

INTERNAL AUDIT REPORT

**Review of the Palmview Elementary School Project #1131-23-01/P000207
New Food Service Multipurpose Building,
Renovations and Site Improvements**

June 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 Palmview Elementary School, Item #015 in the amount of \$254,700 for a 283 day delay that is being requested by the Construction Manager, (Hewett-Kier Construction, Inc.). The audit of the Palmview 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 283 days at a cost of \$254,700; 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 Palmview Elementary Project.

It is the opinion of the Chief Auditor that the Palmview 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 283 days at a cost of \$254,700. Subsequently, the Construction Manager is seeking an additional \$99,050. We also recommend that F&CM should allow the Construction Manager 283 non-compensable days to complete the Palmview 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 will be presented to the Audit Committee at its June 21, 2012 meeting and to the School Board at its July 24, 2012 meeting.

Sincerely,

Patrick Reilly, CPA
Chief Auditor
Office of the Chief Auditor

TABLE OF CONTENTS

	<u>PAGE</u>
EXECUTIVE SUMMARY	
Scope and Methodology	1
Opinion, Summary of Results and Recommendations	2
Other Recommendations	2
BACKGROUND	3-5
SECTION I: FINDINGS	
<u>Condition-Finding #1</u> – The Construction Manager, the Project Consultant, as well as Facilities & Construction Management staff did not adequately manage the Palmview Elementary School New Food Service Multipurpose Building, Renovations and Site Improvements Project	6-13
<u>Condition-Finding #2</u> – Facilities & Construction Management issued a Notice to Proceed (NTP) to the Construction Manager (CM), Hewett-Kier Construction, Inc. with knowledge that the permitted plans were going to be redesigned.....	14-15
<u>Condition-Finding #3</u> – Facilities & Construction Management did not promptly issue Construction Change Directives (CCD) to the Construction Manager (CM) Hewett-Kier Construction, Inc.....	16-18
<u>Condition- -Finding #4</u> – Summary information described in the Construction Change Order contains unsubstantiated statements of cause necessitating a modification to the scope of work previously planned for the existing cafeteria (Building #1) at Palmview Elementary. No documentation or defined criteria mandating the prohibition of adding classrooms or additional areas for student occupancy was provided with Change Order #17	19-20
SECTION II: EXHIBITS	
Exhibit A – Palmview Elementary Change Order – Item #15	21
Exhibit A-1-Palmview Elementary Change Order – Item #15 Revised	22
Exhibit B – Notice to Proceed Issued to Hewett-Kier (Construction Manager).....	23-24
Exhibit C – Construction Manager’s Baseline Schedule.....	25
Exhibit D – Email Directive from Former Deputy Superintendent of F&CM	26
Exhibit E – Original/Design/Redesign Plans Existing Cafeteria (Building #1)	27-29
Exhibit F – Start of Work (Building #1) per Project Manager	30-31
Exhibit G – Construction Change Directive #5R	32
Exhibit H – January 18, 2012 Memo from Deputy Superintendent	33
Exhibit I – Project Consultant’s Meeting Minutes – February 5, 2010.....	34-35
Exhibit J – Consultant's Authorization to Proceed (ATP)	36
Exhibit K – Palmview Elementary Change Order – Item #17	37
Exhibit L – Grand Jury Response- March 31, 2011	38-40
SECTION III: APPENDIX	
Definitions and Abbreviations.....	41-43
SECTION IV: FULL TEXT OF ADMINISTRATIVE RESPONSES	
Facilities and Construction Management Division.....	44-57

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 Palmview Elementary School, item #15 in the amount of \$254,700 for a 283 day delay that is being requested by the Construction Manager, (Hewett-Kier Construction, Inc.). The audit of the Palmview Elementary Change Order #15 (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 & McMahan, 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 283 days at a cost of \$254,700.
- 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 Palmview Elementary Project.
- To determine whether Construction Change Orders reviewed were accurately summarized and/or adequately supported by “actual” criteria or established policies, procedures or state requirements/mandates.

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 Palmview Elementary Project #1131-23-01/P000207 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 (see Exhibit B).
- The Construction Manager's inability to complete the New Cafeteria Multipurpose Building #7 by December 17, 2010, per their project baseline schedule, causing approximately 6 months delay (see Exhibit C).
- The inability of the Construction Manager to perform all work and services necessary to complete the designated project in strict accordance with contract documents as established in the Agreement per Article 1 (1.1) 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 283 days at a cost of \$254,700 (request was increased to contract terms amounting to \$353,750). (See Exhibit A1).

We also recommend that F&CM should allow the Construction Manager 283 non-compensable days to complete the Palmview 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.

In addition, we recommend that all agenda items include supporting documentation that will substantiate the statements in the Description of Change and/or Reason for Change as provided for review by the School Board.

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

Audit Performed by:
Mark Magli
Joe Wright
Gerardo Usallan

Submitted by:

Patrick Reilly, CPA
Chief Auditor
Office of the Chief Auditor

BACKGROUND

The following is a chronology of events relating to the Palmview Elementary School Project #1131-23-01/P000207:

On September 6, 2005, the School Board approved Agenda Item JJ-2, 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 multipurpose building, renovations and site improvements for Palmview Elementary School Project #1131-23-01/P000207. The new food service building was a re-use of Mirror Lake Elementary School's Food Service Building.

On July 25, 2006, the School Board approved Agenda Item J-8 to amend the Professional Services Agreement for the Palmview Elementary School Project awarded to Zelch & McMahon Architects. Agenda Item J-8 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 July 24, 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 \$1,104,000 for Palmview Elementary School, Kitchen/Cafeteria, Project #1131-23-01/P000207. The project scope included a new kitchen/cafeteria and remodel of the existing cafeteria into classrooms and other spaces including a music lab, itinerant office, textbook storage, PE Office, corridors, communications, electrical and mechanical rooms, replace fire alarm system, provide fire protection in building #2, construct new elementary playground and two intermediate play courts, install emergency generator and enclosure. The estimated cost of work was \$6,151,000. The Construction Management at Risk fees were \$1,104,000, for a total construction budget of \$7,255,000*".

On January 7, 2009, the District's Building Department provided the F&CM's Project Manager with a Letter of Recommendation for Permit for the Project Consultant's Plans for the Palmview Elementary Project #1131-23-01/P000207. The original permitted plans included the remodeling of the existing cafeteria (Building #1) into three additional classrooms. The Adopted District's Educational Facilities Plans, dating back to 2003, have not included a request for the remodeling of the existing cafeteria into 3 classrooms for Palmview Elementary.

The actual Guaranteed Maximum Price of \$7,255,000, Agenda Item JJ-4, was approved by the School Board on October 6, 2009, approximately 2 years after awarding the CM at Risk Agreement to Hewett-Kier Construction. 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 that it was a directive from the former Deputy Superintendent of F&CM (see Exhibit D) 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 a new Plant Survey, the DOE informed us that they would not disapprove of a project that already had entered into a contract and had permitted plans. The remodeling of the existing cafeteria into custodial equipment storage, teacher planning room, student activities room, music lab, itinerant office, textbook storage and physical education office, electrical and mechanical rooms and associated corridors 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 \$58,858 was approved for payment on February 22, 2012, over 7 months after the scheduled final completion date.

On December 14, 2009, the F&CM issued a Notice to Proceed (NTP) for the construction phase of the project to the Construction Manager with a final completion date of July 7, 2011 (570 days) (see Exhibit B). Building Permits were issued to Hewett-Kier Construction for the entire project on June 25, 2009. F&CM staff knew the plans would require modification to eliminate the three classrooms prior to issuance of the NTP per numerous communications reviewed during this audit. All Change Orders that were issued for removing classrooms or scope modifications refer to a "State Mandate" prohibiting construction for the purpose of providing additional student capacity as a result of Plant Survey analysis.

The Project Consultant's meeting minutes from January 8, 2010, Construction Mobilization (5a), indicate that the contractor had already mobilized operations on site.

On October 5, 2010, per Agenda Item J-3, the School Board approved an amendment to Z&MA's Professional Services Agreement. The new agreement provided for the elimination of classroom and additional capacity. The new plans would be modified to "*provide remodeling of the existing kitchen area and the Cafetorium space (Building #1), and adding a new, covered walkway,*" nearly 295 days after the NTP was issued to the Construction Manager despite all parties being aware of the plan for redesign prior to issuing the NTP.

The Construction Manager's baseline schedule for construction of the new cafeteria (Building #7) identifies a substantial completion date of December 17, 2010 (368 calendar days). It must be noted that the Certificate of Occupancy was not issued until August 20, 2011, over 246 days past the originally projected date for completing construction on the new cafeteria, (Building #7).

On February 16, 2011, Consultant's Supplemental Instructions #10 (CSI-Plan Change) were submitted to the SBBC Building Department for review of the redesign of the existing cafeteria (Building #1). CSI #10 was reviewed and permitted for construction of the designated work on April 27, 2011. The redesign/remodeling of the existing cafeteria (Building #1) was a reduction in scope that would be likely to result in a credit, as opposed to an additional charge. In addition, it should be noted that the existing facility and the redesigned plans for that facility closely resemble each other when considering the demand for additional allowable time for construction and/or cause for the additional compensable delay claim (see Exhibit E).

Per the Project Manager, (see Exhibit F) Hewett Kier Construction started demolition work on existing cafeteria (Building #1) on June 13, 2011, which was 178 days after the substantial completion date of December 17, 2010, as provided by the CM's baseline schedule for completing the New Cafeteria Multipurpose Building #7 for utilization by students and staff.

On July 7, 2011, the Final Completion Date for the entire project, per the Notice to Proceed, was not achieved.

On August 20, 2011, the Certificate of Occupancy was issued for only the New Cafeteria Multipurpose Building #7 by the SBBC Building Department; 44 days after the scheduled final completion date of July 7, 2011.

The October 17, 2011 **PROLOG** (via F&CM Web Site) is the first indication by the Project Manager that the *“contractor requested an extension of time for Phase II remodeling of the existing cafeteria as there was a change in the 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 is 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 re-design the remodeling in the existing Cafeteria, Building #1”*.

On December 9, 2011, a Construction Change Directive (CCD) #5R was issued to Hewett Kier Construction for Building #1: Remodeling per CSI-10R2, not to exceed \$58,858, contract time to *“Remain Unchanged”* (see Exhibit G). The Building Department approved PC-10R2 on April 27, 2011. The number of days from April 27, 2011 to December 9, 2011 was 226 days.

On January 18, 2012, RSBM Agenda Item #JJ8, Change Order #15 for an additional 283 days at \$900 per day for a total of \$254,700 was withdrawn from the agenda by the Deputy Superintendent of Facilities per memo dated January 18, 2012 (see Exhibit H). (The request was increased to contract terms amounting to \$353,750-see Exhibit A1).

On February 16, 2012, Superintendent Robert Runcie requested that the Office of the Chief Auditor review Change Order #15 and the time delay claim submitted by the Construction Manager for the Palmview Elementary School Project #1131-23-01/P000207. Hewett-Kier Construction has denied any responsibility or fault for the delays.

On February 22, 2012, the School Board approved Agenda Item JJ-7 for Change Order #17, CCD-05R, CSI-10R2/PC-10R2, for additional costs of construction based on the redesign remodeling of the existing cafeteria, (Building #1) for \$58,858 with zero (0) days. It should be noted that the change orders were separated and did not include the time delay request for compensation associated with the redesign of the existing cafeteria (Building #1) as defined in Change Order #15.

FINDING #1

OBJECTIVE

To determine if the Construction Manager was entitled to a delay claim (compensation for Extended General Conditions) for 283 days at a cost of \$254,700.

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 Palmview Elementary School New Food Service Multipurpose Building, Renovations and Site Improvements Project #1131-23-01/P000207. 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 maximum daily contract rate.

The Office of the Chief Auditor disagrees with the Construction Manager’s, (Hewett Kier Construction), claim that they are not responsible in any way for the failure to complete the entire project, in accordance with the Notice to Proceed document, for which they are requesting a delay claim by 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 Palmview Elementary Project file #1131-23-01/P000207, interviewing District staff, the Construction Manager, Project Consultant and other individuals, we identified events that contributed to the inability to meet the Final Completion Date of July 7, 2011 for the project, per the Notice to Proceed documents:

- On June 25, 2009 a Building Permit was issued to Hewett-Kier by the District's Building Department for the entire project. This Building Permit included the three additional classrooms for student capacity.
- On October 6, 2009, the School Board approved a GMP in the amount of \$7,255,000 to Hewett-Kier, the Construction Manager for the Palmview Elementary Project (#1131-23-01/P000207). The GMP included the three additional classrooms as part of the remodeling of the existing cafeteria (Building #1).
- On December 14, 2009 a Notice to Proceed for construction was issued by F&CM to Hewett-Kier for 570 calendar days with a final completion date of July 7, 2011 for the entire project. We've attached the project baseline schedule (see Exhibit C), 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 originally proposed project scope or the Project Consultant's plans.
- The elimination of the three classrooms in the existing cafeteria (Building #1) was based on the F&CM's reference to a State of Florida mandate, that did not exist, prohibiting the construction of additional student capacity. The project meeting minutes from February 5, 2010 identified that the Project Consultant would be revising the remodeling plans for the existing cafeteria, (Building #1) (see Exhibit I), less than 2 months after the NTP was issued. The timeframe for revising the remodeling plans was not deemed critical by the project team at that time because the first segment of construction was to build the New Cafeteria Multipurpose Building #7 within the 368 day baseline schedule according to the Construction Manager. The completion of the new cafeteria was scheduled for December 17, 2010. 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 614 days to complete (246 days past the Construction Manager's scheduled baseline completion date).
- Per the project meeting minutes recorded since February 5, 2010, the Project Consultant reiterated that they were waiting for the District's Board approval and directive to proceed with the redesign of the existing cafeteria, (Building #1). At that time, the delay in revising the remodeling plans did not affect the critical path, since the New Cafeteria Multipurpose (Building #7) was not expected to be completed until December 17, 2010, 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 by eliminating the three classroom design and revising the plans to include additional storage/office areas. On October 29, 2010, the Project Consultant delivered an Authorization to Proceed (ATP) (see Exhibit J), to the F&CM staff. On November 4, 2010, Capital Payments approved the additional funding for the amended Professional Services Agreement.

- Meeting minutes from January 20, 2011 indicate that Hewett Kier Construction was provided with a preliminary copy of the revised remodeling of Building #1 by the Project Consultant for their review and comments.

A Change Order to request modification of the approved project scope or a Construction Change Directive (CCD) could have been issued as soon as plans were permitted by the Building Department in accordance with Article 27 of the Agreement Change Orders and Construction Change Directives so that unnecessary delays would not occur while pricing was vetted. During an interview, the Construction Manager indicated that the cost analysis was completed despite the failure by all involved parties to complete the necessary paperwork to keep the project moving toward completion.

- Although the Construction Manager began work on the original scope (i.e. interior 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 additional days. The entire project was scheduled for completion by July 7, 2011, per the Notice to Proceed. The CCD was issued 155 days after the expected completion date of July 7, 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 \$1,104,000 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 were permitted and subsequently provided to the Construction Manager on April 27, 2011, and that it took 226 days to issue a CCD clearly represents a notable level of mismanagement and failure to actively advance or finalize the project. This condition greatly contributes to the time delay for which the Construction Manager is requesting additional compensation. We disagree that the delay claim is warranted. It is clear that the delay in the completion of the new cafeteria (Building #7) prevented the start of the existing

cafeteria (Building #1) remodeling portion of the project by 178 days. On September 8, 2011, the Construction Manager requested an extension of contract time and applicable compensation due to delays. This request was 63 days after the scheduled date for final completion per the Notice to Proceed. The Construction Manager should have been aware of the possible delay, due to the issuance of the redesign plans approved on April 27, 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.”*

On November 11, 2010, Hewett Kier Construction submitted a memo to F&CM regarding a design omission/error defined by Florida Power & Light. A transformer pad was required to provide space for an additional transformer that would provide additional capacity for power needs of the new building. Based on our review of the support records and interviews with district staff, the Project Consultant, Consultant’s Engineer of Record, as well as FP&L staff members, it has been determined that no extended shut-down of project operations was identified.

When reviewing the Change Order, item #15 (see Exhibit A) for delays amounting to \$254,700 the reason for the delay was only attributable to the redesign of the existing cafeteria (Building #1). As previously stated, there was no State of Florida mandate prohibiting the construction of additional student capacity, although this was cited as the reasoning provided in 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 Multipurpose Building #7 by December 17, 2010 per their project baseline schedule.
- 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 283 days at \$900 per day for a total of \$254,700 (request was increased to contract terms amounting to \$353,750).

We recommend that F&CM allow the Construction Manager 283 non-compensable days to complete the Palmview Elementary Project.

MANAGEMENT RESPONSE

FINDING #1

In Finding #1, the Office of the Chief Auditor (OCA) recommended that the Construction Manager, Hewett-Kier be denied payment for extended General Conditions. Facilities and Construction Management (F&CM), in conjunction with Construction Management, Inc. cost and scheduling consultant to The School Board of Broward County, analyzed the project data, including schedules and pay applications, and concluded that the Construction Manager (CM) is entitled to extend 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).

Origins of the decision for 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, coordination delays attributed to Florida Power and Light in regards to the proposed upgrade of electrical service impacted “Critical Path Activities” on the Project Schedule.

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 #10 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 February 5, 2010, the Consultant, Zelch & McMahon stated in the Project's Progress Meeting, that directions were issued by SBBC confirming required revisions of the Phase II remodeling for the existing Building # 1. On March 17, 2010 the CM was directed 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. Programming this phase was on hold from February 17, 2010 until the drawings were permitted and issued (to the CM) on May 22, 2011 for Plan Changes. Programming and commencement of Phase II work could not begin until this occurred, hence the determination by F&CM and the independent cost and scheduling consultant that the delay could not be attributed to the Construction Manager.

Although the CM's baseline schedule indicated a completion date of December 17, 2010 for Phase I, the scope of work within this phase was also impacted by FPL's coordination of the new upgraded service to the site. It should be noted that December 17, 2010 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 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 November 11, 2010 via a written correspondence. On April 11, 2011 the CM, provide written correspondence outlining the impact of the FPL coordination delays in regards to completing the Phase I scope of work. The pre-existing FPL service to the site was unable to accommodate the additional load of the New Multi-purpose Building. The Critical Path Activity from the Baseline Schedule of the CM indicated that the “Late Start” for energizing the new Building was October 12, 2010. The delay in the upgraded FPL service to the site impacted the start up of the new mechanical equipment which is a critical path activity for the interior finishes to the new Multi-Purpose Building. The upgraded service was required, for example but not limited to, HVAC Test and Balancing, installation of floor tiles and ceiling tile and including finish cabinetry etc.

The full impact of the delays relating to the FPL coordination issues was determined to be concurrent with the delays associated to the Revisions to Phase II of the project which could not commence 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 November 11, 2010 and details of the claim and the impact of the delays were then subsequently submitted, April 11, 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 \$254,700. We performed an independent review of the change orders. We read the independent consultant report and we disagree with it. The report did not identify a root cause for the delay. The consultant recommended adding 224 days to the project without any monetary compensation.

The CM's baseline schedule allowed for 368 days to complete the new cafeteria and provided 202 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 other site modifications. 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 #7) 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 27, 2011, and it took 226 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.*"

FINDING #2

OBJECTIVE

To provide management with recommendations to improve operations based on our review of the Palmview Elementary School's New Food Service Multipurpose Building, Renovations and Site Improvements 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 #1131-23-01/P000207 at Palmview Elementary with the knowledge that the permitted plans were going to be redesigned for remodeling of the existing cafeteria (Building #1).

CRITERIA

Construction management practices should dictate that an owner prohibit a contractor to begin work with knowledge that plans for redesign to the scope of work is imminent.

CAUSE

F&CM elected to issue a Notice to Proceed for construction with the knowledge that a significant owners requested redesign was 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 \$254,700. (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 \$254,700."

FINDING #3

OBJECTIVE

To provide management with recommendations to improve operations based on our review of the Palmview Elementary School's New Food Service Multipurpose Building, Renovations and Site Improvements 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 #1131-23-01/P000207 at Palmview Elementary.

CRITERIA

F&CM's 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, which 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 \$254,700 from July 7, 2011 through April 19, 2012. The project is still not completed.

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, 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 22, 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 and “Owner Requested” added Scope.

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 22, 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 \$58,858 Change Order approved on February 22, 2012, would require 2 additional employees to monitor the project on a CM at Risk project.

FINDING #4

OBJECTIVE

To determine whether Construction Change Orders reviewed were accurately summarized and/or adequately supported by “actual” criteria or established policies, procedures or state requirements/mandates for Palmview Elementary School’s New Food Service Multipurpose Building, Renovations and Site Improvements Project.

CONDITION

Summary information described in the Construction Change Order # 17 document (Form 01250g), as approved by the Board on 2/22/2012, Agenda Item JJ-7 (Exhibit K), contains unsubstantiated statements of cause necessitating a modification to the scope of work previously planned for the existing cafeteria (Building #1) at Palmview Elementary. No documentation or defined criteria mandating the prohibition of adding classrooms or additional areas for student occupancy was provided with Change Order #17.

“Construct Revised Building #1 Remodeling as indicated in Consultant’s Supplemental Instruction #10 in compliance with the State’s mandate restricting the construction of additional student capacity”.

CRITERIA

School Board of Broward County Florida’s Plan of Action to Address the Findings and Recommendations of the Grand Jury March 31, 2011.

“Add more detail to agenda items or provide a link to where more information concerning the item can be found. The School Board’s Agenda request Form (ARF) includes summary information pertaining to the recommended Board action and a background section to explain the item and its history”.

RE: The Superintendent discussed this issue with his Executive Leadership Team (ELT) and directed all staff to provide complete explanation with the recommendation along with adequate supporting documentation to justify the recommendation and demonstrate compliance with the applicable statutes and Board policies (see Exhibit L).

CAUSE

F&CM Administration did not provide a support record or document attachment with the Construction Change Order to assist Board members in determining the legitimacy of deviating from the originally approved plan for construction at Palmview Elementary as provided at RSBM July 24, 2007. Specifically, a “State Mandate” requiring F&CM to modify the original plans for construction was not provided to support the validity of the Change Order request.

IMPACT

Hewett-Kier Construction Inc. has asserted that the “Owner Requested” added scope of work and delays attributed to the redesign of the existing cafeteria (Building #1) have prevented the timely completion of the New Food Service Multipurpose Building, Renovations and Site Improvements Project at Palmview Elementary.

RECOMMENDATION

All assertions or explanations established by the informational summary(s) included in Document 01250g-Construction Change Order's sections Description of Change and/or Reason for Change should be supported by attachment(s) or easily referenced citation (or link) relating to the selected criteria, established policies, procedures or state requirements/mandates as provided by F&CM.

The School Board needs to have complete, clear and accurate information for all agenda submissions presented, in order for the Board to make sound fiscal decisions.

MANAGEMENT RESPONSE

FINDING # 4

F&CM agrees with the OCA's Recommendations that *"All assertions or explanations established by the informational summary(s) included in Document 01250g – Construction Change Order's sections Description of Change and/or Reason for Change should be supported by attachments or easily referenced citation (or link) relating to the selected criteria, established policies, procedures or state requirements/mandates as provided by F&CM"*)

Origins of the decision for 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.

Staff inadvertently considered that this directive was driven from the Department Of Education, Florida and consequently assumed it to be a Mandate.

Staff will continue to develop the process of review for Change Orders and ensure that the appropriate attachments are referenced correctly on the Change Order Document 01250g.

SECTION II

EXHIBITS

PF 11/30



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

(754) 321-1500

Document 01250g - Construction Change Order-Item #15

Facility Name: Palmview Elementary School Date: November 10, 2011
Project Name: New Multipurpose Building, Remodeling, & Site Improvements Project # #1131-23-01/P.000207

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 283 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 # 55 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 \$1,192,416.

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 \$254,700 (283 days x \$900 per day - a savings of \$99,050).

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 19, 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 19, 2012. Additionally, the parties agree that if the Contractor is further delayed, beyond April 19, 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 Credit and/or Added Costs: Add: \$ 254,700.00

Deduct: \$

The Contract Time will be increased by: 283 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: Robert McMahon, 11/16/11
Accepted: Jim Hewett, 11/15/11
Reviewed and Concurred: Dave Archer, 11-28-11

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

Change Order Categories: Owner's Request, Unforeseen, Consultant Error, Consultant Omission
Sub Categories: Regulatory Compliance, Safety/Emergency



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

(754) 321-1500

Document 01250g - Construction Change Order-Item #15R2

Facility Name: Palmview Elementary School Date: Mar. 26, 2012, Feb. 21, 2012
 Nov. 10, 2011
 Project Name: New Multipurpose Building, Remodeling, & Site Improvements Project # #1131-23-01/P.000207
 Project Description: General Construction
 Contractor: Hewett-Kier Construction Inc. Reference Letter dated: 11/2/11
 Description of Change

Compensation for Extended General Conditions:

Compensation for 283 days of Extended General Conditions at \$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 # 55R 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 declining student enrollment, Staff reevaluated the need for additional student capacity and it was determined that the additional classroom space was no longer needed. The estimated cost of work to be executed during the extended contract duration is approximately \$1,192,416.

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...."

This results in an additional fee of \$353,750 (283 days x \$1,250 per day)

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 the Contractor achieve Final Completion before the adjusted date of April 19, 2012, the Owner shall be entitled to a credit/deductive change order in the amount of \$1,250 for each day the project actually achieves Final Completion before April 19, 2012.

Summary:

Total of Credit and/or Added Costs: Add: \$ 353,750.00
 Deduct: \$

The Contract Time will be increased by: 283 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
<i>[Signature]</i> 03/28/12	<i>[Signature]</i> 3/16/12	
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
<input type="checkbox"/> Owner's Request <input checked="" type="checkbox"/> Unforeseen <input type="checkbox"/> Consultant Error <input type="checkbox"/> Consultant Omission	<input type="checkbox"/> Regulatory Compliance <input type="checkbox"/> Safety/Emergency



Document 00550: Notice to Proceed (CM)

Date: December 10, 2009

To: James R. Hewett, President

**Building Permit No.:
113108PR642PR2P**

**Company Name Hewet-Kier Construction, Inc.
& Address: 3451 NW 14th Avenue
Pompano Beach, FL 33064**

**Advance Copy Sent Via Fax
To: 954-946-2447**

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

Project No: **P. 000207 (f.k.a. 1131-23-01)**
 Project Title: **Kitchen/Cafeteria**
 Facility Name: **Palmview 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:

December 14, 2009

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

- A required performance period of 510 consecutive calendar days.
- A required Substantial Completion Date of May 12, 2011.
- As otherwise delineated in the Agreement Form to which you were a signatory.

A Pre-Construction Conference was conducted on:

Time: **10:00 am**
 Date: **November 20, 2009**
 Place: **Palmview Elementary School
2601 NE First Avenue
Pompano Beach, FL 33064**

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



Document 00550: Notice to Proceed (CM)

Additional Instructions relative to this Notice to Proceed follow below:

Item Instruction

1. Addendum and Bonds are being executed and will be issued under separate cover.

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 Marshall Washington, Project Manager II, at 754-321-1553.

Sincerely,

Michael C. Garretson, Deputy Superintendent
Facilities and Construction Management Division

MCG/DH:dm

Copies:

- Robert Gibson, Principal
- Michael C. Garretson, Deputy Superintendent (With Copy of Payment Bond)
- 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
- Marshall Washington, Project Manager (With Copy of Attachments)
- Pam Norwood, Capital Payments Review Supervisor
- Jim Kale, Coordinator, Capital Planning
- Zelch & McMahon Architects, Project Consultant (With Copy of Attachments)
- Nielson, Alter & Associates, Surety Agent (With Original Attachments)
- Robert Waremburg, Director, Supply Management & Logistics (With Copy of IRS Form W-9 Only)
- Project File (With Original Attachments)
- Contract Set (With Original Attachments)
- Files

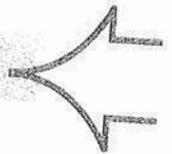
Wednesday, April 25, 2012 3:04:26 PM
Page 3 of 4

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.

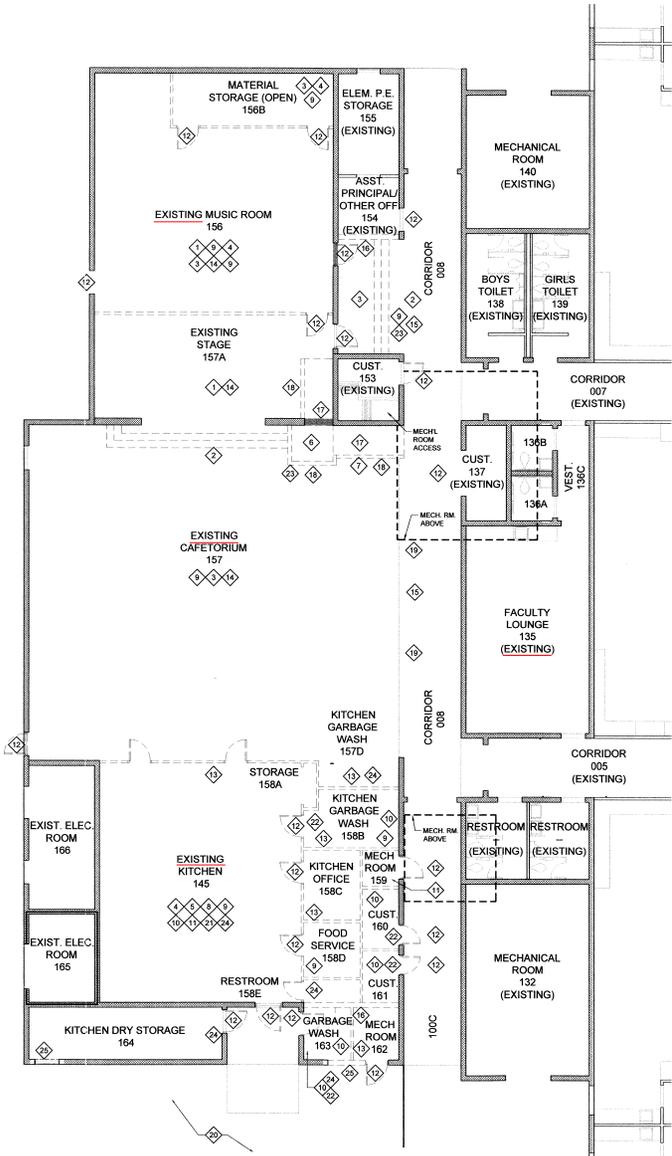


Shelley N. Meloni, R.A., NCARB, LEED® AP
Executive Director, Facilities Design & Construction
Facilities & Construction Management
(754) 321-1610

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?



FLOOR DEMOLITION PLAN CLASSROOM REMODELING
SCALE: 1/8" = 1'-0"



GENERAL REMOVAL NOTES

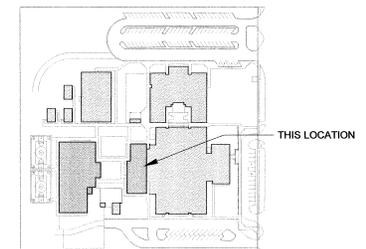
- 1 REMOVE FLOOR FINISH, RAISED CONCRETE SLAB, AND FILLAS REQUIRED TO MATCH FINISH FLOOR ELEV. OF DINING AREA. COORDINATE WITH CIVIL AND STRUCTURAL DRAWINGS.
- 2 REMOVE CONCRETE STEPS.
- 3 REMOVE RESILIENT TILE/CARPET, MASTIC, AND PATCH FLOOR.
- 4 REMOVE EXISTING CABINETRY/SHELVING
- 5 EXIST'G WALK-IN-COOLER AND FOUNDATION TO BE REMOVED
- 6 REMOVE EXISTING CONCRETE RAMP CONSTRUCTION.
- 7 REMOVE EXISTING HANDRAILING.
- 8 CONTRACTOR SHALL REMOVE ALL KITCHEN EQUIPMENT.*
- 9 REMOVE FINISH MATERIALS & FRAMING OF SUSPENDED CEILING SYSTEM.
- 10 REMOVE PLUMBING FIXTURES, PIPING, ETC. BELOW/BEHIND NEW FINISH SURFACE.
- 11 REMOVE WATER HEATER AND PIPING. CAP BELOW OR BEHIND NEW FINISH SURFACE.
- 12 REMOVE DOOR, FRAME AND HARDWARE.
- 13 REMOVE WALL PARTITION
- 14 REMOVE CHALK / TACK AND OR MARKER BOARDS
- 15 REMOVE EXISTING LIGHT FIXTURES IN CORRIDOR #008
- 16 REMOVE MASONRY WALL, (CONCRETE TIE COLUMNS AND BEAMS TO REMAIN).
- 17 REMOVE CONCRETE RAMP LANDING AND FOOTINGS
- 18 REMOVE EXISTING LOW MASONRY WALL
- 19 EXISTING STEEL COLUMN TO REMAIN.
- 20 REMOVE GREASE TRAPS AND PIPING.
- 21 REMOVE QUARRY TILE AND SETTING BED DOWN TO TOP OF CONCRETE SLAB @ (-1-1/2)
- 22 REMOVE CERAMIC TILE AND SETTING BED DOWN TO TOP OF CONCRETE SLAB @ (-1-1/2)
- 23 REMOVE CONCRETE SLAB AND THICKENED EDGE FOOTING.
- 24 REMOVE WALL FINISH - PLASTER, FURRING, CER. TILE, ETC.
- 25 REMOVE MASONRY WALL (COOR. OPENING SIZE FOR NEW COL'G LINTELS & DOORS)

NOTES

- * OWNER HAS RIGHT FOR SALVAGE WHETHER INDICATED ON DRAWING OR NOT. SUCH ITEMS SHALL BE DELIVERED TO LOCATION ON THIS SCHOOL'S SITE DESIGNATED BY OWNER.
- * THE GENERAL CONTRACTOR MUST MAINTAIN THE REQUIRED MEANS OF EGRESS DURING ALL PHASES OF THIS PROJECT.

SYMBOLS

- EXISTING MASONRY WALL TO REMAIN
- - - - EXIST'G TO BE REMOVED OR DEMOLISHED
- EXIST'G PARTITION TO REMAIN
- EXIST'G TIE CONC. COLUMN TO REMAIN
- ◇ SEE "NOTES"



LOCATION PLAN
NOT TO SCALE



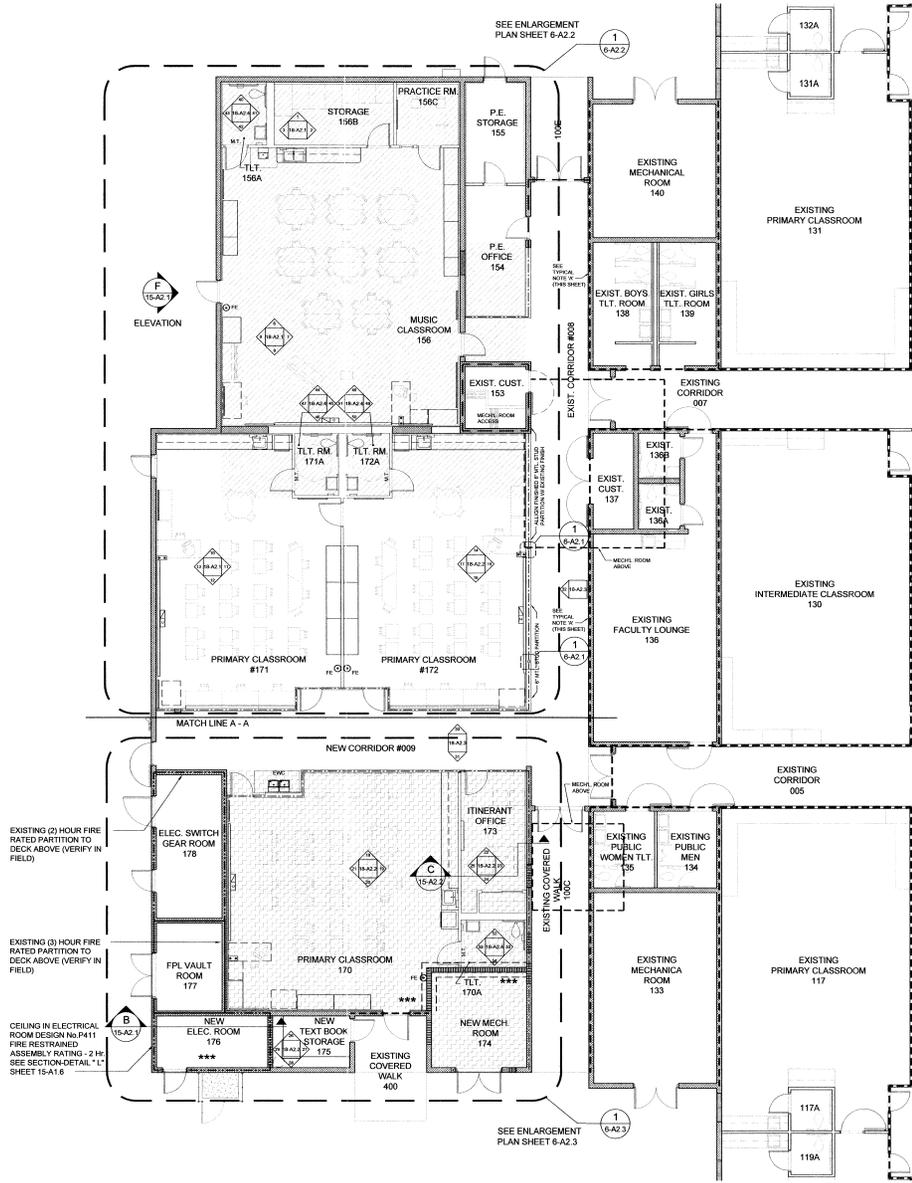
Handwritten signature and date: 04/24/19

PHASE III @ 103% - SD Year 08-PR62GP
 PROJECT NAME: PALMVIEW ELEMENTARY SCHOOL
 New Multipurpose Building, Remodeling, & Site Improvements
 Project No. # 1131-23-01 / P.000207
 SHEET NO. 4-A2.1
 DATE: 04-22-09
 REVIEWED: 12-19-09
 ARCHITECT: zelch and mcMahon, architects
 DAVID B. ZELCH
 ROBERT E. McMAHON

NEW DESIGN

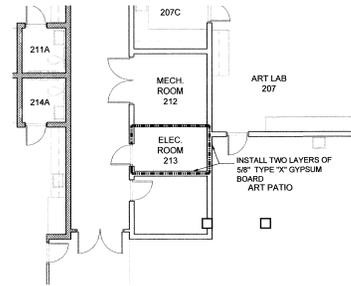
**Building #1 w/ 3 Classrooms
(Cancelled by F&CM)**

28



FLOOR PLAN - OVERALL CLASSROOM REMODELING - BUILDING #1
SCALE: 1/8" = 1'-0"

REMODELING - 3 CLASSROOM DESIGN ELIMINATED DUE TO "STATE MANDATE" PER F&CM



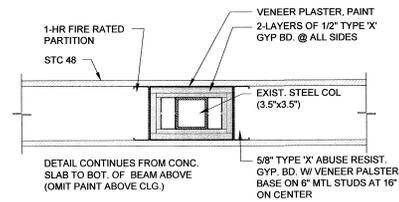
**ELECTRICAL ROOM
FLOOR PLAN BUILDING #2**

NOTE 'A'
CONTRACTOR SHALL INSPECT EXISTING WALLS AND PARTITIONS THAT ACT AS DEMISING WALLS FOR CORRIDOR # 008 AND CORRIDOR # 009. FILL IN ALL HOLES, VOIDS AND CRACKS IN EXISTING PARTITIONS AS REQUIRED TO OBTAIN A ONE HOUR RATING (SEE DETAILS ON SHEET 15-A1.6)

NOTE: ALL EXISTING WALLS (E) AND DOORS (E) SHALL BE PAINTED

NOTES:

- WASHROOM ACCESSORIES - SEE SHEET 10-A1.1
- INTERIOR ELEVATIONS - SEE SHEET 18-A2.2
- CASEWORK/ MILLWORK DETAILS - SEE SHEET 19-A2.1
- FINISH SCHEDULE - SEE SHEET 10-A1.1
- REFLECTED CEILING PLAN - SEE SHEET 7-A2.1
- WALL TYPES - SEE SHEET 20-A1.1
- DOOR SCHEDULE - SEE SHEET 21-A1.1
- DOOR TYPES & DETAILS - SEE SHEET 21-A1.2 & 21-A1.3
- PROVIDE FIRE-CAULK & SMOKE BARRIER SEALANT (MIN. 1 HR.) AT ALL PIPING & CONDUIT PENETRATION OF EXISTING CORRIDOR WALLS / PARTITIONS.

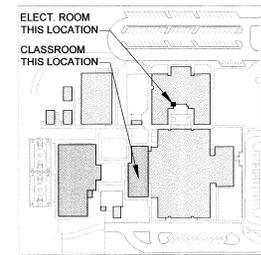
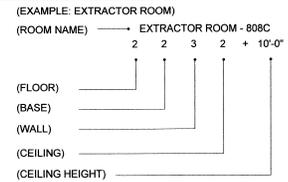


1 COLUMN DETAIL AT CORRIDOR
6-A2.1 SCALE: 1-1/2" = 1'-0" DESIGN UL: X526-1HR.

SYMBOL LEGEND

- EXISTING MASONRY WALL
- EXISTING CONCRETE COLUMN
- NEW MASONRY WALL
- NEW ONE HOUR RATED PARTITION
- SOUND INSULATED PARTITION
- THERMAL INSULATED PARTITION
- ONE HOUR RATED PARTITION W/ SOUND INSULATION
- 6x8 CONC. TIE COLUMN W/1 #5
- 6x12 CONC. COLUMN W/4 #5
- EQUIPMENT KEY
- DOOR NUMBER
- WINDOW TYPE
- KEYNOTES
- ROOM NUMBER
- A.T. = ALUM. THRESHOLD (H.C.)
- M.T. = MARBLE THRESHOLD (H.C.)
- H.C. = HANDICAPPED
- E.W.C. = ELECTRIC WATER COOLER
- THRESHOLD - INTERIOR/EXTERIOR LEVEL
- CALL BACK BUTTON
- CLOCK/SPEAKER
- NEW CONCRETE SLAB 4" THK. W/ 6x6 10/10 W.W.M. O/ TREATED CLEAN COMPACTED FILL.
- NEW MASONRY WALL FTG. 24"X12" W/ 3 #5.
- NEW POURED CEMENTITIOUS LEVELING UNDERLAYMENT @ CERAMIC TILE REMOVALS

ROOM FINISH SCHEDULE KEY



LOCATION PLAN
NOT TO SCALE

PHASE III @ 100% - BD No. 08-PR642P

zelnick and mcMahon, architects
DAVID B. ZELNICK
ROBERT E. MCMAHON

PROJECT NAME
PALMVIEW ELEMENTARY SCHOOL
New Multipurpose Building, Remodeling, &
Site Improvements
Project No. #1131-23-01 / P. 000207

FLOOR PLAN - BUILDING NO. 1

DATE: 04-22-09
DESIGNED BY: [Signature]
CHECKED BY: [Signature]
REVISIONS: [Table]
SCALE: 1/8" = 1'-0"

6-A2.1

Printed by: **Gerardo Usallan**

Page 1 of 2

From:  **Dave A. Archer**

Tuesday, January 24, 2012 11:20:31 AM

**Subject:** Cypress Elementary School - Hewett Kier**To:**  **Gerardo Usallan****Cc:**  **Joe Wright**  **Shelley N. Meloni**  **Sonja V. Coley**

Gerry,

Please note that on or about June 13 2011.the contractor started the demolition work in Building 1 at both Schools.

Because the GMP included work that would still be included in the revised Design, the Contractor continued with that work while we were negotiating the additional cost of the revisions and additional scope. For example Demolition, Fire Alarm, Fire Sprinkler, Plumbing HVAC , Drywall framing etc.

The CCD's were issued for the revised scope when the Prices were resolved and the contractor proceeded with the work.

The Pay Requisitions reflect that progress on the project continued even during the time of negotiating the changes to the cost of work.

The major delay associated with Palmview Elementary's Building # 5 was the FPL issue. Approximately 157 days.

The delays for Cypress is a compilation of issues.

On both Projects there are Owner Requested additional Scope of Work affecting the Critical Path of the Projects.

For example, at Cypress Elementary the re-design of the Parking and site drainage, the re-design of the Bus Drop-off with Canopy and associated site work impacted the overall project duration and

Printed by: **Gerardo Usallan**

Thursday, February 09, 2012 8:21:50 AM

completion of Building # 5.

The delay in Occupancy of Building #5 at Cypress included the conflict with SBBC'S Performance Specifications for the signs as opposed to the approved Vendor in the Contract Documents.

The Permitted Drawings for the revision of work in Building # 1 were issued on or about May 27, 2012 to the Contractor. Contractor started work in the area of Building #1 June 13, 2012 at the same time costs were being developed and reviewed.

Even if the Contractor completed Building # 5 as per the original schedule, the work in the existing Building could not have started as the Revised scope of work inclusive of owner requested changes was not defined at that time. The Architect only recieved an ATP for the revised scope on November 4, 2011.

Even though our contract requires the CM to provide a Schedule, it is clear that the owner reviews it for information only and it is not a review for approving the sequence of events. When the schedule was initially reviewed it was to determined that the project in its entirety would be completed within the time specified in the contract.

Dave A. Archer, PM III
North Area
Cell: 954 249-3904

Under Florida law, email addresses, and all communications, 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) 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 recos request, do not send email to this address, rather contact this office by telephone or writing.



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

(754) 321-1500

Document 01250e: Construction Change Directive

To: Ed Ribachonek, Project Manager
Hewett-Kier Construction, Inc.
3451 NW 14th Avenue
Pompano Beach, FL 33064

Project No: #1131-23-01/P.000207
Project Title: New Multipurpose Building,
Remodeling, & Site Improvements
Facility: Palmview Elementary School

Directive 05R **Date:** 09/15/11
No.: 12/9/11

FACILITIES AND CONSTRUCTION
2012 JAN -2 PM 1:10

Description of Directed Change:

You are hereby directed to make the following change(s) in this Contract:
In accordance with CM@Risk Agreement between the Owner and the Construction Manager, this CCD directs Hewett-Kier Construction Inc. to:

Construct 'Building #1 Remodeling' revisions per CSI #10 to conform to the State of Florida mandate, not to build more classrooms at this school, as requested by the SBBC - Owner's Request

The cost of this work is not to exceed the amount of \$58,858.00 and is the delta between the original scope of work and the 'Remodeling' revisions per CSI #10 as outlined in the attached Hewett-Kier Construction Cost Adjustment Proposal.

Attachments: Contractor's Change Order Request # 40R5 and related documents, Building Department Inspection Report

Proposed Adjustments

1. The Proposed basis of adjustment of the Contract Sum or Guaranteed Maximum price is:

- Lump Sum** **Increase of \$58,858.00 (not to exceed)**
- Unit Price of \$_____ per _____.
- As provided in Specification Section 01250, Contract Modifications.
- As follows:

2. The Contract Time is proposed to be adjusted **remain unchanged**. The proposed adjustment, if any, is an increase of ___ days. decrease of ___ days.

When signed by the Project Consultant and the Owner and received by the Contractor, this document becomes effective immediately as a Construction Change Directive and the Contractor shall proceed with the change(s) described above.		Signature by the Contractor indicates the Contractor's Agreement with the Proposed Adjustments in Contract Sum and Contract Time as set forth in this Construction Change Directive.
Zelch & McMahon, Architects Project Consultant Robert E. McMahon By: <i>[Signature]</i> Date: 12/12/11	School Board of Broward County Owner Thomas Lindner Acting Deputy Superintendent By: <i>[Signature]</i> Date: 12/15/11	Hewett-Kier Construction, Inc. Contractor James R. Hewett, Principal By: <i>[Signature]</i> Date: 12/9/11

Contractor: Return Signed Copy to: Project Consultant Owner _____

17005

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF THE SUPERINTENDENT

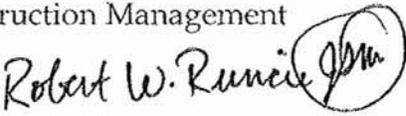
ROBERT W. RUNCIE
SUPERINTENDENT OF SCHOOLS

Telephone: (754) 321-2600 Facsimile: (754) 321-2701

January 18, 2012

TO: School Board Members

FROM: Thomas E. Lindner 
Deputy Superintendent
Facilities & Construction Management

VIA: Robert W. Runcie 
Superintendent of Schools

SUBJECT: Revision to JJ-8, Change Orders, for the January 18, 2012, Regular School Board Meeting

Attached is a revision for JJ-8, Change Orders, for the January 18, 2012, Regular School Board Meeting.

This item is being revised to remove two Change Order Items as follows:
-Cypress Elementary, Change Order #2 - Remove Change Order Item #11 (Unforeseen, \$198,900)
-Palmview Elementary, Change Order #3 - Remove Change Order Item #15 (Unforeseen, \$254,700)

Since these revisions affect all exhibits, attached is a completely revised agenda item. Please discard JJ-8 and replace with the attached revised JJ-8.

Thank you.

RWR/TEL: djc
Attachment

c: Executive Leadership Team



Zelch and McMahon, Architects

17 Northeast 4th Street, Fort Lauderdale, FL 33301

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

Meeting Report

To: **Marshal Washington**, Manager II
 Facilities and Construction Management
 The School Board of Broward County

Project No: #1311-23-01/P.000207

Project Title: **New Food Service-Multipurpose Building**

Facility: Palmview Elementary School

Report No.:	03
Date:	02/05/10
Time:	10:00 AM

Present at Meeting: Marshal Washington, Bob Hancox, Victor Wallace, Jeff Melvin
 & Bob McMahon

01. **Site Conditions:** As requested by Marshal W. requested that H-K provide a Cost Proposal for a ground penetrating radar study. Z&MA rec'd proposal but needs 01250 series backup doc's..
02. **Construction:**
 - a. **Foundation:** Building foundation forming, pouring, stripping operation continue.
 - b. **Masonry:** Masonry stem walls started along north footers.
03. **Meeting Times/Day + Purpose:** Proposed for every other Friday @ 10:00 AM.
04. **Polished Concrete Floors:** Marshal W. advised that the principal is not in favor of the polished concrete floors. It will not be included in the Project.
05. **Buyout Contracts:** H-K advises that Buyout/Award is very nearly completed.
06. **Demolition Report:** Marshal has contacted Bob Krickovich for ACM Reports on Buildings #04 & #05 so that they can be demolished. The report should be available very soon..... maybe today.
07. **Relocation Assistance:** Marshal W. will provide on-site staff assistance for relocating equipment and stored items. Marshal has issued a Work Order for this. Estimated 2 days.
08. **Reported House Damages:** Three (3) adjacent neighbors filed complaints of vibratory damage. It has been turned over to the insurance company. The Ins. Co. has schedule demonstration test for assessment.
09. **Storage Container:** As requested by Marshal Washington, H-K will provide a Cost Proposal to provide a 40' x 8' Storage Container for twelve (12) months to store items in Buildings #04 & #05. H-K & Z&MA provided the CUD to Marshal W. for signature.
10. **Application for Payment:** Application for Payment was previously reviewed.
11. **Poor Paving Condition:** Some of the existing paving on the south side between the pavement re-working and the sidewalk is in poor condition. H-K recommends that the SBBC consider a paving overlay to 'dress' it up. Marshal W. will consider.
12. **Water in Swale:** At the exit from the Parent Pickup/Drop Off on the east side of the School some rainwater runoff lies in the swale area. This Project presently has no work in this area. Z&MA to contact Civil Eng'r for improvement suggestions. Depending on Cost, etc. Marshal W. may consider.
13. **Shop Drawings - Building Department:** The submittal of Building Department required Shop Drawings was discussed. Z&MA first reviews these drawings and then forwards them to Marshal W. to file with the Building Department. The Dept. review time varies. Z&MA will not release these until 'approved' by the Building Dept., i.e. Exterior Windows, Covered Walkways, Steel Joists, Structural Framing, Overhead Coiling Doors, Exterior Doors, Exterior Stucco Soffits, Exterior Louvers/Vents, Fire Alarm, Exterior Lighting Light Poles, Basketball Goal Standards, Fire Protection, etc.



Zelch and McMahon, Architects

17 Northeast 4th Street, Fort Lauderdale, FL 33301

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

Meeting Report

14. **Project Sign Location:** H-K, Z&MA, & Marshal W. have proposed a location for the Project Sign for 'approval' of the school principal.
15. **Building #01 - Revised Remodeling:** SBBC is to approved Z&MA's additional services for the Revised Remodeling design revisions.

10 NOV 8 PM 2:22

FOM
DB



The School Board of Broward County, Florida
Facilities and Construction Management Department
1700 S.W. 14th Court
Fort Lauderdale, Florida 33312

CAPITAL PAYMENTS

10 OCT 29 PM 4:10

2010 NOV -4 AM 10:44

(954)765-6390

Attachment 6:

Consultant's Authorization To Proceed #9

Project No.:	1131-23-01 / P.000207	Date:	October 25, 2010
Project Title:	Food Service Multipurpose Building, Renovations & Site Improvements	SBBC P.O. No.:	2600011829
Facility Name:	Palmview Elementary School	Line No.:	/
Project Consultant:	Zelch & McMahon, Architects, LLC	Project Manager:	Dave A. Archer
		Dir. Capital Planning & Programming	

Under the provisions of your continuing term contract for professional services, you are hereby authorized to proceed with the following services for the project referenced above.

Schematic Design
 Design Development
 Construction Documents
 Bidding
 Construction Contract Administration
 Warranty
 Other Services:
Additional fees of \$26,858.00 approved by the SBBC as the second Amendment to the PSA at the October 5, 2010 meeting.

This Authorization to Proceed is subject to the following attachments:

Attachments:
 Professional Services Required
 Project Schedule
 Professional Fees

The scope of the required services is specified on the Professional Services Required with a Fixed Limit of Construction Cost (FLCC) for this project as indicated below:

Original FLCC	Current Cost Estimate	Revised FLCC by ATP
\$7,255,000.00	\$7,500,000.00	

The following professional services will be provided by the Project Consultant as a normal part of its Basic Services for the Project listed above:

Item	Discipline	Description
------	------------	-------------

PF 1/2



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

(754) 321-1500

Document 01250g - Construction Change Order-Item #17

Facility Name: Palmview Elementary School Date: December 9, 2011
 Project Name: New Multipurpose Building, Remodeling, & Site Improvements Project # #1131-23-01/P.000207
 Project Description: General Construction
 Contractor: Hewett-Kier Construction Inc. Reference Change Order #40R5
 Request: _____

Description of Change:

Revised Building #1 Remodeling:

Construct Revised Building #1 Remodeling as indicated in CSI #10 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 custodial equipment storage, teacher planning room, student activities room, music lab, itinerant office, textbook storage and physical education office, electrical, and mechanical rooms and associated corridors.

Attachments: CSI #10, CCD #05R & Contractor's Change Order Request Proposal #40R5 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 Credit and/or Added Costs: Add: \$ 58,858.00
 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: [Signature] 12/12/11 Accepted: [Signature] 12/9/11 Reviewed and Concurred: [Signature]
 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 Hewett Facilities Project Manager's Typed Name: Dave Archer
 Project Consultant's Firm Name: Zelch & McMahon, Architects Contractor's Firm Name: Hewett-Kier Construction Inc. The School Board of Broward County, FL

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

Current Status of the Grand Jury Report



Matrix – Actions to be Taken in Response to the Grand Jury Final Report

Re: Plan of Action to Address the Findings and Recommendations of the Grand Jury
 March 31, 2011
 Page 25 of 34

coordinated through the District's Office of the Chief Auditor; and the initial testing will be conducted no later than the conclusion of the 2011-2012 school year. Subsequently, this ethics testing will minimally be conducted every three years or as requested by the Superintendent or the School Board Chair.

4. All late additions to the Board's agenda must be discussed at a public meeting.
- Policy 1100A outlines the rules for the scheduling of meetings and establishment and disposition of agendas. To ensure added agenda items cannot be approved on the School Board's Consent Agenda, the Superintendent will initiate the necessary revision to this policy to require all added agenda items be included on the Board's Open Agenda to encourage public input and promote transparency. This policy will be presented to the School Board for discussion at its March 29, 2011 workshop. The revisions to the policy will be presented for first reading at the April 19, 2011 School Board meeting. The policy revisions will receive final approval in accordance with applicable statutes requiring public notice prior to final reading.

The revision to Policy 1100A was presented to the School Board at its March 8, 2011 Board Workshop. The revisions include adding language that:

- Official action by the School Board shall be taken only at regular and special School Board Meetings.
- Except for added speakers, all items added to an agenda for good cause are to be placed on the Open Agenda.
- All items with a financial impact are to be placed on the Open Agenda.
- Items for reduction of retainage and receipt of audits are to be placed on the Open Agenda

The revised policy was presented for first reading and approved at the March 21, 2011 School Board Meeting (Exhibit C). This policy is scheduled to return to the Board for its final reading on May 3, 2011 in accordance with applicable statutes requiring 28-day public notice prior to policy adoption.

- 5. Add more detail to agenda items or provide a link to where more information concerning the item can be found.

- The School Board's e-agenda provides links to all of the supporting documentation contained within an ARF. The School Board's e-agenda is located at the following web address:

<http://eagenda3.broward.k12.fl.us/cgi-bin/WebObjects/eAgenda.woa/wa/displayCalendar>

The School Board's Agenda Request Form (ARF) includes summary information pertaining to the recommended Board action and a background section to explain the item and its history. The Superintendent of Schools will reiterate to the Executive Leadership Team the requirement to include adequate supporting documentation as a component of all ARFs.

The Superintendent discussed this issue with his Executive Leadership Team (ELT) and directed all staff to provide complete explanation with the recommendation along with adequate supporting documentation to justify the

**Re: Plan of Action to Address the Findings and Recommendations of the Grand Jury
March 31, 2011
Page 26 of 34**

recommendation and demonstrate compliance with applicable statutes and Board policies.

The District has already taken strides to provide additional and more comprehensive supporting documentation to justify the recommended action contained within the agenda item. This can be evidenced by the enhancement to the agenda items recommending the reduction in retainage.

6. Reduce the threshold on spending items on the consent agenda.

- Policy 1100A outlines the rules for the scheduling of meetings and establishment and disposition of agendas. Currently, Rule #7 dictates all facility items above \$1 million and all other items above \$500,000 are to be placed on the Open Agenda. This does not include agenda items with a positive financial impact to the District. This policy will be presented to the School Board for discussion at its March 29, 2011 workshop. The revisions to the policy will be presented for first reading at the April 19, 2011 School Board meeting. The policy revisions will receive final approval in accordance with applicable statutes requiring public notice prior to final reading.

The revision to Policy 1100A was presented to the School Board at its March 8, 2011 Board Workshop. The revisions include adding language that:

- Official action by the School Board shall be taken only at regular and special School Board Meetings
- Except for added speakers, all items added to an agenda for good cause are to be placed on the Open Agenda,
- All items with a financial impact are to be placed on the Open Agenda,
- Items for reduction of retainage and receipt of audits are to be placed on the Open Agenda

The revised policy was presented for first reading and approved at the March 21, 2011 School Board Meeting (Exhibit C). This policy is scheduled to return to the Board for its final reading on May 3, 2011 in accordance with applicable statutes requiring 28-day public notice prior to policy adoption.

7. Remove retainage reductions from the consent agenda.

- The Superintendent will initiate revisions to Policy 1100A – Rules For the Scheduling of Meetings and establishment and Disposition of Agendas to require all recommendations to reduce retainage be processed on the School Board's Open Agenda encouraging public input and promoting transparency. Retainage reduction items will no longer be approved on the Consent Agenda. The proposed revisions will be presented to the School Board for discussion at its March 29, 2011 workshop. The revisions to the policy will be presented for first reading at the April 19, 2011 School Board meeting. The policy revisions will receive final approval in accordance with applicable statutes requiring public notice prior to final reading.

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
- RSBM Regular School Board Meeting
- 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 *Thomas E. Lindner*
Facilities and Construction Management

SUBJECT: **PALMVIEW ELEMENTARY SCHOOL AUDIT RESPONSES**

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

Findings #1, pages 1-4

Findings #2, page 5

Findings #3, pages 6-7

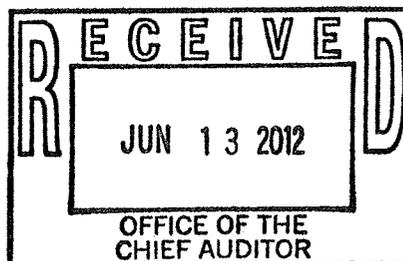
Findings #4, page 8

Summary, pages 9-10

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 (OCA) recommended that the Construction Manager, Hewitt-Kier be denied payment for extended General Conditions. Facilities and Construction Management (F&CM), in conjunction with Construction Management, Inc. cost and scheduling consultant to The School Board of Broward County, analyzed the project data, including schedules and pay applications, and concluded that the Construction Manager (CM) is entitled to extend 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).

Origins of the decision for 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, coordination delays attributed to Florida Power and Light in regards to the proposed upgrade of electrical service impacted "Critical Path Activities" on the Project Schedule.

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 #10 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 February 5, 2010, the Consultant, Zelch & McMahon stated in the Project's Progress Meeting, that directions were issued by SBBC confirming required revisions of the Phase II remodeling for the existing Building # 1. On March 17, 2010 the CM was directed 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. Programming this phase was on hold from February 17, 2010 until the drawings were permitted and issued (to the CM) on May 22, 2011 for Plan Changes. Programming and commencement of Phase II work could not begin until this occurred, hence the determination by F&CM and the independent cost and scheduling consultant that the delay could not be attributed to the Construction Manager.

Although the CM's baseline schedule indicated a completion date of December 17, 2010 for Phase I, the scope of work within this phase was also impacted by FPL's coordination of the new upgraded service to the site. It should be noted that December 17, 2010 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 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 November 11, 2010 via a written correspondence. On April 11, 2011 the CM, provide written correspondence outlining the impact of the FPL coordination delays in regards to completing the Phase I scope of work. The pre-existing FPL service to the site was unable to accommodate the additional load of the New Multi-purpose Building. The Critical Path Activity from the Baseline Schedule of the CM indicated that the "Late Start" for energizing the new Building was October 12, 2010. The delay in the upgraded FPL service to the site impacted the start up of the new mechanical equipment which is a critical path activity for the interior finishes to the new Multi-Purpose Building. The upgraded service was required, for example but not limited to, HVAC Test and Balancing, installation of floor tiles and ceiling tile and including finish cabinetry etc.

The full impact of the delays relating to the FPL coordination issues was determined to be concurrent with the delays associated to the Revisions to Phase II of the project which could not commence 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 November 11, 2010 and details of the claim and the impact of the delays were then subsequently submitted, April 11, 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 \$254,700. We performed an independent review of the change orders. We read the independent consultant report and we disagree with it. The report did not identify a root cause for the delay. The consultant recommended adding 224 days to the project without any monetary compensation.

The CM's baseline schedule allowed for 368 days to complete the new cafeteria and provided 202 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 other site modifications. 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 #7) 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 27, 2011, and it took 226 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.*"

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 \$254,700."

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, 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 22, 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 and "Owner Requested" added Scope.

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 22, 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 \$58,858 Change Order approved on February 22, 2012, would require 2 additional employees to monitor the project on a CM at Risk project.

FINDING # 4

F& CM agrees with the OCA's Recommendations that *"All assertions or explanations established by the informational summary(s) included in Document 01250g – Construction Change Order's sections Description of Change and/or Reason for Change should be supported by attachments or easily referenced citation (or link) relating to the selected criteria, established policies, procedures or state requirements/mandates as provided by F&CM"*)

Origins of the decision for 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.

Staff inadvertently considered that this directive was driven from the Department Of Education, Florida and consequently assumed it to be a Mandate.

Staff will continue to develop the process of review for Change Orders and ensure that the appropriate attachments are referenced correctly on the Change Order Document 01250g.

SUMMARY

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 and FPL efforts of coordinating the location for the new upgraded service to the site. The subsequent delay was attributed to the owner's actions and that of a third party who was not contracted by the CM. FPL's contract for service was directly with SBBC and therefore the subsequent delays could not be attributed to 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 July 7, 2011 Final Completion Date, established by the Notice to Proceed.

F&CM - *"The Construction Manager's inability to complete the new cafeteria by December 17, 2010, per their project schedule, causing approximately a 6 month delay"* as stated by the OCA, was determined by the Project Team, to be as a result of the revisions to planned location of the new FPL Transformer on site. The subsequent delay was attributed to the FPL coordination efforts 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 \$254,700"* and Finding # 3, *"Delays in issuing the Construction Change Directives resulted in the Construction Manager seeking delay damages of \$254,700 from July 7, 2011, through April 19, 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.

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 283 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 \$254,700"*

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 July 7, 2011. At this time, a new scheduled final completion date has not been established.

F&CM - The OCA's statement that Finding # 3, "*Delays in issuing the Construction Change Directives resulted in the Construction Manager seeking delay damages of \$254,700 from July 7, 2011, through April 19, 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 283 days represented July 8, 2011 to April 19, 2012. (See Exhibit A of the Audit Report).

F&CM - The independent report generated and submitted to F&CM by the cost and scheduling consultant, Construction Management Services Inc. (CMS) is 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.

