meeting minutes, 2.03 CONSTRUCTION SCHEDULE dated 2/1/2011.

The full impact of the delays relating to the revised drawings was not determined until after the approval of the drawings and upon the CM’s commencement of the programming of the new Phase II scope of work on, or about June 6, 2011.

At the time of reviewing the delay claim, it was the assessment of the Project Team that the CM did in fact comply with the aforementioned provision of the contract. The formal notice of the claim was submitted August 24 2011 and details of the claim and the impact of the delays were then subsequently submitted, September 8, 2011 with a Change Order Proposal as provided in the aforementioned Article.

As such, staff was assuming responsibility for the delay in expediting the design change approval, as governed by our own contract language. Staff attempted and was successful in mitigating the cost of that impact by negotiating with the claimant. Staff knew from the outset that the project had unique issues and took action to deal with them. However, it is important to note that Staff’s actions were governed by our contract, not the contractor. In the opinion of the OCA, this was the incorrect course of action, despite the fact that the actions were reviewed by legal counsel as to form and compliance with the provisions of the contract.

Follow Up Comments by the Office of the Chief Auditor (OCA)

Our recommendation is to deny extended General Conditions in the amount of \$198,900. We performed an independent review of the change orders. We read the two independent consultant reports and we disagree with them. Neither report identified a root cause for the delay. One consultant recommended tacking on 221 days to the project and the other consultant recommended adding 160 days, and the latter did not recommend any monetary compensation. The CM’s baseline schedule allowed for 367 days to complete

the new cafeteria and provided 203 days to finish the remodeling of the existing cafeteria (Building #1) and other site improvements. This does not justify adding additional days to the end of the project, in our opinion. In addition, the CM negotiated and signed a Notice to Proceed to complete the project in 570 days, knowing from the beginning that there would be remodeling and site work changes. There was ample time to revise and issue change orders for that work, yet this was not done.

In reference to a March 17, 2010 letter from the Project Consultant, which directed the CM to stop work for the existing cafeteria (Building #1), there was no work going on in the existing cafeteria (Building #1) because the new cafeteria (Building #5) had to be completed, before work on the existing cafeteria could begin. The existing cafeteria needed to be in operation until the new cafeteria was completed. Therefore, no work was being done on the existing cafeteria.

In reference to the baseline schedule, where it was stated that this schedule is simply for informational purposes, we do not disagree. However, as we noted in the report, the CM had an agreed upon Notice to Proceed to complete the project in 570 days.

In reference to Article 27 for Change Orders and Construction Change Directives, the fact that the revised drawings for the elimination of three classrooms and replacement with storage area were provided to the Construction Manager on April 21, 2011, and it took 232 days to issue a CCD, represents mismanagement of the project. The inability of the Construction Manager to perform all work and services necessary to complete the work in strict accordance with contract documents, specifically as outlined in Article 1 (1.1) The Project Construction Team and Entire Agreement which states “*furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the owner.*”

In reference to F&CM’s statement “*The Construction Manager advised the team of the anticipated delay claim on February 2, 2011 per the meeting minutes, 2.03 CONSTRUCTION SCHEDULE dated 2/1/2011*”. We reviewed Section 2.03 of the 2/2/2011 minutes, and noted that the CM stated “*The project is on schedule*”. We still contend that they did not comply with Article 42 (42.1.b) of the Agreement Notice of Claim: Waiver of Remedies; No Damages for Delay which states “*The Construction Manager must submit a Notice of Claim to Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim.*” The official notice of claim was September 8, 2011 (see Exhibit I of the audit report).

FINDING #2

OBJECTIVE

To provide management with recommendations to improve operations, based on our review of the Cypress Elementary Project.

CONDITION

Facilities & Construction Management (F&CM) issued a Notice to Proceed (NTP) to the Construction Manager, Hewett-Kier Construction Inc. on the New Food Service Multipurpose Building, Renovations and Site Improvements project, Project No. 1781-24-01/P000346 at Cypress Elementary School with the knowledge that the permitted plans were going to be redesigned for site drainage work and remodeling of the existing cafeteria (Building #1).

CRITERIA

Construction management practices should dictate that an owner should not allow a contractor to begin work with knowledge that plans for redesign to the scope of work will be made.

CAUSE

F&CM elected to issue a Notice to Proceed for construction with the knowledge that two significant owner requested redesigns were going to occur.

IMPACT

F&CM's issuance of the Notice to Proceed, with the knowledge that the permitted plans were going to be revised, resulted in Change Orders and compensation requests for delay claims in the amount of \$198,900. (See Finding #1)

RECOMMENDATION

We recommend that F&CM not issue Notices to Proceed with the knowledge that permitted plans are going to be revised, thereby reducing the potential for Change Orders and delay claims.

MANAGEMENT RESPONSE

FINDING # 2

F& CM agrees with the OCA's Recommendations and Impact comments that a Notice to Proceed (NTP) should not be issued with the knowledge that permitted plans will require revisions. As the OCA indicated, F&CM elected to issue an NTP for construction knowing that there would be two significant redesigns in the project.

The Impact, as indicated by the OCA, is also consistent with the findings of the two independent cost and scheduling consultants who reviewed the Delay Claim. F&CM issued the NTP prematurely, and as a result, delays caused by this action cannot be attributed to the Construction Manager.

Staff will develop a process that will address project design and scope changes to prevent future recurrences of this type of issue.

Follow Up Comments by the Office of the Chief Auditor (OCA)

We do not agree with paragraph 2 above. We do not agree with F&CM's interpretation of OCA's Impact statement. OCA's Impact statement is NOT "*consistent with the two independent cost and scheduling consultants who reviewed the Delay Claim.*" We were pointing out the potential ramifications of issuing a Notice to Proceed with the knowledge that permitted plans were going to be redesigned. Below is our original Impact statement.

"F&CM's issuance of the Notice to Proceed, with the knowledge that the permitted plans were going to be revised, resulted in Change Orders and compensation requests for delay claims in the amount of \$198,900."

FINDING #3

OBJECTIVE

To provide management with recommendations to improve operations, based on our review of the Cypress Elementary Project.

CONDITION

Facilities & Construction Management (F&CM) did not promptly issue Construction Change Directives (CCD) to the Construction Manager, Hewett-Kier Construction Inc. on the New Food Service Multipurpose Building, Renovations and Site Improvements project, Project No. 1781-24-01/P000346 at Cypress Elementary School.

CRITERIA

Facilities and Construction Management (F&CM) Project Management Staff Meeting minutes of March 16, 2010 provide guidance and specific details for project management procedures. More specifically, Item No. 3: Change Order (CO), Change Use Directive (CUD) & Construction Change Directive (CCD) states in the last paragraph *“Do not hold on to contract changes until the end of the job or until you have a large amount. Changes should be processed as they come in. If you only have one item, then process it. There is no Board Policy that states you need a minimum number of items or a minimum \$ value to submit a Change for Processing”*. In addition, per the Agreement, Article 1.1.34, states *“Construction Change Directive (CCD) - A CCD is issued and approved by the Owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner's sole discretion.”*

CAUSE

F&CM elected not to expedite the issuance of a Change Order or a Construction Change Directive, in accordance with Article 27 of the Agreement Change Orders and Construction Change Directives, until eight months after the approval of the redesigned plans.

IMPACT

Delays in issuing the Construction Change Directives resulted in the Construction Manager seeking delay damages of \$198,900 from September 10, 2011 through April 17, 2012.

RECOMMENDATION

Ensure that the Construction Change Directives are processed in a timely manner to prevent construction project delays.

MANAGEMENT RESPONSE

FINDING # 3

In Finding #3, the OCA recommended that Construction Change Orders be processed in a timely manner to prevent construction project delays. This recommendation is sound and should be adhered to on projects, where applicable. As clarified previously under Finding #1, the change order process per Article 27 of the Agreement was in progress and at no time during the process of negotiating the Change Orders for the Plan Changes 7R and 12R, did the Project Team come to an impasse. The Construction Manager continued to work on the scope of work in Phase II that was common to the original scope and that of the plan changes.

In ARTICLE 1.1.34 of the Agreement, the criteria for issuing Construction Change Directives (CCD) and Construction Change Orders (CCO) is clearly defined, as follows:

ARTICLE 1.1.34 “Construction Change Directive (CCD) – A CCD is issued and approved by the owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner’s sole discretion.”

The criteria for issuance of a CCD is not considered to be a function of time by the Project Team but rather an action taken to mitigate a delay in the project completion and/or should the CM fail to agree on the terms offered by the Owner.

It is the opinion of the Project Team that the expedited issuance of the Change Order by the use of a CCD was unnecessary at the time the approved drawings were transmitted to the CM, on or about May 2, 2011. The timing for the expedited CCD process was mutually agreed to be required at the time the project nearing the critical path activity of Drywall Framing. The major structural, mechanical, electrical and plumbing were all common to the original permitted drawings. The CCD for the interior remodeling was issued after the lump sum price for the revisions were reviewed and accepted by the Project Team and prior to the critical path activity which would have impacted the completion schedule of the Phase II of the Project.

The project was not delayed during negotiations of the change orders for the revised scope. After a review of the CM’s requisitions, and comparison with the cost loaded schedule, it was determined that there were no delays consequent to the negotiations of the change orders. Meticulous review of the change orders by the Project Team ensured efficiencies for the credit and additive costs resulting from the plan changes.

With respect to this project, the aforementioned criteria were not applicable since the CM continued to prosecute the work while the change orders were in process for the revised scope of work. In addition, the Change Order Proposal from the CM made no mention of the timing in issuing a CCD or a CCO as cause for the delay claim. The Delay Claim specifically itemized the cause as attributable to the revised remodeling of the existing space per CSI 12R. It should be noted that the delay attributed to drainage revisions CSI 7R was concurrent with the CSI 12R for the remodeling.

If as suggested by the OCA, a CCD was processed at the time the revised permitted drawings were issued to the CM, the enormity of the task of monitoring \$3.2 million in construction on a “Time and Material” basis would require at the very least, two additional full time employees. F&CM will continue to issue Construction Change Directives and Change Orders in accordance with the Agreement in the effort of protecting the resources and best interests of SBBC.

Follow Up Comments by the Office of the Chief Auditor (OCA)

The Office of the Chief Auditor disagrees with F&CM’s statement *“It is the opinion of the Project Team that the expedited issuance of the Change Order by the use of a CCD was unnecessary at the time the approved drawings were transmitted to the CM, on or about May 2, 2011.”* It is OCA’s opinion, based on reviewing the response provided by F&CM, if the Project Team deemed that a CCD was unnecessary, a Change Order should have been issued at that time.

In regard to the final paragraph of the response, OCA disagrees that issuing a CCD, which resulted in a \$37,906 Change Order approved on February 22, 2012, would require 2 additional employees to monitor the project on a CM at Risk project.

SECTION II

EXHIBITS



The School Board of Broward County, Florida
Facilities and Construction Management Division
1643 North Harrison Parkway
Sunrise, FL 33323

Exhibit A

(754) 321-1500

Document 01250g - Construction Change Order-Item #11 ✓

Facility Name: Cypress Elementary School Date: November 10, 2011
Project Name: New Multipurpose Building, Remodeling, & Site Improvements Project # #1781-24-01/P.000346
Project Description: General Construction
Contractor: Hewett-Kier Construction Inc. Reference Letter dated: November 2, 2011
Description of Change:

Compensation for Extended General Conditions:

Compensation for 221 days of Extended General Conditions at a negotiated, reduced rate of \$900 per day in lieu of \$1,250 per day as provided for in the Agreement between the Construction Manager and The School Board of Broward County, Florida. The subject delays to the contract duration are due to no fault of the Construction Manager.

Attachments: Contractor's Change Order Request # 24R and related documents.

Reason For Change:

The delay to Final Completion is due to "Owner Requested" added scope of work and delays attributed to the redesign of the pre-existing cafeteria, as a result of a Florida State mandate, prohibiting the construction of additional student capacity. The estimated cost of work to be executed during the extended contract duration is approximately \$3,204,694.

Article 25.1 (2) of the Agreement provides that "The Construction Manager shall be paid an additional fee should the duration of the construction stipulated herein in for Final Completion extend beyond the approved Final Completion date 18 Months after the Notice-To Proceed due to no fault of the Construction Manager. The Construction Manager's additional Construction Phase Fee and General Conditions set forth in ARTICLE 7.01 of the Agreement will be \$1,250 per consecutive calendar day for each day or portion thereof...."

Notwithstanding its entitlement under Article 25.1 (2), the Construction Manager has agreed to reduce its entitlement to Extended General Conditions fees as authorized in the Agreement, from of \$1,250 per calendar day to \$900 per calendar day. This results in an additional fee of \$198,900 (221 days x \$900 per day - a savings of \$77,350).

The cost associated with the additional scope of work and the Extended General Conditions does not exceed the Guaranteed Maximum Price (GMP) of the Project.

The parties mutually agree that should Contractor achieve Final Completion before the adjusted date of April 17, 2012 resulting from, the Owner shall be entitled to a credit/deductive change order in the amount of \$900 for each day the project actually achieves Final Completion before April 17, 2012. Additionally, the parties agree that if the Contractor is further delayed, beyond April 17, 2012, through no fault of its own, it shall be fully compensated by an additional fee in the amount of \$900 per day for each day of delay.

Summary:

Total of Credited and/or Added Costs:

Add: ✓ \$ 198,900.00

Deduct: \$

The Contract Time will be increased by:

✓ 221 Days

THIS CHANGE ORDER ITEM IS INCLUSIVE OF ALL COSTS ASSOCIATED WITH THIS WORK. NO ADDITIONAL COMPENSATION OR EXTENDED TIME SHALL BE DUE AS A RESULT OF THIS CHANGE IN THE SCOPE OF WORK.

Recommended

Accepted

Reviewed and Concurred

Project Consultant's Signature Date

Contractor's Signature Date

Facilities Project Manager Date

Project Consultant's Typed Name

Contractor's Typed Name

Facilities Project Manager's Typed Name

Robert McMahon

Jim Hewett

Dave Archer

Project Consultant's Firm Name

Contractor's Firm Name

The School Board of Broward County, FL

Zelch & McMahon, Architects

Hewett-Kier Construction Inc.

Project Manager III

This information to be completed by School Board of Broward County Staff

Change Order Categories

Sub Categories

☐ Owner's Request ☒ Unforeseen ☐ Consultant Error ☐ Consultant Omission

☐ Regulatory Compliance ☐ Safety/Emergency



HEWETT-KIER CONSTRUCTION, INC.

GENERAL CONTRACTORS • CONSTRUCTION MANAGERS • DESIGN BUILDERS

3451 NW 14TH AVE.
POMPANO BEACH, FL 33064

PH: (954) 946-4224
FAX: (954) 946-2447

September 8, 2009

SCHOOL BOARD OF BROWARD COUNTY
1700 SW 14th Court,
Fort Lauderdale, FL 33312

Re: Cypress Elementary School
Project No: 1781-24-01/P.000346

Subject: Guaranteed Maximum Price Proposal

Attn: Denis Hermann

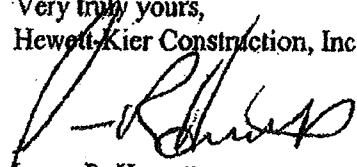
8,704,000. +
8,448,280. -
255,720. *
0. *

Dear Mr. Hermann,

Hewett-Kier Construction Inc., Construction Manager (CM), is pleased to propose a Guaranteed Maximum Price (GMP) of \$ 8,448,280 for this project. This GMP is based on the 100% permitted set of drawings provided and excluding the remodeling work in Building # 1 as requested. We have enclosed an enumeration of the plans with their revision dates upon which the GMP is based and provided a list of drawings specifically excluded due to the removal of the remodeling of Building # 1 from the scope of work.

We look forward to working with the School Board of Broward County on this and all future projects.

Very truly yours,
Hewett-Kier Construction, Inc.


James R. Hewett
President



Zelch & McMahon, Architects

17 NE 4th St. Ft. Lauderdale, FL 33301

Tel/Fax: (954) 525-0975/525-3714

Hilda Jiménez, Project Manager II
Facilities and Construction Management Department
The School Board of Broward County
1700 Southwest 14th Court
Fort Lauderdale, FL 33312

September 02, 2009

RE: Cypress Elementary School #1781-24-01/P.000346
New Food Service/Multipurpose + Renovations
Recommendation of GMP Acceptance

Dear Ms. Jimenez,

We have reviewed the negotiated Guaranteed Maximum (GMP) presented by Hewitt-Kier Construction, Inc. dated September 01, 2009 for the Scope of Work presented for the above referenced Project. In our judgment, the Cost of Approved Work \$7,504,000.00 with a Construction Contingency of \$37,812.00 in the total GMP amount of \$8,704,000.00 is acceptable for the defined scope based on RFI's (1-23), CSI's (1-4), and the Permitted Construction Documents.

The work has been negotiated to achieve Substantial Completion in 510 days and Final Completion in another 60 days from the Construction Authorization date established with the approved GMP proposal package.

Therefore, we find the construction price and the time schedule acceptable and recommend approval.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read 'Robert E. McMahon', written over the 'Very truly yours,' text.

Robert E. McMahon
Zelch & McMahon, Architects



Zelch & McMahon, Architects

17 NE 4th St. Ft. Lauderdale, FL 33301

Tel/Fax: (954) 525-0975/525-3714

Hilda Jimenez, Project Manager II
Facilities and Construction Management Department
The School Board of Broward County
1700 Southwest 14th Court
Fort Lauderdale, FL 33312

September 09, 2009

RECEIVED
CONSTRUCTION
09 SEP 11 PM 4:00

RE: Cypress Elementary School #1781-24-01/P.000346
New Food Service/Multipurpose + Renovations
Recommendation of GMP Acceptance

Dear Ms. Jimenez,

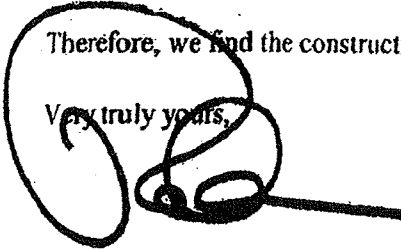
We have reviewed the negotiated Guaranteed Maximum (GMP) presented by Hewett-Kier Construction, Inc. dated September 01, 2009 for the Scope of Work presented for the above referenced Project. In our judgment, the Cost of Approved Work \$7,248,280.00 with a Construction Contingency of \$37,812.00 in the total GMP amount of \$8,448,280.00 is acceptable for the defined scope based on RFI's (1-23), CSI's (1-4), and the Permitted Construction Documents.

Remodeling of the existing Cafetorium to Classroom has been deleted. The School Board of Broward County intends to renovate rather than remodel the vacated areas. The exact needs and costs will be determined at a later time.

The work has been negotiated to achieve Substantial Completion in 510 days and Final Completion in another 60 days from the Construction Authorization date established with the approved GMP proposal package.

Therefore, we find the construction price and the time schedule acceptable and recommend approval.

Very truly yours,

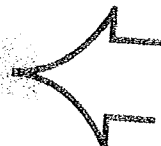

Robert E. McMahon
Zelch & McMahon, Architects

Patrick Reilly, Chief Auditor
Office of the Chief Auditor
Office (754) 321-2400
Fax (754) 321-2719
patreilly@browardschools.com

Under Florida law, email addresses are public records. Your email address and the contents of any email sent to the sender of this communication will be released in response to any request for public records, except as excluded by F.S. 119.071, 1002.22(3) (d) [student records], or any other law of the State of Florida. If you do not want your email address to be released as part of any public records request, do not send email to this address, rather contact this office by phone or in writing.

Shelley N. Meloni on Wednesday, January 11, 2012 at 2:31 PM -0500 wrote:
Pat:

We do not have a written mandate from the State, however, we were informed through the Plant Survey process (via Tom Getz) and through directive from Mr. Garretson that we were no longer to proceed with planned classroom additions.



Shelley N. Meloni, R.A. NCARB, LEED® AP
Executive Director, Facilities Design & Construction
Facilities & Construction Management
(754) 321-1610

Under Florida law, e-mail addresses, and all communications, including e-mail communications, made or received in connection with the transaction of School Board business are public records, which must be retained as required by law and must be disclosed upon receipt of a public records request, except as may be excluded by federal or state laws. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Patrick O. Reilly on Tuesday, January 10, 2012 at 10:30 AM -0500 wrote:

I was in the process of our review of change orders for Palmview and Cypress Elementary Schools. The description of the change order states that "delays attributed to the design of the pre-existing cafeteria was due to a Florida State mandate prohibiting the construction of additional student capacity". Can you send me a copy of the Florida mandate that relates to this matter?



Exhibit F

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

1701 SW 14TH COURT • FORT LAUDERDALE, FLORIDA 33312 TEL 754-321-2510 FAX 754-321-1661

FACILITIES & CONSTRUCTION MANAGEMENT

Thomas E. Linder,
Acting Deputy Superintendent

SCHOOL BOARD

Chair: JENNIFER LEONARD COTTLEB
Vice-Chair: BENJAMIN J. WILLIAMS
RODNEY BARTLEMAN
MAUREEN S. DINNER
PHYLLIS C. HOPE
STEPHANIE ARMA KRAFT, ESQ.
ANN MURRAY
ROBERT D. PARKS, Ed.D.
KEVIN F. TYNAN, ESQ.

JAMES F. NOTTER
Superintendent of Schools

January 13, 2010

Zelch and McMahon Architects
17 Northeast 4th Street
Fort Lauderdale, FL 33301
Attn: Robert E. McMahon

Re: Cypress ES Cafeteria Project #P.000346 (1761-2401)
Site Drainage Re-Design

Dear Bob,

As a follow up to the several meetings held at the Facilities Department concerning the Drainage issues at the above referenced facility, you are hereby requested to submit a proposal for additional services for unforeseen design conditions in respect to the site drainage.

Subsequent to the Cafeteria project Guaranteed Maximum Price (GMP) submitted by Hewett-Kier being approved by the Board on October 6, 2009 Broward County experienced, flash flooding the school site flooded on November 5, 2009 and for a second time on December 18, 2009. The North Area Superintendent's office and Safety Department requested that the Facilities Department explore the possibility of advancing the Drainage scope phase of the Project.

Careful analysis was done by Project Team including the Contractor's and Engineers input. The outcome is that it will not be feasible to proceed with the drainage portion of the project, until perhaps early next summer. The potential negative impact to school operations is too great.

Flynn Engineering, the Civil engineer of record was in the process of obtaining the Site Permit from EDP/SFWMD (Environmental Protection Department) and was informed that the water table in the surrounding area has been adjusted by eighteen inches to a higher elevation (meaning a reduced ability of the surrounding canals to hold excess water). This resulted in the need for new site drainage engineering calculations.

February 1, 2008

Page 2

Exhibit F

Additionally, the original design included underground tanks for water retention. Set Aidie, Facilities Senior Civil Engineer, will not approved this system citing Maintenance and initial construction cost concerns. The original design with the underground tanks had been reviewed by peer reviewers at the Russell Partnership an outside firm, and not by the SBBC Design Services Department.

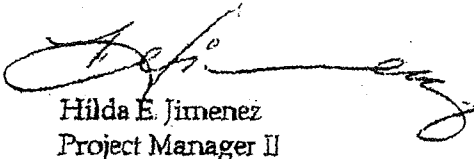
It was also observed, that the surrounding neighborhood is causing a "river like" water condition coming into the site aggravating the already existing drainage problem.

Finally, the East and NE end of the site which were not included in the original design are the areas that are receiving the worst impact with the run-off water from the neighbors.

As a result of these findings, a re-design of the drainage is required. Until this new site drainage design is permitted, a Notice to Proceed will not be issued to the contractor. The new design is being permitted by EDP.

Should you have any questions, please do not hesitate to call me at 754-321-1649.

Sincerely,



Hilda E. Jimenez
Project Manager II

HEJ/dr

cc: Derrick Ragland
Denis Herrmann
Shelley Meloni
Jack Cooper
Dave Archer
Set Aidie
File



The School Board of Broward County, Florida
Facilities and Construction Management Division
1700 SW 14th Court
Fort Lauderdale, FL 33312

Exhibit G

(754) 321-1500

Document 00550: Notice to Proceed (GMP)

Date: February 16, 2010

To: James R. Hewett, President

Building Permit No.:
178108PR637PRP

Company Name Hewett-Kler Construction, Inc.
& Address: 3451 NW 14th Avenue
Pompano Beach, FL 33064

Fax and Pick-up:
954-946-2447

This document constitutes your Notice to Proceed with the following Contract:

Project No: P. 000346 (f.k.a. 1781-24-01)
Project Title: Kitchen/Cafeteria
Facility Name: Cypress Elementary School

You are authorized to commence the following phase(s) of your Construction Management Contract:

- ☐ Design
☐ Bidding and Award
☒ Construction

You are hereby notified that the Contract Times as stated for this Contract will commence on the following date:

February 16, 2010

You are instructed to start performing the obligations of the Contract on that date, with:

- ☒ A required performance period of 60 consecutive calendar days.
☒ A required Substantial Completion Date of July 11, 2011.
☐ As otherwise delineated in the Agreement Form to which you were a signatory.

A Pre-Construction Conference is scheduled for:

Time: 10:00 AM
Date: Monday, February 22, 2010
Place: Cypress Elementary School
851 SW Third Avenue
Pompano Beach, FL 33060

Please review the applicable sections of the Project Manual for further information regarding attendance and the agenda for the Pre-Construction Conference.

Additional Instructions relative to this Notice to Proceed follow below:



Document 00550: Notice to Proceed (GMP)

Item Instruction

1.

Your surety is being advised of this Notice to Proceed by copy of this document and its attachments.

If you have any questions concerning this Notice to Proceed, please contact Hilda Jimenez at 754-321-1649.

Sincerely,

Thomas E. Lindner, Acting Deputy Superintendent
Facilities and Construction Management Division

TEL/DH:dm

Attachments:

- ☐ Form of Addendum to the Agreement
- ☐ Document 00600 Performance Bond
- ☐ Document 00610 Payment Bond
- ☐ Document 00455 Background Screening
- ☐ W-9: Request for Taxpayer Identification Number and Certification
- ☐ Risk Management Approval Letter
- ☐ Building Permit

Copies:

- ☐ Paulette Samai, Principal
- ☐ Thomas E. Lindner, Acting Deputy Superintendent
- ☐ Thomas J. Coates, Executive Director, Facility Management, Planning and Site Acquisition
- ☐ Derrick Ragland, Executive Director, Project Management
- ☐ Robert Hamberger, Chief Building Official
- ☐ Claudia Munroe, Executive Director, Design Services
- ☐ Denis Herrmann, Director, Design and Construction Contracts
- ☐ Jack Cooper, Senior Project Manager
- ☐ Hilda Jimenez, Project Manager
- ☐ Pam Norwood, Capital Payments Review Supervisor
- ☐ Jim Kale, Coordinator, Capital Planning
- ☐ Zelch & McMahon Architects, Project Consultant
- ☐ Nielson, Alter & Associates, Surety Agent
- ☐ Robert Waremburg, Director, Supply Management & Logistics (With Copy of IRS Form W-9 Only)
- ☒ Project File
- ☐ Contract Set
- ☐ Files

The School Board of Broward County, Florida**Construction Management at Risk Agreement****Project Schedule**

Project No: 1781-24-01
 Project Title: Kitchen/Cafeteria
 Facility Name: Cypress Elementary School

The required project schedule milestones for this project are presented below. Items marked undetermined require additional development and submittal of the Construction Manager's Master Schedule as required by the Construction Manager at Risk Agreement for this project.

ACTIVITY	DATE REQUIRED OR ESTIMATED TIME PERIOD	
Phase I: Schematic Design:	N/A	Consecutive Calendar Days
Phase II: Design Development	N/A	Consecutive Calendar Days
Phase III: Construction Documents Development		
50% Construction Documents	N/A	Consecutive Calendar Days
100% Construction Documents	90	Consecutive Calendar Days
Phase IV: Bidding and Award of Contract	60	Consecutive Calendar Days
Phase V: Construction	570	Consecutive Calendar Days
Substantial Completion:	510	Consecutive Calendar Days
Final Completion:	60	Consecutive Calendar Days
Phase VI: Warranty	365	Consecutive Calendar Days



Hewett-Kier Construction, Inc.

General Contractors • Construction Managers • Design Builders

Exhibit H

3451 NW 14th Ave.
Pompano Beach, FL 33064

Ph: (954)946-4224

Fax: (954)946-2447

January 17, 2012

Letter No.-00012

ZELCH AND MCMAHON.
17 NE 4th Street
Ft. Lauderdale, FL 33301

Fax No:954-525-3714

Re: Cypress Elementary School
Project No.1781-24-01

Subject: Notice of Delay - Building 1

Attn: Bob McMahon

Dear Sir:

In accordance with the General Conditions of The Contract for Construction, Hewett-Kier Construction, Inc. hereby serves notice that the project is being delayed as a direct result of the events that are described more fully below, and supported by the attached documents.

Our baseline schedule indicated that we would achieve final completion on May 2, 2012. On September 8, 2011, we submitted a time extension request for 160 days based on receiving approval of pricing for the Building 1 remodeling revisions by October 4, 2011. On November 10, 2011, we received Change Order Item #11, which provided for a time extension of 221 days, thereby requiring that final completion of the project be achieved on or before April 17, 2012. On December 15, 2011, we received an executed CCD #04R for the Building 1 remodeling revisions, but the time extension of 221 days was not modified.

Hewett-Kier Construction, Inc. continues to experience ongoing delays to the project as follows:

1. On September 22, 2011, we provided Zelch and McMahon with a complete submittal for the hollow metal doors, frames, and hardware for Building 1. As of today, nearly four months later, we have not yet received a review of this submittal. Our schedule allows for a review period of 10 working days for submittal review time on any submittal (see Activity IDs #08100-B and 08710-B). The absence of doors, frames, and hardware at this time is prohibiting us from completing the drywall installation in Building 1 and proceeding with the finishes.

Exhibit H

2. Drywall installation in Building 1 has also been delayed by unforeseen conditions that were uncovered during and after demolition work was completed. We found numerous structural and life safety deficiencies in the existing masonry walls. CUD #17, dated January 10, 2012, provides for the repair of the existing deficient masonry walls.

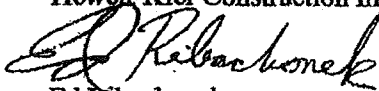
Since a final resolution to the issue of the door and hardware submittal has not yet been achieved, it is impossible, at this time, to quantify the extent of a contract time extension that will be needed. However, given the amount of work that remains to be done on the project, and based on the approved schedule update through December 31, 2011, it appears that we will not be able to achieve final completion until on or after May 2, 2012. This would mean that the project will be delayed a total of 236 calendar days.

In compliance with Specification Section 01250, Paragraph 1.5A, we offer this letter and the attached backup information for your evaluation:

- A.) Schedule update through December 31, 2011, indicating a delay to the project of 236 calendar days.
- B.) Letter dated September 8, 2011, requesting a time extension of 160 days, based on the assumption that approval of the Building 1 remodeling revisions would be provided by October 4, 2011.
- C.) COI #11, dated November 10, 2011, providing for a time extension of 221 days.
- D.) CCD #04R, executed on December 15, 2011, and providing approval of the Building 1 remodeling revisions.
- E.) Submittal transmittals of the H.M. doors and frames dated September 22, 2011.
- F.) CUD #17, dated January 10, 2012, providing for the repair of the existing deficient masonry walls.

We believe that the above and attached data provides sufficient justification for a delay that has impacted our critical path, that has occurred through no fault of our own, and that is ongoing and undefined in its extent. We reserve the right to provide additional information, and to request an extension of the contract time as needed.

Very Truly Yours,
Hewett-Kier Construction Inc.


Ed Ribachonek
Project Manager

Cc: James R. Hewett
Dave A. Archer, SBBC

Exhibit I



Hewett-Kier Construction, Inc.

General Contractors • Construction Managers • Design Builders

3451 NW 14th Ave.
Pompano Beach, FL 33064

Ph: (954)946-4224
Fax: (954)946-2447

September 8, 2011

Letter No.-00009

ZELCH AND MCMAHON.
17 NE 4th Street
Ft. Lauderdale, FL 33301

Fax No:954-525-3714

Re: Cypress Elementary School
Project No.1781-24-01

Subject: Time Extension / Additional GCs

Attn: Bob McMahon

Dear Sir:

In accordance with General Conditions of The Contract For Construction, Hewett-Kier Construction, Inc. respectfully requests an extension of the contract time of no less than (160) One Hundred Sixty Calendar Days as a direct result of delays described more fully below and supported by the attached documents.

Additionally, we respectfully request reimbursement for the Construction Manager's Additional Construction Phase Fee and General Conditions as set forth in Article 7.01 of the CM Agreement.

The delays are as follows:

1. Delay caused by the Revised Drainage and Related Work as per CSI-007R:

The Notice to Proceed for the project had not yet been issued when a rain event in November 2009 caused major flooding at the school campus. The School Board of Broward County (SBBC) then required Zelch & McMahon Architects (Z&MA) to revise their design. Although Notice to Proceed was issued on February 16, 2010, it was not until May 2, 2011 that the revised permit plans were issued for the construction of project's site work. Hewett-Kier Construction, Inc. was delayed for over one year while the SBBC and Z&MA negotiated the fees for the additional design work, then while Z&MA actually produced the design, and finally while

Exhibit I

Broward County Environmental Protection Department and the SBBC Building Department issued permits for construction.

Backup documentation (correspondence) is provided herein as follows:

- A.) Meeting at SBBC on 11/6/09, wherein the permitted drainage design utilizing rain tanks was rejected.
- B.) Letter from Z&MA dated 12/9/09 advising of the need for pine tree removals.
- C.) E-mail dated 9/16/10 placing covered walkway on hold.
- D.) E-mail dated 1/28/11 providing the Tree Removal License from Broward County.
- E.) E-mail dated 2/9/11 providing the revised architectural drawings that were impacted by the revised drainage.
- F.) E-mails dated 3/17/11 confirming that the work shown on CSI #7 drawings remains on hold until the SBBC permit is issued.
- G.) Consultant's Supplemental Instructions #007R dated May 2, 2011.

Requests for Information are provided herein as follows:

- a.) RFI #33 – pine tree conflicts with paving – issued 4/16/10.
- b.) RFI #44.1 – north covered walkway conflicts – issued 8/1/10.
- c.) RFI #60 – detectable warning questions – issued 9/7/10.
- d.) RFI #77 – clarify sod type and location – issued 5/10/11.
- e.) RFI #81 – detectable warning questions – issued 5/19/11.
- f.) RFI #84 – fencing questions – issued 6/23/11.
- g.) RFI #88 – north covered walkway questions – issued 7/19/11.
- h.) RFI #89 – sidewalk questions – issued 7/19/11 – sketches were provided, but the off-site work was placed on hold on 8/3/11 (note: this may trigger another delay).
- i.) RFI #92 – fencing questions – issued 7/19/11.
- j.) RFI #99 – bollard question – issued 8/9/11.

2. Delay caused by the Revised Remodeling of Building 1 as per CSI-012:

Concurrent with the above, a time delay occurred as a result of the events described below.

On March 17, 2010, all work on the remodeling of Building 1 was stopped as a result of a mandate by the State of Florida that Broward County could not build any more classrooms. Zelch and McMahon Architects produced Consultant's Supplemental Instructions #012 on April 22, 2011, which basically redefined the usage of the space in Building 1.

Hewett-Kier Construction, Inc. has been delayed for more than one year in being able to submit shop drawings for the various trades involved in the remodeling work. The important shop drawing submittals that were delayed include the doors and hardware, fire sprinklers, ductwork, and fire alarm. Additionally, as a result of the drawings produced in conjunction with CSI #012, all of the subcontractors involved in the remodeling work needed to revise their contract costs. Although some of the

Exhibit I

revisions in plans resulted in deleted scope of work, it should be noted that scope was also added. New subcontractors were added, and their submittals also became critical. These are the rain hoods, the corner guards, and the acoustical wall panels. Hewett-Kier Construction, Inc. is submitting herein the construction cost adjustments resulting from the subcontractor negotiations for the added scope of work required in CSI #012 related to the revised remodeling of Building 1. The construction cost adjustments resulting from the revised drainage and related work as per CSI-007R are being submitted separately.

Backup documentation is provided herein as follows:

- A.) Stop work notification on remodeling of Building 1 dated March 17, 2010.
- B.) Baseline schedule dated February 16, 2010.
- C.) Consultant's Supplemental Instructions #012 dated April 22, 2011.
- D.) Schedule update dated September 1, 2011, indicating a total time delay of 160 days.

The above analysis does not represent all applicable delays to the project. However, we believe that sufficient justification has been provided for the time requested. We reserve the right to provide additional information if necessary, and to request additional time if needed.

Note: The updated schedule is based on the assumption that SBBC Board approval of the price proposals for CSI #007R and CSI #012 will be obtained on October 4, 2011.

Very Truly Yours,
Hewett-Kier Construction Inc.

Ed Ribachonek
Project Manager

Cc:
James R. Hewett, Hewett-Kier Construction
Dave Archer, SBBC



The School Board of Broward County, Florida
Facilities and Construction Management Division
1643 North Harrison Parkway
Sunrise, FL 33323

Exhibit J

(754) 321-1500

Document 01250g - Construction Change Order-Item #12

Facility Name: Cypress Elementary School Date: December 8, 2011
Project Name: New Multipurpose Building, Remodeling, & Site Improvements Project #: #1781-24-01/P.000346
Project Description: General Construction
Contractor: Hewitt-Kier Construction Inc. Reference Change Order Request: COR #24R2

Description of Change:

Revised Building #1 Remodeling:

Construct Revised Building #1 Remodeling as indicated in CSI #12 in compliance with the State's mandate restricting the construction of additional student capacity.

In Lieu of remodeling the previously existing Cafeteria into classrooms, the revised scope includes remodeling the space into general storage, multipurpose space, music lab, textbook storage, physical education office, electrical and mechanical rooms, and associated corridors.

Attachments: CSI #12, CCD #4R, & Contractor's Change Order Request # 24R2 w/ attachments

Reason For Change:

The changes are due to the "Owner Requested" revised Scope of Work attributed to the redesign of the existing Cafeteria, as a result of a Florida State mandate, prohibiting the construction of additional student capacity. This Change Order item reconciles the difference in the cost between the original scope versus the revised scope of work.

Summary:

Total of Credited and/or Added Costs: Add: \$ 37,906.00'

Deduct: \$

The Contract Time will be unchanged by: 0 Days

THIS CHANGE ORDER ITEM IS INCLUSIVE OF ALL COSTS ASSOCIATED WITH THIS WORK. NO ADDITIONAL COMPENSATION FOR EXTENDED TIME SHALL BE DUE AS A RESULT OF THIS CHANGE IN THE SCOPE OF WORK.

Recommended

Accepted

Reviewed and Concurred

Project Consultant's Signature Date

Contractor's Signature Date

Facilities Project Manager Date

Project Consultant's Typed Name

Robert McMahon

Contractor's Typed Name

Jim Hewitt

Facilities Project Manager's Typed Name

Dave Archer

Project Consultant's Firm Name

Zelch & McMahon, Architects

Contractor's Firm Name

Hewitt-Kier Construction Inc.

The School Board of Broward County, FL

Project Manager III

This information to be completed by School Board of Broward County Staff

Change Order Categories

Sub Categories

☒ Owner's Request ☐ Unforeseen ☐ Consultant Error ☐ Consultant Omission ☐ Regulatory Compliance ☐ Safety/Emergency



The School Board of Broward County, Florida
Facilities and Construction Management Division
1643 North Harrison Parkway
Sunrise, FL 33323

PF 1/13
Exhibit K

(754) 321-1600

Document 01250g - Construction Change Order-Item #13R3

Facility Name: Cypress Elementary School Date: January 12, 2012
December 2, 2011
Project Name: New Multipurpose Building. Project # #1781-24-01P.000346
Remodeling, & Site Improvements
Project Description: General Construction
Contractor: Hewett-Kier Construction Inc. Reference Change Order Request: COR #32R2

Description of Change:

Revised Site Remodeling:

Construct Revised Site Remodeling as per Consultant Supplemental Instruction (CSI) #7r

Attachments: CSI #7r, CCD #05R2, & Contractor's Change Order Request # 32R2 w/ related documents.

Reason For Change:

After an unseasonal rain event the permitted Site Remodeling design was requested to be modified in order to address the deflection of neighborhood storm water run-off at the perimeter areas of the School Board's property.

The previously accepted Underground Storm Water Storage (Rain Tanks) was changed to consider a combination of Dry Retention and Exfiltration System only.

Improve site drainage in the north parking/bus loop area by removing extra paving and providing more pervious area.

Summary:

Total of Credited and/or Added Costs:

Add: \$ 290,326.00

Deduct: \$

The Contract Time will be unchanged by:

0 Days

THIS CHANGE ORDER ITEM IS INCLUSIVE OF ALL COSTS ASSOCIATED WITH THIS WORK. NO ADDITIONAL COMPENSATION FOR EXTENDED TIME SHALL BE DUE AS A RESULT OF THIS CHANGE IN THE SCOPE OF WORK.

Recommended

Project Consultant's Signature Date
01/12/12

Project Consultant's Typed Name

Robert McMahon

Project Consultant's Firm Name

Zelch & McMahon, Architects

Accepted

Contractor's Signature Date
1/12/12

Contractor's Typed Name

Jim Hewett

Contractor's Firm Name

Hewett-Kier Construction Inc.

Reviewed and Concurred

Facilities Project Manager's Signature Date
1-13-2012

Facilities Project Manager's Typed Name

Dave Archer

The School Board of Broward County, FL

Project Manager III

This information to be completed by School Board of Broward County Staff			
Change Order Categories		Sub Categories	
<input checked="" type="checkbox"/> Owner's Request	<input type="checkbox"/> Unforeseen	<input type="checkbox"/> Consultant Error	<input type="checkbox"/> Consultant Omission
		<input type="checkbox"/> Regulatory Compliance	<input type="checkbox"/> Safety/Emergency

ITEM 2B

Activity/ID	Activity Description	Orig Dur	Rem Dur	%	Early Start	Early Finish	Total Float
CYPRESS ELEMENTARY SCHOOL							
Total		710	541	3	31AUG09A	10AUG11	0
PHASE 1							
COMMENCEMENT							
00040V	ACCEPTANCE OF GMP	1	0	100	31AUG09A	06OCT09A	
01000.00	COMPLETION OF DESIGN REVIEW	0	0	100	31AUG09A		
00042V	ISSUE BUILDING PERMIT - BLDG 1	80	80	0	01SEP09A	08JUN10	6
00041V	ISSUE BUILDING PERMIT - BLDG 5	10	0	100	01SEP09A	04FEB10A	
01000.01	ADVERTISE TO BIDDERS	30	0	100	16SEP09A	15OCT09A	
01000.05	SUBMIT PAYMENT / PERFORMANCE BOND	5	0	100	06OCT09A	06OCT09A	
01000.02	PRESENT SUB BIDS AND MAKE RECOMMENDATIONS	15	0	100	16OCT09A	06NOV09A	
01000.03	SECURE MAJOR SUBCONTRACT AGREEMENTS	10	0	100	12NOV09A	14DEC10A	
00043V	NOTICE TO PROCEED	1	0	100	16FEB10A	16FEB10A	
01000.04	SUBMIT BUILDERS RISK INSURANCE	5	0	100	16FEB10A	16FEB10A	
01310	PRECONSTRUCTION CONFERENCE	1	1	0	16FEB10	16FEB10	0
CONSTRUCTION OVERVIEW							
01000.06	CM FEE - GENERAL CONDITIONS	511*	510*	0	16FEB10A	11JUL11	0
01000.07	CM FEE - CONSTRUCTION	511*	510*	0	16FEB10A	11JUL11	0
01000.08	CM FEE - OVERHEAD	511*	510*	0	16FEB10A	11JUL11	0
01000.09	CM FEE - PROFIT	511*	510*	0	16FEB10A	11JUL11	0
00044V	MILESTONE START - MOBILIZE ON SITE	0	0	0	17FEB10		12
01350	GROUND BREAKING CEREMONY	1	1	0	17FEB10	17FEB10	254
01320	AERIAL PHOTOGRAPHY	15	15	0	17FEB10	03MAR10	495
00700	OWNER CONTINGENCY - BALANCE REMAINING	1	1	0	17FEB10	17FEB10	509
19000	UNCOMMITTED FUNDS - BALANCE REMAINING	1	1	0	17FEB10	17FEB10	509
00045V	MILESTONE FINISH - BUILDING PAD @ BUILDING 5	0	0	0	0	22MAR10	0
00047V	MILESTONE FINISH - POUR FLOOR SLAB @ BUILDING 5	0	0	0	0	26MAY10	1
00055V	MILESTONE FINISH - DRY IN ROOF @ BUILDING 5	0	0	0	0	15SEP10	8
00057V	MILESTONE FINISH - ENERGIZE BUILDING @ BLDG. 5	0	0	0	0	14DEC10	13
00063V	MILESTONE FINISH-SUBSTANTIAL COMPLETION BLDG. 5	0	0	0	0	18FEB11	2
01000.10	CM FEE - WARRANTY	90	90	0	19FEB11	19MAY11	83
01820	DEMONSTRATION AND TRAINING	30	30	0	19FEB11	20MAR11	143
01700.5	CONSTRUCTION ACCEPTANCE / PUNCH LIST BLDG. 5	30	30	0	19FEB11	20MAR11	143
00064V	MOVE STAFF AND STUDENTS INTO BLDG. 5	10	10	0	21FEB11	04MAR11	0
00073V	FINAL COMPLETION	0	0	0	0	10AUG11	0
SUBMITTALS & PROCUREMENT							
15105-A	SUBMIT PLUMBING PIPING	1	0	100	07JAN10A	07JAN10A	
15410-A	SUBMIT PLUMBING FIXTURES	1	0	100	07JAN10A	07JAN10A	
Project Start: 31AUG09 Project Finish: 10AUG11 Date Data: 16FEB10 Run Date: 02JUN11							
Legend: [Green Bar] Early Bar [Yellow Bar] Fast Bar [Red Bar] Program Bar [Blue Bar] Critical Activity							
© Primavera Systems, Inc.							

CYPRESS ELEMENTARY SCHOOL
Baseline Schedule

Sheet 1 of 24

SECTION III

APPENDIX

Definitions

Change Order - A change order is issued and approved by the Owner for additions or deletions in the scope of work or services provided by the Construction Manager. A change order shall increase or decrease the GMP subsequent to approval of the final GMP.

Construction Change Directive (CCD) - A CCD is issued and approved by the Owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner's sole discretion.

Construction Manager - The "party of the second part", of the Contract. The person, firm or corporation with whom a contract has been made with the Owner for the performance of the Work defined by the Contract Documents.

Contingency Use Directive (CUD) - A CUD is issued and approved by the Owner for the purpose of accounting for unforeseen increases or decreases in the construction cost and/or to be utilized for unforeseen circumstances as set forth in Article 6.1 of the agreement.

The Deputy Superintendent Facilities and Construction Management - An employee of the School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part.

Facilities and Construction Management Division - The Facilities and Construction Management Division is the Owner's organizational entity which acts as liaison between the Consultant and Owner and provides day to day management, plan review, inspection and other professional services on the Owner's behalf.

Final Completion - Means that date subsequent to the date of Substantial Completion at which time the Construction Manager has completed all of the Work (or designated portion thereof) in accordance with the Contract Documents as certified by the Project Consultant and/or approved by the Owner. In addition, Final Completion shall not be deemed to have occurred until any and all governmental bodies, boards, entities, etc., which regulate or have jurisdiction of the Work, have inspected, approved and certified the Work.

Guaranteed Maximum Price - The GMP is the maximum amount of money that the Owner shall pay the Construction Manager for all the work described in the contract documents.

Notice to Proceed - The term Notice to Proceed shall mean a written work order based on a defined scope of work, prepared by the Facilities Project Manager and issued to the Construction Manager.

Owner - The School Board of Broward County, Florida. The School Board of Broward County, Florida, through its Board, must approve all Agreements, changes in the scope of work, change orders, fees, final acceptance of the project final payment and use of the contingency as set forth in Article 6.1 of the Agreement between Owner and Construction Manager.

Phase - A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, and liquidated damages. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors.

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design, permitting, construction and code inspection necessary to build the component parts of the project identified in project manual.

Project Consultant - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services for development of the design and Contract Documents for the work of this Project and, any additional services as may be required during the construction and warranty phase.

Project Manager - An employee of The School Board of Broward County, Florida, who is designated by the Deputy Superintendent to provide direct interface with the Construction Manager with respect to the Owner's responsibilities.

Substantial Completion - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the work performed by Construction Manager and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether substantial completion has been achieved.

Abbreviations

▪ A/E	Architect/Engineers
▪ ATP	Authorization To Proceed
▪ CCD	Construction Change Directive
▪ CM	Construction Manager
▪ CO	Change Order
▪ CSI	Consultant's Supplemental Information
▪ DOE	Department Of Education
▪ F&CM	Facilities and Construction Management Division
▪ GMP	Guaranteed Maximum Price
▪ HK	Hewett-Kier Construction, Inc.
▪ NTP	Notice To Proceed
▪ OCA	Office of the Chief Auditor
▪ OR	Owner's Request
▪ PC	Plan Change
▪ PM	Project Manager
▪ PE	Physical Education
▪ PSA	Professional Services Agreement
▪ SBBC	School Board of Broward County
▪ ZMA	Zelch & McMahon Architects

SECTION IV

FULL TEXT OF ADMINISTRATIVE RESPONSES AND ADMINISTRATIVE SUMMARY

**SUMMARY INCLUDES FOLLOW UP COMMENTS
BY THE OFFICE OF THE CHIEF AUDITOR**

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
FACILITIES AND CONSTRUCTION MANAGEMENT

THOMAS LINDNER
DEPUTY SUPERINTENDENT

Telephone: (754) 321-1510

Facsimile: (754) 321-1680

June 12, 2012

TO: Patrick Reilly, Chief Auditor
Audit Department

FROM: Thomas Lindner, Deputy Superintendent
Facilities and Construction Management

Thomas E. Lindner/SLM

SUBJECT: CYPRESS ELEMENTARY SCHOOL AUDIT RESPONSES

Please find attached, responses to findings for Cypress Elementary School Audit.

Findings #1, pages 1-3

Findings #2, page 4

Findings #3, pages 5-6

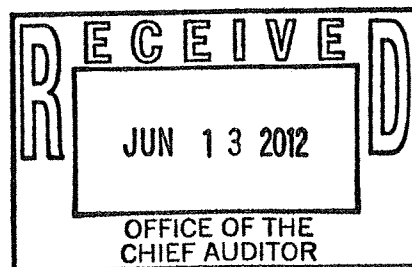
Summary, pages 7-8

For questions or concerns call my office at (754) 321-1510.

TEL/SC:bc

Attachments

c: Shelley Meloni, Executive Director, Facilities Design & Construction



FINDING #1

In Finding #1, the Office of the Chief Auditor (OAC) recommended that the Construction Manager, Hewitt-Kier be denied payment for extended General Conditions. Facilities and Construction Management (F&CM), in conjunction with two independent cost and scheduling consultants analyzed the project data, including schedules and pay applications, and concluded that the Construction Manager (CM) is entitled to Extended General Conditions for the following reasons:

Hewitt-Kier was unable to complete the project within the originally scheduled timeframe because the District implemented changes to the scope of work that prevented the CM from meeting the original scheduled date, as identified in the Baseline Schedule and Notice to Proceed (NTP).

One of the changes to the original scope occurred via an oral directive to the Project Management Department by the former Deputy Superintendent, that no additional classrooms were to be constructed, including those that were to be generated from remodeled space. As a result, the Project Manager (PM) overseeing the project during the time of the directive, instructed the consultant to stop Phase II. A new scope had to be developed by the Capital Planning Department and once complete, this information was provided to the consultant.

In addition, and as detailed in the audit report, District staff requested changes to the permitted site drainage design. The drawings were reviewed and permitted by the Environmental Protection and Growth Management Department and the SBBC's Building Department. The drawings were designed incorporating a rain tank system; however, after the rain events of November and December 2009, the District's Senior Engineer requested a change from rain tanks to retention ponds. This necessitated a redesign and re-permitting through the outside agencies. As a result, the PM requested a fee proposal for the remodeling of the existing space and the new drainage design from the consultant.

It should be noted that under the current organizational structure, and in an effort to eliminate this reoccurrence, the Senior Engineer was moved to the Building Department, and now reviews drawings during the permitting process.

On January 14, 2010, the consultant provided the proposal to staff for the revisions to the remodeling work in the existing space and the permitted site drainage. After several months of negotiation, the board item for additional services was approved on October 5, 2010. The Authorization to Proceed (ATP), with the amended scope of work was issued to the consultant on November 12, 2010.

There was an approximate 10-month delay, during which the internal administrative processes of the F&CM Division contributed to the delayed commencement of the design of the proposed plan changes (CSI 7R/drainage and CSI 12R/interior remodeling).

On or about June 5, 2010 the Negotiations for additional design fees was at an impasse as a result of a \$3,300 difference between what was being offered by the owner when compared with the best and final offer by the consultant. The protracted delay in negotiating the design fees and finally the Board approval of the Amendment to the Agreement, a process lasting from January 14, 2010 until October 5, 2010, contributed to the delay in issuing the Authorization to Proceed to the Consultant for the revisions to the Permitted Drawings.

F&CM has in place a procedure to have the intervention of the Deputy Superintendent to make the final determination in resolving any negotiating impasse in the future, which may be cause for delays to the Project Schedule.

On March 17, 2010, the Consultant, Zelch & McMahon issued a letter to the CM directing it to cease programming work on Phase II, due to revisions to the original scope of work for the remodeling of the existing cafeteria. This action resulted in a delay to the commencement of the Phase II scope of work, placing this phase on hold from March 17, 2010 until the drawings were permitted and issued to the CM on April 22, 2011 for Plan Change 12R and May 2, 2011 for Plan Change 7R. Programming and commencement of Phase II work could not begin until this occurred, hence the determination by F&CM and the two independent cost and scheduling consultants that the delay could not be attributed to the Construction Manager.

Although the CM's baseline schedule indicated a completion date of February 18, 2011 for Phase I, the scope of work within this phase was also impacted by the revisions to the site drainage. It should be noted that February 18, 2011 as shown on the baseline schedule was not defined as a contractual obligation, since neither the Agreement, nor the NTP stipulated specific durations and completion dates for any of the phases of the project.

As implied by SBBC's CM Agreement, a baseline schedule is an instrument relevant to the means and methods of the Construction Manager. It was provided to SBBC for information purposes only in the assurance of compliance with the Substantial and Final Completion dates, per the Agreement and NTP. Reference is made to its application in ARTICLE 7.01.05 of the General Conditions of the Contract: *"By providing these Schedules to Owner, Owner does not in any way acknowledge or consent that the Schedules are acceptable or reasonable, but it is simply reviewing same for its own informational purposes."*

With respect to the OCA's statement regarding the District's Project Manager and the Construction Manager to effectively utilize the provisions of Article 27 of the Agreement, Change Orders and Construction Change Directives, F&CM submits that the Agreement specifically establishes the criteria for issuing Construction Change Directives and Construction Change Orders. Per ARTICLE 1.1.34 the criteria for the use of Construction Change Directives is defined:

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ARTICLE 1.1.34 "Construction Change Directive (CCD) – A CCD is issued and approved by the owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner's sole discretion."

The change order process per Article 27 of the Agreement was in progress and at no time during the process of negotiating the Change Orders for the Plan Changes 7R and 12R, did the Project Team come to an impasse. All costs were scrutinized and validated in the best interest of SBBC. The Construction Manager continued to work on the scope of work in Phase II that was common to the original scope and that of the plan changes.

Regarding the OCA's statement that the Construction Manager failed to comply with Article 42 (42.1.b) of the Agreement Notice of Claim: Waiver of Remedies; No Damages for Delay, which states that the *Construction Manager must submit a Notice of Claim to the Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim*, F&CM offers that sufficient notice was provided. The Construction Manager advised the team of the anticipated delay claim on February 2, 2011 per the meeting minutes, 2.03 CONSTRUCTION SCHEDULE dated 2/1/2011.

The full impact of the delays relating to the revised drawings was not determined until after the approval of the drawings and upon the CM's commencement of the programming of the new Phase II scope of work on, or about June 6, 2011.

At the time of reviewing the delay claim, it was the assessment of the Project Team that the CM did in fact comply with the aforementioned provision of the contract. The formal notice of the claim was submitted August 24 2011 and details of the claim and the impact of the delays were then subsequently submitted, September 8, 2011 with a Change Order Proposal as provided in the aforementioned Article.

As such, staff was assuming responsibility for the delay in expediting the design change approval, as governed by our own contract language. Staff attempted and was successful in mitigating the cost of that impact by negotiating with the claimant. Staff knew from the outset that the project had unique issues and took action to deal with them. However, it is important to note that Staff's actions were governed by our contract, not the contractor. In the opinion of the OCA, this was the incorrect course of action, despite the fact that the actions were reviewed by legal counsel as to form and compliance with the provisions of the contract.

Follow Up Comments by the Office of the Chief Auditor (OCA)

Our recommendation is to deny extended General Conditions in the amount of \$198,900. We performed an independent review of the change orders. We read the two independent consultant reports and we disagree with them. Neither report identified a root cause for the delay. One consultant recommended tacking on 221 days to the project and the other consultant recommended adding 160 days, and the latter did not recommend any monetary compensation. The CM's baseline schedule allowed for 367 days to complete the new cafeteria and provided 203 days to finish the remodeling of the existing cafeteria (Building #1) and other site improvements. This does not justify adding additional days to the end of the project, in our opinion. In addition, the CM negotiated and signed a Notice to Proceed to complete the project in

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570 days, knowing from the beginning that there would be remodeling and site work changes. There was ample time to revise and issue change orders for that work, yet this was not done.

In reference to a March 17, 2010 letter from the Project Consultant, which directed the CM to stop work for the existing cafeteria (Building #1), there was no work going on in the existing cafeteria (Building #1) because the new cafeteria (Building #5) had to be completed, before work on the existing cafeteria could begin. The existing cafeteria needed to be in operation until the new cafeteria was completed. Therefore, no work was being done on the existing cafeteria.

In reference to the baseline schedule, where it was stated that this schedule is simply for informational purposes, we do not disagree. However, as we noted in the report, the CM had an agreed upon Notice to Proceed to complete the project in 570 days.

In reference to Article 27 for Change Orders and Construction Change Directives, the fact that the revised drawings for the elimination of three classrooms and replacement with storage area were provided to the Construction Manager on April 21, 2011, and it took 232 days to issue a CCD, represents mismanagement of the project. The inability of the Construction Manager to perform all work and services necessary to complete the work in strict accordance with contract documents, specifically as outlined in Article 1 (1.1) The Project Construction Team and Entire Agreement which states “*furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the owner.*”

In reference to F&CM’s statement “*The Construction Manager advised the team of the anticipated delay claim on February 2, 2011 per the meeting minutes, 2.03 CONSTRUCTION SCHEDULE dated 2/1/2011*”. We reviewed Section 2.03 of the 2/2/2011 minutes, and noted that the CM stated “*The project is on schedule*”. We still contend that they did not comply with Article 42 (42.1.b) of the Agreement Notice of Claim: Waiver of Remedies; No Damages for Delay which states “*The Construction Manager must submit a Notice of Claim to Owner within 20 days of when the Construction Manager was or should have been aware of the occurrence of the event giving rise to the claim.*” The official notice of claim was September 8, 2011 (see Exhibit I of the audit report).

FINDING # 2

F& CM agrees with the OCA's Recommendations and Impact comments that a Notice to Proceed (NTP) should not be issued with the knowledge that permitted plans will require revisions. As the OCA indicated, F&CM elected to issue an NTP for construction knowing that there would be two significant redesigns in the project.

The Impact, as indicated by the OCA, is also consistent with the findings of the two independent cost and scheduling consultants who reviewed the Delay Claim. F&CM issued the NTP prematurely, and as a result, delays caused by this action cannot be attributed to the Construction Manager.

Staff will develop a process that will address project design and scope changes to prevent future recurrences of this type of issue.

Follow Up Comments by the Office of the Chief Auditor (OCA)

We do not agree with paragraph 2 above. We do not agree with F&CM's interpretation of OCA's Impact statement. OCA's Impact statement is NOT "*consistent with the two independent cost and scheduling consultants who reviewed the Delay Claim.*" We were pointing out the potential ramifications of issuing a Notice to Proceed with the knowledge that permitted plans were going to be redesigned. Below is our original Impact statement.

"F&CM's issuance of the Notice to Proceed, with the knowledge that the permitted plans were going to be revised, resulted in Change Orders and compensation requests for delay claims in the amount of \$198,900."

FINDING # 3

In Finding #3, the OCA recommended that Construction Change Orders be processed in a timely manner to prevent construction project delays. This recommendation is sound and should be adhered to on projects, where applicable. As clarified previously under Finding #1, the change order process per Article 27 of the Agreement was in progress and at no time during the process of negotiating the Change Orders for the Plan Changes 7R and 12R, did the Project Team come to an impasse. The Construction Manager continued to work on the scope of work in Phase II that was common to the original scope and that of the plan changes.

In ARTICLE 1.1.34 of the Agreement, the criteria for issuing Construction Change Directives (CCD) and Construction Change Orders (CCO) is clearly defined, as follows:

ARTICLE 1.1.34 "Construction Change Directive (CCD) – A CCD is issued and approved by the owner or its designee for additions or deletions in the scope of work or services provided by the Construction Manager when authority to proceed with the change needs to be expedited or the Construction Manager fails to agree on the terms offered by the Owner for the change at the Owner's sole discretion."

The criteria for issuance of a CCD is not considered to be a function of time by the Project Team but rather an action taken to mitigate a delay in the project completion and/or should the CM fail to agree on the terms offered by the Owner.

It is the opinion of the Project Team that the expedited issuance of the Change Order by the use of a CCD was unnecessary at the time the approved drawings were transmitted to the CM, on or about May 2, 2011. The timing for the expedited CCD process was mutually agreed to be required at the time the project nearing the critical path activity of Drywall Framing. The major structural, mechanical, electrical and plumbing were all common to the original permitted drawings. The CCD for the interior remodeling was issued after the lump sum price for the revisions were reviewed and accepted by the Project Team and prior to the critical path activity which would have impacted the completion schedule of the Phase II of the Project.

The project was not delayed during negotiations of the change orders for the revised scope. After a review of the CM's requisitions, and comparison with the cost loaded schedule, it was determined that there were no delays consequent to the negotiations of the change orders. Meticulous review of the change orders by the Project Team ensured efficiencies for the credit and additive costs resulting from the plan changes.

With respect to this project, the aforementioned criteria were not applicable since the CM continued to prosecute the work while the change orders were in process for the revised scope of work. In addition, the Change Order Proposal from the CM made no mention of the timing in issuing a CCD or a CCO as cause for the delay claim. The Delay Claim specifically itemized the cause as attributable to the revised remodeling of the existing space per CSI 12R. It should be noted that the delay attributed to drainage revisions CSI 7R was concurrent with the CSI 12R for the remodeling.

If as suggested by the OCA, a CCD was processed at the time the revised permitted drawings were issued to the CM, the enormity of the task of monitoring \$3.2 million in construction on a "Time and Material" basis would require at the very least, two additional full time employees. F&CM will continue to issue Construction Change Directives and Change Orders in accordance with the Agreement in the effort of protecting the resources and best interests of SBBC.

Follow Up Comments by the Office of the Chief Auditor (OCA)

The Office of the Chief Auditor disagrees with F&CM's statement *"It is the opinion of the Project Team that the expedited issuance of the Change Order by the use of a CCD was unnecessary at the time the approved drawings were transmitted to the CM, on or about May 2, 2011."* It is OCA's opinion, based on reviewing the response provided by F&CM, if the Project Team deemed that a CCD was unnecessary, a Change Order should have been issued at that time.

In regard to the final paragraph of the response, OCA disagrees that issuing a CCD, which resulted in a \$37,906 Change Order approved on February 22, 2012, would require 2 additional employees to monitor the project on a CM at Risk project.

F&CM - In summary, the Project Team's objective in regards to the review of the delay claim was as follows:

- Determine if the project was delayed
- Analyze the Delay Claim to determine the number of days the project was delayed
- Determine if any delay could be attributed to the Construction Manager.
- Establish the entitlement to the Construction Manager and the rate of compensation per the Agreement.

"The inability of the Construction Manager to complete the project in the 570 day schedule outlined and agreed to in the Notice To Proceed" as stated by the OCA was determined to be as a direct result of owner requested revisions to the scope of work. The subsequent delay was attributed to the owner's actions and not that of the Construction Manager.

Follow Up Comments by the Office of the Chief Auditor (OCA)

We disagree with this statement. Change orders can occur during the project terms. Our report identified that Change Orders were not prepared until after the September 9, 2011 Final Completion Date, established by the Notice to Proceed.

F&CM - *"The Construction Manager's inability to complete the new cafeteria by February 18, 2011, per their project schedule, causing approximately a 4 month delay"* as stated by the OCA, was determined by the Project Team, to be as a result of the revisions to the drainage and parking lot, and which was contingent on the final acceptance of the new cafeteria. The subsequent delay was attributed to the owner's actions and not that of the Construction Manager.

Follow Up Comments by the Office of the Chief Auditor (OCA)

We disagree with this statement. The delays identified by the Project Team are inconsistent with the delays identified by the Construction Manager in his September 8, 2011 letter. The Change Order that was presented to the Board on January 18, 2012 identified that the delay was strictly related to the deletion of the three classrooms due to the State of Florida mandate (that did not exist).

F&CM - The OCA's Finding #2 *"F & CM's issuance of the Notice to Proceed, with the knowledge that the permitted plans were going to be revised, resulted in Change Orders and compensation requests for delay claims in the amount of \$198,900"* and Finding # 3, *"Delays in issuing the Construction Change Directives resulted in the Construction Manager seeking delay damages of \$198,900 from September 10, 2011 through April 17, 2012"* are actions and the responsibility of the Owner and any delays attributed to the actions or lack thereof by the Owner, cannot be attributed to the Construction Manager.

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Follow Up Comments by the Office of the Chief Auditor (OCA)

We disagree with this statement. The Construction Manager did not comply with Article 1 (1.1) The Project Construction Team and Entire Agreement which states "*furnish efficient business administration and superintendence and use its best efforts to complete the project in the best and soundest way and in the most expeditious and economical manner consistent with the interest of the owner.*"

F&CM - F&CM respectfully disagrees with the recommendation of the OCA to deny the claim for Extended General Conditions. By recommending 221 non-compensable days, it appears that the OCA is acknowledging the days requested, but failed to adequately demonstrate that the delays are attributable to the Construction Manager. In fact, Finding # 2 of the Audit Report confirms the reason for the Delay Claim "*F & CM's issuance of the Notice to Proceed, with the knowledge that the permitted plans were going to be revised, resulted in Change Orders and compensation requests for delay claims in the amount of \$198,900.*"

Follow Up Comments by the Office of the Chief Auditor (OCA)

We disagree with this response. Our justification for recommending non compensable days can be found in Finding #1 of the audit report. Regarding the comment on Finding #2, please see OCA's follow up response to F&CM's responses to Finding #2.

F&CM - No argument was presented by OCA to demonstrate the reasons for waiving the provision of Liquidated Damages against the Construction Manager if in fact the delays are attributable to same.

Follow Up Comments by the Office of the Chief Auditor (OCA)

We did not comment on liquidated damages; however, per Article 5 of the CM Agreement, there is a provision for F&CM and Legal Counsel to pursue this. The original final completion date was September 9, 2011. At this time, a new scheduled final completion date has not been established.

F&CM - The OCA's statement that "Delays in issuing the Construction Change Directives resulted in the Construction Manager seeking delay damages of \$198,900 from September 10, 2011 through April 17, 2012". There is no documentary evidence to validate these statements.

Follow Up Comments by the Office of the Chief Auditor (OCA)

The CCD was converted to a Construction Change Order that was presented to the Board on January 18, 2012, (which was withdrawn) which reflected that the 221 days represented September 10, 2011 to April 18, 2012. (See Exhibit A of the Audit Report).

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F&CM - The two independent reports generated and submitted to F&CM by the cost and scheduling consultants, Construction Management Services Inc. and Atkins North America, Inc. are in the possession of the Construction Manager.

Follow Up Comments by the Office of the Chief Auditor (OCA)

We question why F&CM's in-house Cost Estimators did not provide an opinion.

F&CM - It is important to note that if action is taken to deny the Delay Claim by the Construction Manager, as recommended by the OCA, it should be anticipated that legal action would be taken by the Construction Manager. It is strongly recommended that SBBC's General Counsel review the recommendation of the OCA, by evaluating the probability of successfully defending the SBBC from this claim.