

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

McGladrey Audit Finding No. 7

Best Practice Bulletin No. 01

Contract Bulletin Nos. 65

McGladrey Audit Finding No. 5

Purpose:

Implement a procedure relating to the reuse of design documents.

Issue:

Best Practice is to conduct a "Lessons Learned" review of prototype designs and evaluate the prototypes as potential reuse opportunities.

Procedure:

- 1. Responsible parties
 - a. Executive Director
 - 1. Comply with the following procedure.

PROCEDURE

When staff contemplates the reuse of a previous architectural design, the following shall occur:

- 1. Facility Management, Planning & Site Acquisition and Design Services staff shall identify and review candidate architectural plans and post occupancy reviews for compliance with the current educational specifications and design standards. Each director shall issue a written recommendation to the Deputy Superintendent based after the results of the review.
- 2. Following an affirmative recommendation, the project manager shall prepare the scope, budget, and schedule for the project.
- 3. Based upon an affirmative recommendation from the directors of Facility Management, Planning & Site Acquisition and Design Services, and a scope, budget, and schedule approved by the Director of Project Management, the Deputy Superintendent may authorize the Contracts staff to commence negotiations for the site adaptation of the reuse design.
- 4. Contracts staff shall ensure compliance with the following:
 - a. Compliance with Ch. 287.055 with respect to public announcement of the intended reuse was included in the initial procurement.
 - b. The scope does not extend beyond site adaptation and the budget and schedule are complete and accurate.
 - c. Established fee parameters and negotiations procedures.
- 5. Upon successful negotiations, Contracts staff shall process the award of a contract using our current standard procedures.

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

**Summary of Proposed Changes
Form of Agreement between Owner and Contractor- Lump Sum Continuing Service**

In considering our contract recommendations as redlined in this draft Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

Contract Reference	Proposed Change
Article 4 – Basis of Compensation	<p>This section was modified from using a Single Fixed Rate Multiplier to using a Time and Materials Pricing Structure that negotiates fixed hourly rates plus actual materials costs/ subcontractor costs. A Fee structure is also added which defines fee as a percentage of the cost of work.</p> <p>Additional language is added to require whatever supporting documentation the Owner requires to approve reimbursables and estimates. The Owner has the right to reject a proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies.</p>
Article 6 – Purchase Orders, and Article 10 – General Provisions	<p>Removed the reference to the Single Fixed Rate Multiplier table, as this was removed from Article 4 per the above description.</p>
Article 10.07 – Contractor's Accounting Records and Right to Audit Provisions	<p>The definition of Contractor's records is expanded to include any and all records reasonably requested that relate to performance of services including information, materials and data of every kind and character (hard copy, as well as computer readable data if it exists), books, papers, documents subscriptions, recordings, estimates, price quotations, agreements purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, monthly, quarterly, yearly or other financial statements, job cost reports, job cost history, margin analysis, constructability or peer reviews, coordination documents, logs and supporting documentation, general ledger entries, and insurance information.</p> <p>If overcharges greater than \$25,000 by the Design Builder Contractor to the Owner are found during an audit, the audit fees are paid by the Design Builder Contractor.</p>

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DOCUMENT 00520

**FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR**

THIS AGREEMENT made and entered into this 2nd day of August, 2011 in the year two thousand and eleven by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

(Hereinafter referred to as "Owner") and _____

M.V.P. Contractors, Inc.
2100 N Andrews Avenue Ext.
Pompano Beach, FL 33069

FEIN# 65-0965753
(Hereinafter referred to as "Contractor")

Construction Services Minor Projects
Bid No. 2011-04-FC
General Contracting Services – Item #1 (Main Contractor)
at
Various Locations

WHEREAS, It is agreed that this Agreement is an "Open End" Agreement in that the Owner will from time to time during the term of this Agreement require services, which may include labor, materials, and/or services from the Contractor on various different projects. Rather than enter into separate agreements each time that is required, the Owner and Contractor have entered into this Agreement. The terms and conditions of this Agreement shall govern each of the individual projects for which the Contractor is hired.

WHEREAS, the Contractor is desirous of performing the Work in accordance with the Contract Documents and all applicable laws, codes and ordinances.

NOW THEREFORE, in exchange for the mutual covenants and promises set forth herein agreed to by the Owner and the Contractor, the parties agree as follows:

ARTICLE 1 -DEFINITIONS

1.01 Definitions:

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

- 1.02 **The Deputy Superintendent, Facilities and Construction Management** - An employee of the School Board of Broward County, Florida, who has the authority and responsibility for oversight and management for the Owner of the specific project of which the Work is a part. Referred to hereinafter as the Deputy Superintendent.
- 1.03 **Owner** - The School Board of Broward County, Florida. (SBBC). The School Board of Broward County, Florida, through its Board, , which is the approving body of all Agreements, changes in the scope of work, change orders, fees, final acceptance of the project final payment and use of the contingency as set forth in Article 6.1 of the Agreement between Owner and Contractors.
- 1.04 **Owner's Representatives** - The Deputy Superintendent of Facilities, Construction Managers or his designee.
- 1.05 **Contractors** - Any person, firm or corporation with whom a Contract has been awarded by the Owner under any type of delivery process, for the performance of any work as directed by the Owner on the Work covered by the Contract.
- 1.06 **Project Consultant** - The individual, partnership, corporation, association, joint venture, or any combination thereof, of properly registered professional architects, engineers or other design professionals who has entered into a contract with the Owner to provide professional services pursuant to the terms of this contract or Agreement.
- 1.07 **Project Manager** - An employee of The School Board of Broward County, Florida, (SBBC) who is designated by the Deputy Superintendent for Facilities and Construction, and Construction Director to manage or provide direct interface with the Contractor, or Project Consultants with respect to the Owner's responsibilities. They could be Project Manager I, II, III, or a combination of PM's based on the complexity and size of the Project.
- 1.08 **Project** - The Project is the total work to be performed under this Agreement. The Project consists of planning, design, or other Professional Services necessary to build the component or parts of the project identified in the project manual and or as contemplated by the Owner under an approved scope of work.
- 1.09 **Phase** - A designated subdivision of the Work, usually with its own requirements for Substantial and Final Completion, Professional Services Work with its own completion schedule. A Phase may be designated for completion by the Owner's own forces, or by Other Contractors or Professional Consultant.
- 1.10 **Punch List** - A list of items of work required by the Contract Documents which after inspection by the Owner and the Contractor has been termed to be deficient and/or inconsistent with the Contract Documents or Professional Services.
- 1.11 **Subcontractor/Sub-Consultant** - A person or entity other than a material man or laborer who enters into a Contract with a Contractor and or Consultant for the performance of any part of Construction and or Design or Services required by the Owner, or its representative. The term "Subcontractor or Sub-Consultant" is referred to throughout the Construction Contract Documents and or Service Agreement as if singular in number and means a

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Subcontractor or Sub-Consultant as an authorized representative of the Subcontractor or Consultant. The term "Subcontractor and or Sub-Consultant" does not include a separate contract or subcontract with the Owner.

- 1.12 **Fixed Limit of Construction (FLCC)** - Fixed Limit of Construction Cost, referred to hereinafter as FLCC, and is the total dollar value of the Contractors and or Professional Services Consultant fee's, contingency, and cost of the work to include other consultants Fees.
- 1.13 **Guaranteed Maximum Price (GMP)** - The GMP is the maximum amount of money that the Owner shall pay the Contractor or Consultant for all the work described in the contract documents and the consultants fee.
- 1.14 **Submittals** - Are prepared by the Contractor or those working on his behalf (subcontractors, material suppliers, and others) to show how a particular aspect of the Work is to be fabricated and installed. The Contractors submittals include shop drawings, product data, samples, mock-ups, test results, warranties, maintenance agreements, project photographs, record documents, field measurement data, operating and maintenance manuals, reports, certifications and other types of information described in the specifications.
- 1.15 **Substantial Completion** - The term Substantial Completion as used herein, shall mean that point at which, the Work, or a designated portion thereof, is at a level of completion in substantial compliance with the Contract Documents such that the Owner or its designee can enjoy use or occupancy of the work performed by the Contractor and can use or operate it in all respects for its intended purpose. In the event the Work includes more than one Phase, the Owner, at its discretion, may set Substantial Completion dates for each Phase and may impose provisions for liquidated damages for each Phase. Occupancy may not be the sole factor in determining whether substantial completion has been achieved.
- 1.16 **Sub Consultant** - A person or organization of properly registered professional architects, engineers or other design professionals who have entered into an agreement with the Owner or Contractor to furnish professional services to the project.
- 1.17 **Superintendent or Contractor and/or Contractor's Project Manager** - The executive representative for the Contractor present on the project at all times during progress, authorized to receive and fulfill instructions from the Owner and the Project Consultant, if applicable, and capable of management of the work efficiently as designated, per current and applicable contracts.
- 1.18 **Superintendent of Schools** - The duly appointed executive officer of the Owner authorized to act by and through the School Board of Broward County.
- 1.19 **Surety** - The firm, corporation, or individual which is bound by the Construction and Performance Bond with and for the Contractor, and which engages to be responsible for the Construction and acceptable performance of the work and for his payment of all debts pertaining thereto.
- 1.20 **Building Code Inspector: Employees of The School Board of Broward County, Florida,** and others designated by the Chief Building Official (CBO) who are certified by the State of Florida. Any references to "UBCI" within any documents shall mean BCI. The BCI are certified pursuant to Chapters 468, 471 and 481 of the Florida Statutes. A BCI may provide

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plan review, construction inspection for code compliance and report non-compliant work to the Broward School Project Manager, Project Consultant and Contractors under contract with the Owner.

- 1.21 **Scope of Work** - The totality of the obligations, including construction and other services, imposed on the Contract and or Consultant by the Contract Documents, whether completed or partially completed, and including all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the its obligations. The Work may constitute the whole or a part of the Project or Services.
- 1.22 **Written Notice** - Shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, if delivered at or sent by registered mail or other traceable delivery service to the last business address known to him who gives notice. Electronic, FAX or other telephonic transmission **shall not be** considered as a written notice.
- 1.23 **Change-Order** – A change order is issued and approved by the Owner for additions or deletions in the scope of work or services provided by the Contractor or Consultant. A change order shall increase or decrease the Contract Cost.
- 1.24 **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 Contractor, and or Consultants with authority to proceed with the change needs to be expedited. The Contractor and/or Consultant are not required to agree on the terms offered by the Owner for the change at the Owner’s sole discretion (Unilateral Directive).
- 1.25 **Contingency Use Directive (CUD)** - A CUD is issued and approved by the Owner for the purpose of Accounting for unforeseen increases or decreases in the construction cost and/or Professional Services to be utilized for unforeseen circumstances and will need to be approved by the owner per the agreement.
- 1.26 **Supplemental Services** –Those services referred to in 2.01 below under Consulting Services.
- 1.27 **Authorization to Proceed** – A document in the form found in Attachment # 4, issued by the Owner’s representative to the Project consultant and/or Contractor, authorizing all or a portion of the work of specific professional services to proceed per contract documents and or agreement.
- 1.28 **Senior Project Manager (Design / or Construction)** – An employee of the SBBC referred to hereinafter as the “SENIOR PM” and who is the direct Supervisor of all the Project Managers (PM I, II, & III) and is responsible that all projects are completed within time and budget per signed Contract Documents.

ARTICLE 2 CONTRACTOR'S RESPONSIBILITIES

2.01 Representations:

2.0 1.01 as to all labor, materials and/or services provided pursuant to this Agreement, the Contractor shall furnish such labor, materials and/or services by or under the supervision of persons licensed, as applicable in Florida, in compliance with any and all applicable codes as amended, laws and ordinances.

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2.01.02 All construction services and associated products or instruments of those services provided by the Contractor shall: (A) be in accordance with all applicable codes as amended, including but not limited to, Florida State Board of Education Regulations, Chapter 6A-2.0010 Educational Facilities, the Florida Department of Education's State Requirements for Educational Facilities, 2007("SREF") and its referenced codes and standards, as modified, supplemented, or replaced by the 2007 Florida Building Code and the Fire Prevention Code as amended ; and all guidelines or regulations of the Owner (provided same are not less stringent than applicable codes), with Owner serving as the interpreter of the intent and meaning of SREF or any other applicable codes; and (B) be provided for the benefit of the Owner and not for the benefit of any other party.

2.01.03 The Contractor's work shall conform to Owner's specifications, including but not limited to, plans and specifications, Owner's Design and Materials Standards Owner's Guidelines and Procedures Manual and Forms for capital projects, provided, however, that in the event of conflict, the provisions of this Agreement shall govern.

2.01.04 The Contractor must comply with SBBC and M/WBE goals as set forth by the Owner in the Bid Construction Services Minor Projects.

ARTICLE 3 -THE OWNER'S RESPONSIBILITIES

3.01 Information, Documents and Services Furnished: The Owner shall provide such information, documents, plans and specifications regarding requirements for the Project as is reasonably necessary to complete the work.

3.02 Owner Furnished Items: When documents, services, or other materials furnished by the Owner for the Contractor's use are deemed by the Contractor as inappropriate, inaccurate, or otherwise unreasonable, the Contractor shall notify the Owner of its opinion within 48 hours in writing immediately upon discovery of same. Failure of the Contractor to so notify the Owner shall result in the Contractor's being responsible for any costs, expenses, or damages incurred by the Owner and forfeiture of claims for damages, extensions of time/delay damages or other compensation related to the use of Owner furnished materials.

3.03 Project Management:

3.03.01 The Deputy Superintendent or his designee shall act on behalf of the Owner in all matters pertaining to this Agreement, and shall approve all Notices to Proceed to the Contractor and all invoices for payment to the Contractor.

3.03.02 **Non-Conforming Work:** If the Owner (by way of BCI's or other Owner personnel) observes or otherwise becomes aware of any fault or defective work in the Project, or other non-conformance with the Contract Documents during the construction phases, the Owner shall give prompt notice thereof to the Contractor. However, whether the Owner observes a defect or not, it is the Contractor's duty and responsibility to determine whether its work is defective, faulty, or not in compliance with the Contract Documents. If the Contractor determines that the Work is defective, faulty or not in conformance with the Contract Documents, the Contractor shall advise the Owner in writing, and make recommendations to the Owner concerning correction of the work and require the Contractor to undertake such corrections as allowed by the Contract Documents. Final determination of whether the work is defective, faulty or not in compliance with the Contract Documents shall be determined by the Owner.

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ARTICLE 4 -BASIS OF COMPENSATION

4.01 ~~The Single Fixed Multiplier, as agreed upon, is .579. Per the approve multipliers found in document 00410 "Bid Form" Table A, found in this agreement.~~

TABLE A

Work Category	Item #1 (\$0 to \$ 199,999.99)	
General Contracting	Multiplier	0.579
	Contract	\$2,000,000
	Renewable	-\$400,000

~~4.01.01 The Contract amount for each project as set forth in the Table A found in Document 00410 "BID FORM" and this document (00520) the Purchase Order shall be: THE TOTAL OF EACH UNIT PRICE INCLUDED ON THE PROJECT COST SHEET, TIMES THE QUANTITY REQUIRED, TIMES THE SINGLE FIXED MULTIPLIER. The Single Fixed Multiplier includes all Labor, materials, services, profit, overhead (including all necessary travel and per diem), insurance, and any other expenses associated with completing the work.~~

4.01 Time and Materials Pricing Structure:

Salaries and other compensation of the General Contractor's personnel at the General Contractor's principal office. For time and material agreements the hourly rates will be negotiated fixed hourly rates plus actual materials cost / subcontractor costs expected to be incurred for completion of the Work. The Contractor will submit to the Owner the labor rate per hour and the actual fringe benefit rate per hour for each labor classification. The Contractor will provide the cost per hour for each component of the fringe benefit rate. The Owner will review the labor and fringe benefit rate and based on the review will negotiate the fixed labor rate set forth below. The fixed labor rates will be used in pricing work subject to this Agreement.

Labor Classification	Base Rate	Burden Factors				
		Taxes	W/C	TBD	TBD	TBD

4.01.01 Firm Fixed Price Structure:

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A weighting percentage and profit fee percentage will be assigned to the risk factors identified above by the Owner's Representative for each individual SOW issued to the Contractor. After all risks have been weighted and assigned profit fee percentages; the two are multiplied to get the "weighted" profit fee percentage for each variable. Total weighted profit fees are then summed together to obtain the total profit factor for the project. Fees will range from 4.5% to 12% for each SOW based on the results of this risk weighted fee curve analysis. The resulting Fee percentage will be multiplied by the Cost of Work defined as the total costs less any contingency.

4.02 Reimbursements:

4.02.01 Reimbursements will be made for survey data, testing services, fees, performance and payment bonds, builder's risk insurance, SBBC I.D. badges and permit as may be necessitated by request for submittals from the Contract Administrator. This reimbursement shall be based on an actual cost and supported by documentation as required by the Owner. (Reimbursements are not subject to multiplier.)

4.03 Estimates:

~~4.03.01 Estimates shall include all items as listed on the Price Schedule detailed in the detailed scope of work. Estimates will be in a form deemed suitable by the Owner, as indicated in the request for proposal. Deletion or changes to the unit prices or items of work shown on the Price Schedule will be cause for rejection of the estimate. With unlisted items, the Contract Administrator and Contractor have the authority, after review of submittals (actual invoice, subcontractor's estimate, supplier estimate, cut sheet, shop drawings, etc.), to change the price schedule accordingly.~~

~~4.04 The Price Schedule will be composed of the following:~~

~~4.04.01 Cost estimates shall be based on the current RS Means Facilities Construction Cost Data, (or other referenced cost data as noted on Document 00410, Bid Form) in effect at the date of the Purchase Order as adjusted by the "Location Cost Factor" for Fort Lauderdale, Florida (Zip 333) and/or Table A as described in 4.04.03.~~

~~4.04.02 If a labor rate needs to be established for a task not found in the price schedule, use the labor rates published in the current RS Means Facilities Construction Cost Data [Crew Tables] set forth in 4.04.01 above.~~

~~4.04.03 If certain tasks in the RS Means Facilities Construction Cost Data have been modified or a specific task is not listed in the RS Means Facilities Construction Cost Data Edition, the Contractor is instructed to contact the assigned Contract Administrator for clarification.~~

~~4.05 If a discrepancy exists between the unit price costs and the assembly costs, the unit price cost will govern.~~

4.05 The Owner reserves the right to reject a Contractor's proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The Owner has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The Owner also reserves the right to not award a project if Owner's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. The Contractor shall not include the following items in their proposal regardless of pricing structure:

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- a. Bonuses, profit sharing and any discretionary form of compensation or fringe benefits.
- b. The Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
- c. Costs due to the negligence or willful misconduct of the Contractor, Subcontractors, suppliers, or anyone directly or indirectly employed by any of them or for whose act any of them may be liable.
- d. Tools and equipment with an individual cost of \$500 or less.
- e. Cell phone charges in excess of \$100 per authorized employee as approved by the Owner.
- f. Discretionary labor benefits such as, but not limited to: cost of living adjustments, auto allowances, etc. unless previously approved by the Owner.
- g. Overtime charges not previously authorized in writing by the Owner.
- h. Any travel, subsistence, fuel, mileage, or similar classification of cost not previously approved in writing by the Owner.

ARTICLE 5 -ESTIMATING ORDER

5.01 Each Estimating Order and the attachments will describe the extent of work to be removed and the extent and type of new work to be installed. Descriptions may be written by sketch or by drawing. Each Estimating Order and attachments will give the location where work is to be performed and whether or not work may be performed during regular working hours. Each Estimating Order shall describe the requirements for submittals. Submittals may include certificates, shop drawings, manufacturer's literature, data, test reports and/or other documents that provide required information on the material and/or equipment.

5.02 Each Estimating Order shall be acknowledged within the time specified on the Estimating Order by the Contractor's submittal of a cost sheet(s) and all other documents mandated by the Estimating Order. The cost sheet(s) and other documents will be reviewed by the Contract Administrator and, if found to be acceptable by the Contract Administrator, the Notice to Proceed will be signed by the Contract Administrator and the Contractor.

5.03 If, after initial review of the cost sheet(s) and any other documents submitted by the Contractor to the Contract Administrator, the Notice to Proceed cannot be signed, an extended review period will be initiated.

ARTICLE 6 -PURCHASE ORDERS

6.01 No work shall be performed until a written Purchase Order with the appropriate "line number" has been issued by the Purchasing Department together with a fully executed Notice to be Ready Document 00545. The "Start Date" will be shown on the Notice to Proceed. **ANY WORK PERFORMED BY THE CONTRACTOR PRIOR TO RECEIPT OF A FULLY EXECUTED**

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WRITTEN NOTICE TO PROCEED AND PURCHASE ORDER SHALL BE AT THE CONTRACTOR'S OWN RISK.

6.02 The date for commencing work (Start Date) shall not be more than ten (10) calendar days from the start date stated on the Notice to be Ready, Document 00545 unless previously agreed to in writing by the Contractor and Contract Administrator. Upon commencing work, the Contractor will proceed diligently toward completion of the project. Any delay in the work, beyond the Contractor's control, will be reported to the Contract Administrator or his designated representative immediately.

~~6.03 Items for work required by any Cost Sheet that are covered by the Price Schedule will be composed of the following pages from:~~

~~6.03.01 R.S. Means Facilities Construction Cost Data and Table A, which is a portion of the unit price schedule as altered by substitutions.~~

ARTICLE 7-PAYMENTS TO THE CONTRACTOR

7.01 Payment shall be made according to Document 01290 – Payment Procedures incorporated herein by reference.

7.01.01 No payments shall be due to Contractor unless and until all labor, material, services, forms and documents required by Owner have been provided by Contractor and its Sub-Contractor to Owner or others who are to receive same. The Owner retains the right to withhold payment from the Contractor for non-performance of the Contract during any phase or portion of the Project.

7.01.02 The Contractor shall submit a certificate for payment in the Owner's required format as incorporated herein.

7.01.03 All submitted invoices shall have copies of the referenced Purchase Order attached.

7.01.04 Payments are due and payable thirty (30) days from receipt of the Contractor's invoice, provided it is in accord with the requirements of this Agreement.

7.01.05 Every request for payment (whether partial or final in excess of \$500.00) must be accompanied by a "Contractor's Affidavit and Certificate of Completion. The Contractor will receive a blank Partial and Completion Certificate with the Initial Notice to Proceed. Additional copies of the certificate may be obtained from the Division of Facilities and Construction Management.

7.01.06 Reimbursables: Payment for Reimbursables may be requested monthly (on the Owner's standard invoice format) in proportion to the services performed. When such services are authorized, the Contractor shall submit for approval by the Owner, a duly certified invoice, attaching to the invoice all supporting data for payments made to vendors / suppliers engaged on the project. The Contractor shall include with its billing, in either electronic or hard copy format, the following supporting information, and any additional supporting information required by the Owner: time sheets for any reimbursable labor, subcontractors invoices, invoices for reimbursable expenses and time sheets, subcontractor invoices for reimbursables made necessary by the performance of Work. The invoice shall be totaled and care shall be taken to assure previously paid charges are not duplicated.

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ARTICLE 8-INDEMNIFICATION CLAUSE

8.01 See General Conditions, Document 00700-Article 38

ARTICLE 9-INSURANCE

9.01 General Insurance Requirements:

9.01.01 The Contractor shall not provide any services under this contract until the Contractor has obtained all insurances required hereunder and such insurances have been approved by the Owner. Owner may withhold payments due to Contractor in accordance with this Contract or terminate or suspend this contract with all costs or expenses associated with same to be paid by Contractor in the event Contractor fails to comply with any requirement in the Contract regarding insurance.

9.01.02 Performance Bond and Materials and Payment Bond are required on any single project costing two hundred thousand dollars (\$200,000) or more. Each bond shall equal to one hundred percent (100%) of the single project amount for projects in excess of two hundred thousand dollars (\$200,000) or more, and shall be with a surety insurer authorized to do business in Florida and complying with Section 255.05, F.S., as amended. The cost for a required bond shall be reimbursable to the Contractor at the actual amount invoiced without application of any multiplier.

9.01.03 The Contractor shall furnish certificates of insurance to the Owner for review within ten (10) days after award and shall maintain the same insurance at all times during the term of this contract.

9.01.04 All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. All insurance companies providing policies required under this contract shall have at least an, "A" rating and a financial rating not less than VI in the current A.M. Best Manual or hold a Moody's Investors Service Financial Strength of "Aa3" or better. The certificate must contain a provision for written notification to the Owner in accordance with the policy provisions as outlined in the current ISO Accord (2009/09) form; or should older ISO versions be available, provide a minimum of 30-days notice of material changes or cancellation to the Owner.

9.01.05 All insurance policies required under this contract shall be endorsed to be primary of all other valid and collectable coverage's maintained by the Owner. The Owner shall be named as an additional insured under the General Liability policy.

9.01.06 The certificates shall be in the form as approved by Insurance Standards Office [ISO], unless approved by owner and such certificates shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by these provisions, in excess of any pending claims. No material change or cancellation of the insurance shall be effective without a thirty (30) day prior written notice to and approval by the Owner.

9.01.07 The Contractor shall verify that all subcontractors utilized in conjunction with all services provided under this contract shall maintain insurance of the type, amount, and classification required by these provisions.

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9.01.08 Neither approval by the Owner, nor failure to disapprove the insurance provided by the Contractor shall relieve the Contractor full responsibility to provide the insurance as required by this contract.

9.02 Insurance Required:

9.02.01 Commercial General Liability Insurance: The Contractor shall maintain Comprehensive General Liability Insurance, including Products & Completed Operations, Personal and Bodily Injury, and Contractual Liability, to cover the indemnification language set forth herein, with limits of not less than \$2,000,000 per occurrence. The Owner, its members, officers, employees and agents shall be named as an Additional Insured

9.02.02 Owners and Contractors Protective Liability Insurance: The Contractor shall maintain Owners and Contractors Protective Liability Insurance with limits of not less than \$1,000,000 per occurrence.

9.02.03 Automobile Liability Insurance: The Contractor shall maintain Automobile Liability Insurance covering all Owned, Non-Owned and Hired vehicles in the amount of not less than One Million Dollars (\$1,000,000) per occurrence Combined Single Limit for Bodily Injury and Property Damage and shall not be any less restrictive than the standards ISO Business Auto Policy CA 00 01. In the event the Awardee does not own any vehicles, we will accept hired and non-owned coverage in the amounts listed above. In addition, we will require an affidavit signed by the Awardee indicating the following:

_____ (Awardee Name) does not own any vehicles. In the event we acquire any vehicles throughout the term of this agreement, _____ (Awardee Name) agrees to provide proof of "Any Auto" coverage effective date of acquisition.

9.02.04 Workers' Compensation Insurance: The Contractor shall maintain Workers Compensation Insurance in accordance with Florida Statutory Limits and Employers Liability Insurance with a limit of not less than Five Hundred Thousand (\$500,000) Dollars per occurrence.

9.02.05 Builders' Risk Insurance: The Contractor shall carry at an additional expense to Owner, on a per-project basis as determined by the Owner, Builders' Risk Insurance for the perils of fire, vandalism, malicious mischief, windstorm, and those included in extended coverage, such as windstorm / Hurricane, theft and building collapse. Insured in the amount of one hundred percent (100%) of the contract value to include both hard and soft costs. Such policies shall be written to protect the Contractor and Owner as their interest may appear.

ARTICLE 10 -GENERAL PROVISIONS

10.01 Performance:

10.01.01 Performance and Delegation: The services to be performed hereunder shall be performed by the Contractor's and Sub-Contractor's own staff, unless otherwise approved by the Owner. Said approval shall not be construed as constituting an agreement between the Owner and said other person or firm.

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

10.02 Term of Agreement:

10.02.01 The term of this Agreement shall be for three (3) years from the date of award, and may, by mutual agreement between the School Board of Broward County and the Contractor, upon final School Board approval, be extended for one additional one-year period. The Board, through its Facilities and Construction Management Division, will, if considering to renew, request a letter of intent to renew from each Contractor, prior to the end of the current contract period. The Contractor will be notified when the recommendation has been acted upon by the School Board. ~~The Single Fixed Multiplier agreed to herein shall apply for the term of this Agreement and any renewal (Per project limit as shown in table A Doc 00420).~~

10.02.02 No single project's construction value shall exceed \$1,000,000. Additionally, the Agreement shall also expire when the total value of work awarded reaches the contract limits of (see table in 4.01), or the contract renewal limits of (see table in 4.01) unless Agreement is amended to increase contract limit.

10.03 Time for Performance:

10.03.01 The Contractor agrees to start all work hereunder upon receipt of a Notice to Proceed issued by the Deputy Superintendent or his designee, as set forth on the Purchase Order, and to complete all work in a timely manner and in accordance with the Recap Cost Sheet. The Contractor acknowledges that failure to perform timely may cause the Owner to sustain loss and damages and the Contractor will be responsible for same.

10.04 Time Extensions:

10.04.01A reasonable extension of time for completion of various aspects may be granted by the Owner should there be a delay on the part of the Owner in fulfilling its obligations pursuant to this Agreement. Such extension shall not be the basis or cause for any claims or causes of action by the Contractor for additional or extra compensation. Under no circumstances shall the Contractor be entitled to additional compensation or payment as a result of or relating to delays on the Project.

10.04.02 Refer to General Conditions, Article 32, claims by contractor and no damage for delay provisions.

10.05 Termination of Agreement:

10.05.01 If the Contractor defaults, fails or neglects to carry out the work in accordance with the Contract Documents or fails to perform a provision of the Contract, the Owner, after seven (7) days written notice to the Contractor and without prejudice to any other remedy available to the Owner, may make good such deficiencies and may deduct the cost thereof the expenses made necessary thereby, from the payment then or thereafter due to Contractor. Alternatively, at the Owner's option, and upon certifications by the Division of the Facilities and Construction Management that sufficient cause exists to justify such action, the Owner may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon, owned by the Contractor and may finish the

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work by whatever method the Owner may deem expedient. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner within 30 days of written demand.

10.05.02 The Contractor may terminate this Agreement only for a material breach of the Agreement and provide the Contractor has given the Owner written notice of the material breach and ten (10) days to cure that breach. In the event of any dispute regarding or relating to performance pursuant to this Agreement, or payment hereunder, then and in that event, the Contractor is obligated to continue performance in accordance with the terms of this Agreement, unless instructed by the Owner to suspend or delay performance.

10.05.03 Owner may terminate this Agreement for cause, which shall include, but not be limited to, failure of Contractor to comply with any of its material obligations under this Agreement. This shall include, but not limited to, continuously maintaining the Owner's approval of Contractors Pre-Qualification Status, compliant with the requirements in Doc 00410 and Article 4.01 of this Agreement, including licensing, per project, and aggregate limits.

In such event, Contractor shall not be entitled to any additional payments and may be liable to Owner for any damages or losses incurred or suffered as a result of Contractor's failure to properly perform pursuant to the terms of this Agreement. In the event it is later determined that the Owner was not justified in terminating this Agreement for cause, and then it shall be deemed to be a termination for convenience.

10.06 Termination for Convenience:

10.06.01 If the Owner terminates this Agreement other than for cause as set forth above, Owner shall reimburse the Contractor for any unpaid Cost of the Project due him. Contractor expressly waives any claim for lost profits or other consequential damages. In the case of such a termination for convenience, the Owner shall further assume and become liable for obligations, commitments and unsettled contractual claims that the Contractor has previously undertaken or incurred in good faith in connection with said Project. The Contractor shall, as a condition of receiving the payments referred to in this Article, execute and deliver all such papers and take all such steps including the legal assignment of his contractual rights, as the Owner may require for the purpose of fully vesting in him the rights and benefits of the Contractor under such obligations or commitments. Owner reserves the right to terminate for convenience in its sole discretion any project awarded to Contractor hereunder.

10.06.02 Whether or not this Agreement is so terminated, the Contractor shall be liable to Owner for any damage or loss resulting from such failure or violation by Contractor, including but not limited to, costs in addition to those agreed to herein for prosecuting professional services to completion and delay damages paid or incurred by Owner. The rights and remedies of Owner provided by this paragraph are cumulative with and in addition to any other rights and remedies provided by law or this Agreement.

10.07 Contractor's Accounting Records and Right to Audit Provisions:

10.07.01 Contractor's "records", as referred to in this contract, shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other Contractor records which may have a bearing on matters of interest to the Owner in connection with Contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to permit evaluation and verification of: a) Contractor compliance with contract requirements, b) compliance with Owner's business ethics policies, and c) compliance with provisions for pricing, invoices or claims submitted by the Contractor or his payees. Contractor shall require all payees (examples of payees include Subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will require Related Parties and all of Contractor's Subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data. Contractor's records which shall include, but not be limited to, accounting records, payroll time sheets, audited and unaudited financial statements to substantiate overhead rates, written policies and procedures, Sub-Contractor files (including proposals of successful and unsuccessful Sub-Contractors) original estimates, estimating worksheets, computer records, disks and software, videos, photography, correspondence, change order files (including documentation covering negotiated settlements) and any other supporting evidence necessary to substantiate charges related to this Agreement (all of the foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of any price/cost proposals, invoices, payments or claims submitted by the Contractor or any of his payees pursuant to the execution of this Agreement. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations), fees, reimbursable services, etc. as they may apply to costs, matters or items associated with this Agreement. If requested to do so, Contractor shall provide copies of documentation described herein to the Owner.

10.07.02 Whenever the Owner enters into any type of contractual arrangement, including but not limited to, lump sum contracts (i.e., fixed price or stipulated sum contracts), unit price, cost plus or time and material contracts, with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of five years after final payment or longer if required by law. For the purpose of such audits, inspections, examinations and evaluations, the Owner's agent or authorized representative shall have access to said records from the effective date of this Agreement, for the duration of the work, and until five (5) years after the date of final payment by Owner to Contractor pursuant to this Agreement. All costs which the Contractor is unable to provide support or documentation to substantiate that it was incurred as represented by the original estimated breakdown of cost or found not to be in compliance with provisions of this contract, shall be reimbursed to the Owner.

10.07.03 Owner's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract, and shall be provided adequate and appropriate work space, in order to

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

~~conduct audits in compliance with this article. Owner's agent or its authorized representative shall have access to the Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article. Owner's agent or its authorized representative shall give auditees reasonable advance notice of intended audits.~~

10.07.04 Contractor shall require all Sub-Contractors and insurance agents, to comply with the provisions of this article by insertion of the requirements hereof in any written contract agreement. Failure to obtain such written contracts which include such provisions shall be reason to exclude some or all of the related costs from amounts payable to the Contractor pursuant to this Agreement.

~~10.07.05—10.07.05 If an audit inspection or examination in accordance with this Article, and finds that Contractor overcharged Owner, the Contractor shall pay to Owner the Overcharged Amount, which is defined as the total aggregate overcharged amount, together with interest thereon, (such interest to be established at the rate of 12% per annum). If the Overcharged Amount is equal to or greater than \$25,000.00, Contractor shall pay to Owner the Overcharged Amount and the Audit Amount, which is defined as the total aggregate of Owner's reasonable audit costs, incurred as a result of its audit of Contractor and Owner. If such amounts owed Contractor are insufficient to cover the Overcharged Amount and Audit amount, as applicable, then Contractor hereby acknowledges and agrees that it shall pay such remaining amounts: to Owner within seven (7) business days of its receipt of Owner's invoice or such remaining amounts. In no event shall the Overcharged Amount or the Audit Amount be deemed a reimbursable Cost of the Work. If an audit inspection or examination in accordance with this Article, discloses overcharges (except negotiated fees) by the Contractor to the Owner in excess of 2% percent of the total contract billings, the actual cost of the Owner's audit shall be paid by the Contractor. If the audit discloses contract billing or charges to which Contractor is not actually entitled Contractor shall pay over to Owner said sum within 20 days of receipt of a written demand unless otherwise agreed to by both parties in writing.~~

10.08 Contract Documents:

10.08.01 Owner shall retain ownership of all contract documents.

10.08.02 One (1) sets of plans will be provided to the Contractor as attachments to the Estimating Order. Contractor is responsible to have the SREF approved plans and a complete set of specifications on the job site at all times. As-built drawings shall be maintained by the Contractor with weekly review by the Contract Administrator. Contractor is required to submit as-built drawings to satisfy contract completion.

10.09 Electronic Media:

10.09.01 Where this Agreement or referenced provisions in the Contract require the Contractor to provide information or documents in either electronic or magnetic media, the preparation or format of that media shall conform to the Owner's Electronic Media Submittal Requirements.

10.10 Attachments and References:

10.10.01 This Construction Services Minor Projects Agreement, along with the Contract Documents consisting of the Agreement Form, M/WBE goals as set forth in the Bid, No. 2011-04-FC dated (April 19, 2011) and the contractor's bid submittals. Estimating Order Sheet, Recap Cost Sheet, Purchase Order, Notice to Proceed, General and Supplementary Conditions, Addenda, Drawings, Specifications, and modifications issued after execution of the Contract, embody the entire agreement between Owner and Contractor and supersedes all other writings, oral agreements, or representations.

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10.11 Extent of Agreement:

10.11.01 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, written or oral.

10.11.02 This Agreement may not be amended, changed, modified, or otherwise altered in any particular, at any time after the execution hereof, except by an Agreement executed by Owner and Contractor.

10.11.03 This Agreement is for the benefit of the parties to the Agreement and is not for the benefit of any other party, nor shall it create a contractual relationship with any other party.

10.11.04 This Agreement shall be governed by the laws of the State of Florida. Any litigation arising out of this contract shall have venue in Broward County, Florida. The parties are encouraged to participate in mediation of any dispute before engaging in litigation.

10.12 Strict Performance:

10.12.01 The failure of either party to insist upon or enforce strict performance by the other party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such provision or rights in that or any other instance.

10.13 Prompt and Satisfactory Correction:

10.13.01 The Owner, at its sole discretion, may direct the Contractor, at no additional cost to the Owner, to promptly and satisfactorily correct any services found to be defective or not in compliance with the requirements of this Agreement or the requirements of any governmental authority, law, regulation or ordinance.

10.14 Successors and Assigns:

10.14.01 The performance of this Agreement shall not be delegated or assigned by the Contractor without the written consent of the Owner.

10.14.02 The Contractor and the Owner each binds one another, their partners, successors. Legal representatives and assigns to the other party of this Agreement and to the partners, successors, legal representatives and assigns of such party in respect to all covenants of this Agreement.

ARTICLE 11- PUBLIC ENTITY CRIME INFORMATION STATEMENT

11.01 A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Construction Manager, Contractor, supplier, subcontractor, or consultant under a

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

ARTICLE 12 -NOTICES

12.01 When any of the parties desire to give notice to the other, such notice must be in writing, sent by US Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of the paragraph. For the present, the parties designate the following as the respective places for given notice:

Party:		Address:
Owner:	Deputy Superintendent, Facilities and Construction Management The School Board of Broward County, Florida 33323	Sawgrass Technology Park 1643 North Harrison Parkway - Bldg H Sunrise, FL 33323 Attn: Thomas E. Lindner Acting Deputy Superintendent
With Copy To:	Project Manager Facilities and Construction Management The School Board of Broward County, Florida 33323	Sawgrass Technology Park 1643 North Harrison Parkway - Bldg H Sunrise, FL 33323 Attn: TBD
Contractor:	M.V.P. Contractors, Inc.	2100 N Andrews Avenue Ext. Pompano Beach, FL 33069 Attn: Christina P. DeVito President
Surety:	Hartford Fire Insurance Company	One Hartford Plaza Hartford, CT 06115 (888)-266-3488
Surety's Agent:	Charles J. Nielson	8000 Governor's Square, Suite 101 Miami Lakes, FL 33016

12.02 These addresses may be changed by either of the parties by written notice to the other party.

ARTICLE 13 -AUTHORITY PROVISION

13.0 1 Each person signing this Agreement on behalf of either party warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

ARTICLE 14 - NON-DISCRIMINATION PROVISION

14.01 The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

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ARTICLE 15 – CAPTION PROVISION

15.01 The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

ARTICLE 16 – ASSIGNMENT PROVISIONS

16.01 Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from The School Board of Broward County, Florida.

ARTICLE 17 – EXCESS FUNDS PROVISION

17.01 Any party receiving funds paid by The School Board of Broward County, Florida under this Agreement agrees to promptly notify The School Board of Broward County, Florida of any funds erroneously received from The School Board of Broward County, Florida upon the discovery of such erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by The School Board of Broward County, Florida.

Exhibit C

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

In witness thereof, the said Contractor and the Owner, The School Board of Broward County, Florida have caused this contract to be executed and their corporate seal affixed by and through their proper offices, thereunto duly authorized, on this day and year first above written.

OWNER

CONTRACTOR

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

M.V.P. Contractors, Inc.

SEAL

SEAL

By: _____
Benjamin J. Williams
Chair

By: _____
Christina P. DeVito, President

By: _____
Donnie Carter
Interim Superintendent of Schools

By: _____
Steven J. Hines, Vice President

**This Agreement has been reviewed and approved as to
Form and Legal Content by the Office of General Counsel:**

Office of General Counsel

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

**STATE OF FLORIDA
COUNTY OF BROWARD**

BEFORE ME this _____ day of _____, _____, appeared

_____ personally known to me to be the person(s) described

in and who executed the foregoing contract and acknowledge that he executed the same as his free act and deed for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last official this _____ day of _____, 2011.

Notary Public State of Florida

My Commission Expires:

ACKNOWLEDGMENT

The Surety acknowledges that it has read the foregoing Construction Contract and has familiarized itself with the obligations of the Contractor and the Surety as stated therein, which obligations are agreed to by Surety and are incorporated, by reference to the Construction Contract, in the Payment and Performance Bonds.

SURETY:

By:

The School Board of Broward County
Construction Services Minor Projects
February 1, 2011 (R11-06-07-2011-IRS)

Exhibit C

In considering our contract recommendations as redlined in this draft Continuing Service Lump Sum Contract, BCSD should consult with its attorney for review and approval before implementing any of our proposed recommendations.

Its: _____
Date: _____

(Note to Contractors: a separate Power of Attorney is required for each bond & For the Contract Agreement (Doc 00520).

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____,
_____ by _____ of
_____, on behalf of the corporation or agency.

He/she is personally known to me or produced _____ as identification
and did/did not first take an oath.

My commission expires:

(SEAL)

Signature – Notary Public

Printed Name of Notary

Notary’s Commission No.

END OF DOCUMENT 00520

Finding No. 21

General Conditions and Labor Negotiations

Procedure Prepared March 3, 2009

The School Board Of Broward County, Florida
Office of Facilities & Construction
Denis Herrmann, Manager, Design & Construction Contracts

**GENERAL INSTRUCTIONS FOR CONSTRUCTION MANAGEMENT AT RISK
AGREEMENT PREPARATION, FEE NEGOTIATIONS, AND GUARANTEED MAXIMUM
PRICE AMENDMENT PROCESSING**

The following instructions generally describe the processing of agreements and addendums to the agreement for the GMP. All documents and information indicated below are prerequisites to either fee negotiations and agreement preparation, or, GMP Addendum processing. We cannot proceed with these activities without the required information. These procedures are provided to you in order to ensure the expeditious and delay-free processing of your contract documents.

Preparing for and Conducting Fee Negotiations and Preparing the Agreement form

1. CM should contact the SBBC Project Manager indicated in the notice letter and meet at the project site to further define and become more familiar with the scope, schedule, and budget for the project.
2. CM submits the Fee Negotiations form, information requested in the notice letter, provides the fee proposal, Exhibits A, C-F of the agreement along with Forms A - G, insurance certificate, and a written understanding of the scope, budget and schedule for the project. The fee proposal must provide sufficient detail in accordance with Chapter 287.055, FS.
3. Contracts Department (CD) reviews the submitted information and schedules a two-hour negotiation meeting upon confirmation of receipt of all required information.
4. An officer authorized to bind the firm must represent CM at negotiations.
5. Upon successful completion of negotiations CM signs attached "Construction Manager Approval Sign-Off" form.
6. CD may be able to prepare the agreement immediately after the negotiations meeting. If possible, CM should have corporate seal and those authorized to execute the agreement present.
7. The Board considers award of the agreement at the next available regular school board meeting subject to the deadline requirements.
8. CD processes the agreement for execution, receives approval of the insurance certificate and policies, and issues the notice to proceed with the design phase, or, the current phase of the project.

This process requires a minimum of five weeks subject to current workload demands and board meeting schedules.

Preparing the GMP Addendum and processing the Addendum

1643 NW 136 Street - Sunrise, FL 33323
Phone: 754-321-1675 Fax: 754-321-1688

1. CM prepares the final cost estimate, usually at Phase III 50% with review comments. **NOTE: Fast-Tracking and Partial GMPs are NOT ACCEPTABLE unless previously negotiated and approved by the Deputy Superintendent and the Board.**
2. CM prepares the GMP Manual including the attached Schedule of Values summary. Note, if Builder's Risk Insurance was excluded from fees it is shown in cost of work. CM DOES NOT prepare the addendum document. This will be prepared by CD.
3. CM submits five copies of the GMP Manual, one marked original, builders risk insurance, and the building permit to Building 4, Reception.
4. CD, Project Management, cost estimators, legal counsel, budget, Project Consultant, and other consultants review GMP Manual.
5. CD prepares the addendum form and bonds and submits to CM.
6. CM executes four copies of each, addendum, performance bond, and payment bond, and submits four original documents, each with an attached power of attorney from surety twelve (12) total) to Building 4, Reception.
7. The Project Consultant issues a recommendation to approve the GMP.
8. The Board considers award of the agreement at the next available regular school board meeting subject to the deadline requirements.
9. CD processes the addendum form and bonds for approval and execution, and receives approval of the builder's risk insurance.
10. CD issues the notice to proceed with the bidding and award, construction, and warrantee phases. **NOTE: NTPs will not be issued when a complete building permit, or other permits, have not been issued.**

This process requires a minimum of four (4) weeks subject to current workload demands, availability of funds, and board meeting schedules.

NOTE: In the event the project is ready for bidding at the time of Board approval of the selection of the CM, and with the prior written approval of the Deputy Superintendent, the CM may proceed to bidding. In this case the CM should submit the fee negotiations and agreement preparation at the earliest possible time, preferably prior to submission of the GMP to expedite this process. Formal fee negotiations must be conducted. GMPs are not necessarily required in many cases where the cost of work is within pre-established budget.

Projects wherein the GMP exceeds available funds require 1-2 additional weeks to process.

Cc: Project Consultants
Project Managers
Contracts Staff

FORM A: PRE-DESIGN PHASE FEES
COST OF CONSTRUCTION MANAGER'S PERSONNEL ASSIGNED DURING PRE-DESIGN PHASE

NAME OF INDIVIDUAL	TITLE	LABOR		TOTAL
		QUAN.	COST/UNIT EXTENSION	
SUB-TOTAL PRE-DESIGN				

FORM B : DESIGN PHASE FEES
COST OF CONSTRUCTION MANAGER'S PERSONNEL ASSIGNED DURING DESIGN PHASE

NAME OF INDIVIDUAL	TITLE	LABOR			TOTAL
		QUAN.	UNIT	COST/UNIT EXTENSION	
SUB-TOTAL DESIGN					

**FORM C : BIDDING AND AWARD PHASE FEES
 COST OF CONSTRUCTION MANAGER'S PERSONNEL ASSIGNED DURING BIDDING AND AWARD PHASE**

NAME OF INDIVIDUAL	TITLE	LABOR			TOTAL
		QUAN.	UNIT	COST/UNIT EXTENSION	
SUB-TOTAL BIDDING & AWARD					

**FORM E: CONSTRUCTION PHASE FEES (OFF SITE)
 COST OF CONSTRUCTION MANAGER'S PERSONNEL ASSIGNED OFF-SITE DURING CONSTRUCTION**

NAME OF INDIVIDUAL	TITLE	QUAN.	UNIT	LABOR		TOTAL
				COST/UNIT	EXTENSION	
SUBTOTAL (OFF SITE)						\$

FORM F: WARRANTY PHASE FEES
COST OF CONSTRUCTION MANAGER'S PERSONNEL ASSIGNED DURING WARRANTY

NAME OF INDIVIDUAL	TITLE	LABOR			TOTAL
		QUAN.	UNIT	COST/UNIT EXTENSION	
SUB-TOTAL WARRANTY					\$

FORM G: LIST ITEMS OF GENERAL CONDITIONS INCLUDED IN FEES

ITEM #	DESCRIPTION	MATERIAL		LABOR		INSURANCE/SERVICES		TOTAL	
		QUAN.	UNIT COST/UNIT	QUAN.	UNIT COST/UNIT	QUAN.	UNIT COST/UNIT		
		TOTAL GENERAL CONDITIONS							

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

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
NEGOTIATING COMMITTEE
CONSTRUCTION MANAGER APPROVAL SIGN-OFF**

Meeting Date:
Project Number:
Project Name:
Project Manager:
FLCC: \$

Project Description:

Negotiated Contract Terms

Construction Manager Fees:

Guaranteed Maximum Not to Exceed:		
Pre-Design	\$	-
Design	\$	-
Bidding & Award	\$	-
Construction	\$	-
Warranty	\$	-
Overhead	\$	-
General Conditions	\$	-
Lump Sum Not to Exceed:		
Profit	\$	-
		<hr/>
Total	\$	-
		<hr/>

Overhead, profit and bond allowances for Change Orders _____ %

Substantial Completion: _____ Consecutive Calendar Days
 Final Completion in General Conditions 25.01.02: _____ Consecutive Calendar Days
 Construction Phase Fee and General Conditions in 25.01.02 \$ _____ per Consecutive Cal. Day
 Liquidation Damages for Substantial Completion: \$ _____ per Consecutive Cal. Day
 Liquidation Damages for Final Completion: \$ _____ per Consecutive Cal. Day

We, _____ agree to the terms and conditions included in the Agreement Between the Owner (SBBC) and Construction Manager dated _____, including the above terms and conditions.

By: _____
Signature: _____ Title: _____

Printed Name: _____ Date: _____

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

PROJECT: _____

CONSULTANT: _____

CHECKLIST

PROFESSIONAL SERVICES AGREEMENT (CM AT RISK) FOR ARCHITECTURAL/ ENGINEERING SERVICES

- QSEC selects finalist
- CONTRACTS receives documents and response from Consultant
 - Name of Principal who will be involved in the project
 - Names of Those Signing Contract and Corporate Documents Establishing that Authority
 - Insurance Documents Compliant with Article 2.12 of the Agreement
 - Truth in Negotiations
 - Fee Proposal and Supporting Documentation
- CONTRACTS prepares Agreement
- CONTRACTS schedules and facilitates NEGOTIATION PARAMETER COMMITTEE
 - 1. Confirm Schedule
 - 2. Prepare Parameter Form (*NPC Form*)
 - 3. Prepare Meeting Agenda and Sign-In form (*NPC Meeting*)
 - 4. Prepare Meeting Notice
 - 5. Post Outlook Schedule
 - a. Invite:
 - i. Director or Designee, Purchasing
 - ii. Executive Director or Designee, Office of the Chief Auditor
 - iii. Executive Director or Designee, Facility Planning, Management and Site Acquisition
 - iv. Project Manager
 - v. Senior Project Manager
 - vi. Executive Director or Designee, Design Services
 - vii. Director or Cost Estimator/Scheduler, Design and Construction Contracts
 - b. Reserve Meeting Room
- CONTRACTS completes Agreement immediately after negotiations
- CONSULTANT EXECUTES Agreement (Preferably after negotiation meeting)
 - 1. Issue transmittal for pickup or delivery of Agreement
Transmit to Consultant for Execution
 - 2. Attach Agreement and Four Copies of Signature Pages

- CONTRACTS receives executed Agreement from CONSULTANT
- CONTRACTS submits insurance documents to RISK MANAGEMENT
 1. Prepare transmittal from Director
 - a. Attach Collaboration Form and Board Item
 - b. Attach Agreement
 - c. Attach Certificate of Insurance
- CONTRACTS issues Agreement to OFFICE OF THE CHIEF AUDITOR
 1. Prepare transmittal from Director (*Conslt Audit Trans*)
 - a. Attach Collaboration Form and Board Item
 - b. Attach Agreement
- CONTRACTS requests School Board Attorney Approval (Ed Marko)
 1. Prepare Transmittal from Director to Staff Attorney (*Consult Atty Review*)
- CONTRACTS receives School Board Attorney Approval
- CONTRACTS receives approval from RISK MANAGEMENT
 1. Collaboration Form
- CONTRACTS receives approval from OFFICE OF THE CHIEF AUDITOR
 1. Collaboration Form
- CONTRACTS processes BOARD item "Approval of Agreement"
 1. Prepare Agenda Item (*Agenda Shell AOA*) (*Collaboration*)
 - a. Attach Agreement and Attachments
 - b. Attach Four Copies of Executed Signature Pages
 - a. Retain original in Agenda Item Suspense File until approved
- CONTRACTS receives approved BOARD item "Approval of Agreement" and signatures
- CONTRACTS assembles Four Copies Agreement and distributes Original Executed Copy of Agreement and General Conditions to CONSULTANT (*TPM NTP*)
 1. Distribute by cc Original Executed Copy of Agreement to RECEPTION
 2. Distribute by cc Copy of Agreement to PM
 3. Distribute by cc Original Executed Copy of Agreement to CONTRACTS file

GMPs (Partial and Final)

- CONTRACTS receives GMP from Consultant for any new projects
- CONTRACTS receives Builders Risk Insurance Certificates from Consultant
- CONTRACTS forwards Builders Risk Insurance Certificates to RISK MANAGEMENT
- CONTRACTS receives approval from RISK MANAGEMENT
- CONTRACTS prepares GMP Agreement and Performance and Payment Bonds
- CONTRACTS prepares BOARD ITEM and COLLABORATION
- CONTRACTS forwards BOARD ITEM and COLLABORATION to CAPITAL BUDGET
- CONTRACTS receives COLLABORATION from CAPITAL BUDGET
- CONTRACTS receives four executed originals of Agreement and Power of Attorneys, four executed originals of Performance Bond Form and Power of Attorneys, and four executed originals of Payment Bond Form and Power of Attorneys
- CONTRACTS forwards Builders Risk Insurance Certificates to RISK MANAGEMENT
- CONTRACTS forwards Agreement and Bonds to Oscar Soto for approval via

Exhibit D

PROCEDURE – TPM

transmittal

- CONTRACTS forwards Agreement and Bonds to Ed Marko, Staff Attorney, for approval once received from Oscar Soto, Outside Attorney, via transmittal with Oscar Soto's signature of approval
- CONTRACTS receives approved BOARD item "Approval of Agreement" and signatures
- CONTRACTS assembles Five Copies Agreement and distributes Original Executed Copy of Agreement and Bonds to CONSULTANT (*TPM NTP*)
 1. Distribute by cc Original Executed Copy of Agreement to RECEPTION
 2. Distribute by cc Copy of Agreement to PM
 3. Distribute by cc Original Agreement to Surety
 4. Distribute by cc Original Executed Copy of Agreement to CONTRACTS file
- CONTRACTS issues letter to CONSULTANT informing them of BOARD approval

Facility:
Project:
Project Number:
CM/TPM:
Date:

Schedule of Values Amounts						
CSI Division/Specification No.	Sub-Contractor	GMP	Sub-Contract Amount	Change Orders	Contingency Use Directives	Final Sub-Contract Amount

- Ensuring receipt of all subcontracts.
- Certifying the schedule of values as representing the value of all subcontracts.
- Financial close-out of the project - CUDs and Credit Change-orders

GENERAL CONDITIONS - ARTICLE 24. SUBCONTRACTS - CM/TPM shall submit:

- 24.4 Updated listings of Subcontractors denoting changes to the list submitted within ten (10) days of said change.
- 24.5 Copies of executed Subcontractor Contracts within ten (10) days of their execution.
- 24.6 A complete accounting of all payments made to Subcontractors and the balances owed to the Subcontractors with each Application For Payment submitted by the Construction Manager.

Line Item	GMP	Sub-Contract	Change
Plumbing	500,000	550,000	50,000
Electrical	1,000,000	900,000	(100,000)
Mechanical	1,500,000	1,450,000	(50,000)
TOTAL	3,000,000	2,900,000	(100,000)
CUD to Contingency			100,000

Agreement - Article 6.1.2 When 100% of the Trade Contracts have been executed, the contingency within the GMP shall be decreased in proportion to the percent of the Work completed each month. In other words, if 10% of the Work has been completed and the Owner requests that the contingency within the GMP be adjusted, then 10% of the contingency within the GMP will be removed from the GMP by change order and will be moved to the Owners savings line item in the schedule of values. The Owner may utilize funds from the Owner saving line item in the Schedule of Values to fund added scope change orders.

Document 01770 - 1.12 FINAL ADJUSTMENTS OF ACCOUNTS (CM/TPM)

- A. Submit a final statement of accounting to the Project Consultant.
- B. Statement shall reflect all adjustments to the Contract Sum:
 1. The original Contract Sum.
 2. Additions and deductions resulting from:
 - a. Previous Change Orders.
 - b. Deductions for uncorrected work.
 - c. Deductions for liquidated damages.
 - d. Deductions for reinspection payments.
 - e. Other adjustments.
 3. Total Contract Sum, as adjusted.
 4. Previous payments.
 5. Sum remaining due.
 6. The applicable Purchase Order Number issued by the Owner.

FINAL ACCOUNTING		TOTAL
Contract Amount		\$10,000,000
Change Orders		
Additions/Deletions to Scope	100,000	
Other Deletions	0	
Liquidated Damages	0	
Reinspection Payments	0	
Credit from Contingency	(200,000)	
Uncommitted Costs	(100,000)	
Direct Owner Purchase Program	(100,000)	
Total Change Orders		(100,000)
Final Contract Amount		\$9,900,000
Owner Savings		\$100,000
Original Contract Amount		\$10,000,000

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

<input checked="" type="checkbox"/> Best Practice Bulletin No.	<input type="checkbox"/> Contract Bulletin No.	<input checked="" type="checkbox"/> McGladrey Audit Finding No. #26, #27, #28, #29, #30 & #37
----------------------------------------------------------------	------------------------------------------------	-----------------------------------------------------------------------------------------------

Purpose:

To establish a process to (1) track each Application for Payment from the initial receipt up until the adjusted request is processed for payment to the Contractor, (2) track the responsible party's review of each Application for Payment to verify a consistent review of each Application for Payment, (3) ensure that each final Contractor's Application for Payment (Document 01290) is submitted to the Records Management Section in both electronic and hard copies, as revised upon completion from both the Capital Budget Department (Capital Payments) and the Project Management Team and (4) ensure that each Application for Payment is reviewed by the responsible staff to ensure compliance with contract requirements and the reconciliation of accounts in respect to the Schedule of Values and the approved GMP, if applicable.

Issue:

This process addresses McGladrey's recommendation that "F & CM implement procedures to (1) ensure that all final documents are submitted to Records Management upon their completion from both the Capital Budget Department (Capital Payment Group) and the Project Management team, (2) utilize a checklist to document reviews and reconciliations performed throughout the pay application process. This checklist will serve both as documentation of work performed and as a reference to employees, helping ensure proper review and support of all payments, ... (3) as part of the CUD review procedures, the Project Manager or Capital Payments staff reconciles approved CUDs with those reflected in the pay application.

Procedure:

1. Contractor submits Application for Payment (Document 1290a) to F & CM, which is time stamped when received by the Records Management section.
2. Records Management Section verifies project specific insurance compliance of the Contractor.
3. Reception staff logs Application for Payment (Document 1290a) into the electronic SAP system.
4. The hard copy Application for Payment (Document 1290a) is routed to the relevant project manager for review and signatures.
5. Project Management clerical support transmits hard copy of the original Application for Payment (Document 1290a) with revisions and signatures to the Capital Payments Department.

Exhibit E-1

6. Capital Payments Department reviews the Application for Payment (Document 1290a) making adjustments if necessary and providing notification to the Project Manager and Contractor.
7. Capital Payments Department forwards the final edited Application for Payment (Document 1290a) electronically to the supervisor of the Records Management Section.
8. Supervisor of the Records Management Section scans the edited Application for Payment (Document 1290a) into the relevant project file in the Optiview data base.
9. A hard copy of edited Application for Payment (Document 1290a) is inserted into the relevant project file.

Application for Payment Checklist

Location # _____

Project #/P.# _____

Project Name _____

Reception & Data Records Management		Yes	No	N/A	Verified by:	Reviewed by:
1	Application for Payment signed by Contractor and A/E					
2	Application for Payment notarized					
3	Contractor's Insurance and requirements are in compliance					
Project Management		Yes	No	N/A	Verified by:	Reviewed by:
4	Schedule of Values is consistent with the original approved GMP					
5	All summary sheet totals are reconciled with the Schedule of Values					
6	Schedule of Values is summed and totals are traced to the front cover of the Application for Payment					
7	Totals on the Schedule of Values are checked for mathematical accuracy					
8	Original contract sum is verified to final approved GMP					
9	Net Change by Change Orders is reconciled to the Change Order Log					
10	Net Change by Contingency Use Directives (CUD) is reconciled to the CUD Log					
11	Application for Payment sequentially numbered					
12	Period of Application for Payment is accurate					
13	Previous Applications for Payment are reconciled with Owners records					
14	Cover and summary sheet math is correct					

Exhibit E-1

	Project Management					
		Yes	No	N/A	Verified by:	Reviewed by:
15	Time Graph Schedule updated to reflect current Application for Payment					
16	Review for unapproved balance transfers between original GMP line items					
17	Sub-Contractors request for payment is consistent with the request by the G.C. and reconciles with A/E report of "completed and stored" to date on the G.C. Application for Payment					
18	Total Job cost report reconciles with Application for Payment					
19	Davis Bacon Act - Billings for Contractor labor traced to certified payroll report or comparable, CM system produced document					
20	Billings for Contractor Labor Burden traced to proper supporting documentation and are in accordance with the Contract and are recalculated for accuracy					
21	Billings for General Conditions / General Requirements reconciled to supporting invoice, subcontractor Application for Payment another appropriate documentation					
22	Subcontractor lien releases (as applicable) attached					
23	Direct Owner Purchase Log reconciled to Application for Payment					
24	Contingency Use Directives Log reconciled to Application for Payment					
25	Change Order Log reconciled with Application for Payment					
26	Construction Manager Fee request is consistent with the Agreement.					
27	Change Orders referenced in Application for Payment is reconciled with Board Approval of Change Orders					

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

<input checked="" type="checkbox"/> Best Practice Bulletin No.	<input checked="" type="checkbox"/> Contract Bulletin No.	<input checked="" type="checkbox"/> McGladrey Audit Finding No. #31 & #32
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Purpose:

The Owner, being exempt from Florida sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in the Contractor's bid and/or contract. Any equipment, materials or supplies directly purchased by the Owner that are included in the subcontractor's contract shall be referred to as owner-purchased materials.

This process ensures that (1) each Direct Owner Purchase (DOP) delivered to the project site or Owner approved storage facility, is reconciled with the shipping and delivery documentation when compared with the invoices submitted to Capital Payments by the Contractor, (2) the Log of Owner-Purchased Materials, as created and maintained by the Capital Payments Department shall become an attachment for the project file at the time each Application for Payment is processed and approved. This procedure will be applied to all CM @ Risk projects.

Issue:

This process addresses McGladrey's recommendation that (1) "F & CM implement procedures requiring the matching of shipping documents obtained at the time of delivery, to the invoices submitted to Capital Payments and (2) that F & CM implement a policy requiring the Capital Payments personnel responsible for the primary review of the pay application to print and attach the internal DOP log as evidence of their review. This log should be circulated as a part of the pay application for the required additional review procedures and to Records Management for monthly filing."

Procedure:

1. As owner-purchased materials are delivered to the job site, the Subcontractor, Contractor and the Owner's Representative shall visually inspect all shipments of supplies and approve the vendor's invoice for materials delivered.
2. All delivery tickets signed by the receiving contractor's representative shall be copied and provided to the Project Manager at the time of submitting the Application for Payment (Document 1290a) by the Contractor.
3. Project Manager shall assure that each delivery ticket is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made.

Exhibit F-1

4. The Project Manager shall reconcile the delivery tickets with the Application for Payment (Document 1290a) Schedule of Values for work completed and materials stored to date.
5. The Subcontractor shall then submit the vendor invoices to the Contractor for forwarding to the Owner.
6. Project Management shall review each vendor invoice for accuracy and recommend payment by the Owner through the Capital Payments Department.
7. The Owner shall process and pay directly to the vendor in the manner as all other owner entity invoices are processed.
8. Capital Payments shall maintain a Vendor Log of each Purchase Order for Owner-Purchased Materials.
9. Each Vendor Log for Owner-Purchased Material shall be attached by the Capital Payments staff, to the relevant Application for Payment (Document 1290a).
10. Capital Payment Department transmits the final edited Application for Payment (Document 1290a), including all Vendor Logs for Owner-Purchased Materials, to Supervisor of the Records Management Section.
11. Supervisor of the Records Management Section, electronically files edited Application for Payment (Document 1290a), and attachments into the relevant project file of the Optiview database.
12. A hard copy of edited Application for Payment (Document 1290a) and attachments is inserted into the relevant project file.

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

Best Practice Bulletin No. Contract Bulletin No. McGladrey Audit Finding No. #33

Purpose:

To establish a process to ensure that mathematical errors are detected in change orders and contingency use directives.

Issue:

This process addresses McGladrey's recommendations that as part of the change order review procedures, the Capital Payments staff, reconcile and recalculate all relevant supporting documentation to prevent such errors.

Procedure:

1. The Construction Manager shall be required to furnish documentation evidencing proposed expenditures to be charged to the contingency prior to the preparation of Document 01250h.
2. Project Manager to provide change order history to ensure threshold requirements in calculating overhead and profit (OH & P).
3. The Capital Budget Department will review the supporting cost documentation for accuracy prior to the Agenda Preparation Group meeting and Board approval of change order and contingency use directives.

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

<input checked="" type="checkbox"/> Best Practice Bulletin No. 1	<input checked="" type="checkbox"/> Contract Bulletin No.	<input checked="" type="checkbox"/> McGladrey Audit Finding No.'s #34, #35, #36 & #41
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Purpose:

This procedure has been established to outline the change order review process and procurement of an independent cost estimating consultant for review of change orders in excess of the established threshold. To ensure that these documents are given the highest priority, the process of perfecting them must be uniform and streamlined and must place the control and responsibility for the change directly with the District's Project Manager (hereafter PM).

Issue:

One of the principal responsibilities of the Facilities and Construction Department is to process change orders accurately and efficiently. Facilities & Construction has established a procedure for reviewing change orders which includes a facilitative session between PM and the reviewing Cost Estimator. This procedure addresses McGladrey's recommendation that (1) "F & CM develop a process for reviewing change orders over and established threshold that includes involvement from the Contract and Cost Estimation Department", (2) F & CM develop a process for reviewing change orders that include regular involvement from the Design Services Department and (3) F & CM implement procedures requiring the Cost Estimation department be involved in the review of data provided by a 3rd party consultant for cost estimation, change orders CUD's, buyout, etc."

Procedure:

Prior to submission of change orders to the Board for approval, the PM will submit the Change Order Item to the Project Management Council (PMC) for final review. The attendees consist of the Executive Director, Assistant General Counsel, Project Manager III (5), Assistant Building Official, Cost Estimator, Design Services and the Audit Department.

1. Contractor submits *Change Order Request Proposal (1250b)*, with attachments; *Proposal Worksheet Detail (1250c)*; *Proposal Worksheet Summary (1250d)*, and all supporting documentation to Architect/Engineer (A/E) and Project Manager(PM).
2. A/E and PM conduct concurrent reviews of the Proposal for Entitlement, Cause, Amount and Time. *Note: All change orders over \$100,000.00 will be reviewed by a third party independent cost estimator prior to submission to the internal Change Order Review Committee [Project Management Council (PMC)].*

➤ **If denied:**

- Letter of Rejection or Request for Revisions forwarded to the Contractor from the A/E.

- Contractor revises proposal per comments and follows Step 1.
- **If approved:**
 - PM proceeds to Step 3.
- 3. PM with the assistance of A/E prepares *Change Order Item (1250g)*.
- 4. PM prepares and submits Change Order Review Checklist with attachments (*Change Order Item 1250g*) and all supporting documentation to the PMC (via Cab e-mail system) folder by 12 PM Wednesday.
- 5. PMC reviews the Change Order Item (1250g) for Language, Entitlement, Cause, Amount and Time.
 - **If denied:**
 - Letter of Rejection or Request for Revisions forwarded to the Contractor from the A/E.
 - Contractor revises proposal per comments and follows Step 1.
 - **If edits required:**
 - PM makes requested changes per PMC Meeting and resubmits to PMC, and follows Step 3.
 - **If approved:**
 - PM proceeds to Step 6.
- 6. PM prepares Change Order Item/Executive Summary (Board Item) for review at the Facilities and Construction *internal* Agenda Preparation Group (APG) Meeting (attended by Audit, Capital Budget, Contracts, Design, General Counsel, Senior PM, and Building Department, as well as others when relevant to specific project or agenda item).
 - **If denied:**
 - Letter of Rejection or Request for Revisions forwarded to the Contractor from the A/E.
 - Contractor revises proposal per comments and follows Step 1.
 - **If edits required:**
 - PM makes requested changes per APG and returns to Coordinator for submission to Senior APG.
 - **If approved:**
 - Project Manager proceeds to Step 7.
- 7. Coordinator prepares items for submission to Senior APG (attended by Senior APG members).

Exhibit H-1

➤ **If denied:**

- Letter of Rejection or Request for Revisions forwarded to the Contractor from the A/E.
- Contractor revises proposal per comments and follows Step 1.

➤ **If edits required:**

- Project Manager makes requested changes per Senior APG and returns to Coordinator for submission to Official School Board Records (OSBR).

➤ **If approved:**

- Coordinator proceeds to Step 8.

8. Change Order Board Item and Executive Summary finalized for submission to OSBR for Board approval.

9. Upon Board approval, Contractor Notification Letter forwarded to contractor.

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

<input type="checkbox"/> Best Practice Bulletin No.	<input type="checkbox"/> Contract Bulletin No.	<input checked="" type="checkbox"/> McGladrey Audit Finding No. #38
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Purpose:

To establish a procedure of conducting a contractually required pre-construction meeting and pre-application for payment review meeting, which ensures that each Project Management Team meets prior to any construction activity to familiarize and establish contract performance compliance expectations of the Construction Manager/Contractor with the following processes; (1) Application for Payment (2) Change Order, (3) Construction Change Directive (4) Contingency Use Directive and (5) Direct Owner Purchase.

The pre-construction meeting is a contractually required meeting which brings all parties of the Project Team together to collaboratively discuss the expectations of the team. The invited parties shall at minimum include; Architect, Contractor, Owner, Building Department, Testing Agency, School Principal, Maintenance, Project Manager and Capital Payments.

Issue:

This process addresses McGladrey's recommendation that "F & CM hold a meeting no later than prior to the submission of the first pay application, in order to set the expectations of what will be require from the Construction Manager to receive payment for services performed, change orders or CUD;s. These requirements should fall in line with Observations #29, 30, 31 and 35."

Procedure:

1. After the issuance of the Notice to Proceed to the contractor, the project manager schedules a pre-construction meeting with required invitees. Ten days' notice is required for the meeting.
2. Meeting is scheduled at the proposed construction site or school. Prototypical agenda (attached) is distributed along with preliminary contact information of all the invited parties.
3. Items to be discussed as per Section 01301 (Project Management and Coordination of the Construction Contract. *Note: Draft Schedule of Values submitted to Capital Payments prior to the issuance of the contractors first Application for Payment.*
5. A Pre-Construction mandatory sign in sheet shall include individual emergency contact cell phone information and e-mail address of all team members.

Exhibit I

6. Project Architect is responsible for the pre-construction documentation and meeting minutes.
7. Project Architect issues pre-construction meeting minutes to all involved parties.
8. Project Architect responds in writing to any and all inquiries that were presented at the meeting.
9. Project Architect sends final draft of the Meeting Minutes to the School Board of Broward County' Records Management Section.

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

<input checked="" type="checkbox"/> Best Practice Bulletin No.	<input type="checkbox"/> Contract Bulletin No.	<input checked="" type="checkbox"/> McGladrey Audit Finding No. #42
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Purpose:

To ensure that each Project Management team member assist in the timely completion and processing of the Final Change Order within 60 days of the execution of the Certificate of Occupancy (OEF110b).

Issue:

This process addresses McGladrey's recommendation that "F & CM implement procedures requiring Project Managers to obtain all project closeout documentation and final change order resolution within 60 days of beneficial occupancy/final completion."

Procedure:

1. Once contractor reaches substantial completion as required by the Contract, contractor shall submit a statement of accounting to the project consultant.
2. Contractor shall prepare a final change order (if applicable) reflecting approved adjustments to the contract sum not made by previous Change Orders.
3. Project Manager will process change orders through the established change order review and approval process.
4. Board approves final change order reconciling final contract amount and final contract duration.
5. Project Architect inserts the list of change orders on page two of the Certificate of Final Inspection (OEF 209).
6. Once all punch list items have been completed, the OEF 209 is submitted to the Building Official for execution.
7. Once the OEF 209 is executed, the project manager requests final consent of surety, release of lien, retainage reduction certification and any additional relevant information to prepare final acceptance board item.
8. Board approves final acceptance board item.

Note: All project closeout documentation and final change order resolution should be completed within 60 days of beneficial occupancy, unless extraneous circumstances preclude this process.

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

Best Practice Bulletin No.

Contract Bulletin No.

McGladrey Audit Finding No. #43

Purpose:

To establish a procedure that ensures that errors and omissions are tracked and documentation submitted that evidences resolution on all projects.

Issue:

This process addresses McGladrey's recommendation that "F & CM implement procedures to track errors and omissions. Further, we recommend as part of project close out, F & CM require Project Management submit documentation evidencing how the identified errors and omissions were resolved with the Architect.

Procedure:

1. The project consultant issues a Proposal Request (Document 01250a) which includes a detailed description of a proposed change with the supplementary or revised drawing and specification.
2. Contractor shall prepare and submit an estimate within 14 calendar days after receipt of the Proposal Request in the form of the Change Order Request Proposal (Document 01250b) with its required supporting documentation.
3. The Project Consultant and Project Manager will prepare the Change Order Item (Document 01250g) for the Change Order Review Process.
4. During the PM Council meeting the change order is reviewed for entitlement, cause, amount and time.
5. The "cause code" for each change order is discussed and determined at the PM Council meeting and identified on the Change Order Item.
6. The "cause code" for each change order is documented in Prolog and via the Change Order Summary, which provides a tabulation of the overall total changes by "cause code". This summary is included as an attachment to the Board.

Exhibit K

7. Provided there are Error and Omissions on the project, a Demand letter is sent to the Architect and their insurance carrier, to request recovery as established by the Contracts Department.
8. If resolution is not achieved the Contracts Department will refer to in-house Legal Department for resolution.

SECTION III
OFFICE OF THE CHIEF AUDITOR EXHIBITS

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

Best Practice Bulletin No. 01

Contract Bulletin Nos. 69

McGladrey Audit Finding No. 26

Purpose:

Revise the invoice process to ensure revised documents are retained in the master project file.

Issue:

Previously invoices would be revised by Capital Payments and the revised documents were not returned to the master file maintained by Data and Records Management.

Procedure:

1. Responsible parties
 - a. Capital Payments Supervisor
 - i. Comply with attached procedure
 - ii. Ensure revised invoice documents are returned to the Master Project File
 - iii. Consult with Project Manager prior to making revisions
 - iv. Provide copy of revisions to Project Manager
 - b. Supervisor III, Data and Records Management
 - i. Comply with attached procedure
 - ii. Ensure received revised invoice documents are retained in the Master Project Files

**This document was obtained
from the Supply Management
& Logistics website**

Application for Payment Form (1290a) Process

1. Application for Payment Form (1290a) received from Contractor by Reception.
2. Reception Staff Checks for Insurance Compliance.
3. Reception Staff Logs Application for Payment Form (1290a) into SAP.
4. Application for Payment Form (1290a) sent to Project Management for signatures.
5. Project Management Secretary sends original and signed Application for Payment Form (1290a) to Capital Budget Department.
6. Capital Payment Department reviews and makes correction when necessary and notifies Project Manager.
7. Capital Payments Dept. sends adjusted copy of Application for Payment Form (1290a) received from Capital Budget Department by email to Supervisor III, Operations who send it to Optiview Inbox
8. Reception Staff drags adjusted/corrected Application for Payment Form (1290a) to the appropriate project
9. Hard copy of Application for Payment Form (1290a) inserted into project file.

**This document was obtained
from the Supply Management
& Logistics website**

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

Best Practice Bulletin No.

Contract Bulletin No. 40

McGladrey Audit Finding No. 31/32

Purpose:

Establish a procedure to ensure use of the revised Documents 01295 and attachments.

Issue:

Staff revised and clarified terms in Documents 01295 and attachments.

Procedure:

1. Include the current version of Documents 01295 and attachments located on the web site.
 - 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. Schedule a kick off meeting with Capital Payments and commencement
 4. Enforce Compliance by the Contractor
 5. Coordinate activities between the Contractor and Capital Payments.

**This document was obtained
from the Supply Management
& Logistics website**

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

DESIGN AND CONSTRUCTION BULLETIN

Issue Date: January 31, 2013

<input type="checkbox"/> Best Practice Bulletin No.	<input checked="" type="checkbox"/> Contract Bulletin Nos. 54, 35, 43	<input checked="" type="checkbox"/> McGladrey Audit Finding No. 43
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Purpose:

Implement a procedure for processing Change Orders.

Issue:

Implementation of revised Change Order Review Process.

Procedure:

1. Responsible Parties
 - i. Project Manager
 1. Comply with the provisions of the attached procedure

**This document was obtained
from the Supply Management
& Logistics website**

Change Order Review Process

Purpose:

This Procedure outlines the change order review process and procurement of an independent cost estimating consultant for review of change orders in excess of the established threshold. To ensure that these documents are given the highest priority, the process of perfecting them must be uniform and streamlined and must place the control and responsibility for the change directly with the District's Project Manager (hereafter PM).

Scope:

One of the principal responsibilities of the Facilities and Construction Department is to process change orders accurately and efficiently. Facilities & Construction has established a procedure for reviewing change orders which includes a facilitative session between Project Management and the reviewing Cost Estimator. *Note: All change orders over \$100,000.00 will be reviewed by a third party independent cost estimator prior to submission to the internal Change Order Review Committee [Project Management Council (PMC)].*

Definitions:

Prior to submission of change orders to the Board for approval, the Project Manager will submit the Change Order Item to the Project Management Council (PMC) for final review. The Council consists of the Executive Director, Assistant General Counsel, Project Manager III (5), Assistant Building Official and Cost Estimator. *Note: All Change Order Items are made available to Design Services for review and comment.*

Procedure:

1. Contractor submits *Change Order Request Proposal (1250b)*, with attachments; *Proposal Worksheet Detail (1250c)*; *Proposal Worksheet Summary (1250d)*, and all supporting documentation to Architect/Engineer (A/E) and Project Manager.
2. A/E and Project Manager conduct concurrent reviews of the Proposal for Entitlement, Cause, Amount and Time.
 - **If denied:**
 - Letter of Rejection or Request for Revisions forwarded to the Contractor from the A/E.
 - Contractor revises proposal per comment and follows Step 1.
 - **If approved:**
 - Project Manager proceeds to Step 3.
3. Project Manager with the assistance of A/E prepares *Change Order Item (1250g)*.
4. Project Manager prepares and submits *Change Order Review Checklist* with attachments (*Change Order Item 1250g*) and all supporting documentation to the PMC (via Cab e-mail system) folder by 12 PM Wednesday.

5. PMC reviews the Change Order Item (1250g) for Language, Entitlement, Cause, Amount and Time.

➤ **If denied:**

- Letter of Rejection or Request for Revisions forwarded to the Contractor from the A/E.
- Contractor revises proposal per comments and follows Step 1.

➤ **If edits required:**

- Project Manager makes requested changes per PMC Meeting and resubmits to PMC, and follows Step 3.

➤ **If approved:**

6. Project Manager prepares Change Order Item/Executive Summary (Board Item) for review at the Facilities and Construction *internal* Agenda Preparation Group (APG) Meeting (attended by Audit, Capital Budget, Contracts, Design, General Counsel, Project Management, and Building Departments, as well as others when relevant to specific project or agenda item).

➤ **If denied:**

- Letter of Rejection or Request for Revisions forwarded to the Contractor from the A/E.
- Contractor revises proposal per comments and follows Step 1.

➤ **If edits required:**

- Project Manager makes requested changes per APG and returns to Coordinator for finalization.

➤ **If approved:**

7. Change Order Board Item and Executive Summary finalized for submission to Official School Board Records (OSBR) for Board approval.

8. Upon Board approval, Contractor Notification Letter forwarded to contractor.

**This document was obtained
from the Supply Management
& Logistics website**

REVISED
12/11/13

URS Review and
Approves

Initial Above

5.2. Supplemental Fee:

5.2.1. The Program Manager may be authorized to perform Supplemental Services. See Article 5.1.4. The fee for such services will be based upon a Cost Plus with a Guaranteed Maximum Price based on Direct Personnel Expenses. Owner, at Owner's sole discretion, may negotiate and agree with Program Manager on the hourly salary rates for such employee categories or levels as may be appropriate to accomplish the Supplemental Services. Where a mutually agreeable Cost Plus with a Guaranteed Maximum based on Direct Personnel Expense cannot be arrived at, the Owner may secure services from an independent source or from the Owner's resources. The Program Manager shall provide any information and/or copies of project documentation necessary to facilitate the provision of said supplemental services by others.

5.3. Direct Salary Expense:

5.3.1. Where this Agreement or Attachments 1, 4, and 5 hereto indicates a fee computed on the basis of Direct Salary Expense, such fee shall be a not-to-exceed amount based on the following hourly rates:

5.3.2.

Labor Classification	Base Rate	Burden Factors				OH/P	Total
		Taxes	W/C	Insurance	Retirement	%	
Executive Program Manager	\$74.52	11.165%	0.229%	10.401%	2.422%	45.60%	\$134.78
Program Controls/ Clerk Specialist IV	\$44.92	11.165%	0.229%	10.401%	2.422%	45.60%	\$81.24
Senior Project Manager	\$65.08	11.165%	0.229%	10.401%	2.422%	45.60%	\$117.70
Project Manager	\$61.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$110.32
Document Control/ Clerk Specialist III	\$31.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$56.07
Design Manager (Sub-Consultant)	\$52.89	11.165%	0.229%	10.401%	2.422%	45.60%	\$95.66
Estimator (Sub- Consultant)	\$38.47	11.165%	0.229%	10.401%	2.422%	45.60%	\$69.58
Scheduler (Sub- Consultant)	\$38.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$68.73
Project Manager	\$43.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$77.77
Project Manager (Sub-Consultant)	\$50.00	11.165%	0.229%	10.401%	2.422%	45.60%	\$90.43

Note: The hourly rates will be negotiated fixed hourly rates. The Program Manager will submit to the Owner the labor rate per hour and the actual fringe benefit rate per hour for each labor classification. The Program Manager will provide the cost per hour for each component of the fringe benefit rate. The Owner will review the labor and fringe benefit rate and based on the review will negotiate the labor rate set forth above, and, Overhead and Profit. The labor rate will be used in pricing Work subject to this Agreement.

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**SECTION IV
APPENDIX**

ABBREVIATIONS

A/E	Architect/Engineers
CCD	Construction Change Directive
CCNA	Consultant's Competitive Negotiations Act
CDs	Construction Documents
CM	Construction Manager
CO	Change Order
COI	Change Order Item
DOE	Department Of Education
DOP	Direct Owner Purchase
ECD	Estimated Completion Date
E&O	Errors and Omissions
F.S.	Florida Statutes
FBC	Florida Building Code
F&CM	Facilities and Construction Management Division
FHSAA	Florida High School Athletic Association
FS	Florida Statutes
GMP	Guaranteed Maximum Price
HVAC	Heating, Ventilation and Air Conditioning
OCA	Office of the Chief Auditor
OFC	Office of Facilities & Construction
OR	Owner's Request
LSC	Life Safety Code
N/A	Not Applicable
NFPA	National Fire Protection Association
OFC	Office of Facilities & Construction
PM	Project Manager
PO	Purchase Order
PPO	Physical Plant Operations
PSA	Professional Services Agreement
RAF	Regional Athletic Facility
SBBC	School Board of Broward County
SREF	State Requirements for Educational Facilities
UBCI	Uniform Building Code Inspector
UC	Unforeseen Condition

