

The School Board of Broward County, Florida  
**AUDIT COMMITTEE**

MINUTES OF AUDIT COMMITTEE MEETING

June 21, 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 1<sup>st</sup> 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 Greenburg  
                                 Mr. John Herbst, CPA  
                                 Mr. Steve Hurst, CFP  
                                 Ms. Alexandra Mores  
                                 Mr. Duane Wolter

Staff Present:            Mr. Robert W. Runcie, Superintendent  
                                 Mr. Jeff Moquin, Chief of Staff  
                                 Mr. Thomas Lindner, Deputy Superintendent, F&CM  
                                 Ms. Shelley Meloni, Executive Director, Facilities Design & Construction  
                                 Ms. Katie Leach, School Board Member  
                                 Mr. Paul Carland, General Counsel, Office of General Counsel  
                                 Mr. Dave Archer, Project Manager, SBBC  
                                 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. Mark Magli, Director, Facility Audits, OCA  
                                 Ms. Patricia McLaughlin, Confidential Clerk Specialist C, OCA  
                                 Ms. Megan Gonzalez, Confidential Clerk Specialist B, OCA

Guests Present:        Mr. Jim Hewett, Hewett-Kier Construction, Inc.  
                                 Mr. Mike Stearns, Hewett-Kier Construction, Inc.  
                                 Mr. Rob Broline, McGladrey, LLP  
                                 Mr. David Luker, McGladrey, LLP  
                                 Mr. Robert McMahan, Zelch & McMahan, Architects

**Old Business**

A motion was made to approve the minutes for the May 17, 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. Paul Carland stated “As the Committee requested, I did follow up on that litigation case and did discuss it personally with the cadre counsel. I can let the Committee know we are moving forward with the discovery process. We anticipate discovery being completed in October and be looking for a trial date before the end of the year. We are planning at this point to ask the Board for another attorney client session to update them and get direction in August. Of course, as you’re probably aware, any case in court is going to have to be ordered by the judge to go to mediation at one time or another. We’ll be looking at trying to get the case to mediation after the attorney client session with the Board, sometime in September, while we’re still in the discovery phase.

Mr. Steve Hurst asked “Have you at some point, gotten some discovery, other than what we’ve seen so far?”

Mr. Carland replied “I know that we’ve had some paper discovery. I think what we’re looking at taking place would be some depositions. I don’t have specifics on the types of materials we’ve received.”

Mr. Hurst asked “Again, with the November deadline, would you say you get most of the discovery before this deadline.

Mr. Carland replied “Right, that’s what we’re shooting for, to be complete with our discovery phase in October.”

Mr. Hurst asked “That would be after any mediation, correct?”

Mr. Carland stated “Right, we would look to try to, again, any case that’s in circuit court, to some point or the other, the judge is going to order the parties to mediation, so what we’re looking at is trying to get to mediation while we’re still in the discovery phase, so if, by some chance, there is some ability for the parties to reach an amicable agreement, we wouldn’t have to go through the most expensive part. We’d be going on at the same time, but shortly thereafter, we would want a complete discovery if mediation is not successful and then get it set for trial.”

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

Mr. Reilly stated “The Committee requested additional information on the schedule of Change Orders Other audit, such as the name of the attorney who handled each case, how much each attorney was paid, the amount requested for the settlement and all other pertinent information. We received a schedule today from the General Counsel’s office, which was forwarded to the Committee by email, and distributed hard copies at today’s meeting.”

Ms. Charlotte Greenberg stated “Thank you for providing this complete explanation. I have to observe on Everglades High School that the cost paid to the law firm was \$127,591.50 to try to recover \$199,994. This is what I was referring to when I said that the money is not coming back the way it should. Another firm was paid \$26,398 to recover \$24,821 and was advised not to pursue. The District paid so far on another item \$103,690 and the value was ????. This is what we’re referring to that I know we’ll be seeing more of and it’s unacceptable. I know you are looking diligently to try to get this information. We have found another list of projects that we are trying to request and have recovered amounts, mostly zero.”

Mr. Runcie asked “Are these current or historical projects?”

Ms. Greenberg replied “Going forward, we need to look at our history so that we don’t repeat the mistakes.”

Mr. Runcie stated “I’ve seen some items where we had \$5,000-\$6,000 items that had been in the litigation process for three or four years so I immediately told them that we can’t spend any more time on these. We can’t change what people paid in the past, we have to move forward and put a process in place.”

Mr. Carland added “For the Committee’s information, one of the tasks I have as General Counsel is to manage our cadre and assure that the District and the School Board is receiving appropriate services and that our attorneys are handling cases as efficiently as possible. I’d like the Committee to be assured that I am looking at that issue. One of the things I’ve discovered in my first year here is that the District’s legal counsel for this multi-billion dollar operation is woefully inadequate in terms of technology to help us in that task. I am bringing forward to the Board and the Superintendent that our office acquire a case management and e-billing software to help us with that research and give us the ability to have day to day information on where are cases are and start monitoring budgets to assure that we’re getting good value for the people’s expense that we’re making. I just want to assure the Committee that I am very aware of those issues and I’m working toward putting systems together to better manage our cadre.”

Dr. Mack added “Part of that problem was the amount of time that it took your predecessor to get things done. Thus far, you have demonstrated to us that you don’t delay work and when you give it a priority, when you promise us something, you bring it back when you say you’re going to do it. I think the technology piece that you’re asking for will certainly enhance your ability to meet your many deadlines, not only from us, but you’ve got a School Board and a whole system you must respond to. Mr. Superintendent, for the record, we would endorse the technology upgrade of this department.”

Mr. Joe Wright asked “Is there a process where we (the District) can send out a demand letter? I know Mr. Lindner sent out a demand letter one time before.”

Mr. Carland replied “Under the appropriate circumstances where the District has determined that there is liability on the part of the vendor, whether it’s construction or not, and we need to demand compensation for that, that would certainly be appropriate. Our office can work with Facilities to do that, if we’re at that point with a particular vendor.”

**Regular Agenda**

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

Mr. Reilly began “This is a report that was requested by Mr. Runcie, the Superintendent, to look at change orders for request for delays on Cypress Elementary School. Our objective was to perform an independent review to determine if the vendor was entitled to monetary compensation for the requested 221 days, or were they entitled to a different number or were they not entitled to any number of days. As mentioned at the last meeting, we reviewed the project files, spoke with the appropriate in-house and external individuals and concluded that we did not feel they were entitled to the 221 days. The change order originally was at a lower daily rate, but now it’s been changed back to \$1,250 per day. Looking over the contract, we feel there was a Notice to Proceed, which allowed 570 days to complete the project. Specifically on Cypress, the changes to the project that were scheduled to happen were known prior to the Notice to Proceed, which led to another recommendation that we made, where we felt that if there is going to be significant changes to the plans of a project that we should take care of those before issuing a Notice to Proceed. This would curtail the possibility of additional change orders and litigation and concerns about calculating the correct number of days and cost for going through the change order process. We felt that a lot of the procedures in the contract that are in place to keep the project rolling were not adhered to. We basically had the project lapse, in this case, September 9, 2011, was the date of final completion. There were CCD’s (Construction Change Directives) issued three months after the project did not meet its final completion date. During the project, there were a couple of other items, as compared to Palmview, issues with site work that had to be changed. One other thing that happened was that prior to starting the job, it was decided to change the method of site drainage from a rain tank system to a water retention pond system. That was a change that led to a change order, for example, the site work was basically done without the CCD for the project, but the changes related to the existing cafeteria, which was triggered by a State of Florida mandate that no more classes could be added; however, it turned out that there was no State mandate. It was considered a requirement by the former Deputy Superintendent. Regardless of whether we wanted to base it on that reason for changing the existing cafeteria and eliminating three classrooms, or just the fact that we may have wanted to save money, it doesn’t matter, that was another major reason for the delay that was being asked to be done, that was not finalized until three months after the project. We’re concluding on this project, we’ve referenced the three major points of why we feel the monies are not due to them. This is a CM at Risk project; we pay a fee for the CM to run the project and there are other things in this audit that probably could lead to other audits. For example, when we eliminated the three classrooms in the existing cafeteria plan to additional storage area, it was assumed that we would be getting a credit for that, and now it turned out to be an additional \$37,000 in construction related charges. Of course, there would be additional costs for the architect, which occurred, but those are things that we didn’t look into specifically, but we felt there were some issues there. I’ll take any questions you have and then discuss Palmview, which is very close. Both projects are running together at the same time, basically they both included a new cafeteria, remodeling of the old cafeteria. Cypress had drainage and some drainage work

and additional drainage work in the front of the school, while Palmview had more of a problem with delays that they were stating was due to a transformer from FPL.”

Ms. Greenberg stated “We have been through several Deputy Superintendent of Facilities who have consistently disagreed with the auditors’ conclusions, which has led to disastrous results for this District. History has proven that. My overriding question is how can you eliminate three classrooms and not get money back. That just defies logic, but in this District, logic apparently is not in play. I’m very disturbed by page 55, which is the bottom line of this audit, I guess. There were two independent reports generated and submitted to Facilities by Construction Management Companies, one was Atkins, which was previously PBS&J. Am I correct, Pat?”

Mr. Reilly stated “Yes.”

Ms. Greenberg continued “They owed us a lot of money for the false inspections, so now they’re Atkins, not PBS&J. These reports are now in the possession of the Construction Manager. If we are arguing and have a disagreement with the company about the facts and the conditions going on in a project, why would we give them information that they can use against us in court? That doesn’t make any sense to me if we end up in court. Any internal documents should remain internally and not be given to a Construction Manager. If I were running a business, that would make sense to me. The second comment in management’s response is that the General Counsel should review the recommendation of the OCA by evaluating the probability of successfully defending the SBBC from this claim. That’s something that shouldn’t even be in the response, because it indicates that there might be a question. That’s not up to Facilities to discuss, that’s up to administration and the attorney. That would give me ammunition if I were on the other side. You’ve got a nightmare here on both of these. Apparently, not enough people are on the job, because Pat diligently visited. They had so many days to complete the job, and they didn’t. These are the auditors’ recommendations, which were validated by the McGladrey audit. This makes me look around in shock and awe trying to figure out how these responses came to be in complete disagreement with the auditors’ findings, although completely validated by an outside audit firm on this, and many more projects, too. I find that unacceptable.”

Ms. Fertig stated “I think there’s a theme with change orders coming after the fact. So often the work gets done before the paperwork gets done and proper procedures are not followed. The question is whether or not we owe the money; they did the work but the procedures were not followed and it ends up costing us more money. There are so many questions like that, I was hoping Mr. Carland would still be here to answer some of them.”

Mr. Reilly responded “It depends on the situation. There are procedures, for example, with a CCD, a Construction Change Directive, where once that is put in place, the next step is to turn that into a change order, get it to the Board and get the vendor paid. Many times it may not become a CCD. The idea of the CCD is to issue that and direct the contractor to do the work. You have a price, but it may be an estimate, but you deal with that later. The idea is to keep the project going. A change order is much simpler, when everyone agrees on the price. The idea is to do that, have it approved, significant large change orders, bring it to the Board for approval before the work is done. Over the years, I think Tom will agree, many times the work has been done, we’re bringing it after the fact for the Board’s approval. There are procedures, I think it would be good to ask Tom. He’s got procedures and manuals that explain when to use a CCD, when to use a change order, how to turn that CCD as quickly as possible to the next Board

meeting. There are procedures in his department. The contract is probably the main item that directs how the project should be handled.”

Dr. Mack stated “We have procedures for procedures. I’ve often mentioned that we should stop writing so many procedures. It doesn’t do any good to have procedures, if no one follows them. That’s the issue. They have procedures in place, but they have not been followed. We constantly, as a District, get backed into a corner, where we’re in a position that we have to do something drastic or we have a very short timeframe within which to do something to comply with our procedures. If you put yourself in Tom’s position, he has to have a school opened by a certain date to educate children and he’s forced into a position to do something quickly.”

Ms. Fertig stated “My concern is that the contractor did work believing that it was properly authorized by the School Board. The failure is with the District.”

Mr. Lindner replied “In this case, the contractor was authorized to do this work. This was not an issue where a contractor did work that was not authorized. We issued the guy an NTP for a specific scope of work, knowing that the project was flawed, when I got there. We knew there was going to be a change in scope, based upon an erroneous assumption that we couldn’t build any classrooms, so we proceeded based upon that assumption. It was a directive from the previous (Deputy) Superintendent, my predecessor. These were projects that were issued immediately before Mr. Garretson left. If you go back in history, there were several Project Managers on some of these. I think one had five Project Managers before it actually got to construction. Going back to try to reconstruct what happened, even just trying to follow the audit, this was a very convoluted execution of a CM at Risk project. The contractor was authorized to do the work that was performed. That’s not the issue here.”

Dr. Mack asked “You’ve been here a couple of years now. What have you done to reverse this process?”

Mr. Lindner replied “One of the things we’ve done is that we’re not doing CM at Risk anymore. That’s probably the biggest thing. We have analysis paralysis. People are afraid to make a decision. They know that if they make that decision, there will be another opinion that abilitifies them for it. A lot of times things get stuck in a churn between contracts, cost estimator, Project Manager, the consultant. I instituted an existing policy which says if you find yourself in a stonewall, come see me and I’ll make the decision and document it. Hopefully, that will stop some of these delays.”

Dr. Mack stated “On page 31, top of page, how does that comment track to what you just told me.”

Mr. Lindner stated “The projects were awarded. All I do is sign the NTP (Notice to Proceed) and at that time, I was there temporarily. I thought I would only be there for two months, so I sat down, got briefed on the project, met with the contractor. This was two and a half, three years ago. I think I had been there a month at that time. At that time, I had an Executive Director of construction who had been with the District for over 20 years, probably almost 30, the Senior Project Manager who had been with the District for almost 30 years, an Executive Director of Design who had been with the District for 13 years. I had a very senior staff who advised me that this project had been awarded and we were ready to move forward.”

Mr. De Meo asked “It seems to me that there is a lack of clarity with the policies we have and a lack of leadership for fear of being second guessed. We have an internal auditor present at bids, is that correct?”

Mr. Reilly replied “At the bid selection, yes.”

Mr. De Meo asked “Is the internal auditor part of the contract negotiation?”

Mr. Reilly replied “No, we observe it, we do some things to try to assist several departments, such as Facilities, as a non-voting member. We observe the Agenda Prep for the Facilities Department, but my concern is that those are their agenda items. It’s like looking at the cover of a book. You don’t feel comfortable that you know everything in the book. In the timeframe we have to look at those, we are looking for certain things. A lot of people feel that the auditors were there, so they should have seen that. I still have a problem, even though we attend those meetings.”

Mr. De Meo asked “It appears that a lot of these problems were in the past, some of them due to reconstruction due to hurricanes, but I don’t understand when we need to do something in a short timeframe, why there can’t be a group that convenes to make decisions. Is there a group that does that? I see Florida Statutes being cited and then rebutted on the other end. It doesn’t seem to me like everyone understands what is required and instead we’re trying to legislate every action.

Mr. Lindner replied “We have that group, Sir. That group looked at this issue and agreed as a group that the path we took to remedy this situation as it was being executed was the proper path to take. We knew going in that this was going to be a problematic issue regarding the redesign of that space. As we executed this, that group monitored that process, all the change orders, etc. In retrospect, we could have hastened the process, but that group was involved. The decision and the path we choose didn’t agree with the more expeditious path that the Chief Auditor thinks we should have taken. I don’t disagree with the Chief Auditor’s findings for the most part. We do have the right to present the story from our perspective. It’s not meant to be combative. It’s not meant to be that we disagree. It’s meant to show that this was the path we took and this is why we took it and this is what happened while we took that path.”

Dr. Mack stated “You stated that people are reluctant to make decisions because of them being overridden or disagreed with. These people are getting paid very good money and getting paid that money, inherent with it is to be able to take that kind of heat, so to me. This Superintendent is responsible for everything this School District does or fails to do. Tom told you about all these high paid people he relied upon when he came here. That should show you clearly what I’m talking about. They weren’t taking the risks and responsibility commensurate with the salary they were making. As far as I’m concerned, if you’re in the job and you’re getting paid for it, you take all the heat that goes along with it. We’re getting into who’s right and who’s wrong and I’m not going to have that. Is there justifiable cause to support the Chief Auditor’s recommendation that they not be paid.”

Ms. Alex Mores asked “How far along are these projects at this point?”

Mr. Dave Archer replied “We’re four weeks from substantial completion.”

Ms. Mores asked “With regard to the additional funds, do they carry on pending the decision as to whether or not the additional funds will be paid?”

Mr. Archer replied “The contractor is obligated to continue working at the same pace as if there was not dispute.”

Ms. Mores asked “If it’s determined internally that they won’t be paid, what will the next step be once it’s completed?”

Mr. Lindner stated “The contractor has already sent to the District two demand letters, asking for the mediation and I forwarded one yesterday to the General Counsel’s Office. That’s kind of putting the cart before the horse, because the process is that we would try to resolve these issues at project closeout. That’s the path that’s currently been taken.”

Ms. Mores asked “Is there a risk again that we will get back into this loop where we will pay legal fees now to litigate, what is it, 2.2% of the contract?”

Mr. Lindner replied “Yes, there is.”

Ms. Mores asked “Is there any sort of internal analysis to determine the best resolution to move forward. We took a look a few minutes ago on how much we paid in legal fees to resolve some of these issues, but it didn’t include internal fees, cost of funds, etc. I don’t know if there’s any sort of process you would have here, but it seems like we run the risk of actually losing more.”

Mr. Runcie stated “When we look at some of these items, it’s clear that there are issues, there are errors that were made for these particular items, but given the way some of these contracts have been written and how the contractors, basically has been dealt with, you can get a preliminary opinion that tells you that this is not a defensible case, yet we take a position that we are not paying them, because it was wrong. All we’re doing is setting ourselves up to pay the contractor and pay more taxpayers’ money that could be going into our schools and address other issues that we have to fight a position that is not defensible. I understand the issues behind it and why it wasn’t correct, but if we don’t have a good legal footing to stand on why are we fighting these things, just based on principle, because at some level, we’re doing harm to the District. There’s a lot of that going on, just based by the numbers you presented here today. A larger issue is how you construct these deals, as Ms. Fertig mentioned, and where the process is behind them. I’d like to get to the root cause of the problem. I can’t continue to keep going back and dealing with these items. We have to deal with the root cause of it and then figure out how we can move forward and address that. That’s one of the reasons, when I came into the District in October, 2011, the Board asked me ‘what are you going to do about all these issues surrounding Facilities? I gave them a number of things, one being to bring in an external auditor to look at our current processes that we have relative to best practices in the industry and make some recommendations on how we can move forward and that’s where we’re going.”

Ms. Mores said “I agree that we have to get to the root cause of it. Are there times where we’ve done some kind of cost benefit analysis to determine the best way to resolve this as opposed to using all of our internal resources while we go back and look at the root causes. It seems to be the same thing that we see over and over.”

Mr. Runcie stated “I can tell you we do that now, I’m not sure what they did.”



Ms. Fertig stated “We find ourselves in such a difficult position because we have repeatedly suggested changes to these contracts that have never occurred. We’re always told that in six months, we’ll get that updated. I think we have to balance what the contract actually was and if people, in good faith, relied on the word of the District. What Pat does, I think we charge him with finding these errors so we can at least try to fix them. The fact that we don’t fix them is not his fault in my mind. Thank goodness he’s identified them (errors), hopefully we will get to a point that the contracts have been changed so many times, actually the third department that should get involved is the Legal Department. I wish they were here for this conversation today, because at the point where Pat identifies things that were done incorrectly, and what Tom does, as far as identifying how they made the decision to proceed, in my mind these are older schools that desperately need the work. When are we going to get the legal contracts correct?”

Mr. Runcie stated “I’ve asked Tom and the Legal Counsel to review these kinds of errors and come back with a plan on how to restructure all our contracts to address the historical problems that we’ve seen.”

Dr. Mack stated “I have my marching orders in the form of a request and that is our observations should be objected primarily to what happens to the kids. For example, you changed the existing drainage systems from one where kids had a lot of area to play, now it’s a drain field, and they’ve lost that area. These are the kinds of things that we hope our construction folks will look at. Now, when I look at an audit report, I look at it from the standpoint of how it affects the children.

Ms. Greenberg added “I agree that’s part of our charge, but our main mission is to look at everything over 99 cents, in addition to the kids. On the matter of the legal fees, the way these cadres were chosen is part of the problem, which the Grand Jury described of this District. They were chosen for specific reasons and they were paid specifically and there’s a repeat of certain cadres. That’s kind of a different issue, because our in-house legal team can look at these things and deal with them. I would prefer not to say that these things are not defensible. I don’t know how it’s defensible to have three less classrooms and not get money back, and actually be expected to owe money. It does not make any sense to me. If it were my business, I’d be jumping up and down. You just don’t get less than what you originally contracted for.”

Mr. Runcie said “I understand what you’re saying; I’m not disagreeing with you. We gave formal authorization to someone to deliver a service. I’ve never seen a case that goes in front of the law where we as an organization, authorize someone to do something, and they execute and deliver those services, we are obligated to pay, regardless of whether it made sense or not.”

Ms. Greenberg stated “What we authorized them to do was less than the original contract. They had three less classrooms.”

Mr. Archer stated “The space was redesigned. Instead of adding classrooms, the space was redesigned and reconfigured to accommodate multi-purpose space, a music room, and a number of storage areas. In addition, the fact that the revisions to the drawings had additional scope to the project. There was at Cypress, additional drainage work on the northern side of the school that was not included in the original design or GMP. We had to, after the revisions were done, we had to collect all the credit change orders, and we had to look at all the additive change orders and the final CCD or change order that was processed was a delta between one design, as

opposed to another. There was additional work added to the project and it was not necessarily a credit because the spaces were in fact may have been even more, because we have multiple partitions instead of drywall, partitions require enforcement of the roofing structure and the material is a specialty order, meeting flame and fire, and the rest of it. It's a complicated process, it's different on paper, that you're not just choosing classrooms, therefore you should get money back. That's not the case."

Mr. Reilly stated "I'd like to clarify something. I think we're getting off on a tangent here. That's the area of whether or not there should have been a credit or an additional payment. The drainage portion of the work was \$290,000, which was approved on February 22, 2012, but the revisions to the Cypress existing cafeteria was approximately \$37,000. As I mentioned, there were two different things; they turned out to be two different change orders. The point is, that's another audit to look at, whether you feel there should have been a credit or an additive cost. We made the point that we were told it would be a credit. The key thing I'd like to say about this whole project is that the project was not managed well at all. It doesn't matter if you want to eliminate three classrooms or add three classroom, or change the drainage system from one method to another, you do that and there shouldn't be a reason why that's going to be a guaranteed delay. The most important thing in both of these projects is that they needed to build a new cafeteria first, and they could not move the students from one cafeteria to the other until the new one was completed and the old one could be released from use. It wasn't done in the timeframe and within the baseline schedule. There was a delay on both projects when the new cafeteria was actually completed and when it could be used, therefore, access to the existing cafeteria to begin remodeling did not happen until June 13, 2011 for both schools. Part of the delay is there, we're wasting a lot of time talking about whether there should have been a credit or a debit change order. The facts are that we did not use the contract terms to keep the project going properly and to end up now where we are right now. As of January 2012, the request was over 221 days and 283 on Palmview for delay compensation. Currently, we are way over from \$198,000 for Cypress and \$254,700 Palmview. They have now increased those amounts due to the change in the daily rate for delay claims. This now totals over a half million dollars for a change that we had plenty of time to do between the issuance of the Notice to Proceed on February 16, 2010 for Cypress and December 17, 2009 for Palmview. There was, during that critical period of building the new cafeteria, there was time to do all the things they (CM) needed to do and they did some of the things like the site work. They did the scope of work that they did have to do in the existing cafeteria but they didn't start on time to be able to meet the 570 days per the Notice to Proceed on a CM at Risk contract. That's my point."

Ms. Mores asked "When we have vendors that we are dissatisfied with, is anything done?"

Mr. Reilly stated "We have a process on that. If we feel the vendor is not complying with the contract, or if we release them from their contract, they can be placed on a two year probation period. There are specific procedures which are outlined in the contract and also in our School Board Policy #3320 for procurement."

Mr. Duane Wolter asked "What is the purpose for extended general conditions? Why is it in the contract and what is it used for?"

Mr. Lindner replied "It's in the contract and essentially what that does is compensates the contractor to stay on the job and manage the job. Actually, during a period of delay not caused

by the contractor, if the delay was caused by the owner, over and above what the contract documents state, and we want the contractor to stay on the job while we're solving our problems, the contractor is entitled to essentially receive that amount on a daily basis per the contract, so that we keep his staff employed and he can pay his staff. Essentially it's an overhead charge."

Mr. Wolter added "We gave the ok to proceed on February 16, 2010 and then there was a CO issued on August 20, 2011 and the target completion was September 9, 2011, then on October 17, 2011 there was a request for an extension of time and then we go into these other change orders. Assuming that my layout is reasonably accurate and there were comments in the report that there hadn't been a previous issue raised by the GC relative to time and so forth. Why if we the School Board caused the delay that was going to hurt the General Contractor, have them incur incremental costs and extend the completion date beyond the 570 days, why did they wait until October to raise the question and ask for funding?"

Mr. Archer replied "As part of our contract administration of the project, we meet once every two weeks. In addition, every month, a contractor provides an updated schedule. During our bi-weekly meeting, we have an item where we discuss schedules. If the project is fallen behind schedule, there's always a discussion item to account for that. We knew from the updated schedule that comes to us once a month in addition to our face to face meeting every two weeks that there were delays pending. The bottom line is that there are some issues that Mr. Lindner and Ms. Meloni have put in place to resolve or prevent the reoccurrence of these issues. The bottom line is that we changed Phase II of the project and we did not give the contractor the permitted drawings until on or about May 2. On his baseline schedule for the scope of work that was intended in the original contract, he had 203 days to do that work. We gave him the revised drawings. He needs at least 203 days to do the work. What we did with the revised drawings that were permitted and issued to him on May 2, is that we added scope and we did not allow him time to secure his pricing and programming the project. If he has the permitted drawings today, he cannot go and build the project tomorrow. He has to sit back, he has to write contracts; he has to procure specialty materials, he has to do shop drawings, schedules. There's a whole host of things. Typically, when we have CM projects, we allow 90 days for that process. This contract in this instance, because he was involved in the revisions, he participated in the design of the revisions, he was able to mobilize and start the work within 30 days. He was on site on June 13, so that is the issue. We delayed giving him the permitted set of drawings. There's no way that he could build the project in the 570 days if we gave him the permitted set of drawings on May 2<sup>nd</sup>."

Mr. Wolter asked "Are you close enough to the project to know why we were late on delivering the plans for Phase II?"

Mr. Archer replied "Mr. Lindner said I am the sixth Project Manager on the job. I have a fair handle on the reasons why the delay in authorizing the architect to proceed with the design. There was a protracted negotiation for fees for his additional fees. As Mr. Lindner says in the event there is a deadlock, he will now step in and make the decision. We were fighting in June of 2010 over \$3,000 in fees that were being negotiated with the architect. In retrospect, that is insignificant to what the actual cost is today."

Dr. Mack asked "Do I understand you to say that the contract isn't done yet?"

Mr. Archer replied “Phase II of the work is in progress and four weeks away from substantial completion.”

Dr. Mack asked “How are we in terms of the days that are allocated?”

Mr. Archer replied “This is what we are disputing now. The number of days that the contractor on January 17, that we agreed that he was entitled to, is what is disputed today. In addition to the days in terms of the delay in issuing the revised drawings to the contractor, there were another issues, one of which is the as-built conditions of the renovated areas, or the areas to be renovated, where what we thought were walls that went to the underside of the deck actually start halfway up. Walls that we thought were poured cells we found rebar in the cells, but no concrete.”

Dr. Mack stated “I don’t know if anyone else is following this, but I’m tired. You may have answered my question, but I lost you. I think I was asking for a very short answer. Is the project done? Is it done within the number of days allocated? I don’t care why. It’s not really relevant why stuff didn’t happen. Do we pay them the delay or don’t we? Who’s at fault, who’s not at fault, what’s defensible, what’s not defensible, in my opinion, with my limited legal experience, both parties are at fault. Why? Our Construction Manager at Risk, when he observes an abnormality in the contract, he should come to the District and state ‘I’m supposed to have X done by a certain date. I’m not going to make it for these reasons.’ On the other hand, the District should state ‘you’re supposed to have X done by a certain date. It doesn’t appear that you’re going to make it.’ The fact is that both parties were at fault and made mistakes. So, just give us the facts.”

Mr. Hurst added “I was going to use the term ‘joint contributory negligence’. I think you’ve answered all my questions.”

Mr. John Herbst asked “When you do a change order as you were discussing, as part of that change order when you negotiate the change order, do you also negotiate the additional number of days it’s going to take to complete the project, based on that?”

Mr. Archer stated “Yes”.

Mr. Herbst continued “So, if it was going to take an additional 230 days or whatever the number was, that was built into the change order when you did it. Have we exceeded the agreed upon number of days in the change order or not?”

Mr. Archer replied “We have not agreed to the number of days. There’s a board item with the request for the number of days that was for January, so we haven’t agreed to it.”

Mr. Reilly stated “Just to clarify, the change order that should have the days and the cost was broken out. We (the District) approved the payment for Cypress for the remodeling for \$38,000 and we approved the change order for approximately \$290,000. The days were not put together in the same change order. That’s the change order (for delay claim) that Mr. Runcie asked us to look at that was presented on January 18, 2012. According to the information on the change order, that was strictly related to the delays for the remodeling of the three classroom elimination.”

Mr. Herbst asked “So, we approved certain changes and dollar amounts associated with those changes, but not time associated with those changes when those changes were approved.”

Mr. Reilly stated “That’s true.”

Mr. Herbst stated “So, again, going along with Dr. Mack’s and the Superintendent’s direction for looking forward, I would suggest that looking forward is probably not a good practice, that the two ought to go in tandem, so that there’s no dispute about the time when we negotiate the scope of work.”

Mr. Reilly stated “The form requires that also, the materials and the days.”

Mr. Herbst asked “On page 37, it talks about delay caused by the revised remodeling of building #1 and this is the part that Pat has mentioned before where it says work stopped as a result of a mandate by the State of Florida, and I’m wondering who made that assertion.”

Dr. Mack stated “Mike Garretson.”

Mr. Herbst stated “So, that assertion was made by staff, and not validated by anybody else. Everyone else just relied on that.”

Dr. Mack stated “That was prior to Tom.”

Mr. Herbst added “Tom, you stated before that this was a problematic project from the onset. Could you expound on that?”

Mr. Lindner stated “We issued a Notice to Proceed. First, we awarded a contract for a specific scope of work; we changed that scope of work on the previous Deputy’s assertion that we couldn’t build any more classrooms. Intuitively, we knew we had 40,000 extra seats and it made sense. I understand why they marched down that path. That’s what I was told when I got there, you can’t build any more classrooms. At that time, before we had cut projects, we were looking at putting another similar kitchen cafeteria out at a school that had a media center and there were classrooms there. We were looking to design those classrooms out, so we weren’t building additional classrooms then. We issued the NTP, knowing full well that we were going to change the scope of the project. That’s problematic. I agree with Pat. We should have stopped and redesigned everything, cancelled what we were doing and put the work out after we had a new properly designed set of plans or gone back and negotiated a different scope of work. We could have done that.”

Mr. Herbst stated “That’s what I was trying to get to. I didn’t know if the project was problematic, but now I understand what you’re saying.”

Mr. Lindner stated “You’re going to end up in trouble if you start to change what you paid and contracted somebody to do in the middle of the work.”

Dr. Mack stated “I’m going to defer a vote on transmitting this report to the Board until we finish the next two items, with your approval.”

Ms. Greenberg asked “I’m just curious, why?”

Dr. Mack stated "I want to defer it until I've heard all the facts."

Ms. Greenberg asked "Tom, when did you get here?"

Mr. Lindner stated "I started January 12, 2010."

**Internal Audit Report – Review of the Palmview Elementary School Project #1131-23-01/P000207  
New Food Service Multipurpose Building, Renovations and Site Improvements – April 2012**

Mr. Reilly stated "This was a request by the Superintendent to review the change orders that were headed for the Board meeting on January 18, 2010. Similar to Cypress, we have a project that is a new cafeteria, multipurpose building and a renovation of the existing cafeteria. Also there were a couple of other changes in the front of the school, such as the student drop off area. What occurred in this job was unexpected, but the item didn't affect the point that they couldn't begin construction to the existing cafeteria until June 13, 2011. It was an issue with the transformer that FPL originally stated that the school's existing power source was adequate and then two years later, they stated that a separate transformer was needed for the new cafeteria after construction had already started. Interestingly, a CCD was issued during the project, which resulted in a \$99,000 CCD that turned into a change order that was approved by the Board on February 8, 2012, but that showed that the contract procedures were handled properly. A CCD was needed, a price was given and reviewed by the architect in order to keep the project rolling. They did the job, the portion of the work that related to the installation of the new transformer was done. FPL did their work and the building was energized. Now there is the same issue with the elimination of the three classroom addition that was identical to the Cypress project. We waited till after the project's final completion date to issue a CCD for that work. Work was done on the existing cafeteria during the summer of 2011, when the demolition was started and the portion of the original scope work was performed. After work that could be performed was completed, there was a slow down until the CCD was issued. Again, this all occurred after the final completion date was not met. The Construction Manager had agreed to complete the project in 570 days. There was no sense of urgency to get the CCD done prior to the project's final completion date. The clock is still running on the project. That's where we are now. The change order that was submitted on January 18, 2012 that was withdrawn from the meeting showed that the new completion would be April 19, 2012, Exhibit A on page 21. This date was used to arrive at the 283 days requested for delays. The latest status on the project is four weeks away from now for substantial completion. It's very much the same findings as Cypress. We added the same findings relating to issuance of a Notice to Proceed when there are revisions to the contract and the issuance of a CCD in accordance with the contract to keep the project moving under Article 27. We also noted that it is the responsibility of the Construction Manager to use its best efforts to complete the project in the best, soundest way and in the most expeditious and economical manner. We feel this is the same issue as Cypress; the days should be allotted for them to complete the project without compensation. There were discussions about liquidated damages. That's a different issue. That's something that management and Legal may wish to look at, but from our standpoint, our role here was to determine if they were entitled to the delay claims. Currently, the claim has increased to \$353,000 as per the change order amount of \$1,250 per day, which was reinstated. Our position is that access to that building regardless of the transformer glitch that occurred, the main building was still being completed as the process for including the planning, drawings, CCD and installation of the transformer. The drawings for the elimination of the three classroom addition were available at the end of April, 2011. My experience that after

two to three weeks after the revised plans were available, a change order could have been issued to keep this project rolling. Maybe there would have been a small delay, but now we're almost exceeding the additional time for the existing cafeteria and even doubling that time and more."

Dr. Mack stated "It troubles me that I see that the expedited change order process using the CCD works. They did that with the connection with the FPL transformer and the action resulted in the transformer going in and everything was on track. Why wasn't the CCD issued for the remodeling work at the same time? The remodeling work couldn't take place until the transformer was in place."

Mr. Reilly replied "The remodeling was for that separate building and they did not have the drawings available until April 2011. The transformer issue occurred in October 2010 and was finalized and in January 2011, a CCD was issued. The point is a CCD could also have been issued for the three classrooms at an appropriate time similar to what was done when the transformer issue occurred, when a CCD was issued for that work. Instead, for the three classroom issue, we waited till the project was done to issue a CCD."

Mr. De Meo asked "Finding #1 states that none of the staff managed the project well. Is the staff involved from the beginning the same staff currently on the project?"

Ms. Shelly Meloni stated "As Mr. Archer indicated before, we've had a number of Project Managers on this job. Each of them had some input into the management of the job. Dave (Archer) has inherited the project, I believe he is the sixth Project Manager on the job. He has inherited the decision making of all the previous Project Managers."

Mr. De Meo asked "Do you believe the contractor should be paid? The internal auditor doesn't."

Ms. Meloni stated "Based on the information in front of us and the particulars of the project, yes, I do."

Ms. Fertig stated "I think both of these are the same issue. There is a sharing of the fault. I'm concerned that we made representations that may have been misconstrued by the contractor. I'm still not clear if that's the case or not."

Mr. Lindner stated "I was very clear on my response. We accepted responsibility for not properly executing this project when we issued an NTP and we changed the scope. We knew we were going to pay additional fees for that and, in fact, we had internal issues that contributed to the delay. We sent for an analysis, which any change order over \$100,000 goes outside to a third party estimator. We sent those out and had them analyzed twice, because we were going to mitigate the number of days. The claim was for a certain number of days, we disagreed, we sent it out. We shared those documents, the CM is acting on the owner's behalf, so we used those documents to try to mitigate the number of days that we agreed we would be responsible for. It's a daily rate. We negotiated a rate that was less than the rate in the contract. The contract rate was \$12.50 and we negotiated in good faith and agreed to compensate them \$900 per day. At the time, staff believed they were doing the right thing. That's why we were working with the contractor to try to resolve this issue during the execution of the project. We have since found that we were misguided. The staff and the counsel's recommendation that this is the way we should proceed. When we took this to the Project Management Counsel and discussed how to get ourselves out of this mess, we proceeded to do what we thought was the right thing. We accepted

responsibility for our delay and we implemented changes to make sure we don't get stonewalled and wind up in the analysis paralysis again. It's a good example of what you're talking about. To delay a project for three weeks while we negotiate a \$3,000 difference in fees, the person who's doing the negotiating isn't thinking that every day we delay is costing us \$1,200, so there's an internal issue. I think that contributed to it. That shared responsibility thing is where we're headed."

Ms. Greenberg asked "You're saying that the change order that you submitted on January 18, 2012 didn't even discuss the transformer."

Mr. Reilly stated "Right."

Ms. Greenberg stated "The issue on page 56, I'm hearing that the District is saying yes. It's joint culpability. The issue is whether you are going to sit down and mediate this thing? My position is that I agree with the auditors and give them the time, but no money."

Dr. Mack said "It's up to the Superintendent now and he'll get back to us, I'm sure. Pat has finished his job by giving us this report. I think we should all individually make our own response whether we're going to support it or not."

Mr. Hurst stated "A command decision was made, we made a decision with the information we had at the time. How do we keep this from happening again?"

Mr. De Meo stated "I think the Office of the Chief Auditor's work stands for itself and has passed the test of time and is really excellent. That doesn't mean that we should agree all the time. That doesn't mean that the various departments that are the subject of these audits that there will be a reconciliation of these decisions. In this case, I think the Office of the Chief Auditor came up with a recommendation to give the allowable time without compensation. I think at this point the Superintendent should give his decision."

Mr. Runcie said "I will confer with the Legal Department to see what our position looks like and make a decision, based on that. We're not going to burn up more money than what we owe to try to figure that out."

A motion was made to transmit both the Cypress and Palmview Elementary reports. Motion carried.

**External Audit Report – Operational Review of Facilities and Construction Management – McGladrey LLP**

Mr. Rob Broline from McGladrey stated "We would like to thank Pat and his team, Tom and Shelly and their team. Everything went very smoothly and we worked very well together." Mr. Broline gave an outline of the report and the scope of the services provided. There was an emphasis on best practices for the Facilities & Construction Management Division. "We recommended a number of improvements to the contracts. We've heard a lot here today about contracts. There were 47% of our recommendations are related to the pay application review and approval process. There were thirteen recommendations related to construction contract development and seven related to pay application review process. Therefore, 47% of the recommendations were related to those two areas."



Dr. Mack stated “I noted that both the low and high risk recommendations have the same completion date. I noticed in all the high risk areas, the Executive Director had the responsibility for it, and all this has to be done by January 2013. I’m wondering if you took into consideration the validity of that comment, the Executive Director having all these things to do by January 2013, and the feasibility or the probability of this being accomplished.”

Mr. Broline replied “No. One thing to note in the forty-three observation types, we noted that seven related to compliance and thirty-six related to best practices. In terms of compliance, we picked two projects to look at.” He provided exhibits to the District that were referenced in the audit report relating to improving the contracts and other tools to improve procedures. He noted the reference on page 3, which showed several observations that were similar in nature to the Office of the Chief Auditor’s observations in their prior reports.”

Dr. Mack stated “You do realize that these observations were the ones that caused fights between Tom and Pat’s office and some not nice comments resulting from some of those things, which I expected to see in your report, because you referenced it (OCA’s reports). This says to me that they (Facilities) accepted you saying these things, but don’t accept Pat saying these things.”

Mr. Broline stated “I don’t know anything about that.”

Dr. Mack continued “We have problems; we know we have problems; that’s why the Superintendent and the Board members request audits, this Committee requests audits, and that’s to uncover the facts, not to point the finger. Once the facts are uncovered, the responsibility for carrying out the recommendations are rest on any staff member, just go ahead and do it, without the fighting. This is an audit team, the Audit Committee and the Audit Department. I think the procedures are in place, we just have to follow them.”

Mr. Runcie stated “A large part of my thinking in terms of having McGladrey come in and do this audit was recognizing the fact that we could have probably done this work and come up with this analysis internally, but it would not have any public credibility. I always felt we needed a third party, totally independent from the District. Part of my goal is to restore and build public trust in the District, especially relating to dysfunction. I certainly recognize the work that’s been done internally, but for the same reason financial organizations go and get financial audits, we need to do it this way.”

Mr. Broline discussed potential cost avoidance and best practices. “We’re not suggesting that things are not being done with respect to the department, and being proper stewards of the District in saving the District money. Based upon our analysis of the two projects that we looked it, if you are able to implement some of these provisions and best practices into the contract, these are some of the cost avoidance type of dollars that could be saved. This is potential cost avoidance for the future as we move forward. Obviously, from our snapshot, if the cost avoidances were in place, this would be a significant amount of savings. Of the cost avoidance, \$1.4 million of this relates to the Construction Manager fee in each project. In both cases, based upon all of our experience in the industry and benchmarks we developed, if you were to get these favorable provisions, you could have saved this much on fees and general conditions.” Mr. Broline also discussed the CM at Risk delivery method and stated that this could be a good delivery method, even though the District had some bad experiences with it. Discussions followed.

Ms. Greenberg stated “Thank you. I especially appreciate the fact that you validate all the things that the Chief Auditor has been coming forth with all these years that I’ve been on this Audit Committee. It’s nice to see validation for a Chief Auditor who has been, by various administrations, maligned so much. I think if a CM at Risk is written the way it’s supposed to be written, it can be a good delivery system, but this District has not done that. The problem is the way they (the District) write the contracts is not CM is supposed to work. The District is in the middle of the contractor and the architect and that’s not what’s supposed to happen. This District needs to write the contract properly and it would be a good delivery system. I’m especially interested in all the money that could have been saved by doing these contracts correctly. As far as credibility with the public, the auditors have never had a problem with credibility with the public, so I’m glad this audit validated what the auditors have been saying. I’m looking forward to implementation of these recommendations. Thank you.”

Mr. Hurst asked “On some of your best practices, you were saying you’re not an attorney and the suggestions you were making would be examples of other entities that had used similar type contracts, so in essence, if they were using them in similar type contracts, they would have already gone through their Legal Department. Granted, it may differ from state to state. Is that correct?”

Mr. Broline stated “Yes.”

Mr. Hurst continued “So they’ve been considered to be, and you wouldn’t be sharing them unless they’ve gone through some evaluation process, to say this is a darn good idea of what would work in your area.”

Mr. Broline stated “That’s correct. I’m happy to say that I’m not aware of any of our recommendations that were not implemented so far in contracts for any legal reason.”

Ms. Fertig stated “I’m sorry that the Superintendent is not here, I’ll trust that Mr. Moquin will repeat verbatim, this report really is a repetition and reaffirmation of the work of the auditors and the Audit Committee. While we have a new Superintendent and a new attorney, the rest of the staff is still the same. We’ve asked for these things, on page 9, the Right to Audit clause. When I read that, I pulled out the kitchen cafeteria audit, where we specifically asked for a change in the provisions of the Right to Audit clause to make sure we could get the receipts and back up materials. Here we are over two years later and you’re making the same recommendation. The policy on the scope of this project, I mention this every meeting that we have, it’s still not done. This is wonderful, because it puts it all in one book, we don’t have to go back and pull our minutes. Pat’s been great on keeping follow up items. If I seem like I’m concerned with the January 2013 date, it’s because I am. For five years, we’ve been asking for a definition of policy on the scope. For two years, we’ve been asking that the contracts be amended. I think this is a good road map, my concern is that over and over again Pat and his office have identified these things and have been making recommendations to see them changed. These recommendations didn’t just go to the board. I’m really disturbed that no one from the Legal Department is here because Pat can review everything, we can make recommendations, Tom can follow the rules that are in place, but unless the Legal Department actually follows through, we’ll be having this same conversation in three years.”

Mr. Runcie stated “January seems too far off to me, that’s my personal view. We can go through at some point, maybe next week, and prioritize these things. You can’t do fifty things at the same time, so what’s the priority? I have a whole bunch of problems and issues down here. If I go chasing these all day, I’ll do this forever, but if I can actually create some kind of structure and get to the root cause of these things, more and more will go away. What are the big things we can go after first that will address the most serious problems that we have going forward. Then we can keep going down the list. What we’d like to do, maybe in August or September, is have a workshop with the Board where we essentially look at the history of what’s happened in Facilities, look at where we are today in terms of projects that are coming up or how the contracts are structured. The third piece is how we incorporate these recommendations and best practices into the practices we have going forward. After that’s done, I want to have a community process to actually begin to look at our schools. The fact of the matter is that we don’t have the resources we need in order to address all of Facilities’ needs. We’ve got to come up with some criteria in terms of how we allocate resources if we ever do get the resources that we need. There has to be confidence and trust that these are allocated fairly.”

Dr. Mack stated “Mr. Superintendent, the majority of these responses state that the Facilities & Construction Management will evaluate the recommended contractual modifications and consult with Legal Counsel to determine feasibility of implementation. We’re talking about the Executive Director having all this done by January 2013. With all of these requirements having to go through the Legal Department, I don’t see how Legal can take these actions by January 2013, because there are too many of them. To me, it seems that some of this can be done without the benefit of the Legal Department. I think that your office should determine the priority of which should go to Legal or not and that staff follow your direction regarding those items. I don’t want Tom to say he was unable to implement some of the recommendations because he didn’t get answers from the Legal Department.”

Mr. Runcie added “For example, requiring the Construction Manager to disclose any related third party relationships with bidding subcontractors, I don’t need a legal opinion for that. I don’t think a lot of these things will take till January 2013. Once the Legal Department revises the contracts once, it becomes a boiler plate.”

Mr. Broline stated “Just to clarify, this is why we did the redline contract. This is ready for Tom and the Superintendent to sit down tomorrow and say ‘here it is’. It’s redlined, nothing needs to be done to it. If you simply took our report and took our recommendations, you don’t need to write it up, it’s already done in this redlined contract. Step one has already been done. It makes sense to me that Tom, the Superintendent and other appropriate staff review that redlined copy and tweak it very quickly. Then you can go to the attorney with that.”

Dr. Mack stated “We have to transmit this to the Board. That’s the issue and we don’t want anything to result in the Board jumping on Tom, Legal or Pat. With the structure of this document, I love it, I understand the intent of it. We have a new Board. What they interpret and what they see is totally different than some of the other Boards we’ve had. That’s why I’m saying these January dates are unrealistic. This Board, unlike some of the others, are very direct in their questions. If we have to go back and change some of these comments, not like redlining, we’ve got to come up with something definite. We’ve got to fix it now before it gets there.”

Mr. De Meo stated “I think this is good example of how we can move forward. The illustration you give; is this a final report? I’m afraid something like that could be easily misinterpreted or criticized and some parts that could be considered extremely hypothetical. I would caution us against engaging in those kinds of things in the report. In general, I have never seen a construction contract that doesn’t have either a percentage limitation or a dollar amount or definition.”

Ms. Greenberg stated “There’s no reason that the Board members would not understand. We’re supposed to communicate with them.”

Dr. Mack stated “You and I do that.”

Ms. Greenberg added “Well, everybody’s responsibility is to do that. If they’re not doing it, they’re failing their responsibility as an appointee on this Committee.”

Dr. Mack added “There are five of us around this table who do that religiously, because we’ve been around a while. If you take someone who’s only been here six months, it’s not going to happen. My point was that the way the document is written now, it would provoke questions by members of the Board. I’m just saying to let McGladrey know that we will be sending it to the Board, so the redlined comments would not be appropriate for that purpose.”

Mr. Broline asked “I’m sorry, but I don’t know what you’re referring to by redline comments.”

Mr. Runcie replied “Essentially, what they did was take the contracts and modified the contracts.”

Mr. Broline stated “It’s not a redline report, it’s a final report.”

Ms. Greenberg stated “Mr. Superintendent, you were not here before, so I’ll say it again. This validates everything the Chief Auditor has been bringing to us for fourteen years. There was never a problem with the auditor’s credibility.”

Mr. Runcie said “It doesn’t matter if we have an internal auditor or not, the general public, if we issue something and it comes from our internal auditor, they don’t care about the structure. The public doesn’t understand. They understand when we get an audit from a third party. I discussed this with Tom and Pat back in the fall. I mentioned it to the Board, as well. It’s great that it’s consistent with everything that you have contributed over the years.”

Ms. Greenberg stated “I agree with the audit completely.”

Ms. Fertig stated “Certainly for our community and for us, Pat has incredible credibility. It’s just a pleasure working with him and his staff. They are just so honest. Repeatedly, we’ve asked for follow ups. Over two years ago, we sat right here and very specifically pointed out the same things that are here. It began two years ago and we’ve followed up ever since. I think that’s critical and the reason it came to a head was the kitchen/cafeteria audit. It’s been pointed out in so many of the audits. Secondly, is to define when to go out and rebid. We’ve been asking for that for five years. The next time we discuss this, we would like to have Legal here. Finally, when I read in here that we’re paying 12% instead of 5% for fees, it breaks my heart. Every day that we delay changing the contracts and defining the scope of projects, we’re wasting money.”

Mr. Broline stated “The Right to Audit clause is in the contracts, but could be improved upon and we provided recommendations for the language.”

Dr. Mack referred back to Facilities’ response to the Palmview audit, to which management responded that the contractor has some documents (external consulting review report) that we don’t normally give a contractor, unless it’s requested by a public records request. He asked if the contractor requested a public records request for these documents.

Mr. Reilly stated “No.”

Dr. Mack asked Tom Lindner if there was a public records request for that report.

Mr. Lindner replied “No sir, not that I’m aware of.”

Mr. Wolter asked “When you quote best practices, are you quoting some database or experience that you and your firm have developed? Can you give a brief explanation of how large that database is, how many companies, how many contracts or just add some depth to your comment in terms of how you get the best practices.”

Mr. Broline replied “There are a couple of different databases and our own experience. There isn’t any one particular national database that we use as a benchmark. This is our collective experience, being a national firm and having many experienced employees in the construction field.”

Ms. Mores asked if someone would be monitoring the implementation of the recommendations and if they would be doing any follow up.

Mr. Reilly stated that there would be a current status review performed.

Dr. Mack asked regarding the external audit performed on Palmview, why these external reports were given to the Construction Manager.

Mr. Lindner replied “As we attempted to negotiate the price down and the number of days that were associated with the original claim from the contractor, we went outside with two separate estimates for the number of days, not necessarily entitlement, just the number of days that were impacted in both of those contracts by the perceived delay caused by, or contributed to, by the District. That public information is now, because now the CM is making a claim against us and threatening legal action and demanding mediation, those documents are in his possession as well, and they support the contention that we contributed to that delay.”

Dr. Mack asked “The question is was there a public records request from the CM for those documents?”

Mr. Lindner replied “No, sir. The reason we prepared those documents was to use as justification to decrease the number of days. Remember, the CM is acting in the interest of the owner, so we were working in partnership with them, to try to mitigate the amount of money that we were going to pay to the General Contractor/Construction Manager, so that’s why the CM has those documents. Now, this whole issue is turned around and we’re now taking a different stance, so instead of being on the same team, now the CM is caught in the middle. That’s what happened.”

Dr. Mack asked “How can you avoid that kind of situation in the future?”

Mr. Lindner said “The real way to avoid it is to not get yourself into a situation where you’re changing the path of the project after you’ve already issued the scope of work. When you issue a scope of work, you should say, unless you’re going to negotiate a separate scope and handle it separately, you should pay the guy for that contracted scope. You can legally modify a contract in the middle of a job, as long as everyone agrees, but we didn’t do it that way.”

Dr. Mack said “So, the reason that he (CM) has those documents in his possession is because when you gave them to him, he was on our side.”

Mr. Lindner replied “That’s correct.”

Dr. Mack said “That’s why he got them in the first place; he was defending us against the CM.”

Mr. Lindner said “And also to mitigate the number of days. We were trying to demonstrate that the number of days in their original claim was excessive.”

Ms. Greenberg stated “My solution would be to let them know that you have data, but keep the internal documents internal.”

Mr. Lindner said “If it goes to Legal, those documents will be part of discovery anyway, so it really is, you’re just delaying the inevitable. That’s the environment we operate in, because of the law.”

Dr. Mack said “What Charlotte is saying is that you are giving them more time to prepare a defense on whatever position they’re going to take.”

Ms. Greenberg added “It is the consensus of the Audit Committee that it’s an excellent report that validates our internal auditors’ findings.”

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

Mr. Lindner stated “I wanted to say that the statement that we used regarding all of these items that surround contractual modifications, at the time we prepared this response, we did not have those exhibits in hand, and that actual language was provided by my buddy, David, here. We used that language based upon his recommendation. What that really means is that before we can say that his recommendations, I can’t do that. I know what the redlined contracts looked like, and I’ve not been a fan of a lot of our contracts. We do need to consult with Legal and work through the language and change these contracts. The fact that we have redlined contracts that were provided by people who are experts today in this business will help speed up that process.”

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

Mr. Reilly stated “All of the ten schools in this audit report complied with all policies and procedures.”

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 eighteen locations audited. All of these locations complied with all policies and procedures. There was approximately \$22 million in assets audited and there were only twenty items unaccounted for.

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

**External Audit Reports – Early Learning Coalition of Broward County, Inc. - Annual Review and Assessment Instrument for the SBBC-FFS-11-ELC6 Contract and the Department of Health & Human Services – Review of the Broward County School Board Head Start and Early Head Start Programs**

Mr. Reilly stated that he wanted to bring forward two reviews that were performed by external auditors for the Early Learning Coalition of Broward County, Inc. - Annual Review and Assessment Instrument for the SBBC-FFS-11-ELC6 Contract and the Department of Health & Human Services – Review of the Broward County School Board Head Start and Early Head Start Programs. The results were positive that the District basically complied with the requirements of the programs. Discussions followed.

**Summary of Audit Activities for 2011-2012 and Proposed Audit Plan for the 2012-2013 Fiscal Year**

Mr. Reilly stated that he provided the Summary of Audit Activities which provided the audit services that were performed during the 2011- 2012 fiscal year and the Proposed Audit Plan for the 2012-2013 fiscal year. “The Audit Plan is a living document that can change during the year as priorities shift. We plan to perform the audit services with a staff of nineteen employees.

Mr. Hurst stated “In fact, you all are finding money and saving money. Does that subsidize having several more people?”

Mr. Wolter asked whether a Transportation audit would be performed.

Mr. Reilly stated that we could perform an audit under the title of Operational Audits.

Discussions followed.

**Other Discussions**

A list of tentative dates for next year’s Audit Committee meetings was provided.

Meeting adjourned at 3:25 p.m.