

The School Board of Broward County, Florida
AUDIT COMMITTEE

MINUTES OF AUDIT COMMITTEE MEETING

May 17, 2012

Dr. Henry Mack, Chair, called the Audit Committee meeting to order at 12:30 p.m. at the Kathleen C. Wright Building in the 1st Floor Board Room. A moment of silence was observed for the men and women in the Armed Forces serving our country. Members and guests were introduced.

Members Present Mr. Anthony De Meo
 Mr. Ken Evans
 Ms. Mary Fertig
 Ms. Charlotte Greenbarg
 Mr. John Herbst, CPA
 Mr. Steve Hurst, CFP
 Mr. Andrew Medvin, CPA
 Ms. Mary Lou Ruderman

Staff Present: Mr. Robert W. Runcie, Superintendent
 Mr. Donnie Carter, Chief Operations Officer
 Mr. Thomas Lindner, Deputy Superintendent, F&CM
 Ms. Denise Rusnak, SBBC
 Ms. Gwen Lipscomb, SBBC
 Ms. Katie Leach, School Board Member
 Mr. Paul Carland, General Counsel, Office of General Counsel
 Mr. Thomas Cooney, Asst. General Counsel, Office of General Counsel
 Mr. Patrick Reilly, Chief Auditor, Office of the Chief Auditor (OCA)
 Ms. Delores McKinley, Director, Internal Audits (OCA)
 Mr. Joe Wright, Facility Audits, OCA
 Mr. Gerardo Usallan, Facility Audits, OCA
 Mr. Mark Magli, Director, Facility Audits, OCA
 Ms. Patricia McLaughlin, Confidential Clerk Specialist C, OCA
 Ms. Megan Gonzalez, Confidential Clerk Specialist B, OCA

Guests Present: Ms. Shelly Solomon, Parent

Old Business

A motion was made to approve the minutes for the March 29, 2012 Audit Committee meeting. Motion carried.

Current Status Report – Follow-Up Items

Follow Up Item #1 - Update on the Audit of the Ashbritt, Inc. and C&B Services Invoices for District Portable Repairs Related to Hurricane Wilma – July 23, 2009

Mr. Pat Reilly stated “At this time, after checking with our legal staff, there is no update for this meeting.”

Follow Up Item #2 – Miscellaneous Discussions – May 5, 2011

Mr. Reilly stated “This item has been a continuous item. The Committee requested additional information on the schedule of Change Orders Other audit, such as the amount of money the District spent on legal fees for each case. At one time, the Committee asked for the timeframe of when the litigation began and who represented the District, etc. During our last meeting, the attorneys were not present to answer the Committee’s questions. They are present today, if anyone has any specific questions.”

Ms. Charlotte Greenberg asked “For several months, I’ve been asking for the same information. I would like to know when all of these projects started with the first claim, who the attorney was that handled each case, how much the attorney got paid, what we asked for and what we got. I see some of the information here, but some we don’t have. I would really appreciate knowing the complete background for all of these cases.”

Mr. Paul Carland replied “When you say the start date, are you looking for the date the case was assigned to counsel?”

Ms. Greenberg stated “Yes.”

Mr. Carland asked “When you say what we asked for, are you talking about the initial demand?”

Ms. Greenberg stated “Right.”

Mr. Carland asked “And then the recovery amount?”

Ms. Greenberg stated “Right.”

Mr. Carland asked “And what the attorneys got?”

Ms. Greenberg stated “Yes.”

Mr. Carland asked the Committee for the opportunity to gather that information and present an update at the next meeting.

The Committee agreed.

Ms. Mary Fertig asked “I don’t see this on the follow up item list, but we’ve been asking for several years for a definition or a policy on when to rebid when the scope of a project changes, either way, up or in another case, way down. What are the guidelines? The State Statutes have one set of rules; we seem to have a different interpretation at different times. Do we have any update on when that policy might be brought forward?”

Mr. Carland replied “Staff has not had any discussion with me about this. It is the Superintendent’s responsibility to bring policy recommendations forward to the Board.”

Dr. Henry Mack asked Mr. Reilly to follow up with Legal Counsel to obtain an update for the next meeting.

Mr. Thomas Cooney added “The matters on the bottom of that last handout were not handled in-house by the General Counsel’s office, but rather by the Facilities Department. They handled it all.”

Ms. Greenberg stated “You indicate that Facilities handled these matters without going to Legal. How much was recovered?”

Mr. Reilly replied “At the last Audit Committee meeting, the schedule showed some of the projects that were handled by Facilities and then the discussion came up, regarding the information that was handed out by Legal, about the Dispute Resolution Committee. You asked for an update to be given at this meeting regarding that. We had asked Tom (Lindner) to do that. Basically, what’s been provided to you today is an explanation of the Dispute Resolution Committee and their process. When something isn’t resolved, it elevates to the General Counsel. They provided a flow chart on their process. I don’t know if you would like to add anything, Mr. Lindner, but the idea was if they could resolve it quickly in-house before it becomes a legal issue, they would try to do that. If not, it goes to Legal.”

Ms. Greenberg asked “How much did we get from it, if anything?”

Mr. Reilly replied “I think we’ve built this schedule over a couple of meetings. For this meeting, the last thing you were looking for was the amount of money the District spent on legal fees for each case. I think we have the information on what the settlement was, which outside Cadre handled each case, the name and some background for each project, when it started, etc. What’s outlined here was the next step on what you had asked for, the functions of the Dispute Resolution Committee.”

Dr. Mack asked that an update be brought to the next meeting.

Mr. Joe Wright asked “Mr. Chair, this is the Audit Committee. The Audit Department is heavily involved with all these audit reports and audit issues. I think it would be prudent that the Chief Auditor be maintained in the loop and be the liaison between Legal Counsel and the Audit Committee members.”

Dr. Mack asked “What did I just get through saying?”

Mr. Wright stated “I think there should be more communication.”

Dr. Mack added “Fine, thank you. I agree. Wrap it up and bring it to the next meeting. Your point is well taken. Is there anything else you’d like to add?”

Mr. Wright stated “I just think there should be more communication. For example, now, no one knows exactly who is responsible for this information.”

Dr. Mack replied “As far as I’m concerned, the Chief Auditor is responsible to get that information and bring it back to the Audit Committee. How he does it is his business. The communication link that he establishes is also his business. We’re only interested in the end result.”

Mr. Steve Hurst asked Mr. Carland “Is there a timeline for the Ashbritt issue where you’ll be attempting to communicate or go forward? I understand there has been no update since the last time we met. Is there a timeline?”

Mr. Tom Cooney replied “We don’t have an established timeline. The last time I actually presented an update to the Committee, I mentioned that we pulled in a sub-contractor after we began litigation. They are based in North Carolina and they had an opportunity to come down and inspect the roofs that were in question. They’ve done that. We’ve met to discuss their findings. Originally, I projected December that we should be wrapping up the discovery, since we pulled in the sub-contractor. At this point, I can’t give you a definitive date, but we’re actively pursuing it in the discovery process right now. We’ve been pressing the issue with the sub-contractor. We feel, quite frankly, that’s the best approach. I couldn’t give you a date certain on when the discovery itself, will be concluded.”

Mr. Steve Hurst asked “My experience as being an arbitrator in a different venue, as such, timelines are set for discovery and for responses to discovery. You’re saying that hasn’t been done in this situation?”

Mr. Cooney replied “It hasn’t been done because the matter has not been noticed for trial. If there was a trial order, they would have, in fact, established those deadlines. In fact, when we think we’re at a comfortable point of discovery, we will set the matter for trial and then we will establish those deadlines ourselves and place the burden back on the defendant.”

Mr. Hurst asked “In other words, with a trial date, everybody is a bit more motivated. Is that correct?”

Mr. Cooney said “That’s true, absolutely.”

Mr. Hurst asked “So, is it in our best interest for everyone to be more motivated in this situation?”

Mr. Cooney replied “Now, we’re starting to go into our opinions as they develop on our legal strategies, but we will set the matter for trial once we feel we’re at that stage. It would be premature, quite frankly, to set it at this moment. It would be against better judgment.”

Dr. Mack asked “Why?”

Mr. Cooney replied “Again, that’s something we’re discussing with cadre counsel. The information that we’re discovering, as we go through this process, once we feel we’ve gotten

everything we need and we can start setting actual depositions, then we'll be inclined to file notice for trial. Notice for trial means you're ready to go. You can pack up your bags and go to the courthouse the next day. We're not there yet, because we need more information."

Dr. Mack stated "Understand that this Committee has been listening to this kind of dialogue from the Legal Department for the last fifteen years. We are concerned about not being able to get what we consider to be reasonable information. In our opinion, you could establish a timeline for what you are doing. You can estimate. Don't just leave us hanging out here, waiting for the same information, meeting after meeting. At the next meeting, would you come back with something?"

Mr. Carland responded "Sir, we will certainly try to outline for this Committee as prudently as we can what we might consider trial timeline. I think what Mr. Cooney was trying to communicate is that we certainly cannot go into very much detail about that. That certainly could reveal some strategy on the part of the District, and we wouldn't want to reveal that. Also, we have had closed door sessions, as appropriate under Florida law with the School Board, about strategy in the case, and have moved forward accordingly. I do want the Committee to know that the client, which is the School Board, is informed, knows what we're doing, and we are moving forward with their direction. We'll certainly try to put together something that we think is appropriate to give the Committee a little bit better picture of where we are in litigation, but I'm sure you all agree and know, in your experience, that litigation is a moving target."

Dr. Mack added "You understand why we're so frustrated. We appreciate where you are now. Since you've taken over the Legal Department, to us, it's been a 180 degree turnaround. That's a compliment to you."

Ms. Fertig added "I'd like to go back to why the Audit Committee has such an interest in this. The auditors raised many questions back in 2009 and initially, the School Board was reluctant to discuss this, so this has been a longstanding thing that we have followed. These problems were initially discovered in an audit and initially, there was resistance in going after them. I just wanted everyone in the room to be on the same page. The question I asked before, I thought that had been on a follow up before, but I'd like to rephrase that through the Chair that that item be brought back to us at the next meeting. There's been a longstanding problem in this District with the scope of projects increasing or decreasing significantly well beyond what the State Statutes require, and yet the same contractor or crew is doing the job. We asked for a policy, which delineates when a job needs to be rebid. We understand it was internally a decision that was made with no stated criteria that could be explained to the Committee over a number of years. I thought we were making progress on this item and don't want to let it go."

Ms. Greenberg asked "Who is the outside cadre handling Ashbritt, please?"

Mr. Cooney replied "Mr. Oscar Soto."

Mr. Robert Runcie asked "To piggyback on Mary's comments, if we have, for example, a contract for \$10 million to do a particular type of facility renovation, and the amount goes over, do they go back to the Board for approval?"

Ms. Greenberg stated "We've been told in the past that State law states that if a change order is over \$250,000, you have to go out and rebid. Is that correct?"

Mr. Reilly replied “It’s about \$300,000, but you have to look at whether it’s a change order that’s related to that project or something that’s separate from that project. That’s the important thing. There needs to be a decision on whether it’s beneficial to process it as a change order or to rebid if it’s a large enough item. There are other factors, as we discussed.”

Mr. Runcie asked “If it’s related to the project, you’re saying that you can spend any amount?”

Mr. Reilly stated “The problem is if it wasn’t in the original scope, you may have unbid work.”

Mr. Runcie added “Let’s say it was in the original scope and there was a poor estimation done and they were \$2 million short, but the scope is the same?”

Mr. Reilly replied “If it’s in the scope of the project, there would be no need for a change order.”

Dr. Mack stated “The question was whether you have to go back to the Board.”

Mr. Runcie and Mr. Reilly said “You would.”

Ms. Fertig said “It was explained to us that the School Board attorneys would determine if it was within the scope of the project or not?”

Mr. Runcie asked “Does it go to the School Board at that point for approval?”

Mr. Reilly stated “It still would if it’s not in the original scope.”

Ms. Fertig stated “The question became “If you had bid this as part of the original job, someone could have bid on it.”

Mr. Runcie agreed. “One issue is to make the determination if it was a separate scope of work. When I used to do contracts, my view was that I had outside contractors bidding on it and they are supposed to have the expertise and they are supposed to share the risk associated with it. When they bid and give me a price, then someone else gives me a price and if you underbid with the assumption that once you begin work, you’re going to get more money, that’s too bad. You took a risk. That’s how I’ve always looked at it. If there’s an increase, and it’s within the scope, we have to ask ourselves what was going on with the scope.”

Ms. Fertig stated “If you are building a football field, and then decide to add tennis courts and a library, at what point should the job be rebid?”

Ms. Greenbarg stated “Another classic example was Beachside, they call it scope creep, which was supposed to be an elementary school, then suddenly turned into a K-8, with millions of dollars more, and the auditors said it violated State law.”

Regular Agenda

Internal Audit Report – Review of the Cypress Elementary School Project #1781-24-01/P000346 New Food Service Building, Renovations and Site Improvements – April 2012

Dr. Mack stated “We’ve had this report for almost 24 hours. I understand we do not have any management responses in writing. I do not intend to spend the rest of the afternoon dealing with this report. I’m going to ask Pat for a summary of what we have here and we’d like to know why

you don't have management's responses. We are going to give the Superintendent our opinion on this this afternoon, with or without management's responses. Do you have management's responses yet?"

Mr. Reilly replied "No. This audit was requested by Superintendent Runcie. We were asked to look at some change orders that were scheduled to be on the January 18, 2012 School Board agenda. These change orders were requested by Facilities and the contractor for delay claims of 221 days, amounting to \$198,900, relating to the Cypress Elementary CM at Risk project. We were asked to basically determine if the contractor was entitled to 221 days, or a different amount of days or if they were not entitled to any dollars for delay, or whether they are entitled to be given the requested days without monetary compensation. That was our objective. We performed our audit. We spoke to the necessary people; we did a chronology from the beginning of the project through the date of the audit and came to the conclusion that the contractor had delayed the project. It was his doing, based on his project schedule, plus the Notice to Proceed is the document that he is following that he agreed to and it was negotiated to complete the project in 570 days. Looking at that, after speaking to the contractor, the architect and District staff, we reviewed the contract. In our opinion, there were multiple items, per the contract, that were not followed. We were paying the contractor a \$1.2 million fee as the CM at Risk to manage this project. Multiple procedures on how to handle change orders were not handled in a timely framework. There were options to do a Construction Change Order Directive, (CCD) that were not taken. The project lapsed and CCD's turned into change orders significantly after the project completion date. That's basically our opinion. We made some recommendations not to issue Notices to Proceed when it is known that there are significant changes to the plans, such as significant renovation changes. They have to get site work changes that were made after the 100% plans were permitted and ready to go. One of those items that was a change order was considered originally to be a credit, but it turned out to be an added expenditure for the District. We also made a recommendation that if change orders and agreements can't be made and prices can't be vetted in a timely basis, you must follow with a CCD, which includes the assistance and work of the architect, also known as the Project Consultant, to put a not to exceed price on the item, so we can keep the project going. There's a responsibility of the CM to manage this project, to keep it rolling and not let it lapse. The bottom line, where we are right now, we have an incomplete project with the possibility of litigation with \$1,250 per day delay rate. Right now, we don't have the responses. We had an exit conference with Mr. Lindner on this project. Our process, per Policy 1002.1 is to have an exit conference. The idea is to have a report, observations, recommendations, management's responses and a follow up from our department, if applicable, to be considered a completed audit. The Board has made changes to this policy, stating that after an exit conference and the normal time period given to receive management's responses, a report is considered complete with or without responses." Note: Policy 1002.1 was changed and approved by the Board on April 20, 2010 and Section 10 now states *'If a department or school fails to timely respond to invitations for an audit exit conference or to submit a management response, the audit report shall be considered complete.'* "We are bringing this forward to the Audit Committee for your decision on how you want to handle the discussion or tabling of the item, or follow through with the report without the responses."

Dr. Mack asked "Why don't you have the responses?"

Mr. Reilly responded “We had a schedule. I was told (by Mr. Lindner) that the audit took four months to do and there wasn’t enough time to assign people from his staff to respond. He stated that the audit had omissions and was flawed, in his opinion. I feel that the report was clearly documented, supported and the proper documentation exists for all of the noted findings. Our independent opinion with this case is whether the delay claims are warranted.”

Dr. Mack stated “I hear all these words. Tell me why you don’t have management responses, in one sentence.”

Mr. Reilly stated “I believe Mr. Lindner should tell us that.”

Dr. Mack stated “I don’t want to hear from Mr. Lindner.”

Mr. Reilly stated “I have a deadline date of when the responses are due. If more time was needed, I did not receive any requests for additional time. I also had a verbal discussion with Mr. Lindner. When I did not receive the responses by the due date, I told him we could delay the report until Monday (5/14/12) and issue the report separately. He said I would not be getting the responses on Monday, (5/14/12). I told him that the Audit Committee would be meeting on Thursday (5/17/12). He stated that I would not be receiving the responses by Thursday, (5/17/12) either. I’m following School Board Policy 1002.1. When I have a report without responses, I’m following my procedure of presenting the report without responses.”

Dr. Mack stated “I’m following my procedure, OK. You have submitted to us an incomplete report, because it does not have management’s responses. That’s pursuant to policy. By our policy, we should not be dealing with this, because we are not going to transmit something to the Board or the Superintendent without management’s responses and that is in writing, as we’ve gotten for the past fifteen years. There’s no reason to change the policy now. We have a couple of options as an Audit Committee, contrary to my opening statement. We can give the Superintendent our recommendation now, or we can have a discussion before we give him our recommendation. We do not deal with management responses today, because we don’t have them. I will entertain opinions or observations from those who wish to speak. I have my own opinions, and I will express those to you. Does anyone have any problems with that? Let me go back to before 9/11, to 9/9/99. We had an issue with a project at a cost of \$115 million that was sent to the Board for approval. The Board decided they wanted me to take a look at it and I did. When I went to the Board meeting, the project was stopped because the CM at Risk contract left the District with too much exposure. The cadre attorney for that particular project was Mr. Soto. At the School Board meeting, I asked Mr. Soto whose side he was on, because he was the one who presented the proposed new contract, which in my opinion, was totally unnecessary, and I said as much. I was given the task, personally, to rewrite it, because I volunteered to do it, so I rewrote the CM at Risk contract and took it before the Committee, which included all the big construction guns, as well as some of the School Board members, who may have had relationships with these people. They approved it within 30 minutes. The provisions of that contract were that regardless of what happens, the Construction Manager is at risk. Any errors or omissions, by either the contractor or the School Board staff are still the responsibility and the risk of the Construction Manager at risk. That being the case, all this time and effort we’re going through now has been a waste of time. Regardless of what happens, as the name implies, the

person who signs this document is at risk, and not the School Board. I'm saying regardless of where the errors occurred by either party, the Construction Manager is at risk. In my opinion, our School Board does not owe them one dime, because they are at risk, not the School Board."

Mr. Hurst asked "Dr. Mack, as I was involved with the project, as steps are being done along the way, what are the checks and balances to make sure those steps are being done, not to micromanage the construction company, but to check off 'we're OK up to here.' Nowhere in here do I see that somewhere along the way, the project fell behind and there wasn't anyone standing behind them saying 'move forward'. Isn't there such a position where the School Board's representative is looking at this saying 'they're getting behind'. How do you keep a problem from happening?"

Dr. Mack stated "In my opinion, I believe a Project Manager was assigned to the project, notwithstanding that."

Mr. Hurst asked "And it still got behind?"

Dr. Mack stated "Yes and the at risk party is the contractor."

Mr. Hurst asked "So, in essence, the School Board Project Manager did what he was supposed to be doing all along the way."

Dr. Mack stated "I'm not saying that. I'm saying there was one assigned to it, I believe, to the best of my knowledge. Why did that really matter? While, in the normal course of doing things, someone from our staff would say 'you didn't do X, so the project is going to slip'. With a Construction Manager at Risk contract, they should have someone doing that. They should say to our Project Manager, 'we can't do this, because this hasn't been done'. Tom Lindner should be chasing behind some projects, if we've got a Construction Manager at Risk. He may put a Project Manager there, but it still doesn't matter. If we fail to do something, it's still the contractor. It's 9/9/99. I was involved in that process, and so was Charlotte. Maybe along the way, they changed it or made some modifications to the policy. If they did, so be it, but I don't see how they could have changed that provision because if that provision isn't there, then you don't have a Construction Manager at risk. The School Board is at risk, which is what we don't want to happen."

Mr. Hurst asked "The School Board, from their point of view, I say that as a collective body, to include employees, did everything they were supposed to do."

Dr. Mack said "I didn't say that. I'm saying it doesn't matter if they did or did not."

Mr. Runcie stated "There was a fee of \$1.2 million, not chump change, that was actually paid to the Construction Manager to assume all the risk, so if there's an issue with the project, then they are liable; otherwise, what did you get for the \$1.2 million?"

Mr. John Herbst stated "I don't think, based on what I'm reading here on page 10, that that is actually how the contract reads. The contract somewhere along the line got away from your direction in 1999 to where we are today, where it is not truly a CM at risk, but a CM at modified risk."

Mr. Runcie and Dr. Mack asked “Why is it called that, then?”

Mr. Runcie asked “So, why did we pay the \$1.2 million, or did we not pay that?”

Mr. Reilly stated “They earn it progressively.” Mr. Reilly asked Tom Lindner for clarification.

Dr. Mack stated “I do not want to hear from Mr. Lindner. Mr. Lindner’s remarks are supposed to be in the management responses in writing, and they were not. Mr. Lindner may be physically here, but otherwise, he’s not in this meeting.”

Ms. Greenberg asked “When did you have your exit conference, Pat?”

Mr. Reilly responded “It was Friday, April 27, 2012.”

Ms. Greenberg added “So, in my opinion, there’s no excuse for not having those responses in writing for this particular audit. There was enough time. My second comment is that for what you did to the CM at Risk, and we’ve been around for eleven, twelve years (Dr. Mack stated ‘fourteen’) and we see what happens when a contract is settled on and suddenly, it’s morphed. Something happens to it as it gets through Legal maybe, words get changed. We never had a true CM at Risk contract, Mr. Runcie, in this District to protect the District. I’ve been saying this for twelve, thirteen years. The contract protects the contractor. I wrote it in 1996 to the Sun Sentinel. They never wrote a contract to protect the District. They write them to protect the contractor, and that’s what happened in this case. That’s why I say it’s business as usual in Broward County. It’s obvious in this audit that the Construction Manager, the Project Consultant or the Facilities staff did not properly manage the contract. Everyone made a mess of it. I think this needs to go to the Board without the responses, just as it is, with our recommendation that we don’t owe them anything, and that Mr. Soto doesn’t get the outside cadre assignment to deal with it, if you have an outside cadre assignment. I think we need to learn a lesson about recommending to the Board that they look at that CM at Risk contract and make it protect the District.”

Dr. Mack stated “Or get rid of it all together.”

Mr. Runcie asked “This contract was written in 2005, is that correct?”

Ms. Greenberg stated “I don’t know.”

Mr. Hurst said “Yes.”

Mr. Runcie stated “Seven years ago.”

Ms. Greenberg stated “That’s when they played games with them.”

Mr. Runcie said “So you’re saying we never had a CM at Risk contract?”

Ms. Greenberg stated “We never had one to protect the District?”

Mr. Runcie asked “Does this Committee actually look at the contracts when they’re completed?”

Ms. Greenberg stated “No.”

Dr. Mack stated “We get an audit report. Otherwise, we don’t deal with it at all.”

Ms. Greenberg stated “We did ask for one contract and they gave it to us signed. We asked to see it before they signed it. That was for Zyscovich and the \$150,000 that we didn’t get. They brought us the signed contract and said ‘too bad’. That’s exactly what happened. I think this is a disgrace, it really is.”

Dr. Mack stated “I sincerely hope that this exercise, along with a couple of others that you are privy to, would influence you, for lack of a better word, to look at how we do the whole construction business.”

Mr. Runcie replied “I will look at it, but obviously, there’s a huge issue in terms of the contracts, themselves, and how they’ve been written, which pre dates all of us. That’s where it starts. You can put all the processes in place that you want, but if the agreement that you have that deals with risk and other changes that occur in the contract are not sufficient, then we’re always going to have problems.”

Dr. Mack added “Each regime that we’ve had, the 9/9/99 was midpoint for me. I started with this construction department back in 1980, when I was with the executive committee of the NAACP and one of the founders for the Coalition for Economic Progress. That was a coalition of Black and Hispanic contractors who were seeking to get a school contract with this District. I was also in the construction business back in those days myself. We went through a routine with Mr. De La Feuillez. You’ll hear that name as time goes on. Things got a bit warm for him and he retired. Now, he’s a consultant for one of the largest school contractors that we’ve had. He, along with the other big contractors, was present at that meeting when they approved the Construction Manager at Risk contract. They turned and asked him if he concurred with the changes, and he said ‘yes’. I think you can see the picture that’s being painted here. There’s just so much that we, as an Audit Committee, can do. There’s just so much we are authorized to do. Our function begins with, as you know, responding to audit reports. Because of the nature of the experience we have around this table, it brings to question anything that could possibly go wrong in any situation in the School District. I think the School Board members have done an excellent job in selecting representatives to this Committee and I’m proud to serve on it. I get annoyed when they are ignored and their desires are not answered or responded to and the negative response to our auditing department and the things that we request. Again, Charlotte, this is the third Superintendent that we’re giving the same thing to. It’s way beyond us. We get charged for it, but it’s really not our call. What we have here, in our opinion, is that our policy is not being honored or followed in regard to responses to audit reports. The contract itself bears looking into by someone other than Mr. Soto. If you recall, when we had the discussion with the prior Legal Department, those who were here heard me ask about Mr. Soto and why he was getting such a lion’s share of the business. We know why. It was backed by a very high level of politicians, Diana Wasserman Rubin. We know how that happened. It goes on and on. We’re all volunteers. We don’t get paid a dime, but we work hard for you.”

Mr. Runcie stated “I think the next step is to ask Mr. Reilly to meet with the Legal Department and review the Construction Manager at Risk terms to identify and make some recommendations on how we may need to modify that, so it can actually be used to protect the District, as intended.”

Dr. Mack stated “Or not use it at all.”

Mr. Runcie stated “Right, because we’re spending money. In this case, we spent \$1.2 million on a Construction Manager at Risk to assume risk and it seems like the contract, from what I’m hearing, does not actually do that. That’s problematic. That’s a waste of \$1.2 million.”

Dr. Mack stated “I would recommend, depending on his attitude, that Tom Lindner be included in this process.”

Ms. Fertig asked “I have several questions. Should we forward this to the Board without a response? I would think these are questions that people would want answered. What is the current status at Cypress Elementary? There are repeat references to changes in scope on this document. I’d like to know exactly the total dollar value of that change in scope, as well as, what it was for. Based on the dates in the report, the change order for scope actually came after.” Ms. Fertig read from the report “*On June 13, the Construction Manager began work on the original scope, although the Construction Manager began work on the original scope of the existing scope on June 13, the change order or CCD was issued for change of scope on December 9, 2011.*” “I think there are two issues here, one is the Construction Manager at risk, and the other is the issue that we’ve been trying to follow for a long time, the changes in scope and how to handle them. This is a little school that really needs the work. We see things before us for new schools that are getting stuff; this is an old school that’s been neglected for a long time. It’s heartbreaking that five years have been spent like this and I’m sure there’s an explanation for some of it. Two things that come out of this are the September 9 meeting on the Construction Management at Risk contract and the continual request for a process, a timeline and a policy governing changes of scope. I don’t know where Cypress Elementary is today, but I hope that we resolve this soon, because for these small, forgotten schools, it’s important to make sure the kids get what they need.”

Dr. Mack stated “Mary, I’m expecting to get those answers back from Pat.”

Mr. Reilly replied “Would you like those answers now?”

Ms. Fertig stated “Yes, I would like to know.”

Mr. Reilly stated “The work on the existing cafeteria is partially done, up to this point, with the elimination of three classrooms out of the existing cafeteria. The Board approved a change order on February 22, 2012 for approximately \$37,000, but that did not include the delay time the contractor is requesting. That’s part of the issue here. They brought forward the delay claim first on January 18, 2012, but the change order was pulled and then they brought a change order for \$37,000 for the cost of doing the renovations to eliminate the three classrooms for more storage. There was an additional cost to the architect of \$27,000 to make these changes. The other change order that was significant here was changing the site irrigation, which was originally planned to have rain tanks, then that was changed. They also added a couple of things in the north end of the school, relating to the site drainage. That was approximately \$290,000 the Board approved for the site work. The claim for the delay is basically, according to the documentation, due to the elimination of the three classrooms that were considered to be removed because of a State of Florida mandate that did not exist. Regardless of whether we wanted to eliminate the classrooms to save money or for any other reason, the District chose to change the plans and change the idea for that existing cafeteria after the Notice to Proceed was issued and after the 100% drawings had been prepared and while everyone knew those changes were coming.”

Mr. Herbst asked “If we are deleting work from the initial scope of work and are no longer building three classrooms, I would expect to see a credit, not a charge.”

Mr. Reilly continued “You are right, and I was told originally that the elimination of the three classrooms would result in an \$80,000 credit; however, it turned into a \$37,000 additional charge.”

Mr. Herbst stated “If I take this room and divide it up into three classrooms, with electrical work, etc. as opposed to leaving the room open like this, which would entail a lot less work, I don’t understand how that could result in an increase.”

Dr. Mack stated “We are doing now precisely what I did not want to do.”

Ms. Fertig stated “If we could just get all of that as a change in scope, the change in scope, if we spell out each item. You just listed four things.”

Dr. Mack stated “There is no doubt in my mind that if we had gotten the management responses, these questions would have been answered. Do you see what I’m getting at, Pat?”

Mr. Reilly replied “Yes.”

Dr. Mack stated “I’m not going to waste any more time with this, because we’re not going to get any answers without the responses. We’re charging this man to come back to the next meeting.”

Mr. Herbst asked “This is a 2005 contract. I’d like to know what the last CM at Risk contract looked like. Did it have similar language in it? If we just issued a contract in the last year, are we still using the same contract?”

Mr. Reilly replied “The original contract is a living document that has been changed and improved over the years. In fact, today we spent four hours with a lot of recommendations from the external auditor for contract changes and a lot of other recommendations. There were quite a few comments that I thought were good related to upgrading the CM at Risk contract. With all these contracts, it’s a two party transaction. Each party wants to make it the best for themselves. I believe there was something similar to Article 25 in the original contract that gave the Construction Manager some kind of opportunity for delay claims if it’s not his fault. As I explained in the report, I don’t think they were entitled to the delay claims. I’ve got a lot of support in there and would be glad to answer any questions. At this point, the Construction Manager had the tools to keep this project rolling and right now, I’m not even sure when the project will be completed. The change order in January 2012 for the delays noted a completion date of April 17, 2012. That date was not met and this is an ongoing project, but at the point of the request for delays, they put in the delays first to get those to the Board, and then the actual cost of the project.”

Dr. Mack said “Next item, Internal Audit Report.”

Ms. Greenbarg asked “Where are we on this?”

Dr. Mack replied “Pat Reilly’s got the responsibility to bring us all the answers back. That’s where we are.”

Ms. Greenberg asked “By when?”

Dr. Mack answered “Next meeting.”

Ms. Greenberg replied “When is that? That’s a long way off.”

Mr. Reilly responded “June 21st.”

Ms. Greenberg stated “I’d like to have a special meeting on this alone.”

Dr. Mack replied “Let’s wait and see what Pat comes up with. Let that be a recommendation from him. How can we set a special meeting now?”

Ms. Greenberg asked “Can’t he tell us when he’ll be finished and let us know.”

Dr. Mack replied “He has not been successful in getting the management responses.”

Ms. Greenberg replied “Well, that’s the whole problem. The policy says that management has a certain time to respond. They haven’t responded; therefore, the audit goes to the Board without them (responses). If we want responses, what are you gonna use, a crowbar?”

Mr. Runcie added “We’ll get the response and if you want to send it to the Board, you can. Then the Board will send it back and ask for the response, so however you want to do that. I’ll meet with Mr. Lindner and Mr. Reilly. We’ll get a response to this, but I’m a lot more interested in the processes regarding the way change orders and scope changes are approved, and the terms in this Construction Manager at Risk (contract) and why it can’t be applied to the intent for which it was originally designed. Those are the big issues. I can’t change the past and what happened with this contract, but I can fix these things going into the future. That’s what I’m going to focus on. In the meantime, we will get the responses.”

Ms. Greenberg stated “I certainly hope you’re successful, because for fifteen years, we have yet to have a contract for CM at Risk that protects the District. I really do hope you can do that.

Mr. Runcie stated “It can’t be that hard to do.”

Ms. Greenberg added “Wait till you find out. You have no idea.”

Dr. Mack stated “Mr. Superintendent, trust me. Three superintendents now, and we’re not pushovers in this room. I would not like to come before this bunch myself. It just hasn’t happened.”

Mr. Runcie added “In the world I come from, we don’t have these kinds of problems with contractors.”

Internal Audit Report – Audit of the Internal Funds of Selected Schools in the North, Central and South Areas

Mr. Reilly stated “There are twenty-five schools in this audit report; twenty-four complied with all policies and procedures. There was one school that had some exceptions related to procedural issues regarding disbursements, late remittances and negative fund balances. The remainder of the schools should be congratulated for following the policies and procedures.”

Mr. Anthony De Meo asked “Is it mandated that the schools maintain all these checking accounts. Is there a legal reason for that?”

Mr. Reilly replied “I think most of them have one checking account and they could also have one investment account, the treasury pool account with the District, where they can invest excess funds.”

Mr. De Meo asked “So there aren’t individual checking accounts for all the classes, clubs, etc?”

Mr. Reilly answered “No, there is only one checking account.”

Mr. De Meo asked “Is there a separate payroll account?”

Mr. Reilly replied “Yes, payroll is a District expenditure. This is internal fund money.”

Ms. Greenberg stated “I’d like to congratulate the Audit Department. Some of us saw what it used to be like and this is the result, getting here with almost no exceptions. This is great.”

A motion was made to transmit the report. Motion carried.

Internal Audit Report – Property and Inventory Audits of Selected Locations

Mr. Reilly stated “There were twenty-three locations audited. Only one location had audit exceptions relating to some missing items. The controls are working with our new policy, better monitoring and better review of their inventory.”

Ms. Greenberg stated “This is the third audit in a row where this department has had exceptions. Is that correct?”

Mr. Reilly stated “Yes.”

Ms. Greenberg stated “Because of what Mark and his staff did, we don’t see exceptions repeated like we used to see, but this one is a repeat finding.”

Mr. Mark Magli stated “It’s not my work that’s going to change these things. I appreciate that, but it’s the oversight done by the Division. I think we’re part of the input and I do appreciate that.”

Ms. Greenberg added “I’m saying that you set the template for anyone who cares to use it. This department seems to have a problem. This department especially distresses me, because these are the kids that really need the things that we’re looking for. This is the one department where the kids most need the stuff I’m seeing on here as missing.”

Dr. Mack suggested that Mr. Reilly discuss the concerns with Mr. Runcie as a follow up.

Ms. Greenberg stated “I know that Mark is going to Facilities. There’s an open box for a Property and Inventory auditor. For six or seven years, he worked to get this to where we don’t see many exceptions, at a lower pay grade. I’m just making an observation that the new box has a higher pay grade for the new employee.”

Ms. Fertig asked “Have some of these items been on previous audits? Some of them date back to 1998. The oldest item is from 1998. Were those cleared in between?”

Mr. Magli stated “They are cleared, unless we have any information provided to us later to the Financial Reporting Division, which actually monitors the records. As a policy, it’s kept on there for two years. It’s re-classified; the designation in the database to indicate that the items were unaccounted for. It would sit in there for two years, in the hope of finding the item. It’s hopeful that some of these items will be tracked back and eventually be reactivated.”

Mr. De Meo asked “The corrective action plan on page 17, is that a credible response?”

Mr. Reilly replied “I think there are some good things there. The most important thing is the first thing they list. If they do that, it will help them monitor their inventory much better.”

Mr. De Meo asked “May I suggest that we get a report back on the remediation on this?”

A motion was made to transmit the report. Motion carried.

Internal Audit Report – Current Status Update of the Review of the Auditor General’s Report #2010-183 – Broward County District School Board Financial and Operational Audit for Fiscal Year Ended June 30, 2009

Mr. Reilly began “This is a current status of the Auditor General’s 2009 report. They are actually here presently, doing the 2012 school year audit. There were sixteen original findings. We did one current status, soon after the original report. Those fourteen items we found had been cleared. There were two open items; the first item was a recommendation that the District develop an anti-fraud policy for District staff to communicate instances where they may be aware of something that has occurred. A draft has been created by our HR Department, which they plan to present to the School Board in August. Through the process, it should be a School Board policy by December. The other item had to do with monitoring overtime. We’ve created a written payroll policy detailing how to handle overtime. We have overtime reports on file at each location for each payroll period. There are procedures now to ensure that overtime is pre-approved. There is more monitoring of overtime than in the past. We’ve highlighted the things that we’ve done since that time. Our department has also done several desk reviews that identified secondary positions where the overtime rate was based on the primary positions, which was an expensive option that we’ve eliminated. We’ve created job descriptions for jobs that didn’t have them. We feel that the District has taken action on both of those open items.”

Ms. Fertig stated “I’d like to express my frustration that it would take so long to get an anti-fraud policy. It’s the same thing with our change in scope policy. These should be the easiest things to do. These are non-monetary. How can it take so many years to get an anti-fraud to correct our policies to make sure that we’re doing what was recommended three years ago? We said we were going to do it two years ago, and now maybe they’ll have it finalized by August. I just think that when we’re looking at flaws, one of them is how long it takes to respond to things. This is just ludicrous, because it should have been so easy and quickly.”

Dr. Mack stated “We have a new Legal Department now. That was the hold up in this District. We had asked that former legal person that question. They were masters of delay. They always used some excuse about protecting the District. That’s how it happened. I’m encouraged with the

way the new Legal Department responds to us. I think we'll see a different response time for major and minor issues.”

Ms. Fertig stated “I hope you are correct. One thing they should be aware of is that taking the time to change policies like this, it’s good to call to their attention that it doesn’t cost anything, but you can save money.

Dr. Mack stated “I would like the Committee members to communicate more with the Board members who selected you. They need to know the issues that we’re facing.”

Ms. Greenbarg stated “Without the consent of the majority of the School Board, the (General) Counsel would never get away with that. He knew he could get away with it, because that was the direction he was getting from the School Board. One of the members of the School Board objected to my use of the word ‘fraud’. I said ‘I suspect fraud’. I’m obligated to say that, as an Audit Committee member. That was the direction the Board was giving the staff. That’s why they did it and why nothing ever happened in this District. If it doesn’t come from the Board, it doesn’t happen. There are very few renegades.”

Dr. Mack added “We’ve had superintendents who allowed the Board to go around his office and go directly to staff.”

Ms. Fertig stated “I just want to remind them that this shouldn’t take more than six months.”

Ms. Greenbarg stated “That’s why it did.”

Mr. Hurst asked “Mary, what you’re saying is the longer it takes, if something happened that was fraud, now it’s a legal situation and you didn’t have a policy in place to say ‘you should have known’. That’s why you want to do it as expeditiously as possible.”

Ms. Greenbarg agreed “It’s very convenient not to have a policy.”

Dr. Mack stated “Communication from us to the Board has to be increased. They sit up there and I can tell they didn’t read the minutes that were sent to them, by the questions they ask. They don’t read. If there are things that you feel they should know and emphasize, tell them. That’s not violating the Sunshine Law.”

Mr. De Meo asked “On the fraud policy, doesn’t the State require the fraud policy that the external auditors requested?”

Mr. Reilly replied “Yes.”

Mr. De Meo asked “Why didn’t we have it?”

Mr. Reilly replied “I recall at first there was a Committee that was gathering information from other Districts and municipalities on their anti-fraud policies, but it just never materialized. We had a big discussion about this several years ago and the thought was that there’s a Florida Statute. The idea at first was not to write something that would be contradictory to Florida Statutes. That was the trend after many attempts to make our own policy. Our own anti-fraud policy was encouraged, because it gives the employee procedures on what they should do, who

they should report to and encourages them to come forward if they come across suspicious activities.”

Mr. De Meo asked “On pre-approved overtime, has the Office of the Chief Auditor sampled or tested any of the overtime to see if there was improvement, documentation and approval in advance, in accordance with policy.”

Mr. Reilly replied “We actually do that on any school that we audit as part of our Audit Plan. We’ve done a couple of special requests also. At Mr. Lindner’s request, we audited the payroll processes at the Design Services department.”

Mr. De Meo asked “Are the external auditors reviewing any overtime activity?”

Mr. Reilly responded “Yes, they (State Auditor General’s Office) are reviewing some payroll right now. I can’t say specifically overtime, but they are looking at payroll at various locations.”

A motion was made to transmit the report. Motion carried.

Meeting adjourned at 2:30 p.m.