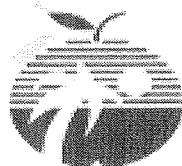


INTERNAL AUDIT REPORT

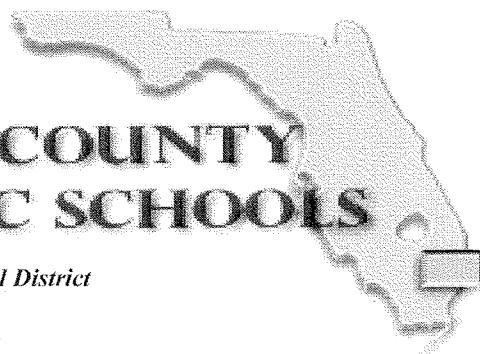
**Current Status Update of the Review of the Palmview Elementary
School Project #1131-23-01/P000207 New Food Service
Multipurpose Building, Renovations and Site Improvements**

October 2013



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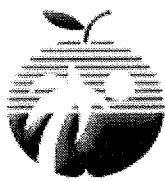
To be presented to the:

**Audit Committee on
October 10, 2013**

**The School Board of Broward County, Florida on
November 5, 2013**

By

The Office of the Chief Auditor



Broward County Public Schools

The School Board of Broward County, Florida

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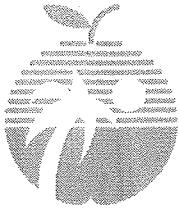
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Members of The School Board Audit Committee

Robert W. Runcie, Superintendent of Schools

Ladies and Gentlemen:

This Current Status Update of the Review of the Palmview Elementary School Project No. 1131-23-01/P000207 New Food Service Building, Renovations and Site Improvements issued in June 2012, was performed in accordance with the 2013-2014 Audit Plan. The report consisted of a review of the Current Status responses from management and analysis of the supporting documentation associated with their reported actions to date. The objective of this audit was to review Current Status responses from the Office of Facilities & Construction (OF&C) formerly known as Facilities & Construction Management (F&CM) Division and report the results and actions to the Audit Committee and the School Board; review and analyze actions taken to address the findings and recommendations in the original audit report and document the rationale for noted actions; determine whether or not OF&C followed the recommendations to deny the Construction Manager, Hewett-Kier any payment for delay claims and allow the Construction Manager non-compensable days to complete the project; review and report on procedural internal control weaknesses identified in the original audit report; document organizational or procedural changes associated with the previously identified items; and to report recommendations to the administration, if needed.

Our Current Status of the Review of the Palmview Elementary School Project 1131-23-01/P000207 New Food Service Building, Renovations and Site Improvements contains updates from the OF&C on our recommendations from the original audit. Of the original four (4) findings, it is the opinion of the Office of the Chief Auditor (OCA) that Finding #1 is open, Finding #2 is incomplete, Finding #3 is implemented, but not in use and Finding #4 is open.

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In Finding #1 in the original Audit Report, OCA recommended that OF&C should deny the Construction Manager, Hewett-Kier any payment for delay claims (compensation for Extended General Conditions). In this Current Status, we documented that OF&C has prepared a proposed Construction Change Order-Item # 027 which is intended to seek School Board approval to pay the Construction Manager, Hewett-Kier \$298,495 as compensation for 285 days of Extended General Conditions. OCA disagrees with this payment for reasons documented in the original Audit Report and the Current Status Matrix. As OF&C is intent on paying the Construction Manager and OCA maintains that no payment for delay claims should be made, it was the opinion of OCA that the resolution and disposition of this issue needed to be made by the Office of the General Counsel.

Subsequent to the completion of this Current Status Report, the Office of the General Counsel was requested to provide a legal opinion regarding the Construction Manager's delay claims and associated compensation. On September 27, 2013 the OCA received the Office of the General Counsel's Legal Opinion Memorandum (see pages 48-50) that affirmed the OCA's recommendation to deny the Construction Manager's delay claims and associated compensation. In consideration of the Office of the General Counsel's Legal Opinion Memorandum, OCA recommends the Office of the General Counsel consider pursuing Liquidated Damages due to the Construction Manager's failure to complete the project within the time set forth in the contract documents.

This report will be presented to the Audit Committee at its October 10, 2013 meeting and will be presented to the School Board at its November 5, 2013 meeting.

Sincerely,

A handwritten signature in black ink that reads "Patrick Reilly". The signature is fluid and cursive, with "Patrick" on top and "Reilly" below it, both starting with a capital letter.

Patrick Reilly, CPA
Chief Auditor
Office of the Chief Auditor

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EXECUTIVE SUMMARY

Scope and Methodology

This Current Status Update of the Review of the Palmview Elementary School Project No. 1131-23-01/P000207 New Food Service Multipurpose Building, Renovations and Site Improvements issued in June 2012, was performed in accordance with the 2013-2014 Audit Plan. The report consisted of a review of the Current Status responses from management and analysis of the supporting documentation associated with their reported actions to date. The objective of this audit was to:

- Review Current Status responses from the Office of Facilities & Construction (OF&C) formerly known as Facilities & Construction Management (F&CM) Division and report the results and actions to the Audit Committee and the School Board;
- Review and analyze actions taken to address the findings and recommendations in the original audit report and document the rationale for noted actions;
- Determine whether or not OF&C followed the recommendations to deny the Construction Manager, Hewett-Kier any payment for delay claims and allow the Construction Manager non-compensable days to complete the project;
- Review and report on procedural internal control weaknesses identified in the original audit report;
- Document organizational or procedural changes associated with the previously identified items;
- Report recommendations to the administration, if needed.

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 aforementioned standards require that we plan and perform the audit to ensure 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

It is our responsibility to perform the review under generally accepted auditing standards and Government Auditing Standards, as well as provide 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 the 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, and to comply with applicable laws, regulations and School Board policies.

The procedures used to satisfy our objectives in this audit included the following:

- Request and review Current Status Update responses from management;
- Review correspondence and contract documents used to administer the contracts associated with construction projects noted in the original report;
- Review and analyze the OF&C rationale relating to payment or nonpayment to the Construction Manager for delay claims submitted by the Construction Manager;
- Review and analyze newly implemented process established to prevent issuance of Notice To Proceed (NTP) when it is known that permitted plans are going to be revised;

- Review and analyze procedures for processing Construction Change Directives (CCDs) to determine if CCDs are processed in a timely manner;
- Review language in executed construction agreements and compare to any documented follow up actions on the part of OF&C for all construction related projects noted in the original audit report;
- Interview staff, correspond electronically to request specific documentation required to verify actions and document rationale for the same;
- Review project file documents, plans and specifications, email correspondence, meeting minutes and construction contract agreements;
- Perform other auditing procedures as deemed necessary.

Opinion and Summary of Results

Our Current Status of the Review of the Palmview Elementary School Project No. 1131-23-01/P000207 New Food Service Multipurpose Building, Renovations and Site Improvements contains updates from the OF&C on our recommendations from the original audit. Of the original four (4) findings, it is the opinion of the Office of the Chief Auditor (OCA) that two findings are open (#1 and #4), Finding #2 is incomplete, and Finding #3 is implemented, but not in use.

In Finding #1 in the original Audit Report, OCA recommended that OF&C should deny the Construction Manager, Hewett-Kier any payment for delay claims (compensation for Extended General Conditions). In this Current Status, we documented that OF&C has prepared a proposed Construction Change Order-Item # 27 which is intended to seek School Board approval to pay the Construction Manager, Hewett-Kier \$298,495 as compensation for 285 days of Extended General Conditions. OCA disagrees with this payment for reasons documented in the original Audit Report and in the Current Status Matrix. As OF&C is intent on paying the Construction Manager and OCA maintains that no payment for delay claims should be made, it was the opinion of OCA that the resolution and disposition of this issue needed to be made by the Office of the General Counsel.

Subsequent to the completion of this Current Status Report, the Office of the General Counsel was requested to provide a legal opinion regarding the Construction Manager's delay claims and associated compensation. On September 27, 2013 the OCA received the Office of the General Counsel's Legal Opinion Memorandum (see pages 48-50) that affirmed the OCA's recommendation to deny the Construction Manager's delay claims and associated compensation. In consideration of the Office of the General Counsel's Legal Opinion Memorandum, OCA recommends the Office of the General Counsel consider pursuing Liquidated Damages due to the Construction Manager's failure to complete the project within the time set forth in the contract documents.

We would like to thank the OF&C and all District personnel who aided in the completion of this report.

Submitted by:

Patrick Reilly

Patrick Reilly, CPA

Chief Auditor

Office of the Chief Auditor

Audit performed by:

Robert Goode

Gerardo Usallan

Joe Wright

SECTION I
CURRENT STATUS MATRIX

| PALMVIEW ELEMENTARY CURRENT STATUS MATRIX | | | |
|---|--|---|--|
| Findings | Recommendation | Management Response | Current Status |
| Condition #1: The Construction Manager, the Project Consultant, as well as Facilities & Construction Management (F&CM) staff did not adequately manage the Palmview Elementary School New Food Service 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 | <p>It is the recommendation of the Office of the Chief Auditor that F&CM should deny the Construction Manager, Hewitt-Kier, any payment for delay claims (compensation for Extended General Conditions) for 283 days at \$900 per day for a total cost of \$254,700 (request was increased to contract terms amounting to \$353,750).</p> <p>We recommend that F&CM should allow the Construction Manager 283 non-compensable days to complete the Palmview Elementary Project.</p> <p>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,</p> | <p>Administrative Response – Facilities & Construction Management Division June 12, 2012:</p> <p>In Finding #1, the Office of the Chief Auditor (OCA) recommended that the Construction Manager, Hewitt-Kier be denied payment for extended General Conditions. Status — OF&C met with Hewitt Kier, Construction Inc. to discuss mitigating the financial impact of Extended General Conditions as a result of delays to the project duration.</p> <p>Hewitt Kier, Construction, Inc. agreed to swap delay days attributed to the Construction Manager in exchange for excusable delays attributed to unforeseen conditions and Owner delays.</p> <p>Administrative Response – Facilities & Construction Management Division (Formerly Facilities & Construction Management Division) July 17, 2013:</p> <p>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:</p> <p>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.</p> <p>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.</p> | <p>Administrative Response – Office of Facilities & Construction Management (Formerly Facilities & Construction Management Division) July 17, 2013:</p> <p>In addition, the Construction Manager discounted the daily rate for extended General Conditions from \$1,250/day to a rate of \$1,100 per day.</p> <p>As per the Construction Management Agreement, Non Compensable time applies exclusively to all subcontractors, i.e., NO DAMAGES FOR DELAYS, see ARTICLE 24.14 of the Agreement.</p> <p>In regards to the Construction Manager, the remedy for Delays for the duration of the contract period would be either:</p> <ul style="list-style-type: none"> • Extended General Conditions (See ARTICLE 7.1.04) • Liquidated Damages for delays attributed to the Construction Manager. (See ARTICLE 5 LIQUIDATED DAMAGES) <p>The Audit Report did not reference contract language which would lead to a conclusion that the Construction Manager is only entitled to Non-Compensable Delays.</p> |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|--|---|---|--|
| Condition #1 continued: <i>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.</i> | <p>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.</p> <p>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.</p> <p>The Office of the Chief Auditor disagrees with the Construction Manager's, (Hewett-Kier Construction), claim that they are</p> | <p>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).</p> <p>Subsequent to the completion of this Current Status Report, the Office of the General Counsel was requested to provide a legal opinion regarding the Construction Manager's delay claims and associated compensation. On September 27, 2013 the OCA received the Office of the General Counsel's Legal Opinion Memorandum (see pages 48-50) that affirmed the OCA's recommendation to deny the Construction Manager's delay claims and associated compensation. In consideration of the Office of the General Counsel's Legal Opinion Memorandum, OCA recommends the Office of the General Counsel consider pursuing Liquidated Damages due to the Construction Manager's failure to complete the project within the time set forth in the contract documents.</p> | <p>Status - Open Follow-up Response – Office of the Chief Auditor - October 2013:</p> <p>OF&C did not provide complete details of the status of the Finding/Recommendation as there was no mention of the payment and/or payment amount to the Construction Manager, Hewett-Kier Construction, Inc. for Extended General Conditions as identified in the original Finding and Recommendation. However, it is documented in proposed Construction Change Order-Item # 27 dated July 22, 2013 (see Exhibit A) that OF&C will seek Board approval to pay Hewett-Kier Construction, Inc. \$298,495 as compensation for extended General Conditions as a result of Project delay attributed to unforeseen conditions and Owner Delays.</p> <p>OCA disagrees with OF&C making payment and OCA maintains, as noted in the original Audit Report, the Construction Manager should not</p> <p>Status - Open Follow-up Response – Office of the Chief Auditor - August 2013:</p> <p>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.</p> <p>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.</p> |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|--|----------------|--|--|
| Condition #1 continued: 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. | | <p>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: <i>"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."</i></p> <p>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:</p> <p>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."</p> | <ul style="list-style-type: none"> 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 I). 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 J). 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. <p>This intended payment is in direct conflict with the Audit Finding Recommendation and is ill-advised by the OCA.</p> <p>It must be noted, the Construction Manager was paid a total Fee of \$1,104,000 to manage the project and as stated in Article 1 of the Agreement... <i>The Construction Manager covenants with the Owner to furnish its best skill</i></p> |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|--------------------------------|-------------------------------|---|---|
| Condition #1 continued: | and that of the plan changes. | <p>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.</p> <p>Additionally, the Report (Audit Finding/Recommendation) did not state <i>the Construction Manager is only entitled to Non-Compensable Delays</i>, as noted in OF&C's response. The Audit recommended <i>F&CM should allow the Construction Manager 283 non-compensable days to complete the Palmview Elementary Project.</i></p> <p>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</p> | <p><i>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..."</i> As noted in the Audit Finding, the Construction Manager did not adequately manage the project in the best interest of the Owner.</p> <p>Because OF&C feels the Construction Manager should receive payment and OCA has documented (in the Audit Report) the Construction Manager should not receive payment, this matter should immediately be reviewed, analyzed and resolved by the Office of General Counsel.</p> |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|--------------------------------|-----------------------|---|-----------------------|
| Condition #1 continued: | | <p>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.</p> <p>Follow up comments by the Office of the Chief Auditor June 13, 2012:</p> <p>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 reports 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.</p> <p>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.</p> <p>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.</p> | |

| PALMVIEW ELEMENTARY CURRENT STATUS MATRIX | | | |
|---|----------------|---|----------------|
| Findings | Recommendation | Management Response | Current Status |
| Condition #1 continued: | | <p>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.</p> <p>In reference to Article 27 for Change Orders and Construction Change Directives, the fact that the revised drawings for the elimination of three classrooms and replacement with storage area were provided to the Construction Manager on April 21, 2011, and it took 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 <u>"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."</u></p> | |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Administrative Response – Facilities & Construction Management Division June 12, 2012: | Management Response | Current Status |
|---|---|--|--|--|
| Condition #2: 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). | 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. | <p>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.</p> <p>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.</p> | <p>Status - Incomplete Follow-up Response – Office of the Chief Auditor - August 2013:</p> <p>OF&C provides Contract Bulletin No. 004/017 issued January 31, 2013 (see Exhibit B) as support for newly implemented procedures. Our review of Construction Bulletin 004/017 noted:</p> <ul style="list-style-type: none"> • The Contract Bulletins are maintained on the Facility Planning and Real Estate, Broward County Public Schools – Construction Contracts Department website (see Exhibit C) <p>Follow up comments by the Office of the Chief Auditor June 13, 2012:</p> <p>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."</p> <ul style="list-style-type: none"> • Both Bulletins reference revised (construction) Document 00550 (see Exhibit E) in their procedure. The Facility Planning and Real Estate, Broward County Public Schools – Construction Contracts Department website page for Division 00 Procurement and Contracting | <p>Administrative Response – Office of Facilities & Construction (Formerly Facilities & Construction Management Division) July 17, 2013:</p> <p>OF&C implemented procedures to ensure that a Notice-to-Proceed (NTP) will be verified for completeness prior to being issued to the Contractor. See attached Contract Bulletin No. 004/017 issued January 31, 2013.</p> <p>Status - Incomplete Follow-up Response – Office of the Chief Auditor - August 2013:</p> <p>OF&C provides Contract Bulletin No. 004/017 issued January 31, 2013 (see Exhibit B) as support for newly implemented procedures. Our review of Construction Bulletin 004/017 noted:</p> <ul style="list-style-type: none"> • The Contract Bulletins are maintained on the Facility Planning and Real Estate, Broward County Public Schools – Construction Contracts Department website (see Exhibit C) • On this website Bulletin #4 (004) (see Exhibit C) is titled NOA and NTP Documents 00510, 00550 and Bulletin #17 (017) (see Exhibit C) is titled Authorization to Bid, but the Bulletins (documents) are identical and both do not contain their respective titles on the document (see Exhibits B and D) • Both Bulletins reference revised (construction) Document 00550 (see Exhibit E) in their procedure. The Facility Planning and Real Estate, Broward County Public Schools – Construction Contracts Department website page for Division 00 Procurement and Contracting |

| PALMVIEW ELEMENTARY CURRENT STATUS MATRIX | | | |
|---|----------------|--|----------------|
| Findings | Recommendation | Management Response | Current Status |
| Condition #2 continued: | | <p>Requirements notes ... Division 00 documents are currently under revision and will be available at this site soon... (see Exhibit F) The page provides a name and phone number to contact for questions. The person whose name is shown to contact no longer works in the Office of Facilities & Construction (see Exhibit G)</p> <ul style="list-style-type: none"> • Document 00550 (Exhibit E) reflects its most recent revision date as 10-18-11 which precedes the Palmview Elementary Audit Report date of June 2012 | |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Administrative Response – Office of Facilities & Construction (formerly Facilities & Construction Management Division) July 17, 2013: | Current Status |
|--|---|--|--|--|
| Condition #3: Facilities & Construction Management (FCM) 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. | Ensure that the Construction Change Directives are processed in a timely manner to prevent construction project delays. | 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: | <p>Status – Implemented, but not in use Follow-up Response – Office of the Chief Auditor - August 2013:</p> <p>ARTICLE 1.1.34 "<u>Construction Change Directive (CCD)</u> - 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."</p> | 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. |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|--------------------------------|-----------------------|--|---|
| Condition #3 continued: | | <p>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.</p> <p>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.</p> <p>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.</p> | <p>Follow up comments by the Office of the Chief Auditor June 13, 2012:</p> <p>The Office of the Chief Auditor disagrees with F&CM's statement "<i>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.</i>" It is OCA's opinion, based on reviewing the response</p> |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|--------------------------------|-----------------------|---|-----------------------|
| Condition #3 continued: | | <p>provided by F&CM, if the Project Team deemed that a CCD was unnecessary, a Change Order should have been issued at that time.</p> <p>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.</p> | |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|---|---|--|--|
| Condition #4: 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. | All assertions or explanations established by the informational summary(s) included in Document 01250g - Construction 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". | <p>Administrative Response – Facilities & Construction Management Division June 12, 2012:</p> <p>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"</p> <p>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.</p> | <p>Status – 17, 2013:</p> <p>The current process implemented requires all Change Orders to be reviewed by the Project Management Council's (PMC) process.</p> <p>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.</p> |

PALMVIEW ELEMENTARY CURRENT STATUS MATRIX

| Findings | Recommendation | Management Response | Current Status |
|--------------------------------|-----------------------|----------------------------|---|
| Condition #4 continued: | | | <p>Order Item # 27 (Exhibit A) which is the Change Order planned to be processed to seek School Board approval to make payment of \$298,495 to Hewett-Kier.</p> <p>Additionally, there is a discrepancy in the intended payment amounts as documented in proposed Change Order # 27. Description of Change \$298,495 and the Reason For Change \$289,495 (see Exhibit A).</p> |

SECTION II
EXHIBITS

EXHIBIT A



The School Board of Broward County, Florida
Facilities and Construction Management Division
1843 North Harrison Parkway
Sunrise, FL 33323

(754) 321-1500

Document 01250g (00 63 63)-Construction Change Order-Item # 27

| | | | |
|----------------------|--|-------------------------|--|
| Facility Name: | Palmview Elementary School | Date: | July 22, 2013 |
| 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: | Hewett-Kier Construction, Inc. July 18, 2013 |

Description of Change:

Hewett-Kier Construction Co., Inc., is to be compensated for extended General Conditions as a result of Project delays attributed to unforeseen conditions and Owner Delays.

The Construction Manager provided a discounted adjustment to the per diem rate to \$1,047.35 per day in lieu of the contractual obligation of \$1,250.00.

The discounted compensation for extended General Conditions totals \$298,495.00, for 285 days of delay in lieu of \$356,250.00 providing a savings of \$57,755.00 to the Owner.

Attachments: [SBBC Financial Review](#)

Reason For Change:

In accordance with the Construction Manager at Risk Agreement,

"ARTICLE 25.1(3) CONSTRUCTION MANAGER'S FEES 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 18 months after the Notice-To-Proceed, due to no fault of the Construction Manager....."

Summary:

Total of added Costs:

Add: \$298,495.00

Deduct:

The Contract Time Increased by:

285 Days

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

Recommended

Accepted

Reviewed and Concurred

| | |
|---------------------------------|------|
| Project Consultant's Signature | Date |
| Robert McMahon | |
| Project Consultant's Typed Name | |
| Zelch & McMahon, Architects | |
| Project Consultant's Firm Name | |

| | |
|------------------------------------|------|
| Contractor's Signature | Date |
| Jim Hewett | |
| Contractor's Typed Name | |
| Hewett-Kier Construction Co., Inc. | |
| Contractor's Firm Name | |

| | |
|---|------|
| Facilities Project Manager | Date |
| Dave A. Archer | |
| Facilities Project Manager's Typed Name | |
| Facilities & Construction Management | |
| The School Board of Broward County, FL | |

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

EXHIBIT A



Hewett-Kier Construction, Inc.

General Contractors • Construction Managers • Design Builders

3451 NW 14th Ave.
Pompano Beach, FL 33064

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

July 18, 2013

Letter No.-00011

The School Board of Broward County,
1643 North Harrison Parkway
Sunrise, FL 33323

Fax No:754-321-1680

Subject: Palmview & Cypress Elementary School
Project No. 1131-23-01 / 1781-24-01

Mr. Archer,

As you are aware, Hewett-Kier Construction Inc. has been forced to bear the costs and burden of extended general conditions costs on Palmview Elementary and Cypress Elementary projects for several years now. Every construction professional that has reviewed these projects has agreed that Hewett-Kier is entitled to additional fees due to the extension of final completion dates due to no fault of Hewett-Kier. This includes, the SBBC's construction department, the project architects and every consultant hired by the SBBC. The contracts are unambiguous as to the compensation due to Hewett-Kier under these circumstances - \$1,250.00 per day.

In November 2011 we met with SBBC personnel and agreed in principle on a compromise both as far as the number of days we were seeking and the "per diem". We agreed on 283 compensable days for Palmview and 221 compensable days for Cypress. In the spirit of cooperation, we agreed to \$900/day for the per diem. This agreement, of course, never made it to the Board and Hewett-Kier was forced to continue to incur the costs of extended contract performance through no fault of its own. As a result, we withdrew our compromise per diem of \$900.00.

Past forward to June 2013 and we once again met with SBBC personnel in good faith to resolve our claims for extended general conditions. Please note that additional delays beyond the control of Hewett-Kier occurred between our November 2011 meeting and our June 2013 meeting. In June 2013 we agreed in principle to accept 247 days on our claim on Cypress of 329 days and to accept 285 days on Palmview on our claim of 471 days. As a courtesy, we also agreed to reduce our per diem from the contractually mandated \$1,250.00 to \$1,100.00. This reduced the amount

EXHIBIT A

to be paid to Hewett-Kier to \$271,700.00 on Cypress and \$313,500.00 on Palmview. We were prepared to put these two projects behind us on these terms.

The SBBC subsequently requested a conference call to request Hewett-Kier to consider further discounting its claims. That call was attended by you, Denis Herrmann, Shelley Meloni as well as other SBBC personnel. We have considered your request and based on our longstanding relationship with the School Board of Broward County and our respect for the above individuals, we are making a onetime offer to further reduce our claims as follows. We will accept \$298,495.00 on Palmview and \$253,501.00 on Cypress. Should this not be accepted and approved, we will proceed to enforce our contractual rights.

Very Truly Yours,
Hewett-Kier Construction Inc.


James R. Hewett
President

EXHIBIT A

| SBBC REVIEW | | | | | |
|--|---|-------------------------------|-----------------------------|-------------|--|
| FEDERAL MILITARY CO 1005 INTERIM/COMPETITION SBC Project # P-162257 (L.C. 1101-25-01) June 18, 2010 | | | | | |
| TIME | | | | | |
| # | DESCRIPTION | CONTRACT DATES/NO. OF DAYS | ACTUAL DATES/NO. OF DAYS | DELTA | COMMENTS |
| 1 | DATE TO SUBSTANTIAL COMPLETION | DECEMBER 16, 2009 50 | DECEMBER 16, 2009 50 | 0 | |
| 2 | DATE TO FINAL COMPLETION | DECEMBER 21, 2009 50 | DECEMBER 21, 2009 50 | 0 | |
| 3 | DATE OF SUBSTANTIAL | DECEMBER 16, 2009 50 | DECEMBER 16, 2009 50 | 0 | |
| 4 | TOTAL DAYS OF LOS | 50 | 50 | 0 | DELTA IS MAX DAYS OF DELAY |
| 5 | LOS | | | | |
| 6 | NUMBER OF DAYS OF LOS WHICH WERE REASONABLE DELAY | | | | |
| 7 | DAYS | | | | |
| 8 | 40 | 40 | \$1,000.00 | \$40,000.00 | (DAYS OF DELAY FROM ACTUAL TO ACTUAL SUBSTANTIAL) - REASONABLE DAYS) |
| 9 | DAYS OF LOS FROM SUBSTANTIAL TO FINAL | 5 | \$650.00 | \$3,250.00 | |
| 10 | TOTAL DAYS OF LOS | 45 | | | |
| DELTA/LOSS | LOSS | ONE FREQUENCY | DELTA | | |
| 11 | DATE OF DELAY | 471 | 471 | 0 | |
| 12 | DATE OF DELAY BY DM | 471 | 471 | 0 | |
| 13 | DELTA/LOSS | 1,500 | | | |
| 14 | DATE OF DELAY | 471 | 471 | 0 | |
| 15 | DATE OF DELAY BY DM | 471 | 471 | 0 | |
| 16 | DELTA/LOSS | 1,500 | | | |
| 17 | DATE OF DELAY | 471 | 471 | 0 | |
| 18 | DATE OF DELAY BY DM | 471 | 471 | 0 | |
| 19 | DELTA/LOSS | 1,500 | | | |
| 20 | DATE OF DELAY | 471 | 471 | 0 | |
| 21 | DATE OF DELAY BY DM | 471 | 471 | 0 | |
| 22 | DELTA/LOSS | 1,500 | | | |
| 23 | TOTAL ADDITIONAL FEE | 1,500 | \$1,500.00 | \$22,500.00 | |

EXHIBIT B

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

Best Practice Bulletin No. Contract Bulletin No. 004 / 017 McGladrey Audit Finding No.

Purpose:

Establish a procedure to coordinate the issuance of the Notice to Proceed with the receipt of the Building Permit. See also CB 017.

Issue:

Revised Document 00550 to incorporate a placeholder for the Building Permit Number and established the procedure to prohibit issuance of a Notice to proceed without a Building Permit issued by the CBO.

Document 00550 issued to Project Managers and project Consultants. Currently posted on web site.

Procedure:

1. Include revised Document 00550 in all bidding documents
 - a. Responsible Parties
 - i. Project Manager
 1. Ensure the project Consultant has complied at Phase III 50% and 100% Construction Document submittals.
 2. Provide complete, duplication-ready Construction Documents, including Division 0 and 1 documents, to Design and Construction Contracts Department when Permit Approval Memo is issued by the CBO.
 3. Do not issue a Notice to Proceed without the appropriate, valid Building Permit for the Work encompassed in the Notice to Proceed.

EXHIBIT C**BROWARD COUNTY CONSTRUCTION AND EQUIPMENT CONTRACTS**

| Home | Documents & Forms | Division 2 Docs/Design Services | Bulletins |
|--|---------------------------------------|---|---|
| Prequalification Process | Bidding & FAQ's | Division 0 Documents | Project Mgmt/Customer Support |

Contract Bulletins

| Bulletin No#. | NAME OF BULLETIN | Bulletin No#. | NAME OF BULLETIN |
|------------------|---|------------------|---|
| * | Alphabetical Index of Procedures and Bulletins | 37 | M/WBE Documents Required With Bids |
| 1 | Prequalification Documents 00008, 00101, 00200, 00462, 00920 | 38 | Safety Procedures |
| 2 | Prequalification Documents 00008, 00101, 00200, 00462, 00920 | 39 | Summer Break Projects |
| 3 | Drug Free Workplace Certification Document 00457 | 40 | Direct Owner Purchase Program |
| 4 | NOA and NTP Documents 00510, 00550 | 41 | Background Screening |
| 5 | Payment and Performance Bonds Documents 00600, 00610 | 42 | Agenda Request Form Timeline |
| 6 | Indemnification Clause - FEDs and PSAs | 43 | Change Order Process |
| 7 | Document 00520 | 44 | Errors and Omissions |
| 8 | Documents 00550, 00600, 00610 | 45 | Assignment of Open End Consultants |
| 9 | Document 00510 | 46 | Negotiations and Parameters Committee |
| 10 | Documents 00101, 00510, 00550 | 47 | Beacon Antenna Instructions |
| 11 | Front-Ends | 48 | Sub-Contractor Bonds |
| 12 | Office Procedures | 49 | Attorneys' Signature Form |
| 13 | Open End Consultants | 50 | Additional Scope |
| 14 | Purchasing Department Change Orders | 51 | Written Quote Procedure |
| 15 | CM at Risk Agreement - Overhead/Profit | 52 | Warranty Requirements |
| 16 | CM at Risk Agreement - GMP Amendments | 53 | Risk Management Procedure |
| 17 | Authorization to Bid | 54 | Change Order Review Approval Form |
| 18 | Bidding Documents | 55 | Warranty Requirements |
| 19 | Notice Form Letters - Non-Performance, Termination & Surety | 56 | Basic Services and Supplemental Services |
| 20 | PSA Amendments | 57 | Project Close Out |
| 21 | Procurement Projects Over \$500,000 | 58 | Liquidated Damages Assessment |
| 22 | CPQRC "ALL CALL" | 59 | Decreasing Contingency In GMPs/CM at Risk and TPM Contracts |
| 23 | Bid Document Checklist/List of Submittal Log | 60 | Subpoenas |
| 24 | Bid, CRC, CPQRC, School Board Meeting Calendars | 61 | Public Records Request Submissions |
| 25 | PFAs | 62 | Project Management Weekly Publication 101309.doc |
| 26 | Bid Schedule Form | 63 | Bid Document Procedure for Hard Bids |
| 27 | Direct Purchase - Mechanical Equipment Supplier | 64 | Addenda Procedure |
| 28 | CM at Risk - CUDs & C/O - Legal Opinion | 65 | Reuse of Professional Services Agreement |
| 29 | Open End Consultant Utilization | 66 | Dispute Resolution Committee Procedure |
| 30 | Bid Addendum | 67 | CSMP - Recap Sheet |
| 31 | Public Contract Documentation-Bid Schedule and Pre-Qualified Contractors | 68 | Procurement Services Request Form and Procedure |
| 32 | Bidding Documents-M/WBE Goals, LDs, Time of Completion, PM Names, Project Names, etc. | 69 | Records Management Compliance |
| 33 | Security - ID Badges and Finger Printing | 70 | Response to the McGladrey Audit: Best Practices |
| 34 | Procurement from Unit Cost Term Contracts | 71 | Prolog: Vendor Name Entry |
| 35 | Project Consultant Errors and Omissions | 72 | Prolog: ISS AOR - EOR - GC Entry |
| 36 | Schedule of Values - Initiation of Purchase Order | | |

| Board Calendar | Board Meetings | Board Policies | Board Member By District |

Nondiscrimination & Reasonable Accommodation
Email-Webmaster

EXHIBIT D

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

| | | |
|---|---|--|
| <input type="checkbox"/> Best Practice Bulletin No. | <input checked="" type="checkbox"/> Contract Bulletin No. 004 / 017 | <input type="checkbox"/> McGladrey Audit Finding No. |
|---|---|--|

Purpose:

Establish a procedure to coordinate the issuance of the Notice to Proceed with the receipt of the Building Permit. See also CB 004.

Issue:

Revised Document 00550 to incorporate a placeholder for the Building Permit Number and established the procedure to prohibit issuance of a Notice to proceed without a Building Permit issued by the CBO. Document 00550 issued to Project Managers and project Consultants. Currently posted on web site.

Procedure:

1. Include revised Document 00550 in all bidding documents
 - a. Responsible Parties
 - i. Project Manager
 1. Ensure the project Consultant has complied at Phase III 50% and 100% Construction Document submittals.
 2. Provide complete, duplication-ready Construction Documents, including Division 0 and 1 documents, to Design and Construction Contracts Department when Permit Approval Memo is issued by the CBO.
 3. Do not issue a Notice to Proceed without the appropriate, valid Building Permit for the Work encompassed in the Notice to Proceed.



The School Board of Broward County, Florida
Facilities and Construction Management Division
EXHIBIT E
Sawgrass Technology Park,
1643 North Harrison Parkway, Bldg H
Sunrise, FL 33323
(754) 321-1500

Document 00550: Notice to Proceed (Permitting)

Date:

To:

Company Name
& Address:

Pick Up:

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

Project No.
Facility
Name:
Project Title:

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

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

- A required performance period of _____ consecutive calendar days.
- As otherwise delineated in the Agreement Form to which you were signatory.

Please review the applicable sections of the Project Manual including Documents 00200 and 001330 for further information regarding the permitting process.

Additional Instructions relative to this Notice to proceed follow below:

Item Instruction

1. Per Division 01, Section 01330, this NTP pertains to permitting only.
2. Agreement Form and Bonds will be issued under separate cover.

If you have any questions concerning this Notice to Proceed, please contact, Project Manager II, at (754) 321-

Sincerely,

Thomas Lindner, Deputy Superintendent
Facilities and Construction Management Division

TEL/SNM/DH/PK/dlm



EXHIBIT E
The School Board of Broward County, ~~Florida~~
Facilities and Construction Management Division
Sawgrass Technology Park,
1643 North Harrison Parkway, Bldg H
Sunrise, FL 33323
(754) 321-1500

Document 00550: Notice to Proceed (Permitting)

Attachments:

- Document 00520 Agreement Form
- Document 00600 Performance Bond
- Document 00610 Payment Bond
- Risk Management Approval and Certificate of Insurance

Copies:

- Principal, School
- The Honorable, _____, Mayor (With Municipal Letter)
- Thomas Lindner, Deputy Superintendent (With Copy of Payment Bond)
- Christopher Akagbosu, Executive Director, Facility Management, Planning and Site Acquisition
- Shelley Meloni, Executive Director, Facilities Design & Construction
- Robert Hamberger, Chief Building Official
- Alice Shapiro, Senior Architect, Design Services
- Denis Herrmann, Director, Design and Construction Contracts
- Sonja Coley, Senior Project Manager
- Project Manager II (With Copy of Attachments)
- Pam Norwood, Capital Payments Review Supervisor
- Omar Shim, Director, Capital Planning
- Project Consultant (With Copy of Attachments)
- Bill Harris, Director, Supply Management & Logistics (With Copy of IRS Form W-9 Only)
- Project File (With Original Attachments)
- Contract Set (With Original Attachments)
- Files

EXHIBIT E

The School Board of Broward County, Florida
Notice to Proceed - Permitting
October 1, 1996 (R10:04-01-2011-IRS) (R11-7-01-11 PM) (R12-10-18-11 PK)

Document 00550
Page 3

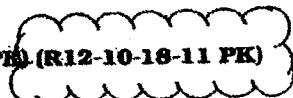


EXHIBIT F

SEARCH | RECENTLY VIEWED DOCUMENTS

Home Documents & Forms Division 1 Docs/Design Services Bulletins
Prequalification Process Bidding & FAQ's Division 0 Documents Project Mgmt/Customer Support

Division 00 Procurement And Contracting Requirements

Sorry for the inconvenience but the Division 00 documents are currently under revision and will be available at this site soon. Please contact John Hodge at 754-321-1635 if you have questions or need assistance.

Thank You

John Hodge
Design and Construction Contracts

RETURN TO MAIN CONSTRUCTION CONTRACTS HOME PAGE
[Board Calendar] [Board Meetings] [Board Policies] [Board Member District by Schools]
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Nondiscrimination & Reasonable Accommodation

Printed by: Joe Wright
Title: Re: Request for re-assignment of employee : CAB



THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
600 SOUTHEAST THIRTY AVENUE, FORT LAUDERDALE, FL 33301 • Telephone: 754-321-2716 • Fax: 754-321-2716

SUSAN T. ROCKELMAN, DIRECTOR
INSTRUCTIONAL STAFFING DEPARTMENT
www.browardschools.com/teacher

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NORAH REED

ROBERT W. RINDGE
Superintendent of Schools

Acknowledgment of Surplus Placement

June 6, 2013

PN#20170

John Hodge
P.O. Box 771805
Coral Springs, Florida 33077

Dear John Hodge:

Thank you for your patience during this process. Listed below is your assigned location for the 2013-2014 school year. Please contact the principal to discuss your specific assignment. Vacancies are determined based on the schools projected budgets. We make every attempt to assign teachers to their preferred locations; however, this is not always possible. If your current location receives a vacancy, you will be contacted about returning to the location.

You are expected to report to your assigned location on August 12, 2013. Failure to report will result in your name being recommended to the Board for termination. You are eligible to seek your own transfer. Complete the on-line Transfer Request Form, if you have not already completed one. If your employment status changes, contact your new principal.

To acknowledge receipt of your assignment, please sign, date, and return a copy of this letter to Instructional Staffing via fax at 754-321-2716. Your commitment to Broward County Schools is appreciated. We wish you the best of luck in your new assignment.

Sincerely,

Susan T. Rockelman, Director
Instructional Staffing

STRkids

School Information

School 1

Mrs. Ann E. Andersen-kewalski

Bright Horizons School
754-754-321-4440
3901 N.E. 1 Terrace, Pompano Beach

*Information is listed under "School 1" you have been assigned to a 100% position shared between two schools.

School 2*

Joe Wright on Thursday, August 01, 2013 at 4:54 PM -0400 wrote:

[REDACTED]

[REDACTED]

EXHIBIT H



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

(754) 321-1500

Document 01250g (00 63 63)-Construction Change Order-Item # 28

| | | | |
|----------------------|--|-------------------------|--|
| Facility Name: | Palmview Elementary School | Date: | July 22, 2013 |
| Project Name: | New Multipurpose Building Remodeling & Site Improvements | Project # | 1131-23-01/P.000207 |
| Project Description: | General Construction | Reference Letter Dated: | Hewett-Kier Construction, Inc. July 16, 2013 |
| Contractor: | Hewett Kier Construction, Inc. | | |

Description of Change:

After a discounted fee for extended General Conditions in the amount of \$298,495.00, In regards to 285 days of delay, the construction Manager Hewett Kier Construction, Inc. will execute a Credit Change Order in the amount of \$981,516.70 of uncommitted Project Funds back to the Owner.

Attachments: [SSBC Financial Review](#)

Reason For Change:

In accordance with the Construction Manager at Risk Agreement,

| | |
|--|---------------------|
| Original Contract with Added Change Order | \$5,622,459.57 |
| Actual Cost of Work (COW) with Changes | \$4,342,447.89 |
| Uncommitted (COW) Project Funds | \$1,280,011.68 |
| → Extended General Conditions fees for Delay | \$298,495.00 |
| Total Uncommitted Project Funds | \$981,516.68 |

Summary:

Total of credited Costs:

Add: _____

Deduct: **\$981,517.00**

The Contract Time increased by:

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

Recommended

Accepted

Reviewed and Concurred

Project Consultant's Signature Date

Robert McMillon

Contractor's Signature Date

Jim Hewett

Facilities Project Manager Date

Dave A. Archer

Project Consultant's Typed Name

Zelch & McMillon, Architects

Contractor's Typed Name

Hewett-Kier Construction Co., Inc.

Facilities Project Manager's Typed Name

Facilities & Operations Management

Project Consultant's Firm Name

Contractor's Firm Name

The School Board of Broward County, FL

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

Change Order Categories

Sub Categories

Owner's Request Unforeseen Consultant Error Consultant Omission

Regulatory Compliance Safety/Emergency

The School Board of Broward County, Florida
Palmview Elementary School Phased Replacement 1131-24-01/P000207
Zelch & McMillon, Architects

SSBC Design & Material Standards, January 01, 2008 Edition, rev. 02-01-08 RW, 05-01-08 RW, 05-01-09 RVU

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Construction Change Order
August 20, 2010
Page 1

EXHIBIT H



Hewett-Kier Construction, Inc.

General Contractors • Construction Managers • Design Builders

3451 NW 14th Ave.
Pompano Beach, FL 33064

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

July 18, 2013

Letter No.-00011

The School Board of Broward County,
1643 North Harrison Parkway
Sunrise, FL 33323

Fax No:754-321-1680

Subject: Palmview & Cypress Elementary School
Project No. 1131-23-01 / 1781-24-01

Mr. Archer,

As you are aware, Hewett-Kier Construction Inc. has been forced to bear the costs and burden of extended general conditions costs on Palmview Elementary and Cypress Elementary projects for several years now. Every construction professional that has reviewed these projects has agreed that Hewett-Kier is entitled to additional fees due to the extension of final completion dates due to no fault of Hewett-Kier. This includes, the SBBC's construction department, the project architects and every consultant hired by the SBBC. The contracts are unambiguous as to the compensation due to Hewett-Kier under these circumstances - \$1,250.00 per day.

In November 2011 we met with SBBC personnel and agreed in principle on a compromise both as far as the number of days we were seeking and the "per diem". We agreed on 283 compensable days for Palmview and 221 compensable days for Cypress. In the spirit of cooperation, we agreed to \$900/day for the per diem. This agreement, of course, never made it to the Board and Hewett-Kier was forced to continue to incur the costs of extended contract performance through no fault of its own. As a result, we withdrew our compromise per diem of \$900.00.

Fast forward to June 2013 and we once again met with SBBC personnel in good faith to resolve our claims for extended general conditions. Please note that additional delays beyond the control of Hewett-Kier occurred between our November 2011 meeting and our June 2013 meeting. In June 2013 we agreed in principle to accept 247 days on our claim on Cypress of 329 days and to accept 285 days on Palmview on our claim of 471 days. As a courtesy, we also agreed to reduce our per diem from the contractually mandated \$1,250.00 to \$1,100.00. This reduced the amount

EXHIBIT H

to be paid to Hewett-Kier to \$271,700.00 on Cypress and \$313,500.00 on Palmview. We were prepared to put these two projects behind us on these terms.

The SBBC subsequently requested a conference call to request Hewett-Kier to consider further discounting its claims. That call was attended by you, Denis Herrmann, Shelley Meloni as well as other SBBC personnel. We have considered your request and based on our longstanding relationship with the School Board of Broward County and our respect for the above individuals, we are making a onetime offer to further reduce our claims as follows. We will accept \$298,495.00 on Palmview and \$253,501.00 on Cypress. Should this not be accepted and approved, we will proceed to enforce our contractual rights.

Very Truly Yours,
Hewett-Kier Construction Inc.


James R. Hewett
President

EXHIBIT H

| SUB/SUPPLIER | | CONTRACT WITH CHANGES SOURCE | SUMMARY/SUB |
|--------------------------------|-----------------------------|--|-------------|
| GLNP Amount | Sub/Supplier | | |
| PALEVEY ELEMENTARY SCHOOL. | | | |
| Project No. 1181-23-017-A01207 | | | |
| DUMPSITE FOR CUD 22 WORK | HEWETT-KIER | \$250.00 CUD 22 | 350.00 |
| CHANGE ORDER PRINTING | HEWETT-KIER | \$15.16 CO #3 \$1,498.31 CO #4 | 1,611.47 |
| 1050 SURVEYING | 14,000 BRUCE CARTER | \$10,650.00 9. GLNP \$800.00 CO #3 \$2,250.00 CO #4 | 13,500.00 |
| METER FEES | NIC | | |
| 1019 FINAL CLEANING | 9,250 CORPORATE BLD SERVICE | \$5,061.64 6. GLNP | 5,481.64 |
| 1102 AERIAL PHOTOGRAPHS. | 2,279 AERIAL PHOTOGRAPHY | \$2,218.00 10. GLNP \$887.00 CO #4 | 2,881.30 |
| 1410 GROUND PENETRATING RADAR | GROUND ROUND | | |
| 1600 GROUND BREAKING CEREMONY | 6,000 | \$800.00 CUD 19 | 900.00 |
| 1500A/C TRAILER-KITCHEN ITEMS | 1,300 WORK SPACE PLUS | \$1,600.00 11. GLNP \$2,112.75 CUD 16 | 3,712.75 |
| OWNER STORAGE BLDG 5 | | | |
| RELOCATE FOOD SVC ITEMS | 300 | \$1,285.00 CO #4 \$827.95 GLP 1180 | 1,782.95 |
| SECURITY GUARDS | NIC | | |
| 2280 TERMINATE CONTROL | 2,354 ALAN SMITH | | |
| 2350 BLDG DEMOLITION | 84,000 HIGHWAY DEMO | \$18,880.00 15. GLNP \$1,800.00 15GLMP/BO \$75.00 40 GLMP/BO \$600.00 CO #4 | 21,825.00 |
| 2070 SITE DEMO | 38,000 MIAKE WRECKING | \$18,472.00 16. GLNP \$4,877.10 CO #4 | 23,449.00 |

EXHIBIT H

| | | |
|-----------------|------------------------|--|
| 2201 STAGE FILL | 10,000 STANFORD & SONS | |
|-----------------|------------------------|--|

| | | |
|----------------------------------|-------------------------|---------------------------------|
| 2200 EARTHWORK | 95,708 STANFORD & SONS | \$150,198.80 17, GMP 751,802.01 |
| | | \$1,222.50 17 GMP/BQ |
| | | \$1,822.84 17 GMP/BQ |
| | | \$2,774.51 17 GMP/BQ |
| | | \$1,020.00 18, GMP |
| | | \$1,822.75 25 GMP/BQ |
| | | \$4,588.00 18, GMP/BQ |
| | | \$2,720.00 21, GMP |
| 2880 FIRE LINE | | 5157,482.00 24, GMP |
| 2731 SEWER | 82,427 STANFORD & SONS | \$9,500.00 25, GMP |
| | | \$139,073.00 26, GMP |
| 2731 LIFT STATION | 57,072 STANFORD & SONS | \$128,842.22 27, GMP |
| 2720 DRAKE | 84,334 STANFORD & SONS | \$125,821.86 28, GMP |
| 2674 ASPHALT PAVING | 168,398 STANFORD & SONS | \$844.00 CUD 2 |
| | | \$3,076.00 CUD 5 |
| | | \$424.00 CUD 6 |
| | | \$4,728.00 CUD 22 |
| 2600 SITE CONCRETE, CURBS, | 54,540 STANFORD & SONS | \$942.50 CO #1 |
| 2680 STRIPPING, STORAGE, BUMPERS | 4,424 STANFORD & SONS | \$75,154.00 CO #3 |
| | | \$27,784.61 CO #3 |
| | | \$22,785.00 CO #4 |
| 2618 GEO PAVERS | 13,912 STANFORD & SONS | (\$82,100.00) DOB |
| 2800 LANDSCAPE | 32,201 DIXIE LANDSCAPE | \$42,500.00 30, GMP 111,876.25 |
| | | \$51,058.00 30, GMP |
| | | \$2,482.25 35 GMP/BQ |
| TREE RELOCATION | NIC | \$23,700.00 34, GMP |
| | | \$1,700.00 34 GMP/BQ |
| TEMPORARY IRRIGATION | NIC | \$951.00 CUD 9 |
| | | \$1,200.00 CUD 1 |
| 2886 SOD | | \$250.00 CUD 22 |
| | | \$125.00 CO #4 |
| 2886 SOD MAINTENANCE | 1,500 DIXIE LANDSCAPE | \$825.00 CO #4 |
| | | \$7,085.00 CO #4 |
| 2885 TOPSOIL 60/40 | 20,200 DIXIE LANDSCAPE | |
| | | 42,538 DIXIE LANDSCAPE |
| 2881 CHAIN LINK FENCES | 31,801 TROPIC FENCE | \$35,080.00 \$1, GMP 40,408.00 |
| | | \$4,483.00 CO #3 |
| | | \$825.00 CO #4 |

EXHIBIT H

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8/1/2013

| | | | | | |
|--------------------------------|--------|-----------------------|----------------|-----------|------------|
| 1510 TEMPORARY FENCE | 12,398 | NATIONAL CONST RENTAL | \$4,732.68 | 12, GMP | 23,232.78 |
| | | | \$7,885.38 | BO | |
| 275 COLOR COAT & LINESTRIPES | | | \$2,987.61 | CUD 1/BQ | |
| | | | \$812.15 | CUD/BQ | |
| | | | \$8,888.00 | CUD #17 | |
| PLYWOOD FENCE | | | \$1,208.78 | 12, GMP | 3,492.70 |
| | | | \$2,284.00 | CO #4 | |
| FLORIDA FENCE | | | | | |
| N/A | | | | | |
| 11480 BASKETBALL POLES & BOARD | 13,620 | MCCOURT CONST | \$11,000.00 | 28, GMP | 20,700.00 |
| 2880 PLAYGROUND EQUIPMENT | 68,208 | REP SERVICES | \$500.00 | 28GMP/BO | |
| 2880 PLAYGROUND SAFETY SURFACE | | | \$22,888.63 | 32, GMP | 62,725.53 |
| 2330 #70 TRAP SAND | | | (\$143.10) | CO #2 | |
| BIKE RACKS | | | \$25,903.00 | 32, GMP | 25,903.00 |
| SIDEWALKS | | | | | |
| | | incl. below | | | |
| 2316 FILL & GRADE SIDEWALKS | | | | | |
| 3000 CONCRETE | | 755,588 ALAN W SMITH | \$3,103.00 | 28, GMP | 408,855.87 |
| REINFORCING STEEL | | | \$83,583.00 | 12, GMP | |
| REBAR LABOR | | | \$248,743.00 | 35, GMP | |
| HOUSEKEEPING PADS | | | \$168,300.00 | 36, GMP | |
| CONCRETE TOPPING | | | \$2,100.00 | 36, GMP | |
| 4000 MASONRY | | | \$441.00 | 36, GMP | |
| DECORATIVE BLOCK | | | \$6,850.00 | CUD 14 | |
| SAWCUT RETAINING WALL | | | \$8,757.00 | CUD 22 | |
| SPEEDY CONCRETE CUT | | | \$2,700.00 | CO #3 | |
| | | | \$3,085.00 | CO #4 | |
| | | | \$40,825.00 | CO #4 | |
| | | | (\$151,451.13) | DOP | |
| | | | \$728.24 | 48 GMP/BO | 728.24 |

EXHIBIT H

| | | | | | | |
|--------------------------------------|-------------------------------|---------------|----------|--------------|--|--|
| | | | | | | |
| 5220 STRUCTURAL STEEL | 131,410 STEEL FABRICATORS | \$182,295.00 | 37, GMP | 210,251.00 | | |
| | | (\$1,555.00) | 37GMP/BQ | | | |
| | | \$73,695.00 | 38, GMP | | | |
| | | (\$3,355.00) | 38GMP/BQ | | | |
| METAL DECK | Incl. above | \$2,120.00 | 38GMP/BQ | | | |
| | | \$983.00 | 38, GMP | | | |
| 6120 TOUCH UP PAINT/WELDS | 1,500 STEEL FABRICATORS | \$11,152.00 | CO #4 | | | |
| | | \$4,356.00 | CO #4 | | | |
| | | (\$40,915.00) | DOP | | | |
| 5600 ROOF & HATCH LADDERS | 117,000 STEEL FABRICATORS | | | | | |
| HANDRAILS | Incl. above | | | | | |
| OH DOORS ANGLES | Incl. above | | | | | |
| STAGE DRAPERY SUPPORTS | Incl. above | | | | | |
| CU SUPPORT | Incl. above | | | | | |
| INSTALL BOLLARDS | Incl. above | | | | | |
| SEAS STAR NOSINGS | 716 STEEL FABRICATORS | | | | | |
| 6100 FOUNISH CARPENTRY | 17,881 HEMMET-KIER | \$20,161.84 | 40, GMP | 20,161.84 | | |
| | | (\$1,239.10) | CO #4 | (\$1,239.10) | | |
| 6400 CABINETS | 50,370 INSTITUTIONAL PRODUCTS | \$48,850.00 | 41, GMP | 33,911.00 | | |
| | | (\$14,730.00) | CO #4 | | | |
| 12358 MUSIC CASEWORK | 9,114 LOTTSPEICH (see 10505) | | | | | |
| 7121 DAMPROOFING | 15,460 METRO CAULKING | \$17,250.00 | 42, GMP | 25,015.00 | | |
| | | \$8,890.00 | 48, GMP | | | |
| 7300 SEALANTS & CAULKING | 9,370 METRO CAULKING | \$80.00 | CO #4 | | | |
| FIRESTOP PENETRATIONS | In tube | \$880.00 | CO #4 | | | |
| 7270 ALLOWANCE TO FIRESTOP EXIST. PT | | 5,000 | | | | |
| 7270 FIRESTOP HEAD OF WALL | 16,000 TROPIC FIRE PROTECTION | \$12,080.00 | 43, GMP | 14,324.50 | | |
| SPRAYED-ON FIREPROOFING | INCO | \$2,334.50 | 43GMP/BQ | | | |

EXHIBIT H

5
4/12/2013

| | | | | |
|--------------------------------|----------------------------|---------------|----------|------------|
| 7826 BUILT-UP ROOFING | 171,000 CROWTHEER ROOFING | \$157,530.00 | 44, GMP | 173,650.78 |
| LIGHTWT. INSUL. CONCRETE | Ind. above | \$986.00 | 44GMP/BO | |
| 7722 ROOF HATCH | 2,100 CROWTHEER | \$2,000.00 | 45, GMP | |
| | | \$2,134.00 | CUD 8 | |
| | | (\$200.00) | CUD 20 | |
| | | (\$300.00) | CQ 12 | |
| | | \$0,883.76 | CO 44 | |
| | | \$1,887.00 | CO 45 | |
| WALL FLASHING | SBC Industries | \$212.00 | CO #3 | 212.00 |
| 8100 STEEL DOORS & FRAMES | 23,527 QUALITY ENGINEERING | \$23,028.42 | 47, GMP | 0.00 |
| | | \$8,480.54 | 47GMP/BO | |
| 8210 WOOD DOORS | 16,282 QUALITY ENGINEERING | \$13,882.00 | 48, GMP | |
| 8710 FINISH HARDWARE | 47,288 QUALITY ENGINEERING | \$46,110.00 | 52, GMP | |
| PANIC DEVICES FOR EGRESS | Ind. above | (\$546.88) | CO 44 | |
| 8710 DOORS, FRAMES, HOWE LABOR | 24,000 HURRICANE RESISTANT | \$11,250.00 | 47, GMP | 19,450.00 |
| INSTAL. HOWE FOR EXPRESS | 300 | \$3,300.00 | 48, GMP | |
| 8810H ROLLING DOORS | 5,444 WAYNE DALTON | \$4,900.00 | 52, GMP | |
| 8811 S.S. ROLL UP SHUTTER | 3,288 | \$5,100.00 | 50, GMP | 4,635.00 |
| 8810 ACCESS DOORS | 600 | (\$700.00) | 50GMP/BO | |
| 8820 WINDOWS | 30,887 ARSO ENTERPRISES | \$20,525.00 | 51, GMP | 24,087.00 |
| | | \$890.00 | 51GMP/BO | |
| GLASS & GLAZING | Ind. above | \$3,172.00 | 53, GMP | |
| 8814 LARGE MIRRORS | 2,859 ARSO ENTERPRISES | | | |
| 9200 GYPSUM BOARD SYSTEMS | 427,115 ATLANTIC INTERIOR | \$1,000.00 | 15, GMP | 201,886.47 |
| VENEER PLASTER | Ind. above | \$1,350.00 | 47, GMP | |
| | | \$880.00 | 48, GMP | |
| | | \$247,500.00 | 54, GMP | |
| | | \$150.00 | 54GMP/BO | |
| | | \$237.00 | 54GMP/BO | |
| STUCCO | Ind. above | \$1,257.00 | CO 44 | |
| | | (\$50,589.88) | DOP | |

EXHIBIT H

| | | | | |
|--------------------------------|---|-------------|-------------|-----------|
| 8810 CERAMIC & QUARRY TILE | 98,247 SPECTRA FLOORING | \$71,780.00 | 55, GMP | 74,271.28 |
| 9311 MARBLE SKILLS | 450 SPECTRA FLOORING | \$460.00 | 55, GMP | |
| 9510 ACOUSTICAL CEILINGS | 50,458 ACOUSTI ENGINEERING | \$2,041.28 | CO #4 | |
| 9520 ACOUSTICAL WALL PANELS | 32,274 ACOUSTI ENGINEERING | \$40,018.00 | 57, GMP | 75,288.00 |
| 960 VCT FLOORING | 36,325 ACOUSTI ENGINEERING | \$27,150.00 | 59, GMP | |
| RUBBER STAIR TREADS | 0 | \$5,000.00 | 55, GMP | |
| 9800 PAINTING | 62,425 HIGHWAY PAINTING | \$500.00 | 50, GMP | 57,815.00 |
| 9800 PAINT FRAMES BITUMATIC | 2,850 HIGHWAY PAINTING | \$46,325.00 | 51, GMP | |
| 9800 PAINT COLOR CODING PIPES | 1,570 | \$3,353.00 | 57, GMP/BOD | |
| 9730 URETHANE FLOORING | 5,730 | \$1,852.00 | CUD 15 | |
| 10532 ALUMINUM WALKWAYS | 81,472 PERFECTION ARCHITECTURE | (\$220.00) | CD #4 | |
| 10100 VISUAL DISPLAY BOARDS | 8,444 AMERICAN VISUAL | \$95,027.00 | 62, GMP | 828.00 |
| 10100 TRACKBOARDS | 2,620 BEST-RATE CHALKBOARD (Completed Art Visual Contract) | \$4,851.00 | 62, GMP | 4,851.00 |
| PEGBOARD | Incl. above | | | |
| 10770 TOILET PARTITIONS | 9,356 ALL SPECIALTY SALES | \$9,288.00 | 63, GMP | 34,518.00 |
| 10800 TOILET ACCESSORIES | 10,183 ALL SPECIALTY SALES | \$8,770.00 | 65, GMP | |
| LOUVERS | 0 | \$11,085.00 | 71, GMP | |
| 10400 SIGNS | 0 | \$2,042.00 | 73, GMP | |
| 10400 PLAQUE | 0 | \$288.00 | CUD 18 | |
| 10800 JOB SIGN | 1,500 SIGN A RAMA | \$2,982.00 | CO #2 | |
| 10222 FIRE EXTINGUISHERS & CAB | 3,275 TRIANGLE FIRE | \$2,844.00 | CO #2 | 1,231.88 |
| | | \$41,00 | CO #4 | 3,400.00 |

EXHIBIT H

7
6/11/2013

| | | | | | | | | |
|------------------------------|---------|-----------------------------|--|----------------|-----------|------------|--|--|
| 4220 SAW CUT MASONRY OPEN | 250 | | | | | | | |
| 10508 LOCKERS & SHELVING | 7,398 | LOTSPEICH | | \$7,900.00 | 68. GMP | 24,430.00 | | |
| | | | | \$7,900.00 | 77. GMP | | | |
| | | | | \$8,580.00 | CO #4 | | | |
| 10300 SS. RAIN HOODS | 6,335 | BONNERT SHEET METAL | | \$6,892.00 | 65. GMP | 10,270.00 | | |
| | | | | \$2,578.00 | CO #4 | | | |
| 10280 VINYL CORNERGUARDS | 600 | TEPPOMARK | | \$424.20 | 84. GMP | 388.20 | | |
| | | | | \$24,588.00 | 70. GMP | 39,738.00 | | |
| 10352 ACCORDION DOOR | 28,000 | HISFCOR | | \$15,150.00 | CO #4 | | | |
| 11400 FOOD SERVICE EQUIPMENT | 325,000 | LACE FOODS | | \$222,723.90 | 74. GMP | 15,830.50 | | |
| | | | | (\$276,732.50) | DOP | | | |
| WALK-IN COOLER/FREEZER | | Incl. above | | | | | | |
| KITCHEN HOOD | | Incl. above | | | | | | |
| ISOMAT SYSTEM | | Incl. above | | | | | | |
| S. STEE. TRENCH DRAINS | | Incl. below | | | | | | |
| FLY FANS | | In mech. | | | | | | |
| 11002 STAGE CURTAINS | | 4,684 NATIONAL STAGE&WINDOW | | \$4,688.00 | 72. GMP | 5,768.00 | | |
| | | | | \$1,100.00 | 72 GMP/BO | | | |
| 11132 PROJECTION SCREENS | | 2,621 ALL SPECIALTIES | | | | | | |
| 11145 RESIDENTIAL APPLIANCES | | 3,145 MESHMEN | | \$1,768.84 | 75. GMP | 1,763.34 | | |
| | | SEARS | | \$2,633.15 | 75. GMP | 263.15 | | |
| | | H-K | | | | | | |
| 15400 PLUMBING | | 425,360 HEAVY PLUMBING | | \$280,000.00 | 79. GMP | 281,340.50 | | |
| | | | | \$1,500.00 | 78 GMP/BO | | | |
| | | | | \$2,540.19 | CO #4 | | | |
| PLUMBING DEMO | | Incl. above | | \$14,400.00 | CO #4 | | | |
| | | | | (\$28,468.68) | DOP | | | |
| BACKFLOW PREVENTERS | | Incl. above | | | | | | |
| 15300 FIRE SPRINKLER SYSTEM | | 120,000 SPRINKLER SYSTEM | | \$89,385.00 | 78. GMP | 91,714.34 | | |
| | | | | \$1,045.00 | CUD 21 | | | |
| | | | | \$884.34 | CO #4 | | | |

EXHIBIT H

8

| | | | | |
|-------------------------|--------------------------------|---------------------|-----------|--------------|
| 15000 D/HVAC | 550,000 THERMAL CONCEPT | \$3,500.00 | 38 GMP/80 | \$37,815.00 |
| CONTROLS | Ind. above | \$350,000.00 | 30 GMP | |
| | | \$74.00 | CUD 20 | |
| | | \$12,785.00 | CO #3 | |
| | | (\$78,182.00) | DOP | |
| 16000 E/ELECTRICAL | 945,100 UNIVERSAL ELECTRIC | \$78,182.00 | 81 GMP | 702,531.88 |
| FIRE ALARM BLDG. #3 | Ind. above | \$1,357.90 | CUD 1 | |
| | | \$525.00 | CUD 10 | |
| | | \$6,786.00 | CO #1 | |
| | | \$24,118.23 | CO #3 | |
| | | \$420.00 | CO #4 | |
| | | \$2,541.32 | CO #4 | |
| SUBTOTAL | \$5,771.557 | \$18,283.00 | CO #4 | |
| CONTINGENCY | 303.368 | (\$178,894.67) | DOP | |
| BUILDERS RISK ALLOWANCE | 78,075 BUILDERS RISK INSURANCE | \$78,347.10 | 84 GMP | 196,434.32 |
| TOTALS | \$6,151,000 | \$1,00 | CO #1 | |
| | | \$1,637.00 | CO #4 | |
| | | \$260.00 | CO #4 | |
| | | \$58,480.00 | CO #4 | |
| | | \$23,256.00 | CUD 23 | |
| | | \$86,822.00 | CUD 24 | |
| | | COST | | 4,342,447.89 |
| | | DPO Savings COA #75 | | |

EXHIBIT H

9
6/1/2013

| CUD'S ISSUED AND AMOUNTS | | |
|--------------------------|-------------------------|---------------------|
| Change Order # 1 | \$8,384.00 | |
| Change Order # 2 | \$2,384.00 | |
| Change Order # 3 | \$1,75,573.00 | \$1,397.00 CUD 1 |
| Change Order # 4 | \$27,477.00 | \$814.00 CUD 2 |
| Change Order # 5 | \$925.00 | VOE CUD 3 |
| Change Order # 6 | \$1,897.00 SBC Flashing | VOE CUD 4 |
| | | \$2,078.00 CUD 5 |
| | | \$1,224.00 CUD 6 |
| | | VOE CUD 7 |
| | | \$5,813.00 CUD 8 |
| | | \$351.00 CUD 9 |
| | | \$908.00 CUD 10 |
| | | \$1,200.00 CUD 11 |
| | | \$7,250.00 CUD 12 |
| | | VOE CUD 13 |
| | | \$5,950.00 CUD 14 |
| | | \$1,682.00 CUD 15 |
| | | \$5,950.00 CUD 16 |
| | | \$5,889.00 CUD 17 |
| | | \$88.00 CUD 18 |
| | | \$902.00 CUD 19 |
| | | \$574.00 CUD 20 |
| | | \$1,045.00 CUD 21 |
| | | \$12,085.00 CUD 22F |
| | | \$28,255.00 CUD 23 |
| | | \$28,828.00 CUD 24 |
| | | \$116,578.00 CUD'S |



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

EXHIBIT I

(754) 321-1500

Document 00550: Notice to Proceed (CM)

Date: December 10, 2009

To: James R. Hewett, President

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

Building Permit No.:
11310SPR542PR2P

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 Waremberg, Director, Supply Management & Logistics (With Copy of IRS Form W-9 Only)
- ~~Request File (With Original Attachments)~~
- Contract Set (With Original Attachments)
- Files

EXHIBIT J

| Activity | Description | Start Date | End Date | Duration | % Complete | Early Start | Early Finish | Total Float |
|----------------------------------|--|------------|----------|----------|------------|-------------|---------------|-------------|
| PALMIEN ELEMENTARY SCHOOL | | | | | | | | |
| 00040V | ACCEPTANCE OF GMP | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 31AUG09A | 08OCT09A |
| 01000.00 | COMPLETION OF DESIGN REVIEW | | | | 0 | 0 | 100 | 31AUG09A |
| 00041V | ISSUE BUILDING PERMIT - BLDGS 1 & 2 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 01SEP09A | 06APR10 |
| 00042V | ISSUE BUILDING PERMIT - BLDG 7 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 01SEP09A | 23NOV09A |
| 00041V | ADVERTIZE TO BIDDERS | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 16SEP09A | 15OCT09A |
| 01000.01 | PRESENT SUB BIDS AND MAKE RECOMMENDATIONS | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 18OCT09A | 18NOV09A |
| 01000.02 | SUBMIT BUILDERS RISK INSURANCE | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 30NOV09A | 30NOV09A |
| 01000.04 | SUBMIT PAYMENT / PERFORMANCE BOND | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 01NOV09A | 01NOV09A |
| 01000.05 | PRECONSTRUCTION CONFERENCE | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 07DEC09A | 07DEC09A |
| 01310 | NOTICE TO PROCEED | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 11DEC09A | 14DEC09A |
| 00043V | SECURE MAJOR SUBCONTRACT AGREEMENTS | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09 | 28DEC09 |
| CONSTRUCTION OVERVIEW | | | | | | | | |
| 01000.06 | CM FEE - GENERAL CONDITIONS | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09A | 07MAY11 |
| 01000.07 | CM FEE - CONSTRUCTION | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09A | 07MAY11 |
| 01000.08 | CM FEE - OVERHEAD | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09A | 07MAY11 |
| 01000.09 | CM FEE - PROFIT | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09A | 07MAY11 |
| 00044V | MLESTONE START - MOBILIZE ON SITE | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09 | 14DEC09 |
| 01350 | GROUNDBREAKING CEREMONY | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09 | 23JUL10 |
| 01320 | AERIAL PHOTOGRAPHY | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09 | 28DEC09 |
| 00700 | OWNER CONTINGENCY - BALANCE REMAINING | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09 | 14DEC09 |
| 16000 | UNCOMMITTED FUNDS - BALANCE REMAINING | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 14DEC09 | 509 |
| 00045V | MLESTONE FINISH - BUILDING PAD @ BUILDING 7 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 18JAN10 | 0 |
| 00046V | MLESTONE FINISH - POUR FLOOR SLAB @ BUILDING 7 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 25MAR10 | 2 |
| 00047V | MLESTONE FINISH - DRY IN ROOF @ BUILDING 7 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 15JUL10 | 7 |
| 00051V | PRESTOPE FIBRE-TEN FIBER OPTIC CABLE @ BLDG 7 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 28OCT10 | 14 |
| 00052V | CAVEA - JANUARY | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 17FEB10 | 2 |
| 01000.10 | CONSTRUCTION ACCEPTANCE / PUNCH LIST BLDG. 7 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 18DEC10 | 18JAN11 |
| 01700 | Demonstration and Training | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 01DEC10 | 16JAN11 |
| 01820 | MOVE STAFF AND STUDENTS INTO BLDG. 7 | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 20DEC10 | 08JUN11 |
| 00081V | FINAL COMPLETION | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 01JUL11 | 0 |
| SYSTEM PLUMBING PIPING | | | | | | | | |
| 15105A | SYSTEM PLUMBING PIPING | 01JUN10 | 01JUN11 | 0 | 0 | 100 | 021DEC09 | 12DEC09 |
| | | | | | | | | 33 |
| | | | | | | | Start (or 23) | |

PALMIEN ELEMENTARY SCHOOL
Baseline Schedule

Exhibit "J"
BJS (initials)

© Project Schedules, Inc.

EXHIBIT J

Return completed form as needed to:
 Office of Educational Facilities
 325 West Gaines Street, Room 1054
 Tallahassee, Florida 32399-0400
 (850) 245-8494
 Fax (850) 245-8226 or (850) 245-8504

FLORIDA DEPARTMENT OF EDUCATION

Office of Educational Facilities

CERTIFICATE OF OCCUPANCY

OEF USE ONLY

INSTRUCTIONS: Submit one copy of the completed form for each project over \$500,000. Reproduce this form in sufficient quantity for your use.

RE: School Board of Broward County, Florida

Palmview Elementary School

New Food Service-Multipurpose Building #7 DPSLW

Project No. #113108P642PR2P

School District Community College

School Name Campus

Description of Project

EFIS Number (if applicable)

In accordance with Section 1013.37(2)(c), Florida Statutes, and upon recommendation of the project architect/engineer and the certified inspector, as stated below, the subject project is ready for occupancy.

Signature: [Signature] Superintendent President Designee

Date: 8-23-11

Intended Occupancy Date: August 15, 2011

PROJECT ARCHITECT/ENGINEER AND CERTIFIED INSPECTOR I have inspected the subject project and, to the best of my knowledge and ability, I have determined that the safety systems* are working satisfactorily; the facility is in compliance with statutes, rules and codes affecting the health and safety of its occupants; and that no asbestos-containing materials were specified for use in this building, nor to the best of my knowledge were asbestos containing materials used in the construction of this project.

Architect or Engineer of Record:

High Performance Green Building Standard Used (S. 255.2575(2), F.S.)

Rating Achieved

Robert E. McManon, Kelch & McManon, Architects
Name (Type or Print)

AA-P000244
License #

February 28, 2013
Expiration Date

Signature: [Signature] Architect Engineer

Building Official:

Robert HOMBERGER Bu 1112
Name (Type or Print)

License #

11-30-11
Expiration Date

Signature: [Signature]

Contractor:
Hewlett-Kier Construction, Inc.
James R. Hewlett
Name (Type or Print)

CGC 008022
License #

9/31/2012
Expiration Date

Threshold Inspector (If Applicable):
Jean-François Desauvage PE
Name (Type or Print)

PE Lic. No: 47885 / SI Lic. No: 1080
License #

2/28/2013
Expiration Date

Project Information

Code/Edition: FBC 2004

Construction Type(s): II-B

Occupant Load: 500

Automatic Sprinkler System Required: N

District/Community College Permit Number: 113108P642PR2P

Special Permit Stipulations

*Safety systems include, but are not limited to: exiting, safety, rescue, fire rating, fire protection, means of egress, master valves, eye wash and dousing shower in science lab; emergency disconnects in shops; fume and dust collection systems; heat and smoke detectors, stage protection including curtain operation, smoke vent, sprinklers, etc.; kitchen hood; fire sprinklers; smoke venting; illumination of means of egress; emergency lighting; emergency power; exit lights; fire alarm systems with required incidental functions; fire extinguishers; fuel fired heaters; electrical illumination; electrical system required ventilation; toilet facilities; kitchen hot water supply; water supply; and sewage disposal as they apply to this project.

Revised August 2009

OEF 110B

SECTION III
FULL TEXT OF ADMINISTRATIVE RESPONSES

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
OFFICE OF FACILITIES & CONSTRUCTION

SHELLEY N. MELONI, R.A., NCARB, LEED® AP
TASK ASSIGNED CHIEF FACILITIES & CONSTRUCTION OFFICER

Telephone: (754) 321-1610

Facsimile: (754) 321-1680

July 17, 2013

TO: Patrick O. Reilly, Chief Auditor
Office of the Chief Auditor

FROM: Shelley N. Meloni, R.A., NCARB, LEED® AP *SM*
Task Assigned Chief Facilities & Construction Officer

SUBJECT: MANAGEMENT RESPONSE TO
OFFICE OF THE CHIEF AUDITOR, APRIL 2012,
REVIEW OF THE PALMVIEW ELEMENTARY SCHOOL
NEW FOOD SERVICE BUILDING, RENOVATIONS AND
SITE IMPROVEMENTS PROJECT

Finding # 1:

The Construction Manager, the Project Consultant, as well as Facilities & Construction Management staff did not adequately manage the Palmview Elementary School New Food Service Building, Renovations and Site Improvements Project.

Management Response - Office of Facilities & Construction (OF&C)

Status:

OF&C met with Hewett Kier, Construction Inc. to discuss mitigating the financial impact of Extended General Conditions as a result of delays to the project duration.

Hewett Kier, Construction, Inc. agreed to swap delay days attributed to the Construction Manager in exchange for excusable delays attributed to unforeseen conditions and Owner delays.

In addition, the Construction Manager discounted the daily rate for extended General Conditions from \$1,250/day to a rate of \$1,100 per day.

As per the Construction Management Agreement, Non Compensable time applies exclusively to all subcontractors, i.e., NO DAMAGES FOR DELAYS, see ARTICLE 24.14 of the Agreement.

In regards to the Construction Manager, the remedy for Delays for the duration of the contract period would be either:

- *Extended General Conditions (See ARTICLE 7.1.04) for excusable delays*
- *Liquidated Damages for delays attributed to the Construction Manager. (See ARTICLE 5 LIQUIDATED DAMAGES)*

The Audit Report did not reference contract language which would lead to a conclusion that the Construction Manager is only entitled to Non-Compensable Delays.

Finding # 2:

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.

Management Response - Office of Facilities & Construction (OF&C)

Status:

OF&C implemented procedures to ensure that a Notice-to-Proceed (NTP) will be verified for completeness prior to being issued to the Contractor. See attached Contract Bulletin No. 004/017 issued January 31, 2013.

Finding # 3:

Facilities & Construction Management did not promptly issue Construction Change Directives (CCD) to the Construction Manager (CM), Hewett-Kier Construction, Inc.

Management Response - Office of Facilities & Construction (OF&C)

Status:

Recommendation as to OCA's Audit, Finding # 3 has been implemented.

OF&C will continue to adhere to the contractual procedures for issuing and expediting Change Orders and Construction Change Directives.

Finding # 4:

Summary information described in the Construction Change Order # 17 document (Form 01250g) contains unsubstantiated statements and no documentation or defined criteria mandating the prohibition of adding classrooms.

Management Response - Office of Facilities & Construction (OF&C)

Status:

The current process implemented requires all Change Orders to be reviewed by the Project Management Council's (PMC) process.

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.

SNM/SVC/DA:djc
Attachment

c: Sonja Coley, Senior Project Manager, Construction
Dave Archer, Project Manager III
Audit Response File, Office of Facilities & Construction

**THE SCHOOL BOARD OF PEARL CREEK COUNTY, FLORIDA
OFFICE OF FACILITIES AND CONSTRUCTION**

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

Best Practice Bulletin No. Contract Bulletin No. 004 / 017 McGladrey Audit Finding No.

Purpose:

Establish a procedure to coordinate the issuance of the Notice to Proceed with the receipt of the Building Permit. See also CB 017.

Issue:

Revised Document 00550 to incorporate a placeholder for the Building Permit Number and established the procedure to prohibit issuance of a Notice to proceed without a Building Permit issued by the CBO.

Document 00550 issued to Project Managers and project Consultants. Currently posted on web site.

Procedure:

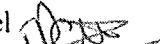
1. Include revised Document 00550 in all bidding documents
 - a. Responsible Parties
 - i. Project Manager
 1. Ensure the project Consultant has complied at Phase III 50% and 100% Construction Document submittals.
 2. Provide complete, duplication-ready Construction Documents, including Division 0 and 1 documents, to Design and Construction Contracts Department when Permit Approval Memo is issued by the CBO.
 3. Do not issue a Notice to Proceed without the appropriate, valid Building Permit for the Work encompassed in the Notice to Proceed.

SECTION IV
OFFICE OF THE GENERAL COUNSEL

MEMORANDUM

TO: Gerardo Usallan, Jr., Manager, Facility Audits, and
Mr. William J. Wright, Manager, Facility Audits

FROM: Thomas C. Cooney, Assistant General Counsel 

VIA: J. Paul Carland, II, General Counsel 

DATE: September 27, 2013

SUBJECT: Requests for Legal Opinion – Hewett-Kier Claims
Cypress Elementary School - Project #1781-24-0 I/P000346
Palmview Elementary School - Project #1131-23-0 I/P.000207

This is in response to memoranda from Messrs. Usallan and Wright dated August 8, 2013 requesting legal opinions regarding Hewett-Kier's contractual entitlement to extended general conditions for both of the above referenced projects.

The issues, contracts and legal questions are substantially similar for both projects; therefore, this memorandum synthesizes the requests into three basic questions as set forth below. Please note that question number 1 below is a threshold legal question, the answer to which determines the entitlement of Hewett-Kier to extended general conditions on both projects. Once the conclusion of non-entitlement was reached, further analysis of dates, amounts and facts became unnecessary.

Question 1: “Is Hewett-Kier entitled to Extended General Conditions as [it has] requested [on both projects]?”

Answer: No. The Construction Manager, Hewett-Kier (hereinafter, the “CM” or “Hewett-Kier”) is not *contractually* entitled to extended general conditions based primarily upon its failure to strictly comply with the notice provisions contained in the contract between the parties. Notwithstanding such preclusion however, The School Board of Broward County, Florida (the “School Board”) is not prohibited from approving additional compensation to the CM should it see fit to do so.

The School Board and the CM entered into valid and enforceable Agreements Between Owner and Construction Manager approved at the Regular School Board Meetings of July 24, 2007 (Palmview) and November 14, 2007 (Cypress). The terms of the Contracts are clear and unambiguous regarding claims for delay damages. Pursuant to Article 42.1, the CM agreed that the Owner will not be liable for any claim that the CM fails to submit as a Request for Change Order as provided in Article 42. Article 42 requires that:

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; and

Within 10 days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all details of the claim, including a description of the work affected;

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this Article.

(Emphasis added).

Based on the documentation provided for review by the Office of the Chief Auditor, the CM failed to submit Notices of Claims to the School Board within 20 days of when it was aware or should have been aware of the occurrence of events giving rise to the claims. Further, the CM failed to submit its Requests for Change Orders within 10 days of submitting its Notices of Claims.

It is not the function of the courts to rewrite a contract or interfere with the freedom of contract or substitute their judgment for that of the parties thereto in order to relieve one of the parties from the apparent hardship of an improvident bargain. *Steiner v. Physicians Protective Trust Fund*, 388 So.2d 1064 (Fla. 3rd DCA 1980); *Beach Resort Hotel Corp., v. Wieder*, 79 So.2d 659 (Fla. 1955).

Whether a contract precludes recovery of claims for additional and unanticipated expenses incurred in performing the work is a pure question of law, to be answered by the examining language of the contract itself. *Zaklama v. Mount Sinai Medical Center*, 906 F.2d 650, 652 (11th Cir. 1990).

In *Inland Dredging Company, LLC v. Panama City Port Authority*, 2005 U.S. Dist. Lexis 43647 Northern District of Florida 2005, a dredging contractor encountered differing site conditions while performing its scope of work. The contractor put the owner on notice of the claim via written letter stating it was entitled to an adjustment pursuant to the contract. The owner disagreed that the contractor was entitled to an adjustment. The contractor paid a subcontractor an additional \$300,000 to perform work regarding the differing site conditions. At project end, the contractor brought suit against the owner alleging its entitlement to an adjustment based on the differing site conditions. The court ruled in favor of the owner as the contractor failed to provide written notice of the specifics of the claim [including dollar amount] within 30 days of discovering the differing site conditions. The contractor did put the owner on notice of the claim within 30 days but failed to specify the details and the

Gerardo Usallan, Jr. and
William J. Wright
Page 3 of 3

amount of the claim as required by contract. The court held "the contractor's claims are time barred for failure to comply with the contractual terms". The court also sites *Marriot*, supra.

In *Tuttle/White Constructors, Inc. V. State Dept. of General Services*, 371 So.2d 1096 (Fla. 1st DCA 1979), the First District Court upheld a decision barring a contractor from recovering on a delay claim that was not asserted within 20 days as required by contract.

Question 2: "Did the Construction Manager, Hewett-Kier, comply with the General Conditions of the Contract Article 42, Notice of Claim: Waiver of Remedies; No Damages for Delay Clause?"

Answer: No. As stated above and based on the documentation provided for review by the Office of the Chief Auditor, the CM failed to provide notice of its claims as required by Article 42 of the CM Agreement.

Question 3: "Did the Construction Manager, Hewett-Kier waive his right to request additional time and the associated compensation [by executing Construction Change Directives] ...?"

Answer: Yes. The documentation provided for review by the Office of the Chief Auditor did not indicate the existence of any unforeseen conditions which arose after the CM's execution of Construction Change Directives ("CCD"); therefore, the CM waived its right to request additional time and compensation for work associated with such CCDs. This conclusion is supported by the statement contained underneath the CM's signature block which states "*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.*" Further, Item #2 under the Proposed Adjustments section of each CCD indicates that the Contract Time is to Remain Unchanged.

If any of the foregoing information upon which this opinion is based is incorrect, please notify this Office as changes in such information may require this Office to draw different conclusions.

TCC:tcc

**SECTION V
APPENDIX**

Abbreviations

- CCD Construction Change Directive
- CCO Construction Change Order
- CM Construction Manager
- CO Change Order
- CSI Consultant's Supplemental Information
- F&CM Facilities and Construction Management Division
- GMP Guaranteed Maximum Price
- NTP Notice To Proceed
- OCA Office of the Chief Auditor
- OFC Office of Facilities & Construction (formerly F&CM see above)
- OR Owner's Request
- PM Project Manager
- SBBC School Board of Broward County
- ZMA Zelch & McMahon Architects