



Internal Audit Report



Award and Administration of Construction Projects



Facilities exceeded its goal of constructing classroom space, but at the expense of internal controls and good business practices.

September 2008

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

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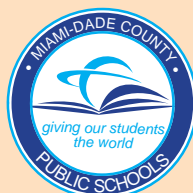
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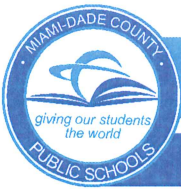
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Miami-Dade County Public Schools

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August 28, 2008

Members of The School Board of Miami-Dade County, Florida
Members of the School Board Audit Committee
Dr. Rudolph F. Crew, Superintendent of Schools

Ladies and Gentlemen:

In accordance with the Audit Plan for the 2007-08 Fiscal Year, we have performed an audit of the award and administration of construction projects for the period of January 1, 2004 through present. The objectives of the audit were to evaluate the propriety of the project award and management processes, and to assess the effectiveness of internal controls over these processes.

Our audit concluded that the Office of School Facilities successfully met its aggressive goal of delivering an increased number of student stations. However, the process of negotiating, awarding and administering construction projects requires targeted improvements. Although sound written policies and procedures are in place, substantial deviations from those policies and procedures, as well as rules were observed. Potential cost savings could also be achieved with increased and enhanced monitoring and analyzing of project activity and cost. Also, State Requirements for Educational Facilities contracting requirements and established internal controls need to be adhered to. Greater internal controls and improvements to operations could be achieved by embracing recommended best practices, as opposed to being committed only to statutory mandates and requirements.

Our findings and recommendations were discussed with management. Their responses along with explanations are included herein.

Sincerely,

Allen Vann, CPA
Chief Auditor

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EXECUTIVE SUMMARY

During the period audited, Miami-Dade County Public School's capital program had a change in key management positions, including its chief facilities officer and the senior design and construction officer. The changes occurred in March 2007 and November 2006, respectively. According to staff, the two-year period, prior to March 2007 was also characterized by an ambitious and aggressive posture. The construction projects reviewed were contracted and administered during the tenure of the former chief facilities officer. The principle construction project delivery method used by M-DCPS during this period was construction management at risk (CM at-Risk). Therefore, the results of the audit make reference to the CM at-risk process and the construction manager (CM). We did not observe an actual assumption of risks by the CM, as is implied by the methodology's name and technical description, and based upon M-DCPS' application of this delivery method. Nevertheless,

references to the CM at-Risk process and the CM do not intimate any bias toward that project delivery method vis-à-vis any other method.

OVERVIEW OF FINDINGS

- The Office of School Facilities (OSF) exceeded its stated goal and constructed approximately 56,600 student stations during the 2004 through 2007 school years. Moreover, project's cost per student station was within the State's limits.
- There are sound written policies and procedures for awarding and administering construction projects, but they were not satisfactorily adhered to.
- We found instances of projects not appropriately bid and subcontracts were not always awarded to lowest bidder.
- The negotiated GMPs valued at \$37 million were not adjusted for an almost \$2 million net difference between the subcontract and the awarded GMP.
- Project allowance varied widely from 0% to 46%. For one project, \$4.9 million of the \$10.6 million of hard construction costs was allowance.
- Fifty-five percent (55%) of the projects (or 8 of 11 schools) analyzed for timely completion were completed late.
- Construction manager's management costs varied widely and were near or above the upper limit of the industry range of 16% to 30.5%.
- The School Board approved primary projects individually; but was not always informed about related subprojects, collectively valued at over \$1 million.
- While there were proper releases of liens for payments of \$17.7 million, there were no releases of liens for another \$2.6 million.

Under the direction of the Office of School Facilities (OSF), M-DCPS exceeded its stated goal of tripling the number of student stations constructed from approximately 5,700 to 15,000 in 2004. The reported number of student stations brought online during the 2004 school year and the period under audit was approximately 18,000 and 56,600, respectively. It is noteworthy that in accomplishing this achievement, the cost per student station was within the limits established by the Florida Department of Education (FDOE), based on the projects sampled during our audit. The total value of the projects awarded during the audit period was approximately \$1.81 billion of which we tested approximately \$86.9 million.

It is also noteworthy to mention that the design and design features of the District's recently constructed school facilities are visually appealing and should have a positive effect on their resident communities. Moreover, a total of five of the District's schools received either Honorable Mention or Project of Distinction recognition in the *School Planning & Management* 2008 Education Design Showcase Annual Awards.¹

Analysis of project costs, general conditions and agreements identified potential cost savings of approximately \$2.3 million, which should be refunded to M-DCPS.

The audit also found that the OSF has detailed, comprehensive written policies and procedures that govern the entire CM at-Risk process. Those policies and procedures contain adequate controls and safeguards. However, non-compliance with established policies and procedures

that may have an adverse impact on the entire process was noted.

There are areas in the award and administration of construction projects that require immediate attention and improvement. For instance, adherence to controls and safeguards are needed to ensure construction project costs are consistently determined based on criteria established in State Requirements for Educational Facilities (SREF) and M-DCPS' policies, procedures and applicable contract. For example, multiple bids should be solicited and received for items agreed to in the guaranteed maximum price (GMP). This was not the case for 43% of such items examined. Subcontracts to perform the work should be issued to the lowest bidder, except where documentary proof indicates that the lowest bidder is non-responsive or incapable of performing. This was not the case for 64% of such items examined. Moreover, there is a real need to ensure that articulation exists among the amount bid, agreed to and the subcontracts issued

¹ Deborah P. Moore, "2008 Education Design Showcase Annual Awards," *School Planning & Management*, June 2008, pp. E2-E48.

to perform the work. In 59% of the cases sampled, the value of the subcontract issued was different from the amount listed in the project's Bid Tabulation Sheet and negotiated GMP. In 59 cases, the subcontracts were less and there was no documented evidence in the files to indicate that the negotiated GMP was adjusted for the net difference totaling \$1,950,711.

A need for improvement in the project negotiation process is apparent. A greater degree of project continuity and cost control could be achieved when projects are awarded only after certain key components or functions are completed. For example, project drawings, budgets and bidding should be completed before project negotiation and award. The audit found that projects valued in the tens of thousands were awarded without having truly competitive bids, budget or completed drawings. Consequently, the rate of project allowance varied widely from 0% to 46%, with one project sampled having \$4.9 million in allowance. Because subcontractors' bids are not received for the portion of work covered by the allowances, these amounts are not subject to the publicly open competitive

Projects were awarded without truly competitive bids, adequate budgets or completed drawings.

bid process required by SREF Section 4.1(6)(f)3. As such, the ultimate price the District pays for the work might not be competitive. It is evident that these important controls were not adhered to in an attempt to meet the aggressive goal established for student station delivery. Also,

adequate meeting notes, including minutes from the negotiation meeting were not maintained in the GMP file.

The aggressive schedule OSF committed to for delivering student stations, which was accomplished, may have led to certain undesirable practices. In accelerating construction projects, the practice of breaking projects into several smaller projects (i.e., pullouts) was prevalent. The 11 primary projects sampled had 22 pullouts, some of which were singularly almost \$1 million and collectively over \$1 million. Although not required, these pullout projects did not individually go to the School Board for approval. Of greater concern to us, the School Board was not always informed about the related pullout projects when approval for the main or major project was being requested. Despite the efforts to accelerate construction projects in this fashion, 55% of the projects analyzed for timely completion were not completed within their contractual due dates. OSF asserted that the delayed completions did not adversely impact occupancy of the facilities. Furthermore, the District's construction program could also benefit from closing out projects more timely.

There were areas identified where enhanced reviews may result in savings to the District. For example, in some instances, construction manager's total management cost (general conditions, fees, overhead, profit, insurance, etc.) varied widely and were near or above the upper limit of the industry range. Also, modifying the construction contract to explicitly provide for refunding project cost savings will provide the District additional savings. To demonstrate, of the \$1,950,711 difference between the value of the negotiated GMP and subcontracts, only one construction manager in our sample credited the District for a portion of the difference owed to the District. The above condition identified an area where definitive cost savings could be realized through a broader careful analysis of both the CMs' and subcontractors' contracts and records. We have recommended that a comprehensive review be performed, by an independent outside auditor, of project's cost and contract for each major construction projects upon project completion.

Cost savings can be achieved by performing independent audits of individual construction contracts upon their completion.

Improvements to the contractor payment process could ensure that the appropriate releases of liens are completed. This may also indirectly assist the subcontractor community by ensuring they are appropriately paid for the work they perform on M-DCPS' projects. The audit revealed that of \$20,370,173, paid to construction managers for which releases of liens were required, the proper releases of liens or consent of surety related to those payments totaled only \$17,741,602. Moreover, subcontractors complained that they had not been paid in full for work performed even though the construction manager was paid in full for the work.

Based on our observations, we made 19 recommendations. We have received and included a response from management. Our detailed findings and recommendations start on page 10.

INTERNAL CONTROLS

Our overall evaluation of internal controls for the award and administration of construction projects is summarized in the table below.

INTERNAL CONTROLS RATING			
CRITERIA	SATISFACTORY	NEEDS IMPROVEMENT	INADEQUATE
Process Controls		X	
Policy & Procedures Compliance			X
Effect		X	
Information Risk			X
External Risk			X

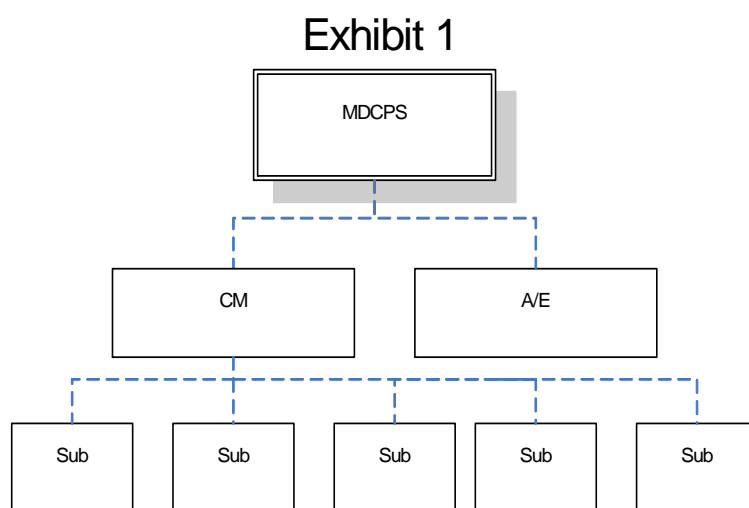
INTERNAL CONTROLS LEGEND			
CRITERIA	SATISFACTORY	NEEDS IMPROVEMENT	INADEQUATE
Process Controls	Effective	Opportunities exist to improve effectiveness.	Do not exist or are not reliable.
Policy & Procedures Compliance	In compliance	Non-Compliance Issues exist.	Non-compliance issues are pervasive, significant, or have severe consequences.
Effect	Not likely to impact operations or program outcomes.	Impact on outcomes contained.	Negative impact on outcomes.
Information Risk	Information systems are reliable.	Data systems are mostly accurate but can be improved.	Systems produce incomplete or inaccurate data which may cause inappropriate financial and operational decisions.
External Risk	None or low.	Potential for damage.	Severe risk of damage.

BACKGROUND

The Office of School Facilities' (OSF) primary function is to provide administrative oversight and management for the planning, designing, constructing and maintaining of educational facilities serving the students of Miami-Dade County. Among its other functions, OSF is entrusted with ensuring the District's compliance with School Board rules, Florida Statute and FDOE rules and guidelines.

In November 2002, the Florida Legislature enacted Senate Bill 30-A, which specifically implemented the reduction of the average number of students in each classroom by at least two-students-per-year beginning with the 2003-2004 fiscal year until the maximum number of students per classroom does not exceed the 2010-2011 maximum.² In an effort to meet the class size reduction mandate, OSF developed a plan to increase capacity, replace outdated facilities, and renovate and modernize existing facilities. In October 2004, OSF made a commitment to triple the number of student stations brought online from 5,700 to 15,000. This plan called for a more aggressive construction method than the then used Design-build method. As a result, in 2004, OSF intensified its use of the Construction Management at Risk (CM at-Risk) model in the District.

According to the OSF, the CM at-Risk model represents an alternate mode of construction contracting, where the District retains a contractor, via a selection process, to provide pre-construction services, such as, schedule, budget and constructability reviews during the project design phase. Once the design progresses to completion, the CM assumes a role similar to a general contractor for the project. Exhibit 1 shows the reporting model for M-DCPS CM at-Risk model. The CM is required to bid the various bid packages for the construction work required to complete the project. The District Project Manager (PM) and Project Architect/Engineer (A/E) are required to attend the bidding session. The lowest bids are combined to compute a guaranteed maximum price (GMP). This price is compared to the A/E's and an



² FS 1003.03 Outlines that by the beginning of the 2010-2011 school year, the maximum number of students in core-curricula courses assigned to a teacher in each of the following three grade groups; (i) 18 students I Pre-kindergarten through Grade 3. (ii) 22 students in Grades 4 through 8 and (iii) 25 students in Grades 9 through 12.

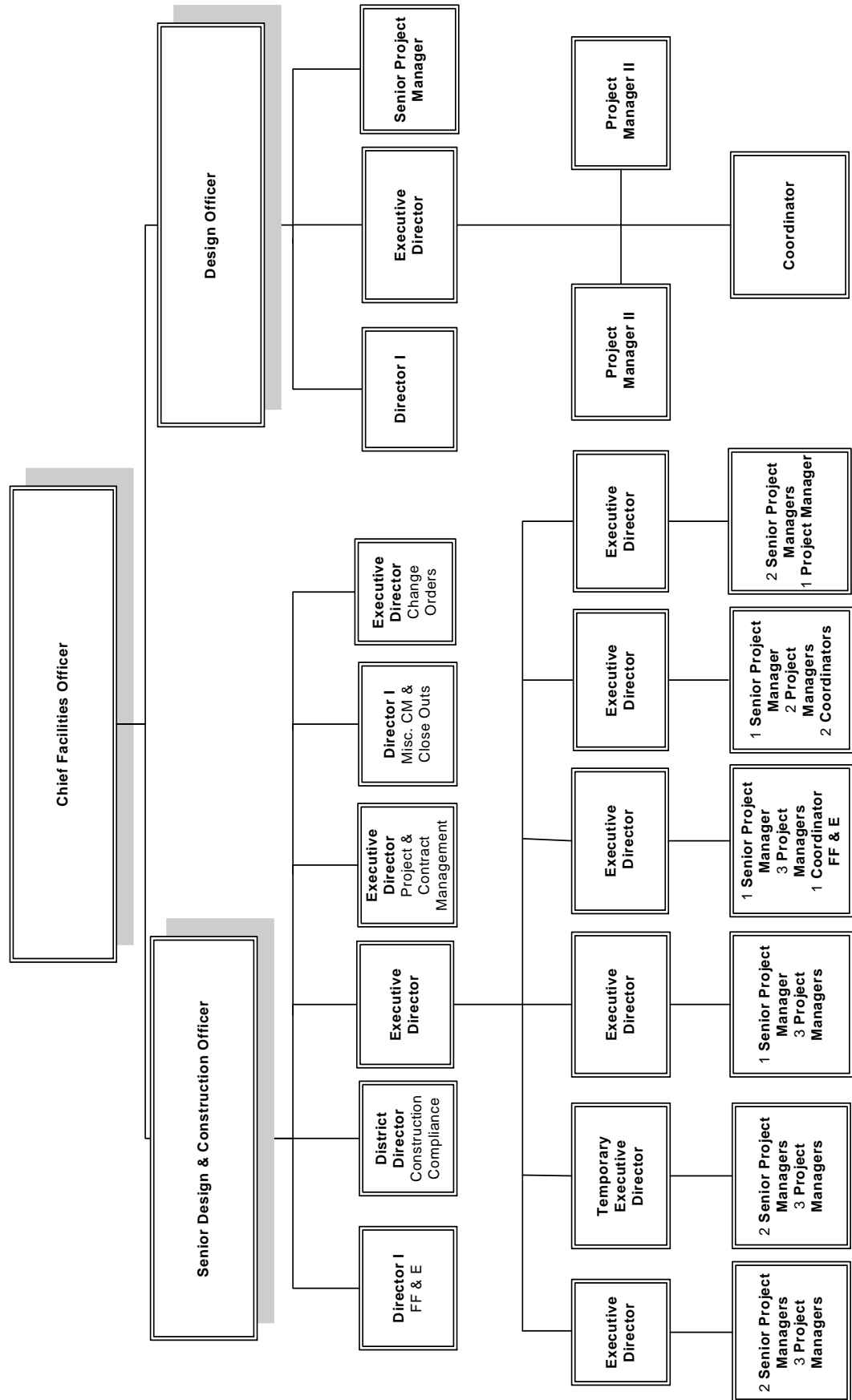
independent estimator's estimates for reasonableness. Once all amounts fall in line, the negotiated GMP is approved by the School Board.

The GMP is composed of the general conditions, construction cost, insurance, bond, overhead, profit, CM fees and owner's contingency. The GMP is a fixed amount. Any cost savings realized by the CM are not typically returned to the District but cost overruns are typically billed to the District. The owner's contingency is not guaranteed to the CM. The contingency is established to cover any unforeseen construction cost, which must be approved by the Technical Review Committee. Once the contingency is exhausted, any additional unforeseen cost is treated as a normal change order and requires School Board approval. Any unused funds are removed from the project budget upon completion, via credit change order(s).

To accelerate a project, the project is usually broken into various smaller projects called pullouts. Pullouts are typically Miscellaneous CM at-Risk³ projects. School Board approval is not required for a pullout valued under \$1 million.

³ To be classified as Miscellaneous CM at-Risk the contract must be for less than \$1 million dollars.

Office of School Facilities Partial Organizational Chart



OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the Audit Plan for the 2007-08 Fiscal Year, we performed an audit of the award and administration of construction projects. The objectives of the audit were to evaluate the propriety of the project award and management processes, and to assess the effectiveness of internal controls over these processes.

The scope of our audit covered construction projects that were on-going or completed between January 1, 2004 and present. Procedures performed to satisfy the audit objectives were as follow:

- Interviewed District staff;
- Reviewed operating policies and procedures and applicable Florida Statutes;
- Examined, on a sample basis, project files, including GMP books and payment files;
- Confirmed CM and subcontractor contracts and general scope of work;
- Analyzed various project budget and cost data;
- Observed construction in progress, where possible; and
- Performed various other audit procedures as deemed necessary.

We conducted this performance audit in accordance with generally accepted Government Auditing Standards issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit included an assessment of applicable internal controls and compliance with the requirements of policies, procedures and rules to satisfy our audit objectives.

FINDINGS AND RECOMMENDATIONS

1. CONSTRUCTION MANAGERS' GMP NOT ESTABLISHED IN ACCORDANCE WITH RULES

The Office of School Facilities (OSF) has written policies and procedures that govern the negotiation and award phases of construction projects, wherein adequate controls and safeguards are contained. However, these were not consistently followed, resulting in an increased risk of financial loss.

For purposes of analyzing individual bid packages, we sampled 10 construction projects, which included 263 bid packages or line items awarded at \$43.1 million. Of this amount, subcontractor bid information for 158 were located in the guaranteed maximum price (GMP) file and 105 were obtained from the construction managers (CM) during the course of the audit, as they were not in the GMP files. The purpose of the test was to determine whether:

1. The negotiated GMP was determined based on criteria established in Florida Statutes, the FDOE State Requirements for Educational Facilities (SREF), and M-DCPS' policies, procedures and applicable contract;
2. The amounts the CM presented in their proposed GMP at negotiation were fair and accurate, based on solicited bids;
3. The GMP files were accurate and complete;
4. There was written justification for contract changes (amounts or subcontractors); and
5. The bid and negotiation processes comport with applicable rules, policies, procedures and best practices.

We confirmed directly with CMs and their subcontractors selected relevant project information. Deficiencies discovered from our sampling of the projects were as follow:

- 1.1 Contracts for CM services were negotiated as required by rules and procedures. However, the negotiated GMP was not consistently determined based on criteria established in SREF and M-DCPS' policies, procedures and applicable contract terms.
 - Of the 263 bid packages or line items sampled, 254 required that more than one bid be received and used in determining the individual GMP bid package. Of the 254 bid packages, multiple bids were received for only 144 (57%) individual bid packages or

items included in the negotiated GMP. However, \$6,784,364 awarded in the negotiated GMPs was established from 110 (43%) bid packages with either a single or no subcontractor's bid, for which written explanations or justifications were not provided or documented in the files. These items include 53 contract allowances valued at \$3,865,125. (See table below.)

Pursuant to SREF Section 4.1(6)(f)3.c. – *Construction Manager/Total Project Manager Duties; Bid and Award Phase*, a CM is to prepare and issues bid packages, open or assist in the opening and evaluation of bids from at least two bidders for each trade package, and provide written recommendations. SREF Section 4.1(f)3.a. states that the CM is required to maintain a list of potential bidders and subcontractors and solicit bidders, including minority participation.

TABLE OF BID PACKAGES WITH ONE OR NO BID THAT WERE INCLUDED IN THE GMP					
	Project Name	Line Items Meeting Test Criteria	One or No Bid Without Written Justification	Allowance in GMP Without Evidence of Bid	Total Audit Exceptions
1	Robert Renick Educational Center	6	0	3	3
2	Jose Marti Middle	1	1	0	1
3	American Senior High	24	1	2	3
4	Kendale Elementary	32	24	6	30
5	Miami Lakes Elementary	28	1	7	8
6	Henry Flagler Elementary	33	6	10	16
7	Early Childhood Center #1	32	15	2	17
8	Bay Harbor Elementary	46	6	7	13
9	Eugenia B. Thomas Elementary	10	3	0	3
10	Shenandoah Elementary	42	0	16	16
	Totals	254	57	53	110

- Of the 263 bid packages or line items sampled, 251 required that the lowest bids be used in determining the GMP. For 90 (36%) of these bid packages or line items, the lowest CM or subcontractor's bids were used to establish the negotiated GMPs. However, \$15,524,306 awarded in the negotiated GMPs was established from 161 (64%) CM or subcontractor's bids that were not necessarily the lowest bids.

A number of factors contribute to this condition: 1) packages or line items had only one bid price; 2) packages or line items had no bid price; or 3) packages or line items had multiple bid prices, but the lowest bid was not selected. Included in the 161 bid package are 76 bid packages or line items for which an actual subcontractor's bid was received and an amount that was not the lowest bid was awarded as part of the negotiated GMPs, (allowance not included). For purposes of our audit, 53 allowances included in the GMPs were also considered an exception. Written explanations or justifications were not provided or documented in the files in most cases.

TABLE OF SUBCONTRACTOR BIDS THAT WERE NOT THE LOWEST BIDS THAT WERE INCLUDED IN THE GMP						
	Project Name	Project Number	Line Items Meeting Test Criteria	Number of Sub-Contractor Not the Lowest Bidder Without Written Justification	Allowance in GMP Without Evidence of Bid	Total Audit Exceptions
1	Robert Renick Educational Center	ADA02051	4	0	3	3
2	Jose Marti Middle	ADA30012	1	1	0	1
3	American Senior High	136900	27	8	2	10
4	Kendale Elementary	138500	32	24	6	30
5	Miami Lakes Elementary	140100	25	4	7	11
6	Henry Flagler Elementary	140500	32	12	10	22
7	Early Childhood Center #1	170000	32	22	2	24
8	Bay Harbor Elementary ⁴	223100	46	17	7	24
9	Eugenia B. Thomas Elementary	361500	10	4	0	4
10	Shenandoah Elementary	290900	42	16	16	32
	Total		<u>251</u>	<u>108</u>	<u>53</u>	<u>161</u>

Three of the above listed projects did not include the bid tabulation that shows the breakdown of subcontractors who submitted

⁴ GMP tabulation includes specific vendor amounts in addition to subcontractors' bids. CM indicated that they do not typically bid vendor amounts. Also, they stated that the work covered by the allowances was not performed at the time of our analysis. This was the only on-going project sampled.

proposals for a specific bid package. Without breakdown of subcontractors' bids and evidence of competitive estimates for allowances, we were unable to determine whether the amounts were reasonable or the process was competitive. Moreover, in as much as bids are: (1) not sealed; (2) received by the CM on various dates; and (3) not opened or viewed simultaneously by the M-DCPS project manager, A/E, CM and subcontractor; subject the bidding process to increased risks and doubt about its competitiveness.

M-DCPS' written procedures require that, "the CM must use the lowest bidder unless he can demonstrate justifiable reasons for any disqualification." The procedures go on to state that, "[t]he CM is not required to select the lowest bids, but there should be clear explanations if they do not ..."

In making their recommendation and determination of the GMP, the CM is required to collect all bids received from subcontractors and himself/herself, for installation work he/she plans to perform. The GMP should comprise all of the lowest bids received. A bid other than the lowest bid may be used with valid written justification.

- 1.2 The value of the subcontract the CM issued to perform the work varied from the subcontractor's bid and/or proposal amount. Of the 167 bid packages or line items for which an actual bid was received from subcontractors, 92 or 55% were different from the amount listed in the projects' Bid Tabulation Sheet and the negotiated GMP. The value of the subcontracts issued by the CM was increased over the bid amount in 33 instances. Conversely, in 59 instances, the subcontract value was decreased. (See examples at EXHIBITS 2 through 5 on the following pages.) Therefore, in these cases, the contracted cost of providing the work was less than the amount awarded to the CMs in their GMPs. The net differences in these amounts totaled \$1.9 million or 5.3% of the \$37.1 million awarded for these packages. This amount should be recovered from the CMs. We did not see documented evidence in the files to indicate that the negotiated GMP was adjusted for the net difference totaling \$1.9 million.

The above condition identified an area where definitive cost savings could be realized through a careful analysis of both the CMs' and subcontractors' contracts and records. To its credit, OSF performs an end-of-project reconciliation, which at times has resulted in the CM

crediting the District for project scope of work or quantities not provided. However, the above demonstrates the need to broaden the extent of the end-of-project reconciliation. We believe greater cost savings could be identified through a comprehensive review, by an independent outside auditor, of project's cost and contract for each major construction projects completed.

EXHIBIT 2 – Excerpt From Bid Tabulation Sheet

HENRY FLAGLER ELEMENTARY
TWO STORY / 21 CLASSROOM BLDG & 1 MODULE ADMINISTRATION SUITE

BID TABULATION
 PROJECT NUMBER: 00140500

BID PACKAGE # 8
 WINDOW

SUBCONTRACTORS	MAJOR PARTICIPATION	AMOUNT
SOL-A-TROL	HEMANC	
GLASS TECH	MOFANG	\$224,500
PENALUM GLASS		\$220,102

No bid was received from this sub. Actual work was shared by Sol-A-Trol (\$139,478) and Glass Tech (\$33,841) for a total of \$173,320.

EXHIBIT 3 – Excerpt From Executed Subcontract Agreement

SUBCONTRACT AGREEMENT

THE SUBCONTRACTOR:

SOL A TROL

FOR THE PROJECT:

HENRY FLAGLER ELEM SCHOOL TWO STORY MODULAR (2-2761ADMR)

TO THE CONTRACT SUM:

1.1 The contract sum is ONE HUNDRED SEVENTY THREE THOUSAND THREE HUNDRED TWENTY DOLLARS (\$173,320.00) and the entire sum of value which total this sum is determined as per contract or attached

EXHIBIT 4 – Excerpt From Bid Tabulation Sheet

BIDDING INFORMATION					
BID INDICATES ELEMENTARY SCHOOL					
PROJECT # 09-10290-000					
SECTION	DESCRIPTION	UNIT	AMOUNT	UNIT	AMOUNT
Div 03 - 110-UP					
RCX Services, Inc.	[REDACTED]		\$ 1,355,930.00		\$ 1,355,930.00
Serez	[REDACTED]		No Bid		
Florida Tel	[REDACTED]	W	No Bid		
Telecom	[REDACTED]		\$ 1,456,220.00		

EXHIBIT 5 – Excerpt From Bid Tabulation Sheet

GMP AGREEMENT	
<p>This GMP AGREEMENT, made and entered into this <u>28</u> day of <u>12</u>, 2005 by and between <u>Jaseo Construction Company, Inc.</u> of [REDACTED] hereinafter called "Jaseo" and <u>RCX Services, Inc.</u> of [REDACTED] hereinafter called "Subcontractor".</p>	
<p>ARTICLE III: CONTRACT PRICE. The Guaranteed Maximum Price for this Project is hereby guaranteed by the Subcontractor not to exceed the sum of <u>One Million One Hundred Seven Thousand Four Hundred Forty Six and 95/100 cents (\$1,107,446.95)</u> (the "Project GMP"), based upon the entire Scope of the Work as described in the Contract Documents, including, but not limited to, the Drawings and the Specifications, subject only to</p>	

The evidence seems to suggest that subsequent to the School Board awarding the GMP, the CM negotiated agreements with the subcontractors for amounts that were less than the amounts included in the subcontractors' bids submitted in the required open bidding process. One of the CMs contacted stated that the differences between individual bids and subcontracts are typically reallocated to other areas of work (i.e., bid packages) in the project and not retained by the CM. However, they did not adequately document the reallocations as stated, because they were not aware of the need to do this based on their understanding of the contract. The above practices present a high level of risk to the District given that the subcontractor bidding process is executed and controlled by the CM. Typically, each CM has a pool of subcontractors to whom an invitation is granted to bid on the appropriate bid package. Essentially the same subcontractors tend to be invited to bid on the various projects.

The following table depicts the changes in the subcontracts by project and represents the net amount that should be refunded to M-DCPS:

SCHEDULE OF CHANGES TO SUBCONTRACTORS' BIDS				
	Project Name	Project Number	Bid Packages With Changes In Sub-Contractor's Bid	Net Value Subcontracts Were (Over) / Under Bids
1	Robert Renick Educational Center	ADA02051	1	\$ (3,000)
2	Jose Marti Middle	ADA30012	--	--
3	American Senior High	136900	6	(11,993)
4	Kendale Elementary	138500	2	(22,248)
5	Miami Lakes Elementary	140100	7	(62,801)
6	Henry Flagler Elementary	140500	16	944,275
7	Early Childhood Center #1	170000	24	219,309
8	Bay Harbor Elementary	223100	15	516,350
9	Eugenia B. Thomas Elementary	361500	4	2,416
10	Shenandoah Elementary	290900	17	368,403
	Net amount to due to M-DCPS		92	\$ 1,950,711

1.3 The audit found that in the majority of cases, the subcontractor whose bid was listed in the negotiated GMP was contracted to perform the work. Nevertheless, in 45 instances, the CM replaced the subcontractor whose bid was included in the negotiated GMP without the required written justification reflected in the GMP files. At the request of auditors, the CM provided justification for a few changes. However, the changes were not reflected in the file.

The following table reflects those changes:

SCHEDULE OF CHANGES TO SUBCONTRACTORS				
	Project Name	Project Number	Changes Made to Sub-Contractor	Total Bid Packages ⁵ Percent Changed
1	Robert Renick Educational Center	ADA02051	--	3 0%
2	Jose Marti Middle	ADA30012	--	-- 0%
3	American Senior High	136900	3	24 12%
4	Kendale Elementary	138500	1	8 13%
5	Miami Lakes Elementary	140100	7	18 39%
6	Henry Flagler Elementary	140500	7	17 41%
7	Early Childhood Center #1	170000	16	32 50%
8	Bay Harbor Elementary	223100	2	20 10%
9	Eugenia B. Thomas Elementary	361500	2	10 20%
10	Shenandoah Elementary	290900	7	25 28%
	Totals		45	157

⁵ The amounts shown do not include bid packages the CM performed or allowances.

- 1.4 Three projects were negotiated and awarded with insufficient information. Robert Renick Educational Center with a GMP of \$90,513 had no bids or budget at the time of negotiating the GMP. Jose Marti Middle School with a GMP of \$937,146 had no approved drawings, bids or independent estimate at the time of negotiating the GMP. Winston Park Elementary School with a GMP of \$14,286,702 had no approved site adaptation drawings (only partial) or budget at the time of negotiating the GMP. In fact, the CM for Winston Park Elementary started the work prior to drawings being approved. The Office of School Facilities' staff indicated that project documents may have been incomplete at negotiation. A complete set of documents causes less confusion, discrepancies and contract changes, and enhances the competitive process.
- 1.5 To compare the negotiated GMP to the various project estimates, we review 11 projects and found that in seven (7) cases (64%), the CM's pre-negotiation proposal estimate was generally in line with, or greater than the negotiated GMP. Nevertheless, in four (4) cases (36%), the CM pre-negotiation proposal estimate found in the GMP book was less than the negotiated GMP. There were no mitigating circumstances noted in the files for the variances.

According to the OSF's procedures, before bidding a project, the CM is required to submit a "proposal estimate" of the project's cost. At the time of negotiation, the CM's estimate is compared to the project budget, and to independent estimates from the project A/E and an independent estimating firm. Negotiation does not proceed unless the estimates are reasonably inline.

- 1.6 Although the GMP files contain a sign-in/approval sheet, some notes on mitigating circumstances and the negotiated GMP; sufficiently detailed meeting notes, including minutes from the negotiation meeting are not maintained in the GMP file. Therefore, the basis for decisions which are brought to the School Board for approval are not sufficiently documented. The District's policy requires that proper records be kept of the substance of meetings where decisions are made that will require subsequent Board action.

RECOMMENDATIONS

- 1.1 **Adhere to the bidding requirements delineated in SREF and M-DCPS' policies, procedures and contracts for construction services. Sealed bids should be required for each bid package. Bids should be opened on a set date and time, and simultaneously reviewed by the M-DCPS project manager, A/E and CM. Bid results should be distributed to both the M-DCPS project manager and A/E. Also, ensure that the official GMP file contains accurate and complete bid tabulations.**

Responsible Department:

Office of School Facilities

Management Response: Staff concurs that bid tabulations for each project (reflecting a list of all subcontractors and the bid prices received by the CM in response to solicitations for a CM At-Risk project) should be included in each GMP negotiation file.

Typically, under normal market conditions, bids and the underlying bid tabulations for specific projects reflect a broad participation of subcontractors which helps ensure the most fair and competitive pricing in the industry for the various trades. However, most of the audited projects were bid during a period of peak activity for the local construction industry, which significantly impacted the level of interest and participation in the District's CM At-Risk projects from certain subcontractor trades due to heavy workloads in other areas of construction. Even under these market conditions, there were only a few instances where CM projects included only one bid or no bids for specific categories.

The audit report states that out of 254 bid packages sampled, 110 bid packages, or 43%, were issued with either one or no bids. However, 53 of the 110 bid packages were stipulated as allowance items which by definition cannot be properly priced at the time of bidding and for which there would not be bid packages (see further clarification below). The value of the remaining 57 bid packages issued was \$2,215,239, which when compared with the total GMP cost of the 10 projects sampled in the audit report (i.e., \$46,573,785), represents less than 5% of the total cost expended by the District for these projects.

While competitive bid pricing for all scopes of the work is typically the norm, there are instances where the CM will self-perform certain portions of the work, either because there were no bidders or because the scope of work in question is best performed by the CM (e.g., installation of temporary fencing and safety barriers, etc.). In these instances, the

negotiation team always reviews the proposed rates and prices to ensure that the CM's proposal is within industry standards.

With regard to the CM's use of bids other than the submitted low bidders, the CM must always provide an explanation and/or justification for their decision. It is very important to understand that the low bid proposal by a subcontractor may not always represent the best value to the owner. Factors such as the prior experience and performance of the subcontractor with similar projects, whether the bid proposal is complete and complies with the specifications required by the contract documents, whether their bid is qualified by certain exclusions and/or limitations, the subcontractor's bonding capacity and qualifications of their supervisory staff, may serve to support a CM's request to use a subcontractor other than the low bidder. In addition, in the instance of a multi-phase and/or fast-tracked project, the benefit of maintaining the same subcontractor to ensure meeting critical scheduling milestones for project completion and to diminish overlapping conflicts in the overall project may be a significant consideration in a CM's request to utilize a subcontractor other than the low bidder. Although staff acknowledges that the explanations and/or justifications for rejecting a low bidder have not always been adequately memorialized in each and every GMP file, staff can affirm that the CM has always provided an explanation and/or justification to the District's negotiation team for each request to choose a non-low bid subcontractor. Staff is currently ensuring that such explanations and/or justifications are clearly documented in each applicable GMP file.

The use of allowances in CM At-Risk contracts is an acceptable and necessary industry practice which addresses the cost of any scope of work that has not yet been defined in sufficient detail at the time of bidding. Therefore, any evidence of bids having been solicited and/or received by the CM as part of the bidding process would neither be applicable nor possible. Additionally, the District's negotiation team reviews the proposed allowance(s) submitted by the CM for each project to ensure that the amount included as part of the agreed to GMP is reasonable and adequate to cover the anticipated cost of each allowance item. It should be noted that OSF has developed guidelines for the actual pricing of allowance items by the CM once the particular design element has been completed by the Project Architect.

As to the audit report's assertion that because subcontractor bids were not sealed, were either not received, or not opened and viewed simultaneously by the CM, District project manager and A/E, it therefore subjects the bidding process to increased risks and doubt about its competitiveness, it

should be noted that the CM At-Risk contract simply states that “bids from Subcontractors shall be in writing and shall be opened and reviewed with the Architect and Owner prior to award by the CM” (see Article 6.5.4 of the standard CM At-Risk contract). There is no District requirement that subcontractor bids be “sealed” for CM At-Risk projects. Likewise, SREF Section 4.1(6)(f)3.c, presently no longer in effect, stated that the CM should “prepare and issue bid packages, open or assist in the opening and evaluation of bids”, but makes no mention of “sealed” bids.

The audit report references language in SREF Section 4.1(6)(f)3.a & c (1999 version) which refers to maintaining a list of potential bidders and subcontractors, soliciting bidders (including minority participation), and opening or assisting in the opening and evaluation of bids from at least two bidders for each trade package. However, such language should not be misconstrued as an SREF requirement, but rather as stated in the main paragraph of SREF Section 4.1(6)(f), these services may be included (but are not mandated) under the bidding phase. Again, it should be noted that this entire section has been stricken from the SREF 2007 version.

Auditors’ Comment: The following comments are presented to bring back into focus the issues and substance of our audit finding and recommendation, and to provide clarity to various points contained in the response from staff. Staff has properly stated that specific sections of SREF, namely Sections 4.1(6)(f)3.a and c, mentioned in our report, were stricken from the SREF 2007 version. However, these sections were included in the SREF 1999 version, under which guidance the projects sampled fell. Moreover, while these guidelines were removed from the SREF 2007 version, they are included in the FDOE’s Guidelines for State Requirements for Educational Facilities (SREF) 2007 version, specifically at Sections 4.1(5)(f)3.a and c. In fact, the entire section stricken from the SREF 2007 version is included in the Guidelines for SREF. Therefore, any inference that these provisions are no longer applicable SREF would be inappropriate. Furthermore, regarding whether the provisions of SREF cited in our report are mandatory or not, it is our opinion that the spirit of the rule (i.e., SREF) as enumerated by the FDOE in its Guidelines for State Requirements for Educational Facilities 2007 version should be followed for obvious reasons stated in the document’s preface. The preface of that document states:

This “Guideline” contains requirements found in the “State Requirements for Educational Facilities” that are written in black standard type.

Guidelines are written in blue italics and include recommendations, “best practices,” and reiteration of required rules, codes, and standards not incorporated by reference in SREF. Facilities planners and designers are encouraged to consider and incorporate as many guideline recommendations as feasibly possible.

Concerning allowances, these amounts are set aside for identified scopes of work and as such, should be competitively priced. If competitive prices cannot be obtained through the initial bidding process when the GMP is established, they should be subsequently obtained after the scope of work is sufficiently developed and the work is contracted to the installing subcontractor. It must be made clear that at no time was the pricing of allowance competitively bid.

Although SREF Section 4.1(6)(f)3.c does not specifically say “sealed” bids, fundamental to a competitive bidding process is for bids to be sealed. This would also be in agreement with existing District competitive bidding policies. It would also lend weight to the OSF’s CM at-Risk Procedures Manual, which states: “Since bidding is the cornerstone to the success of the Construction Managers @ Risk system, the project team can make the determination if there are enough qualified bidders. If not, the A/E and the CM should contact a few more firms.” The point that must be emphasized is that obtaining sealed bids is a best practice and should be implemented.

- 1.2 Compare subcontracts to negotiated GMP and where less, require adjustments to the GMP before the project is completed. In addition, management should request a refund of amounts identified in the audit as due to M-DCPS. The Office of School Facilities, in collaboration with the Office of Management and Compliance Audits should initiate a process for review, by an independent auditor, of major construction projects upon their completion.**

Responsible Department:

Office of School Facilities

Management Response: The GMP negotiated for each CM At-Risk project is considered to be the total price for the project and is not intended to be determined on a “line by line” item basis. The reason for that practice is that once the GMP is finalized, the CM assumes the risk for executing and administering the project as agreed to by the parties and set forth in the Contract Documents (regardless of market fluctuations, materials price escalations, labor shortages), for properly and efficiently coordinating and scheduling the work of all subcontractors, and the responsibility for the performance of all subcontractors and all other risks.

Typically, the CM is not permitted to request additional monies to offset any cost increases due to factors other than unforeseen conditions or scope changes requested by the owner. Although certain subcontracts entered into by a CM may be less than the agreed to prices contained in the negotiated GMP, conversely the CM may experience any number of unanticipated cost overruns throughout the course of the project for which they will not be entitled to request nor receive additional compensation from the District to complete the work. These are the very basic premises of the CM-At-Risk delivery method.

The audit report cites a schedule of changes to subcontractors' bids for 10 sampled projects. The differences are shown as both increases and decreases to various subcontracts, the net sum of which is \$1,950,711. These amounts were included in the original GMPs and the District did not overpay as may be inferred from the audit report. Insofar as decreases in subcontractor prices occurring after bidding/during construction, the current CM At-Risk Agreement contains no specific provisions or procedures requiring that the Board receive a credit for cost savings realized by the CM, not involving a change in the work set forth in the contract documents (see additional comments under Response to Finding #7). Conversely, as a fundamental principle of the "At-Risk" CM contract, the District is not responsible for any cost increases in subcontracted amounts.

Nonetheless, staff agrees that any potential for abuse of subcontractor price changes by CM's should be eliminated and believes that the audit report's recommendation to compare subcontracts may be warranted on a project by project basis as a risk assessment management tool. Likewise, the review of major capital projects upon their completion by an independent auditor is already being considered by OSF and Management and Compliance staff for selected projects, the results of which will be used to for process improvements and if necessary, recommended changes to current rules and/or procedures.

1.3 Monitor CM's changes to subcontractors listed in the publicly open bid and ensure that the official contract file contains written justification and approval.

Responsible Department:

Office of School Facilities

Management Response: The substitution of subcontractors during the project by CM firms is always reviewed and approved by District staff, although staff acknowledges that accurate and complete documentation of

such substitutions was not always included in project files. Staff agrees that any request from the CM for subcontractor substitution will be adequately reviewed and documented in the project files.

1.4 Discontinue the practice of negotiating construction contracts with insufficient project information.

Responsible Department:

Office of School Facilities

Management Response: Staff acknowledges that the preferred practice is for CM At-Risk projects to be bid after Construction Documents are 100% complete and this is the current OSF practice for all construction projects. Typically, projects may include a minimal amount of allowances and qualifications from the CM and/or their subcontractors since most, if not all, of the entire project scope, design and specifications are fully defined. However, due to various exigent circumstances (e.g., school occupancy deadlines, class size reduction requirements, accelerated building program to deliver student stations, impact of major hurricanes, budget considerations, etc.) several of the projects sampled in the audit report were bid and awarded utilizing phased and/or fast-tracked (i.e., pullout packages) delivery methods with Construction Documents that were less than 100% complete in order to allow for an earlier start of construction. The bidding of CM At-Risk projects with an incomplete set of documents can lead to a greater number of allowances and contingency adjustments due to final design changes, as well as an increase in qualifications and/or exclusions from the CM.

1.5 Refrain from awarding GMP amounts that are greater than project's estimated costs, except where documented extenuating circumstances exist.

Responsible Department:

Office of School Facilities

Management Response: As part of the pre-construction services required by the CM At-Risk contract, the CM is required to prepare and provide to the District project estimates at the end of schematic design, design development and construction documents. The purpose of these estimates is to ensure that the projected cost of work is within the established budget for each respective project. Furthermore, at the time of GMP negotiation, the District's negotiation team also has at its disposal additional cost estimates prepared by the Project Architect and an independent estimator. Once the GMP is finalized, the CM is required to submit a GMP book which includes, but is not limited to, a copy of the

CM's cost estimate submitted prior to the actual bidding of the work, as well as the final cost estimate (i.e., GMP summary) agreed to by the parties.

Due to the fact that several of the projects examined in the audit report were bid with approximately 50% construction documents and under adverse market conditions present during that period (see additional comments under Response to Finding #4), the District was unable to derive the maximum benefit of having the CM prepare and submit an accurate cost estimate from a complete set of documents prior to the actual bidding of the work. Therefore, it is quite possible that the increase from the CM's estimate to the actual agreed to GMP price mentioned in the audit report was a result of this "perfect storm" (i.e., a combination of market conditions and incomplete documents).

The current practice of not bidding until construction documents are at or near 100% completion is already minimizing instances where the GMP exceeds the proposal submitted by the CM. Consequently, CM At-Risk major capital contracts negotiated by OSF staff over the last two years have been awarded for GMP amounts that are significantly less than the GMP proposals submitted by CM firms, as well as estimates prepared by the Project Architects and independent estimators. The figures are as follows:

- A total of 93 CM At-Risk major capital projects awarded since April 2006, for a combined GMP sum of approximately \$1.225 billion.
- The negotiated GMP proposals submitted by CM firms for these projects totaled approximately \$1.360 billion (resulting in a negotiated savings of approximately \$135 million) and were also lower than the estimates prepared by the Project Architects and the independent estimates by over \$48 million and \$45 million, respectively.

1.6 Ensure the official GMP file contains all relevant project information, including, but not limited to GMP negotiation notes.

Responsible Department:

Office of School Facilities

Management Response: Staff agrees that GMP files must contain accurate and complete records related to relevant project information. In fact, OSF staff currently ensures that GMP negotiation files contain the following information:

- Final cost estimates prepared by the CM, Project Architect and an independent estimator.

- Copy of current project budget sheet (signed and dated by designee from Capital Budgets).
- The CM's GMP proposal, which shall include, but not limited to, the following documents:
 1. A GMP summary of proposed cost of work, reflecting the recommended subs for each bid package, as well as identifying the portion of the work to be self-performed (if any) and proposed allowances (if any).
 2. Summary of all bids (by bid packages) received on bid opening day.
 3. Bid opening sign-in sheet.
 4. Breakdown of proposed MWBE sub-contractor participation (by bid package & percentage of work).
 5. Breakdown of proposed General Conditions.
 6. CM's proposed Qualifications and Assumptions (if any), including explanations/justifications for the use of non-low bidders (if any).
 7. CM's approved schedule for completion of the work.
 8. Value engineering recommendations (if any) and proposed alternates (if any).
 9. Breakdown of "extraordinary" cost items (if any).
 10. Proposed savings from participation in the District's Tax Exempt Direct Purchase program (if any).
 11. Copy of the CM's estimated cost for this project prepared and submitted prior to bid opening.
- Signed checklist of the front-end documents received by the CM.
- Final negotiated GMP summary reflecting total cost of work (including direct cost of work items and CM General Conditions).
- The CM At-Risk GMP negotiation meeting form (FM-6998) which serves as a sign-in sheet reflecting the names of parties present during negotiations, GMP approval form reflecting the total GMP amount agreed to by the parties, owner contingency, amount of construction materials & equipment to be purchase thru the District's DPO program and tax savings related thereto, total amount of allowances and agreed to project duration.
- Copy of agenda item approved by the Board awarding the GMP contract.

Keeping a complete and accurate set of the above documents (as well as any other relevant project information) in each and every GMP file should be more than sufficient to memorialize the terms and conditions agreed to by the CM and staff during negotiations and will take steps to ensure that the above listed documents are systematically filed in the respective

project files. However, staff believes that the additional recommendation to keep “negotiation notes” which may include strategies discussed during negotiation meetings is unwarranted.

Auditors’ Comment: Staff has indicated that currently, they see to it that the above documentation is in each GMP negotiation file. We believe this practice will greatly improve accountability. However, we see the need for negotiation meeting notes and believe that these can be maintained without divulging negotiation strategies. Such notes would memorialize substantive and pertinent matters discussed during negotiations, which are lacking in any of the other documents. This may also include, among other things, serious concerns raised and their disposition.

2. GREATER TRANSPARENCY OF PULLOUT PROJECTS NEEDED IN THE BOARD APPROVAL PROCESS

The audit initially sampled 11 primary projects and noted there were 22 related pullout projects. Pullout projects are those projects created to complete work that was at one time included in the scope of work of a main project but was removed. Staff indicated that this is usually done to accelerate the project in order to meet planned delivery dates.

During our initial review of the 22 pullout projects, we identified those “pullouts” related to primary projects, valued over \$1 million, for which Board approval of their GMP was required. There were four such projects in our sample. The audit found that while the GMP for the primary project was duly approved by the School Board, the GMPs for the 10 related pullout projects were not. It is not a requirement to obtain School Board approval for projects valued at \$1 million or less. Nevertheless, except for one instance, the board agenda items reviewed did not disclose the related pullout projects to the School Board. The negotiated GMP for the “pullouts” ranged between approximately \$56,500 and \$997,000. Records indicated that seven of the pullout projects were completed using either the standard or Miscellaneous CM at-Risk model, while the remaining three were completed using Maintenance managed term bids.⁶

According to the OSF’s procedures, only projects over \$1 million are taken to the School Board for approval. Projects less than \$1 million are awarded by staff by issuing a work order. This practice of splitting projects has the effect of obscuring the true cost of the work performed at the location and may prove more costly. Because the same CM is typically assigned the pullout projects and the GMP for those projects are negotiated as stand alone projects, general conditions and overhead costs might be duplicated.

RECOMMENDATION

- 2.1 Revise procedures and management practices to limit the splitting of projects into smaller related projects. Packaging and awarding projects in this fashion should be done only when it would ensure greater success of the project’s completion. Whenever projects are split into smaller projects, this should be disclosed, along with their collective estimated values, to the School Board, at the time of seeking board approval for the primary project.**

⁶ Maintenance term bids are competitively bid contracts awarded to contractors for a specific term and limited amount. They are used to complete capital and maintenance projects of a smaller value.

Responsible Department: Office of School Facilities

Management Response: The Office of School Facilities will continue its current practice of developing full 100% design documents prior to bidding and negotiating GMP contracts thereby minimizing the need for “pullout” projects. In order to effectively deliver the District’s building program, however, it is imperative that management retain the flexibility to adjust business decisions in response to changes in market conditions and/or the District’s strategic goals. The use of “pullout” projects is a crucial element which must be used judiciously as market conditions and priorities shift. The selective use of “pullouts” is generally beneficial to the District but and will be limited to situations where critical work elements must be expedited. In future instances where “pullout” projects may be required, OSF will continue to inform the Board in accordance with established procedures.

Auditors’ Comment: We believe the change in management practice to fully develop design documents prior to bidding and negotiating the GMP could have the effect of minimizing the need for pullouts, if other factors such as time pressures, budget constraint, etc., are not overriding. We also acknowledge that in the case of Winston Park Elementary, the one exception stated in our audit finding, staff did inform the School Board about the related pullouts. Our audit recommendation, however, is for staff to fully disclose all related pullouts and their values to the School Board, whether they are individually \$1 million or not. This will provide the Board with cost data not otherwise readily available to them.

3. PROJECT'S GENERAL CONDITIONS COSTS VARIED WIDELY AND MAY BE EXCESSIVE

Included in each construction project costs are certain general and overhead costs commonly referred to as general conditions. Article 6.6.1 of the District's Construction Management at Risk Agreement states that the GMP shall be the sum of the proposed subcontracts, the contingency and the CM's general conditions (including any fees, profit, overhead and all like amounts). The general conditions include estimates for cost elements such as, the direct labor costs for CM's staff who is working on the project, field and some home office supplies and expenses, trash and debris removal, temporary toilets and fence, rented equipment, telephone services and so forth.

We reviewed the amount of contract-defined general conditions (including CM's fees, overhead, profit and insurance costs) included in the negotiated GMP for 11 projects. We requested from the CM, an accounting of actual expenses incurred and supporting documentation for the costs estimated in their general conditions. However, only partial information was provided for four projects. The actual amounts were compared to the estimated amounts included in the CM's general conditions to determine whether the general conditions cost was reasonable.

The audit found that for three of the four projects, the estimated amounts included in the negotiated general conditions were greater than the actual amounts incurred. The following table depicts the audit results:

Project Name	GMP General Conditions (Without Fees, Bond Profit & Overhead)	General Condition Estimates Tested	Actual Expense for General Condition Estimates Tested	Variance Over (Under)	Percent
Eugenia B. Thomas Elementary	\$ 24,338	\$ 18,212	\$ 16,352	\$1,860	10%
Early Childhood Center #1	\$ 513,545	\$ 294,323	\$ 323,954	\$(29,631)	(10%)
Bay Harbor Elementary ⁷	\$ 806,578	\$ 445,361	\$ 229,779	\$215,582	48%
Miami Lakes Elementary	\$ 653,886	\$ 378,888	\$ 195,744	\$183,144	48%

⁷ Project was ongoing at the time of our site observation. General condition actual expense represent actual invoiced or paid expenses applied over the entire period for which general conditions were negotiated. For example, if 12 months of general conditions were awarded, 12 months of actual expenses were included in our analysis.

For Early Childhood Center No. 1, the principal cause for the variance was equipment rental expenses that far exceeded the amount estimated in the GMP. For both Bay Harbor and Miami Lakes, the principal cause for the variance was that estimate labor costs for the project superintendent, manager and engineer assigned to the projects were significantly higher than actual salaries paid to them. In fact, we noted that the general conditions for projects assigned to the CM completing these two projects, all contained the estimated annual salary of the owner, serving as full-time project superintendent. The amount was not apportioned among the various ongoing projects, even when there was an overlapping of project schedules.

Our site observation at Bay Harbor also found that while one storage trailer was on site, three storage trailers were charged in the general conditions. Two portable potties were observed, but four were charged in the general conditions. The CM explained that the quantities charged were correct and that these variances may have resulted due to the timing of our site observations. Also, no office equipment or supplies were found in the office trailer on site, however, \$6,855 and \$4,570 was charged in the general conditions for office equipment and supplies respectively. Additionally, the CM could not provide support to substantiate the \$6,855. Furthermore, we were unable to determine with certainty which employee of the CM worked on the sampled projects visited or what subcontractors were on site, because the CM indicated to us that they do not maintain the contract required site log. This is also a requirement of SREF 4.1(6)(f)4.b.

The Truth in Negotiation Act provision requires the following:

- Submission of cost or pricing data (substantiating backup) showing how prices are arrived at for all negotiated agreements including change orders.
- Requires certification of the data submitted which specifies that the data submitted is accurate, current and complete.
- Provides for a reduction of contract or change order prices if the data submitted are found to be “defective” (inaccurate, not current or incomplete). Price reductions may include profits, penalties and interest in addition to the amounts attributable to the defective data.

A further analysis of CM’s total management cost (inclusive of general conditions, fees, insurance, overhead and profit), included in the GMP for the 11 sample projects was performed. While our research found that there is not a single standard amount or percent for acceptable level of CM’s fees as defined here, a range of between 16% and 30.25%, and an average of 25% were

customary.⁸ Our analysis found that the CM's total fees for eight (8) or 73% of the sampled projects were closer to the upper limit, with three exceeding the upper limit at 32%, 33% and 34%, respectively. Further, the analysis found that even among projects of similar size and scope, the percent of CM's total fees varied significantly. For example, four sample projects with construction costs of \$7.3 million, \$8.3 million, \$8.8 million and \$9 million had total CM's fees of 26%, 34%, 23% and 21%, respectively.

RECOMMENDATIONS

3.1 Closely examine each component of the CM's proposed general conditions to ensure the amounts agreed to are reasonable, including ensuring that labor costs are in line with the rates claimed in the CM's Truth in Negotiation Act affidavit.

Responsible Department:

Office of School Facilities

Management Response: The basic components of GC, which represent management costs attributable to the Construction Manager (CM), are broken down as follows:

- Overhead and Profit (CM Fee) – The CM's overhead is a component of the CM's Fee which represents that portion of the CM's office expenses attributable to each specific project (including general & administrative costs, and the CM's capital expense). Likewise, the CM's profit is a component of the CM's Fee which represents the return expected to be realized by the CM once all operating expenses have been paid for each project. The total CM Fee can vary depending on a number of factors, such as: a) size and complexity of the project (e.g., new construction vs. renovation & remodeling), b) market conditions (e.g., anticipated increases in cost of labor & materials), c) project duration, d) site constraints (e.g., phasing requirements) and e) whether the project is executed by multiple phases and/or fast track packaging (e.g., projects awarded with less than 100% complete set of documents pose a greater risk factor for the CM). Accordingly, the range of the actual CM Fee paid by the District for major capital projects over the last two (2) years is only from 6% - 13%.

⁸ RSMeans Square Foot Costs, 28th Annual Edition (Residential, Commercial, Industrial, Institutional) 2007, Kingston, Massachusetts.

- Bonds and Insurance – The CM must provide and maintain the requisite Bonds and Insurance coverage for the duration of the project, in accordance with the criteria established by the District. The actual cost of Bonds and Insurance varies depending on the size (cost) and duration of the project, as well as the CM's financial condition, size of the company, prior performance and length of time in business. It should be pointed out that most of the projects selected for examination were awarded during a time when CM's were required to procure a Builder's Risk policy for each project with required limits of coverage in the amount of the awarded project. Due to the impact of several major hurricanes and the limited number of insurance companies offering this type of coverage, the cost for Builder's Risk policies (in particular windstorm coverage for high risk areas such as South Florida) skyrocketed over the last few years. As a result, the District implemented its own "umbrella" policy to provide the adequate level of Builder's Risk coverage for capital projects (see Agenda Item E-69, Board meeting of October 11, 2006). Therefore, no meaningful comparison of GC rates charged to the District can be made without accounting for the cost of Builder's Risk coverage from both the "standard" rates and the CM's negotiated amounts for each respective project. The rate for the cost of Bonds and Insurance paid by the District for major capacity projects since the implementation of its "umbrella" policy ranges from 3% - 5%.
- General Conditions – The GC includes the cost to be incurred by the CM in managing and administering the performance of the work. Although there are generally accepted industry standards for GC categories (e.g., on-site supervision, job site mobilization, temporary fencing, trash disposal & cleanup, etc.) the actual GC cost factors may vary from project to project. Moreover, the actual GC cost may be impacted by factors such as: a) level of on-site supervision required due to project duration & complexity; b) additional considerations for an occupied school site vs. a new site (e.g., safety of students & staff, mitigate disruption of school operations, site constraints for mobilization & on-site parking of CM & subcontractors, etc.); c) maintenance of traffic issues, safety devices & barriers, and procuring of jobsite security services, if needed. The range for the cost of GC's negotiated by the District for major capital projects over the last two (2) years is between 6% - 12%.

Given the above, the range of CM management costs (total fees) negotiated by the District over the last two years for major capital projects

(i.e., 15% - 30%) is not only within the acceptable level of fees stipulated in the audit report (i.e., 16% - 30.25%), but is below the average of almost 50% contemplated by RS Means (see Table #1 below) under “unfavorable job conditions” which certainly characterized the construction environment within which the OSF was operating during the audited period. Moreover, in order to ensure that the GC’s proposed by a CM are reasonable and in line with industry standards, the District’s negotiation team carefully reviews the various cost factors included in the GC’s to determine whether they are in accordance with the specific project requirements and duration, as well as comparing the proposed GC to the estimates prepared by the Project Architect and those of a third-party independent estimator.

With regard to the comparison of estimated GC versus the CM’s actual expenses, it should be noted that an accurate assessment of said comparison can only be made once final project close-out has taken place. The reason is that GC’s are usually not expended in a straight-line manner, but rather in a “bell curve” fashion with the tail end of the project (i.e., occupancy, warranty and close-out) bearing a disproportionate length of time. In addition, the smaller CM firms may not have the same level of sophistication and updated systems technology to maintain a comprehensive and accurate accounting of all GC expenses incurred throughout the duration of the project.

Likewise, the comments contained in the report regarding the absence of additional storage containers and office equipment may be inconclusive given that unless the worksite is visited throughout the duration of the project, there may be periods during which certain equipment may not be located on-site at the time of the visit. Moreover, in the event that there are not sufficient trailers located on-site, this may result in an increase in the cost of off-site storage, handling and transporting of materials by the CM. These additional costs would be absorbed by the CM’s overhead and not charged directly through the GC’s.

Insofar as the requirements of SREF 4.1(6) (f) 4.b regarding the Truth In Negotiation Act provisions, the Board Attorney’s Office has indicated that this section referred to the disclosures which must be made by the CM at the time of negotiating a fee for pre-construction services with the District and not for the negotiation of a GMP nor any post-GMP cost savings. We should point out that this section has been stricken from the latest version of SREF (2007).

Auditors’ Comment: The following comments are presented to provide clarity to various points contained in the response from management. The

contracted general conditions are a fixed amount based upon the number of units (i.e., days, weeks, each, etc.) of each item included in the general conditions. Where information was available, our analysis looked at specifically identified components (e.g., portable toilets rented, office trailers rented, office equipment on site, project superintendents, and so forth) and the quantities included in the general conditions. The items tested in our analysis were items that were completed and fully accounted for at the time of completing our analysis. The disproportionate share of costs associated with these items would occur during the actual construction period rather than during periods of occupancy, warranty and close-out, when there should technically be little or no presence of the CM at the project site. We would like to reiterate that the project where we observed insufficient containers and office equipment was approximately 50%-60% complete at the time of our site observation. In fact, to obtain copies of requested documents, the project superintendent had to go to the school's main office to make the necessary copies.

The absence of documentation in the GMP negotiation file regarding the extent of review applied to the general conditions cost factors leaves doubt about whether the general conditions was adequately reviewed. Maintaining adequate negotiation meeting notes, which memorialize the extent of such review, would remove any doubt.

3.2 Where CMs are assigned primary and pullout projects, or concurrent primary projects, each component of the proposed general conditions should be examined to ensure that overlapping of costs do not exist. In the event overlapping exists, adjustments should be made accordingly.

Responsible Department:

Office of School Facilities

Management Response: Whenever a CM is assigned to a primary & pullout projects or concurrent primary projects, the District's negotiation team always reviews the proposed GC for each project to ensure the absence of "over-laps" by the CM.

Auditors' Comment: The absence of documentation in the GMP negotiation file regarding the extent of review applied to the general condition leaves doubt about whether the general condition was reviewed for over-lapping. Again, maintaining adequate negotiation meeting notes, which may memorialize the extent of such review, would remove any doubt.

3.3 Monitor construction projects to ensure CMs adhere to contract and SREF requirement to maintain a site log.

Responsible Department:

Office of School Facilities

Management Response: There is no specific SREF requirement to maintain a Site Log for each and every project, and this has been confirmed with the School Board Attorney's Office. Rather, SREF Section 4.1(6)(f)4.b (since stricken from the 2007 version) simply recommended that the CM "keep a log of all site visits and observations".

Whether or not to require that the CM keep a Site Log depends largely on the complexity, duration and status of the project. For example, if a project is not progressing in a manner that is satisfactory to the District, then the CM may be required to maintain such a log to document the satisfactory staffing of the project and ongoing subcontractor presence. The decision on whether to require such a daily log should be made by the Project Team.

Auditors' Comment: Whether the provisions of SREF cited in our report are mandatory or not, it is our opinion that the spirit of the rule (i.e., SREF), as enumerated by the FDOE in its Guidelines for State Requirements for Educational Facilities 2007 version should be followed for obvious reasons stated in the document's preface. These are good business practices, which should be implemented where possible and practical. To manage the District's capital program solely on whether a practice is mandated by law or rule, and not giving consideration to best practices and sound strategies, unnecessarily exposes the District to avoidable risks.

4. UNACCEPTABLY HIGH GMP ALLOWANCES

As stated in the District's procedures for construction project and the Construction Management at Risk Agreement, the GMP is the sum of the proposed subcontracts, the contingency and the CM's general conditions. Typically, the proposed subcontracts are issued for work that has a defined scope and price. Under unusual circumstances a portion of a project's scope might not be adequately defined or such that pricing might not be readily available. In such cases, granting a price allowance might be necessary at the time of award. However, with adequate and effective planning, scoping, designing and budgeting, allowances should be near to non-existing.

For the 11 projects sampled, the audit found that the rate of allowances varied widely from 0% to 46% of the construction cost related to the identified scope of work or packages (i.e., "hard cost").⁹ Five (45%) of the sampled projects had a high allowance rate of 10% or greater. For example, Winston Park Elementary (project #A0192), Henry Flagler Elementary (project #140500) and Shenandoah Elementary (project #290900) had \$4,900,200 (46%), \$1,635,900 (22.5%) and \$1,339,600 (15.6%) allowances in their respective GMPs. Because subcontractors' bids are not usually received for the portion of work covered by the allowances, these amounts are not subject to the publicly open competitive bid process required by SREF Section 4.1(6)(f)3. As such, the ultimate price the District pays for the work might not be fair and reasonable.

Staff stated that the past practice of negotiating and awarding projects with 50% complete drawings, in part contributed to this condition. Subsequent to completing our fieldwork, management provided us with information showing that the rate of allowance was less than 10%¹⁰ for each of the 25 capacity projects over \$7 million, completed during the last two school years. The information provided was not subject to audit. Notwithstanding, we believe that a shift in policy and practice, as indicated by management, will yield improved results.

RECOMMENDATION

4.1 Restrict the use of project allowance to unusual circumstances and limit the amount set aside for allowance.

⁹ For purposes of analyses, and to more appropriately compare common cost elements, "soft cost" items such as the CM's management cost, as previously defined, and owner's contingency included in the negotiated GMP were excluded from our calculation.

¹⁰ The rate is based on the full negotiated GMP, including "soft cost" and owner's contingency.

Responsible Department: Office of School Facilities

Management Response: Allowances are contract amounts specifically meant to cover undefined items of the work and are commonly used in the construction industry. Typically, allowances are incidental amounts of the contract totaling less than 10% of total construction cost and serve the purpose of allowing a project to proceed without the need to finalize an otherwise minor aspect of the project.

The Office of School Facilities acknowledges that excessive allowance amounts (generally over 10%) are not desirable and should be avoided whenever possible. Higher than customary allowances were applied to some projects selected for this audit; however, as described below, underlying causes can be attributed to unique circumstances which existed in 2005/2006. Further, the chart provided below indicates that this practice has drastically diminished over the past two years.

Of the eleven projects sampled in the audit report, five were cited as having a high allowance rate of over 10% of their respective GMPs, the three most notable being Winston Park Elementary School (46%), Henry Flagler Elementary School (22.5%), and Shenandoah Elementary School (15.6%). These calculations have been derived by deducting the full allowance amount from the GMP and determining the percentage rate of the remaining balance. OSF respectfully disagrees with the method used in the audit report for calculating allowances. For example, the allowance amount for Winston Park is 34% instead of 46%, when factored as a percentage of the contracted GMP amount rather than only the “hard” construction dollars. Further, a recent (March 2008) State of Florida Auditor General’s report on this same issue utilized the full GMP contract amount to derive the allowance percentage. Nonetheless, irrespective of which calculation method is used, OSF staff concurs that either figure (34% or 46%) is higher than usual or desirable.

The three projects identified above were all modular (prototype) classroom building additions at existing schools sites, awarded between October 2005 and January 2006 which were intended to be occupied by August 2006. These prototype two and three-story classroom buildings were developed in 2005 as part of the District’s accelerated building program intended to more than triple the previously planned work and to meet the State of Florida’s Class Size Reduction Constitutional Amendment. Consequently, these projects were planned, funded, designed, bid and constructed under an accelerated schedule, necessitating the use of

abbreviated site development plans and only cursory review of existing utility and site conditions.

An additional mitigating circumstance during this period in 2005, was that Miami-Dade County was impacted by three hurricanes, (Katrina, Rita and Wilma), in August, September and October 2005, causing significant flooding, wind damage, loss of electricity and extensive disruption to the entire area over a three month span. This occurred precisely at the time when plans were being prepared for bidding in order to occupy the projects by August of 2006.

The factors outlined below all converged in the fall of 2005, resulting in the need to fast-track projects and to utilize allowances to an added degree:

- Accelerated Building Program to meet the Class Size Reduction Constitutional Amendment requirements
- Development of multi-story modular (prototype) classroom building additions
- Local market conditions – (construction boom in Miami-Dade County causing a unprecedented demand on building trades)
- Impact of hurricanes Katrina, Rita and Wilma.

The three projects cited were awarded between October 2005 and January 2006. During this four month period alone, the District awarded 26 major capacity projects, (providing student stations), amounting to more than \$200 million. Of the 26 awarded projects, 20 projects were substantially completed prior to the start of school in August 2006 resulting in the delivery of over 13,000 student stations.

A comprehensive analysis of all capacity projects over \$7.0 million awarded during the 2006-07 fiscal year and the 2007-08 fiscal year follows along with the eleven projects sampled by the audit report. The eleven projects analyzed in the auditor's report ranged from 0% to 34% for allowances and averaged 12.2% (see Table #2). The 2006-07 list of awards ranged from 0% to 9% and averaged 2.7% (see Table #3). The 2007-08 totals show a further reduction ranging from 0% to 6.5% and averaging 0.8% (see Table #4).

**TABLE #2
AUDIT FINDINGS
(11 PROJECTS SAMPLED)**

SCHOOL NAME	PROJECT NUMBER	CONTRACT AMOUNT	ALLOWANCE AMOUNT	ALLOWANCE % OF CONTRACT
R. RENICK ED. CENTER	ADA02051/ADA8151	\$ 90,513	\$ 0	0
JOSE MARTI MIDDLE	ADA030012	937,146	0	0
AMERICAN SENIOR HIGH	00136900	1,757,349	157,025	8.9
KENDALE ELEMENTARY	00138500	2,311,472	270,000	11.7
MIAMI LAKES	00140100	11,085,484	438,000	4.0
HENRY FLAGLER	00140500/00209203	10,060,026	1,635,900	16.3
EARLY CHILDHOOD	00170000/01	16,006,897	0	0
BAY HARBOR	00223100	11,425,023	155,500	1.4
E.B.THOMAS ELEMENTARY	00361500	176,646	0	0
SHENANDOAH	00290900	4,822,297	1,339,600	27.8
WINSTON PARK	A01092	14,286,702	4,900,200	34.3
TOTAL		\$ 72,959,555	\$ 8,896,225	12.2 %

A careful analysis of all current bid awards over the past two years demonstrates that allowance amounts have been greatly reduced to an acceptable level and that the relatively high rates for projects awarded primarily before 2006-07 were a result of unique market conditions, other external factors and the District's accelerated building program. It is imperative that management retain the flexibility to make judicious use of allowances on a project by project basis.

**TABLE #3
2006-07 CAPACITY PROJECTS (OVER \$7 MILLION)**

SCHOOL NAME	PROJECT NUMBER	CONTRACT AMOUNT	ALLOWANCE AMOUNT	ALLOWANCE % OF CONTRACT
DEVON AIRE ELEMENTARY	00140600	\$23,256,443	\$125,511	0.5
STATE SCHOOL "UU-1"	A01020	34,995,606	336,887	1.0
STATE SCHOOL "PP-1"	A01026	33,503,553	484,081	1.4
STATE SCHOOL "MM-1"	A0725	34,893,847	769,827	2.2
STATE SCHOOL "JJJ"	A0742	75,665,488	2,204,016	2.9
MIAMI LAKES ELEMENTARY	00140100	11,085,484	1,144,454	9.1
MIAMI CAROL CITY SENIOR HIGH	A0101801	12,588,992	438,000	3.5
MIAMI CENTRAL SENIOR HIGH	A0101301	17,116,534	48,198	0.3
STATE SCHOOL "E-1"	00253000	34,223,084	0	0
STATE SCHOOL "BB-1"	A01112	32,992,362	1,643,180	4.9
STATE SCHOOL "P-1"	00252700	32,338,687	1,157,101	3.6
RUTH K. BROAD/ BAY HARBOR K-8	00223100	11,425,023	544,049	4.8
STATE SCHOOL "W-1"	A01032	23,940,560	1,140,027	4.8
NORTH MIAMI SENIOR HIGH	A01015	85,680,845	2,516,170	2.9
TOTAL		\$463,706,508	\$12,551,501	2.7 %

TABLE #4
2007-08 CAPACITY PROJECTS (OVER \$7 MILLION)

SCHOOL NAME	PROJECT NUMBER	CONTRACT AMOUNT	ALLOWANCE AMOUNT	ALLOWANCE % OF CONTRACT
STATE SCHOOL "QQQ-1"	0025480	\$39,541,921	\$700,000	1.8
JOHN A. FERGUSON SENIOR HIGH	00408200	10,139,488	663,331	6.5
MIAMI CENTRAL SENIOR HIGH	A0101302	14,770,212	0	0
VINELAND K-8 CONVERSION	00408900	8,528,974	0	0
LEEWOOD K-8 CONVERSION	00409100/00467300	10,719,277	346,300	3.2
LAW ENFORCEMENT STUDIES SR.	00362800	35,400,000	0	0
SOUTHWOOD MIDDLE	A01135	11,474,861	0	0
STATE SCHOOL "TT-1"	A01106	31,695,360	0	0
STATE SCHOOL "YYY-1"	00254700	35,209,242	82,500	0.2
G. HOLMES BRADDOCK SR. HIGH	00140800	13,500,000	50,000	0.4
CORAL WAY K-8 CENTER	00395800	9,524,679	0	0
TOTAL		\$220,504,014	\$1,842,131	.8 %

As stated above, the Office of School Facilities acknowledges that excessive allowance amounts (generally over 10%) are not desirable and should be avoided whenever possible. The analysis presented in Tables #3 and #4 clearly indicates that the District's deliberate practice since 2006-07 of completing construction bidding documents to the fullest extent possible is resulting in a drastic reduction of allowances.

Auditors' Comment: For purposes of clarifying staff's response, the methodology used to derive the allowance percentages we reported is contained in our detail finding and differs from the methodology enumerated in staff's response. The full amount of the allowance is included in our calculations. As for the differences between the Auditor General's percentages and ours, because we were unable to obtain access to the Auditor General's working papers, we cannot account for the differences. In any event, we stand by our methodology and its results. This is particularly important given the fact that all five of the projects reported on by the Auditor General had allowances in excess of 10%, and as reported by the Auditor General, "District personnel further stated ... the costs for these items of work were not known and such work was not subjected to subcontractor bidding;" and "...the unused portion of allowance amounts may be transferred to other portions of the project work, as approved by the Project Team..."¹¹

¹¹ Auditor General, David W. Martin, CPA, Miami-Dade County District School Board, Financial, Operational, and Federal Single Audit For the Fiscal Year Ended June 30, 2007, March 2008, Report No. 2008-158, pp.13-14.

5. PAYMENT REVIEW PROCESS NEEDS IMPROVEMENT

The Department of Contract Management within the OSF handles the processing and reconciliation of project invoices. Before submitting contractor's invoices to the Department of Contract Management for payment, the architect/engineer (A/E) and the project manager (PM) are responsible for reviewing the contractor's invoice for completeness and approving it for payment. We reviewed the payment files for 23 projects and matched all payments against the payments processed in the District's MSAF system for accuracy. Our review found satisfactory evidence of payment in all, but one file. Nonetheless, we noted the following:

- Payments to CM were processed and approved without the proper releases of liens. The releases of liens filed with the requests for payment did not equal the amount paid. The releases of liens and consent of surety for all sampled projects totaled only \$17,741,602, while the related payments totaled \$20,370,173.¹² We also noted that for two projects sampled, partial releases of liens were found in the payment files, however, the releases did not include a stated value. In addition to our review of the payment files, we requested and directly obtained applicable releases of liens from the CM. Moreover, in responding to our inquiries, several subcontractors stated they had not been paid in full for work performed even though the CM was paid in full for the said work.

The CM is required to apply to the District for payment using a fully executed Contractor's Requisition For Partial Payment Affidavit and Release of Lien Preceding Requisition form, commonly referred to as a pay requisition. The form contains a sworn deposition from the CM stating that:

1. the labor, services, and/or materials disclosed in the preceding requisition were used exclusively for the project;
2. the appropriate releases of liens have been obtained from the subcontractors involved;
3. the subcontractors have been paid for the labor, materials and supplies used; and

¹² Total payments do not include Division 1 costs listed in the CM's pay requisitions or amounts for scope of work identified as performed by the CM.

4. that M-DCPS is released from any claim, demand or obligation covered by work paid for under the preceding requisition.

The form is signed by an officer of the CM, the project architect and the M-DCPS project manager asserting that the proper releases of liens for the preceding requisition were received. The form is also witnessed and notarized.

- Project vendor files were not always maintained in proper order or a reconciliation of project payments were not maintained in the files. During the course of the audit, OSF staff experienced difficulty locating certain payment information requested. However, except for one case, all payment information requested was eventually located. Furthermore, in one case, a CM was overpaid \$20,038. However, there was no reconciliation in the files documenting the overpayment. To their credit, the CM refunded the District the monies due after staff brought it to his attention.

A payment file is maintained for each vendor. The file contain an approved work order authorizing the service, a purchase order for the value of the work order, paid vendor's invoice(s) and a payment log listing payments made and the unpaid balance. Maintaining the payment file in this fashion ensures that project activity is documented and facilitates the vendor payment reconciliation process.

RECOMMENDATIONS

5.1 Ensure that all required contract documents are placed in the official contract files.

Responsible Department: Office of School Facilities

Management Response: OSF staff concurs with the audit report that all documents should be placed in the official contract files. The regular reconciliations performed by District Contract Management staff will now be placed in the payment files. The repayment by the construction manager (CM) referred to in the audit report was the result of additional credits to the District agreed to by the CM and implemented through a credit change order. This was not an overpayment to the CM.

Auditors' Comment: We believe that staff's movement to include the project reconciliation in the project files will improve documentation and

accountability. However, for purposes of clarifying staff's response, typically, after a reconciliation of project costs is completed, the contract is credited for any amounts refundable to the District, to the extent of funds remaining in the contract. If no funds (including owner's contingency) are remaining in the contract, a check is written for the amount refundable. In this case, the CM was required to write a check to refund the district for amounts overbilled and overpaid. Please see copy of check and transmittal below.

EXHIBIT 6 – CM Refund Check and Transmittal From

Office	P.O. Num.	Invoice Amt	Prior Balance	Retention	Discount	Amt. Paid
ILL		20,038.20	20,038.20	0.00	0.00	20,038.20
OVERPAYMENT ON KENDALE EL.		20,038.20	20,038.20	0.00	0.00	20,038.20

CONST. CO., INC. 4750 DAVEN ROAD DAVEN, FL 33314		WACHOIA BANK, N.A. DAVEN, FLORIDA 63-643970	18550 NUMBER 18550 DATE 5/3/2007 AMOUNT 20,038.20
THE SUM OF TWENTY THOUSAND THIRTY EIGHT DOLLARS AND 20 CENTS MIAMI DADE COUNTY PUBLICS SCH.		[Signature] [Signature] [Signature]	

Package Transmitted For		Delivered Via	Tracking Number
		By Hand	

Item #	Qty	Item	Reference	Description	Notes	Status
001	1.00	Check		Check to MDCPS for Kendale ES Overbilling	\$20,038.20	

Cc: Company Name	Contact Name	Copies	Notes

Remarks
Check to MDCPS for Kendale ES Overbilling - \$20,038.20

- 5.2 Ensure that all reconciled releases of liens are received prior to processing payment to CM.

Responsible Department: Office of School Facilities

Management Response: Releases of Lien (Releases) are neither a statutory nor technical requirement. A payment bond is required and provided for subcontractor protection. The District is lien proof and exempt from lien laws in the State of Florida. Releases are requested from the CM to provide a level of added protection to the subcontracting community. Consent of Surety under the bond is acceptable in lieu of Releases of Lien and serves the same purpose – protection of the subcontractors. Releases of lien are not required for the first payment (and sometimes subsequent payments) nor for general conditions, self-performed work and retainage releases. The Releases are reviewed by the project architect (AE) as required by the *M-DCPS Capital Construction Procedures Manual*, the AE contract and the *Contractor's Requisition for Partial Payment Affidavit and Release of Claim on Preceding Requisition FM-3071*. The CM, on *FM-3071*, provides a sworn statement that the Subcontractors and Suppliers have been paid through the prior requisition. The AE, (not the district's PM), signs the form "as to releases of lien for prior requisition." The AE is charged with using its professional judgment in evaluating the adequacy of Releases of Lien and may for example recommend payment to CM while an on-going dispute with a subcontractor makes it impossible to obtain the release. A release executed by the subcontractor without an amount is a valid release. The AE may obtain releases from the CM between payments. All releases reviewed by the AE may not be contained in the payment files. Although OSF staff acknowledges that 100% of all payments were not accompanied, in the payment files, by releases; however, though not required, 87% were found in the payment files by the auditors.

Auditors' Comment: For purposes of clarifying staff's response, OSF CM at-Risk Procedures Manual specifically states: "All pay requisitions from the contractor shall be processed and approved by the A/E of Record and accompanied by a Schedule of Values, Release of Liens and Updated Construction Schedule." Hence, Release of Liens is required according to established District procedures. Moreover, each member of the Project Team, including the project manager, signs the contractor's pay requisition (FM-3071)(see sample below).

THE SCHOOL BOARD OF WALKER COUNTY, FLORIDA
 CONTRACTOR'S REQUESTION FOR PARTIAL PAYMENT NO. 11
 AFFIDAVIT AND RELEASE OF CLAIM PRECEDED BY REGISTRATION

Contractor's Name: WALKER COUNTY SCHOOLS
 Address: 1000 N. WALKER BLVD. WALKER, FL 32090
 City: WALKER State: FL Zip: 32090
 Phone: 904/355-1234

Project Name: WALKER COUNTY SCHOOLS
 Address: 1000 N. WALKER BLVD. WALKER, FL 32090
 City: WALKER State: FL Zip: 32090
 Phone: 904/355-1234

Contract No.: 9043000

A	B	C	D	E	F	G
CONTRACT	AMOUNT OF CONTRACT	AMOUNT PAID	AMOUNT DUE	TOTAL PAID	AMOUNT DUE	AMOUNT PAID
1000	1000	0	1000	1000	0	1000

According to form, PM's signature is among required signatures as to release of lien

6. STRENGTHEN PROJECT COST CONTROLS

Each construction project has a number of cost control features, including cost per square feet, cost per student station, an established project budget and a guaranteed maximum price. These establish dollar limits, are not to be exceeded, except where extraordinary or unforeseen circumstances are encountered. When the working principles of these tools are applied, they ensure the District pays reasonable prices for services rendered and limits budget overruns. The audit tested cost control features, including cost per student station for seven projects and budgeting for 11 projects and found the following:

- To the credit of the OSF, the cost per student station for six of the seven projects sampled was below the maximum threshold set by the FDOE. The Office of School Facilities, Construction Budget Office, did not provide student station cost information for the seventh project.
- A reconciliation of the project-related contingency found that \$6,519,850 of contingency was approved for the sampled projects. However, due to budget constraints, only \$5,913,920 (91%) was funded. The audit also found that budget constraints delayed the issuance of all project-related purchase orders and as a result, project invoices were being paid from the contingency purchase orders and invoice processing was delayed. The use of project contingency and allowances will be covered in another audit.

RECOMMENDATION

- 6.1 Implement more effective controls over the budgeting process, including ensuring that capital expenditures are properly paid from the appropriate purchase orders.**

Responsible Department: Office of School Facilities

Management Response: As part of the District's budget controls, budget adjustments, increases or decreases, require Board approval. Consequently, there may be occasions where there is a timing difference due to the Board Meeting Schedule or Fiscal Year-End closing. In cases where such timing differences would jeopardize compliance with the Prompt Payment Act or potentially delay a critical project element, the owner's contingency fund is charged and subsequently replenished when the adjustment is posted. This is by no means a standard operating

procedure and is isolated to those instances where there could be a negative impact to the project schedule.

In order to mitigate this issue, in October 2007 OSF and Information Technology Services staff implemented the first phase of a new budget application (WCBU) which has streamlined the process of posting budget adjustments to the financial system and allows for multiple year budget planning and development. In addition, Phase II, which is underway and will go into production in November 2008, will provide project managers with detailed budget information, allowing them to review and manage the net available balances in their projects prior to processing work orders. This capability had not been available up to now because of the District's outdated financial system.

7. REVISE CONSTRUCTION CONTRACTS TO REQUIRE CREDIT FOR COST SAVINGS

The District's standard contract for procuring construction building services under the CM at-Risk project delivery method – Construction Management at Risk Agreement in many ways adequately delineates the rights, duties and deliverables of each party to the contract. However, our review of that agreement highlighted an area for enhancement. The standard contract could be enhanced by including a "savings provision." While the agreement states that the GMP may be subject only to additions and deductions by change order or construction change directive, it does not specifically place a duty on the CM to return or share savings with the District. In fact, eight projects in our sample of 11, performed by four CMs had differences between their negotiated GMP and actual subcontract amounts. Only James B. Pirtle Construction, Inc., returned some of the contract savings to M-DCPS. To this point, another CM suggested that the District's contract should have a savings provision.

In communicating with staff, we noted a prevailing concept, wherein staff may have interpreted the contract reference to a "lump sum fee" as meaning the entire GMP, and that this lump sum GMP is not subject to change. Therefore, the presumption is that the negotiated GMP, less owner's contingency must be paid in full without any reduction. Additionally, the apparent presumption is that the contract referenced "not to exceed sum" or GMP means that no less than the maximum guaranteed amount is to be paid to the CM. Based on these prevailing concepts, the CMs risks are shifted to M-DCPS in that they are compensated the full GMP and for changes to the contract via contingency adjustments, which are essentially change orders, but they are not obligated to return any cost savings resulting in the work. Audit Findings 1.2 and 3, document a number of instances where project savings could have been achieved by M-DCPS if such savings were contractually required to be refunded. Moreover, SREF Section 4.1(6)(e) states, "the CM/TPM contracts should maintain an "open book" project accounting process, with any savings returned to the board."

For these reasons, we reiterate the need for an independent professional to perform an audit of each major construction project completed. This should be considered when revising to the Construction Management at Risk Agreement.

RECOMMENDATION

7.1 **Revise Construction Management at Risk Agreement to include a provision to share project savings with the owner and to align with SREF.**

Responsible Department: Office of School Facilities

Management Response: The Construction Manager at-Risk Agreement contains no specific provisions or procedures requiring that the Board receive a credit for cost savings realized by the CM, unless it involves a change in the work set forth in the contract documents. However, the Board does regularly realize savings in the form of credit change orders due to changes or reductions in the work as ordered by the Board, changes in the design due to value engineering, changes or substitutions of products utilized in the work, etc.

This finding could be interpreted as recommending that the CM reimburse the Board for any savings achieved through effective and efficient construction management, where there was no reduction or sacrifice in the quantity and quality of the work, and no violation of other provisions of the contract. Staff sees no legal basis for such a position which could contravene provisions of the contract requiring the CM to be fully responsible for all construction means and methods. While the contract does allow the Board to audit the CM's financial records, when necessary, each and every expenditure on the part of the CM is not monitored pursuant to the terms and conditions of the current GMP Contract. Upon approval of the GMP contract by the Board, the CM acts as a general contractor for the construction, holds all subcontracts, and must perform all work for a fixed price pursuant to the contract documents, with all its attendant risks (i.e. "CM at-Risk"). As such, the GMP contract is not a cost-plus contract, with the CM receiving a fixed fee for construction management, without guaranteeing the overall GMP. Where appropriate, staff has obtained from the CM and is reviewing financial records, copies of subcontracts, etc., particularly in those instances the CM has requested excessive change orders that could have the effect of increasing the GMP.

As its title "Competitive Negotiations" makes clear, SREF 1999 4.1(6)(e) is referring to pre-construction competitive negotiations between the CM and the Board and does not relate to post-GMP savings. Also, that provision of SREF, which was recommended rather than mandated, has been deleted from the 2007 edition of SREF, along with all of the other provisions related to Construction Management/Construction Program Management.

Irrespective of whether there is such a requirement or not, it is the intent of OSF to include this type of provision in the District's procedures which are currently being updated with the assistance of the School Board Attorney's Office and outside legal counsel.

With regard to the recommendation that an audit be performed on each major project, staff is already working with Management and Compliance Audits to arrange for independent audits to be performed on selected projects. The results of those audits will be taken into account for purposes of improving our contracts and procedures, as well as in the performance evaluation of the CM firms.

8. COMPLIANCE WITH OSF POLICIES AND PROCEDURES NEEDED

To its credit, OSF has detailed, comprehensive written policies and procedures that govern the entire CM at-Risk process. Those policies and procedures contain adequate controls and safeguards. The policies and procedures established 19 criteria that must be followed to complete the process. The criteria cover areas of CM selection, project pre-construction, CM commissioning, subcontractor bidding, GMP negotiations and project closeout.

To test compliance with the established policies and procedures, the audit sampled 11 primary projects, collectively valued at \$91,380,485. Summary results of the major criteria tested, based on the contents of the files, can be found in the table below.

Analysis of Compliance With OSF Policies and Procedures (Reported On A Per Project Basis)		
OSF Policies and Procedures	Percent of Compliance	Percent of Non-Compliance
The CM is required to submit a list of pre-qualified subcontractors for approval by the Department of Business Development and Assistance.	9%	91%
The project architect (A/E) and project manager (PM) are required to be present at the bid opening.	55%	45%
The CM is required to use the lowest subcontractors' bids in establishing the GMP, except where justification exists.	10%	90%
A/E recommendation letter of GMP acceptance must reference to the costs, overhead and profit, general conditions, duration of work in number of days and any mitigating circumstances that may arise.	55%	45%
Complete project budget should be maintained in project file.	9%	91%
Files contain a detailed breakdown of the negotiated general conditions for the projects.	55%	45%

In corroborating the results from our review of the file documentation, MWBE & Related Services (formerly Department of Business Development and Assistance) confirmed that the subcontractor information was not submitted for

prequalification or minority assistance level approval. Additionally, one project file explicitly indicated that the A/E and the PM were not present for the subcontractors' bid opening.

RECOMMENDATION

8.1 Ensure full compliance with written policies and procedures for all constructions contracts.

Responsible Department: Office of School Facilities

Management Response: Staff agrees with the recommendation to ensure full compliance with written policies and procedures for all construction contracts. OSF staff does take those procedures seriously and endeavors to follow them. Staff will take steps to better ensure that the written documentation demonstrating compliance with those procedures is placed in and maintained in the project files.

As to the accompanying table in Section 8 of the audit report entitled "Analysis of Compliance With OSF Policies and Procedures", staff has serious concerns with the manner in which the data is presented and the damning conclusions reached by sampling such a small and type specific number of projects. These projects were, for the most part, awarded under exigent circumstances (as detailed in prior sections of Management's Response) and are not representative of the District's compliance with procedures overall. As to each of the items listed in the chart, the following responses are provided:

List of Prequalified Subcontractors – This procedure applies only to those projects for which specific M/WBE Subcontracting Assistance levels had been established. For many of the projects reviewed, M/WBE Subcontracting Assistance levels were not applicable at the time of the commissioning of the CM firms for those projects.

A/E and PM Present at Bid Opening – Upon review of the projects listed, staff's recollection is that the PM and A/E were indeed present at virtually all of the bid opening meetings for these projects. There may have been a few instances where either the A/E and/or the PM were not available due to exigent circumstances, hurricanes, rebids of certain parts of the work, etc.

CM to Use Lowest Subcontractor's Bids except where Justification Exists – With regard to a CM's use of bids other than the submitted low bidders, the CM must always provide an explanation and/or justification for their decision. It is very important to understand that the low bid proposal by a subcontractor may not always represent the best value to the owner. Factors such as the prior experience and performance of the subcontractor with similar projects, whether the bid proposal is complete and complies with the specifications required by the contract documents, whether their bid is qualified by certain exclusions and/or limitations, the subcontractor's bonding capacity and qualifications of its supervisory staff, may serve to support a CM's request to use a subcontractor other than the low bidder. In addition, in the instance of a multi-phase and/or fast-tracked project, such as with pull-out projects, the benefit of maintaining the same subcontractor to ensure meeting critical scheduling milestones for project completion and to diminish overlapping conflicts in the overall project may be a significant consideration in a CM's request to utilize a subcontractor other than the low bidder. Although staff acknowledges that the explanations and/or justifications for rejecting a low bidder have not always been adequately memorialized in every GMP file, staff can affirm that the CM has always provided an explanation and/or justification to the District's negotiation team for each request to choose a non-low bid subcontractor.

A/E Recommendation Letter of GMP Acceptance – The A/E's recommendation of acceptance of the GMP and the other information cited in this item are delineated in the CM at-Risk Negotiation Meeting Sign-in sheet. These documents are required and provided for every CM at-Risk project negotiation and are executed by each member of the project team, including the A/E, at the time negotiations are finalized. As such, each of the items of information contained on that document is adopted by the A/E in its recommendation to accept the GMP. Typically, this form is included as an attachment to the A/E's cover letter for acceptance of the GMP.

Complete Project Budget in Project File – The complete project budget for every capital project is maintained in the project files of the Department of Capital Construction Budgets. That budget information is shared with the project team throughout the duration of the project, particularly during the design phases and prior to the negotiation of the GMP for each project.

Files contain a detailed breakdown of negotiated general conditions for projects – Staff is not aware of any specific requirement or particular need for a detailed breakdown of general conditions for each and every project. The project team carefully analyzes the general conditions proposed by the CM on all projects, including breakdowns detailing those figures where

appropriate, at the time of GMP negotiations. With regard to the projects reviewed, particularly for the pull-out projects delivered through the Miscellaneous CM at-Risk contract, all general conditions are calculated pursuant to the pre-negotiated rates included in the master CM agreement. This would also apply to groups of small projects, such as safety-to-life and ADA projects, and to time and materials contracts.

Auditors' Comment: For purposes of clarifying staff's response, the evidence reviewed for the projects examined supports the percent of compliance and non-compliance with OSF procedures as delineated. Samples of the type of evidence examined to reach our conclusions are as follows:

Although staff stated that M/WBE Subcontracting Assistance levels were not applicable at the time of the commissioning of the CM firms for those projects and that a waiver was approved to allow for this exemption, we were not provided with a written proof of that exemption, although requested. Furthermore, the following is an excerpt from OSF's policies and procedures for CM at-Risk:

EXHIBIT 8 – Excerpt From OSF CM at-Risk Procedures Manual

PREQUALIFICATION OF SUBCONTRACTORS

Once the estimates and the project budget are reconciled, the CM is required to submit a list of pre-qualified sub-contractors for approval by the Department of Business Development and Assistance, to insure that the project receives the benefit of the most competitive bidding. This list of pre-qualified sub-contractors must be sent to the M/WBE Department at least 30 days before bid opening, and must be included in the GMP submittal documentation. The Project Manager is also to make sure that the required M/WBE procedural report has been received from the CM, and approved by the M/WBE Department before bid.

**EXHIBIT 9 – Sample of Bid Sign-In Sheet With Note Saying Bids
Opened Without A/E and PM Present**

OPEN BIDDING SIGN-IN SHEET
FOR THE PROJECTS OF THE MIAMI-DADE COUNTY PUBLIC SCHOOLS

PROJECT NAME: ST. JAMES ACADEMY
 LOCATION: ST. JAMES ACADEMY
 ADDRESS: 10000 SW 10TH AVE
 CITY: MIAMI
 STATE: FL
 ZIP: 33155
 PROJECT NO.: 10000 SW 10TH AVE
 DATE: 10/10/2011

NAME OF BIDDER: ST. JAMES ACADEMY
 ADDRESS: 10000 SW 10TH AVE
 CITY: MIAMI
 STATE: FL
 ZIP: 33155

NAME OF PROJECT: ST. JAMES ACADEMY
 ADDRESS: 10000 SW 10TH AVE
 CITY: MIAMI
 STATE: FL
 ZIP: 33155

NAME	DATE	TIME	INITIALS	PHONE	EMAIL
<u>ST. JAMES ACADEMY</u>	<u>10/10/2011</u>	<u>10:00 AM</u>	<u>STJ</u>	<u>305-667-2540</u>	<u>stjames@stjamesacademy.com</u>

NOTE: Bids were opened at 10:00 AM on 10/10/2011. The A/E and PM were not present at the time of the bid opening. The bids were opened in the presence of the project manager and the project engineer. The bids were opened in the presence of the project manager and the project engineer. The bids were opened in the presence of the project manager and the project engineer.

9. PROJECTS COMPLETED BEHIND SCHEDULE

Each construction project has a specific number of days to be completed. We reviewed 22 projects (11 primary projects and 11 related pullouts¹³), to ensure compliance with their contract-specified completion time. The audit found that 10 (45%) of the projects were delivered on time but 12 (55%) were not completed by their contract-specified substantial completion dates. For the 12 late projects one (8%) was completed within 30 days of its contract-specified substantial completion date; four (33%) were completed within 90 days of their contract-specified substantial completion dates; and seven (58%) were completed between 91 and 709 days beyond their contract-specified substantial completion dates. As illustrated in the table below, the 12 late projects include main and pullout projects completed at eight (8) of the 11 sites sampled.

According to OSF, the delays were due mainly to changes in CM and inspection delays. OSF staff asserts that the delays did not adversely impact occupancy for any of the projects; and that delays in a pullout project will also delay its related main project. They also stated that the contract-specified completion dates may be adjusted when the project is fully closed out, a final reconciliation is completed and a final change order is issued.

SCHEDULE OF SAMPLED PROJECTS COMPLETED LATE					
	Project Name	Project Number	Contracted Days To Complete	Number of Days Project Delayed	Delay As A Percent of Project Duration
1	American Senior High	136900	180	42	23%
2	Early Childhood Center #1	170001	80	16	20%
3	Early Childhood Center #1	170000	395	85	22%
4	Eugenia B. Thomas Elementary	361500	86	56	65%
5	Jose Marti Middle	ADA30012	300	475	158%
6	Miami Lakes Elementary	140100	300	39	13%
7	Robert Renick Educational Center	ADA02051	120	709	591%
8	Winston Park Elementary	A0109201	180	187	104%
9	Winston Park Elementary	A0109202	60	307	517%
10	Winston Park Elementary	A0109203	120	105	87%
11	Winston Park Elementary	A0109204	120	656	547%
12	Shenandoah Elementary	290902	476	273	57%

Note: Six of the 12 projects in the table (Lines 1, 3, 4, 5, 6 and 7) are main projects.

¹³ Pullout projects are scoped, negotiated and awarded as separate contracts. Each has its own unique project number, budget, GMP, contract duration and substantial completion date. For the 22 projects reviewed, all except for Winston Park's main project and three of its four related pullouts had different substantial completion dates. This was the case even among related groups of projects.

Construction delays may result in additional cost to the School Board. Typically, when projects are delayed, the construction administration services provided by A/E are extended. The A/E is compensated for this extended construction administration. While these additional cost may be offset to some degree by back-charging the CM liquidated damages, we did not see any evidence of liquidated damages being assessed on these late projects.

RECOMMENDATION

9.1 Implement more effective project management oversight procedures so as to reduce contract schedule delays, including assessing damages for delay.

Responsible Department: Office of School Facilities

Management Response: As noted above, Management acknowledges that considering “pullout” projects in the audit sample may be statistically valid; however, it is Management’s opinion that only main projects should have been considered since half of the delayed projects were “pullouts” which are merely components of the overall scope of work.

In order to provide a more comprehensive and perhaps more statistically robust snapshot of OSF’s performance as it relates to timeliness of project delivery, a more comprehensive analysis of all capacity projects (providing classrooms) from July 2004 through June 2008 is provided with this response (see Table #5); that analysis clearly indicates that projects are consistently being delivered on time for occupancy with minimal and inconsequential time extensions. During this four-year period, **132 capacity projects were awarded, providing more than 100,000 student stations, valued at more than \$1.5 billion in construction costs. Of those 132 projects, 109 projects have been completed and occupied as of August 1, 2008 and 104 (95.4%) were completed in time for the originally scheduled occupancy date. Only 5 projects (4.6%) were completed after the originally scheduled occupancy date and these were all awarded between October 2005 and January 2006, during a highly unusual period when three hurricanes impacted Miami-Dade County and delayed all on-going work. The median time extension for the 109 occupied projects was only 16 days.**

It is therefore unfortunate that there was such a small and seemingly unrepresentative sample of projects selected for review in the audit report for the four-year period, when the attached analysis so clearly

demonstrates that the overwhelming majority of construction projects were successfully and timely delivered by the District.

Regardless, as noted above, Management continues to place greater emphasis on substantial completion dates rather than occupancy dates to avoid additional administration costs. Any determination of liquidated damages resulting from excessive contractor related delays is reviewed on a case by case basis by OSF and legal staff, as they relate to project specific conditions and are acted upon in accordance with contract provisions, including Board action where required.

Auditors' Comment: For purposes of refocusing the substance of our audit finding and of clarifying staff's response, we reported on whether the selected projects were substantially completed on time in accordance with their contracts. We did not determine whether the projects were occupied on time. Based on Articles 5 through 7 of EXHIBIT "I" To Construction Manager At Risk GMP Amendment, the CM's contractual duty is to achieve substantial and final completion of the project – not occupancy, by a date certain. According to those Articles, failure to meet either the substantial or final completion dates shall be a material breach of the agreement and result in liquidated damages being assessed. For this reason, our test was limited to determining whether substantial completion, not occupancy, was timely achieved.

While we applaud OSF achievement of managing the delivery of a large quantity of capital projects and their attendant capacity, as stated above, the status of completion presented in staff's accompanying table is based on occupancy and does not reflect the contractual requirement of substantial completion.

10. PROJECTS ARE NOT CLOSED OUT TIMELY

M-DCPS' procedures require that all construction project be formally closed out upon completion. Those procedures are outlined in a well-organized detailed manual and delineate the three phases of the project closeout process as follow:

1. The final inspection, where the A/E certifies final acceptance of the project.
2. Project closeout, where certification of the satisfaction of all mandatories and provisos are determined.
3. Project financial closeout, where a reconciliation of the project budget and costs, including final payment is undertaken.

The Office of School Facilities hired two consulting firms to expedite the project closeout process. However, the audit found significant delays still exist in closing out projects. The audit sampled 17 projects that were listed on the Primavera project management system as being in the closeout phase. Eight (47%) of the projects were term bids or job order contracts (JOC) projects and nine (53%) were CM at-Risk projects. Based on our audit risk assessment and the fact that CM at-Risk project delivery model is almost exclusively used by the OSF, the project files for the nine CM at-Risk projects were reviewed to determine if: 1) the projects were reconciled, 2) the contingency amounts were removed and 3) all vendors were fully compensated as required for closing out the projects. Of the nine projects, only one was found to have evidence that any aspects of the closeout process was being completed. For that project, the owner's contingency balance was removed from the location budget; however, there was no evidence that all project related purchase orders and work orders were closed, or final cost reconciliation was completed, as required. For the remaining eight projects, the audit found no evidence that any of the aspects of the closeout process was completed.

The closing out of a construction project ensures that construction deficiencies and defects are corrected, and that project requirements and documentation are complete. The process also ensures a proper accounting and reconciliation of funds, and prevents funds from being needlessly tied up.

To further address the risks associated with the closeout process, we will initiate a full scale audit of the process in the near future.

RECOMMENDATIONS

- 10.1 Re-evaluate the performance of the consulting firms hired to close out M-DCPS construction projects to ensure that contract deliverables are being met. There should be a determination of that firm's effectiveness in closing out assigned projects.**

Responsible Department: Office of School Facilities

Management Response: A program management firm was hired to assist the District with closeout of construction projects and began work in August 2005. Their original scope of work was to closeout a list of 118 projects; and although the 17 projects in the audit sample were not included in the original group, six were small Maintenance/ADA projects which have already been closed or are in the closeout process.

To date, through the assignment of additional work, the consulting firm has closed-out a total of 275 projects and continues to perform in a satisfactory manner. The effectiveness of the program management firm will continue to be assessed and necessary adjustment will be made, as warranted.

It is important to note that projects which are lacking only documentation are being handled by the closeout team. The team has now been expanded to include of four district professional technical employees and three contracted project managers from the consulting firm; additional District resources will be assigned following the opening of schools in August 2008. Projects which require corrections that go beyond the scope-of-work originally contracted for, will be closed-out and forwarded to the Planning Department for inclusion in the deficiencies database and included in a project at the particular school or facility as funding allows in future issues of the Five-Year Capital Plan.

Auditors' Comment: Again, we acknowledge OSF achievement of managing the delivery of a large quantity of capital projects and their attendant capacity. Nevertheless, there is a need to not only occupy facilities, but to timely close projects. This was made evident by the results of our audit tests and by a similar finding reported by Florida Auditor General¹⁴ on 118 projects. In fact, based on a project status report received as of August 11, 2008, 54 of the 118 projects remain active (i.e.,

¹⁴ Auditor General, David W. Martin, CPA, Miami-Dade County District School Board, Financial, Operational, and Federal Single Audit For the Fiscal Year Ended June 30, 2007, March 2008, Report No. 2008-158, pp.10-11.

not closed). A similar project status report dated August 11, 2008, tracks 1813 projects (some with substantial completion dates as early as 1990). Of these, 689 are active, 902 are closed, and 222 are cancelled.

10.2 Develop and implement a quality control process to ensure that CM's and PM's fully close out projects at project completion, before any final retainage is released.

Responsible Department: Office of School Facilities

Management Response: Quality control and close-out procedures are in place and are followed by each project manager in accordance with M-DCPS Facilities Planning, Design & Construction Procedures Manual. Final retainage is not released until all requirements identified on the closeout checklist (Page 7-15) are received by the project manager and the Release of Retainage FM-5477 is executed by the Architect, Construction Manager, Project Manager, Executive Director and the Construction Officer. Once the form is executed by all parties it is submitted to Document Control where the project file is reconciled prior to payment.

	Project Name	Project Number	Project Budget	Project Costs	Project On Time?	Days On Time/ (Late)	Notable Project Issues
1	Robert Renick Educational Center	ADA02051	\$ 193,254	\$ 241,394	No	(709)	The project was essentially for American With Disabilities Act (ADA) improvements. No bid/quotes were received and no budget was established at the time of negotiations. Additionally, the project was awarded with \$26,500 of allowances.
2	Jose Marti Middle	ADA30012	1,192,316	1,197,203	No	(475)	The project was essentially for ADA improvements. At the time of GMP negotiation, there were no approved drawings, independent estimates or bids. To meet the M/WBE goal, the CM listed a consulting firm, reportedly owned by one of its co-owner. All work was to be self-performed even though CM said they do not self-perform any work.
3	American Senior High	136900	1,965,012	2,061,486	No	(42)	The project added a 12-pack modular building on campus. In a number of cases, the lowest bid could not be determined and subcontractors were replaced (one did not initially bid the work) without documentation. The CM credited M-DCPS \$75,848 of the \$100,513 difference between GMP and subcontracts.
4	Kendale Elementary	138500	2,620,893	2,547,703	Yes	29	The project added a 12-pack modular building on campus. In a number of cases, the lowest bid could not be determined. The project was awarded with \$174,500 of allowances. The CM credited M-DCPS \$79,192 of the \$278,493 difference between GMP and subcontract values.
5	Miami Lakes Elementary	140100	13,264,990	12,212,168	No	(39)	The project added a 34-classroom modular and chiller building on campus. The lowest bid could not be determined in a few cases. Most changes in subcontractor were approved. Subcontracts were more than GMP.
6	Henry Flagler Elementary	140500 289203	10,952,388	14,566,478	Yes	125	The project added a 27-classroom modular building and P.E. shelter on campus. There was a \$944,275 difference between GMP and subcontracts, which CM said was reallocated to other subs. The project was awarded with \$1,635,900 of allowances.
7	Early Childhood Center #1	170000 170001	17,755,858	14,055,908	No	(85)	New facility. Numerous changes in subcontractor and large differences between GMP and subcontracts (\$334,000), without any credit given to M-DCPS. Claims of non-payment were made by subcontractors.
8	Bay Harbor Elementary	223100	12,071,473	12,515,521	Ongoing	Ongoing	K-8 conversion. Bids were opened without A/E and M-DCPS PM present. Bids were not received for many items included in GMP and \$516,350 differences between GMP and subcontracts, which CM said was reallocated to other subcontractors.
9	Eugenia B. Thomas Elementary	361500	250,000	222,959	No	(56)	The project added a new parent drop-off. Multiple bids were received for 7 of 10 packages.
10	Shenandoah Elementary	290900	13,753,448	12,430,887	Yes	142	The project added a 3-story modular classroom building on campus. Only one bid was received for a number of packages and the lowest bid could not be determined. The project was awarded with \$1,339,600 of allowances. No credit given to M-DCPS for \$156,236 differences between GMP and subcontracts.
11	Winston Park Elementary	A01092	<u>15,318,199</u>	<u>14,923,356</u>	Yes	12	The project was a K-8 modular addition from which four other pullouts were awarded. GMP awarded with \$4,900,200 in allowances (46%).
Totals			<u>\$89,337,831</u>	<u>\$86,523,679</u>			

APPENDIX 2 – Modular Classroom Projects Awarded By Contractor

MODULAR CLASS ROOM ADDITION COST DATA ¹⁵				
CONSTRUCTION MANAGER (CM)	NUMBER OF PROJECTS ¹⁶ AWARDED	TOTAL PROJECT BUDGET	AWARD AMOUNT	NUMBER OF STUDENT STATIONS ADDED
James B. Pirtle Construction, Inc.	108	\$172,483,923	\$149,073,877	15,881
Coastal Construction	18	54,774,391	51,616,685	2,714
Vietia Padron Inc.	14	44,423,198	49,345,458	2,642
Centex Construction	10	22,449,598	20,422,385	1,976
Hewett-Kier Construction, Inc.	7	20,824,190	22,304,985	1,272
JASCO Construction	5	12,786,800	12,579,086	1,328
Zurqui Construction Services, Inc.	3	7,349,226	7,979,049	424
Skanka USA Building	2	684,910	16,082,756	0
Stobs Brothers Inc.	2	91,123	10,343,059	0
Others (Projects Not Assigned To CM) ¹⁷	30	2,916,545	17,602,529	0
Totals	199	\$338,783,904	\$357,349,869	26,237

¹⁵ Project cost and CM at-Risk assignment data is based on information received from the Construction and Budget Office, divisions of Office of School facilities.

¹⁶ This column reflects the number of individually scoped projects that were assigned a unique project number and awarded a separate GMP. One or more of these projects could have been performed at a single site.

¹⁷ Projects included in this category were completed via term contracts, Job Order Contracting (JOC), single vendors, and in-house Maintenance force.

MEMORANDUM

August 25, 2008

TO: Mr. Allen M. Vann, Chief Auditor
Office of Management and Compliance Audits

FROM:  Jaime G. Torrens, Chief Facilities Officer
Office of School Facilities

SUBJECT: ADMINISTRATIVE RESPONSE TO DRAFT INTERNAL AUDIT
REPORT: AUDIT OF AWARD AND ADMINISTRATION OF
CONSTRUCTION PROJECTS

Attached is the Administrative Response to the Draft Internal Audit Report for the Audit of Award and Administration of Construction Projects.

If you have any questions, or need any additional information, please feel free to call me.

JGT:sma
M055

Attachments

cc: Dr. Rudolph F. Crew
Ms. Carolyn Spaht
Mr. Trevor Williams

**Management Response to Internal Audit Report
Audit of Award and Administration of Construction Projects**

OVERVIEW OF MANAGEMENT RESPONSES

- The District's construction projects initiated between 2004 and 2007 were awarded within the State mandated cost per student station, in accordance with State Requirements for Educational Facilities (SREF) and the overwhelming majority of projects were completed in time for their intended occupancy dates. This was accomplished by the Office of School Facilities (OSF) despite adverse external factors including an accelerated building program to meet the class size reduction constitutional amendment, skyrocketing construction costs due to the building boom both here and abroad which increased competition for available resources, and a record setting 2005 hurricane season and insurance market turmoil which added further to the cost of doing business.
- The convergence of these external factors had an inevitable impact on the GMP bidding process, requiring the District's aggressive use of "pullout" projects and more extensive use of allowances vis-à-vis limited availability of competitive subcontractor bidding, and higher insurance rates and general condition costs for projects awarded during the audit review period.
- OSF acknowledges that specific aspects of recordkeeping and the project close-out process need further improvement as cited in the audit report and Management will ensure that all required additional measures and safeguards are implemented to achieve this outcome.
- The audit report acknowledges that the District's current CM-At-Risk contract delineates the rights, duties and deliverables of each party to the contract. OSF Staff concurs that the current contract does not include a specific "savings provision," although cost decreases resulting from reductions in project scope are returned to the District and reported to the Board as credit change orders. As noted in Management's response, the CM-At-Risk delivery method is premised on the fact that the negotiated GMP represents the best value for both the client and the contractor, and thus there could not be a requirement for return of "savings" by the CM to the client without a corresponding provision that would allow cost increases to be recouped by the CM from the client.
- It should be noted that in February 2007, a shift in OSF's management has resulted in a strict emphasis on full development of design documents prior to bidding, negotiating and awarding GMP contracts. This measure, together with more favorable market conditions, has contributed to the leveling of general condition costs and has significantly diminished the need for "pullouts" and allowances in all projects.
- In an effort to ascertain what further improvements to contracts and procedures are appropriate (including contractor performance evaluation protocol) OSF staff concurs with the recommendation that an independent outside auditor perform an end-of-project review of major construction projects. OSF is already coordinating with Management and Compliance Audits on audits of selected CM-

At-Risk projects. Results of these audits will be used as the basis for process improvements where needed.

Executive Summary

On October 20, 2004, the School Board approved an ambitious building program to address critical school overcrowding by constructing 15,000 new student stations by the start of the next school year (see Exhibit #1). The Office of School Facilities (OSF) was tasked with tripling the number of originally planned student stations (5,825) to be delivered by August 2005. Ten months later the target was exceeded when 17,648 student stations at 62 school sites were completed in record time. This set the pace for the next phases of the program in subsequent years to meet the constitutional amendment requirements of Class Size Reduction, remove portable classrooms and enhance existing school facilities.

As of August 2008, over 84,000 student stations have been constructed, including 29 new or replacement schools. Other notable achievements over the past four years are:

- **Implementation of Prototype School Designs and Modular Additions:** over 100 capacity projects have been awarded with prototypical design adaptations that realized savings of over \$40 million in design fees and accelerated delivery by an average of one school year (see Exhibit #2).
- **Development and Implementation of “Green” High Performance School Design Principles:** the District’s first “LEED” certified new school, applying water, energy and operational conservation features, is currently under construction and eco-friendly, sustainable design features are being incorporated into all new projects. Additionally, many of the prototypes built by the District over the last three years have been nationally recognized for their quality and functionality (see Exhibit #3).
- **Awarded Over \$2.1 billion in Construction Contracts:** from July 2004 through June 2008. This is a 466% increase over the prior four fiscal years; between July 2000 and June 2004, \$450 million in construction contracts were awarded.
- **Improved Quality of Construction:** an emphasis has been placed on reducing water intrusion and improving indoor air quality. The extensive use of tilt-up construction has resulted in the building of sturdy structures with greatly reduced potential for water intrusion through the building envelope.
- **Implemented a Sales Tax Savings Program:** by directly purchasing selected building materials and equipment for construction projects, the District has saved over \$13 million in sales taxes since 2005.
- **Eliminated Portable Classrooms:** over 500 portable classrooms have been removed from school sites since 2004 and hundreds more will be removed upon completion of the current construction program.

In order to accomplish the aggressive goals of the accelerated building program, OSF, implemented a strategic business approach and organizational changes to address external market conditions and streamline internal processes which threatened to stall

the building program. Among the strategies employed and external conditions faced, were the following:

- **Full Implementation of the Construction Manager at Risk Delivery Method:** this provided the opportunity for “fast-tracking” or overlapping design and construction phases to accelerate project schedules. Additionally, the use of “pullout” projects for components of the project, such as demolition, site work, or building systems tied into existing facilities, further allowed for the acceleration of project schedules by awarding separate construction contracts.
- **Streamlining of Architect/Engineer and Construction Manager Selection Process:** a process which previously took a minimum of three months for each individual project was streamlined by having a pre-selected, tiered, grouping of consultants and builders that could be assigned individual projects, based on a number of factors, primarily driven by experience, bonding capacity and track record.
- **Skyrocketing Construction Costs:** since 2004, construction costs almost doubled nationally as a result of increases in fuel, steel, concrete, and wood along with the increased demand for raw materials globally. Despite these uncontrollable costs, projects have been completed within the state-mandated limits of cost per student station, as acknowledged in the audit report.
- **Local Market Conditions in the Construction Industry:** in addition to the stiff competition for raw materials, the local building boom from 2004 to 2007 coincided with the District’s aggressive construction program, creating a scarcity of skilled laborers in the work force. This further increased prices and limited the pool of sub-contractors available to bid on both public and private sector projects.
- **Impact of the 2005 Hurricane Season:** Miami-Dade County was directly impacted by three hurricanes in the summer and fall of 2005, further straining the available work force and raw materials. The loss of electricity for several weeks impacted projects scheduled to be awarded for construction and completion in 2006. These factors together further necessitated extensive use of allowances and “pullout” projects, diminished the time available for pre-construction site investigation, and shortened the timeframe otherwise desirable to complete 100% designs and plan reviews prior to negotiation of the Guaranteed Maximum Price (GMP) for numerous projects.
- **Property Insurance Crisis:** due in great part to the devastating 2005 hurricane season and its impact on the property insurance market in the State of Florida, builder’s risk insurance and windstorm insurance became difficult to secure and prohibitively expensive. Staff consulted with the District’s Risk Management staff and determined that no other immediate solutions to this problem were available. Subsequently, negotiations yielded, as expected, substantial increases in windstorm deductibles and required further use of allowances to ensure a designated amount was included in the GMP, even if quotes were not available prior to concluding negotiations.

Commencing in February 2007, a fundamental shift in the design process and project negotiations was implemented and is currently in use. The new Chief Facilities Officer

directed that plans be at or near 100% completion prior to bidding and negotiating projects, resulting in significant and immediate reductions in GMP allowances. More complete design information has reduced project risk since pre-construction site investigation of existing conditions is completed prior to negotiations. Fewer unforeseen conditions also led to better cost controls. Overall project costs have stabilized and even declined slightly as a result of this approach as well as a leveling off of external market conditions.

The audit report cites specific findings that are addressed in detail on the following pages. In many instances practices and procedures had already been changed prior to the audit and are consistent with the auditors' recommendations. Other recommendations have been implemented since the audit, and in some instances OSF staff disagrees with the auditors' findings and/or recommendations for the reasons explained in the management response. Nevertheless, the extensive efforts of both OSF and Management and Compliance Audits staff with regard to this audit have yielded a mutual appreciation for the functions and responsibilities of the respective offices.

Response to Finding #1 “Construction Managers’ Guaranteed Maximum Price (GMP)”

1.1 Management Response to Recommendation:

Staff concurs that bid tabulations for each project (reflecting a list of all subcontractors and the bid prices received by the CM in response to solicitations for a CM At-Risk project) should be included in each GMP negotiation file.

Typically, under normal market conditions, bids and the underlying bid tabulations for specific projects reflect a broad participation of subcontractors which helps ensure the most fair and competitive pricing in the industry for the various trades. However, most of the audited projects were bid during a period of peak activity for the local construction industry, which significantly impacted the level of interest and participation in the District’s CM At-Risk projects from certain subcontractor trades due to heavy workloads in other areas of construction. Even under these market conditions, there were only a few instances where CM projects included only one bid or no bids for specific categories.

The audit report states that out of 254 bid packages sampled, 110 bid packages, or 43%, were issued with either one or no bids. However, 53 of the 110 bid packages were stipulated as allowance items which by definition cannot be properly priced at the time of bidding and for which there would not be bid packages (see further clarification below). The value of the remaining 57 bid packages issued was \$2,215,239, which when compared with the total GMP cost of the 10 projects sampled in the audit report (i.e., \$46,573,785), represents less than 5% of the total cost expended by the District for these projects.

While competitive bid pricing for all scopes of the work is typically the norm, there are instances where the CM will self-perform certain portions of the work, either because there were no bidders or because the scope of work in question is best performed by the CM (e.g., installation of temporary fencing and safety barriers, etc.). In these instances, the negotiation team always reviews the proposed rates and prices to ensure that the CM’s proposal is within industry standards.

With regard to the CM’s use of bids other than the submitted low bidders, the CM must always provide an explanation and/or justification for their decision. It is very important to understand that the low bid proposal by a subcontractor may not always represent the best value to the owner. Factors such as the prior experience and performance of the subcontractor with similar projects, whether the bid proposal is complete and complies with the specifications required by the contract documents, whether their bid is qualified by certain exclusions and/or limitations, the subcontractor’s bonding capacity and qualifications of their supervisory staff, may serve to support a CM’s request to use a subcontractor other than the low bidder. In addition, in the instance of a multi-phase and/or fast-tracked project, the benefit of maintaining the same subcontractor to ensure

meeting critical scheduling milestones for project completion and to diminish overlapping conflicts in the overall project may be a significant consideration in a CM's request to utilize a subcontractor other than the low bidder. Although staff acknowledges that the explanations and/or justifications for rejecting a low bidder have not always been adequately memorialized in each and every GMP file, staff can affirm that the CM has always provided an explanation and/or justification to the District's negotiation team for each request to choose a non-low bid subcontractor. Staff is currently ensuring that such explanations and/or justifications are clearly documented in each applicable GMP file.

The use of allowances in CM At-Risk contracts is an acceptable and necessary industry practice which addresses the cost of any scope of work that has not yet been defined in sufficient detail at the time of bidding. Therefore, any evidence of bids having been solicited and/or received by the CM as part of the bidding process would neither be applicable nor possible. Additionally, the District's negotiation team reviews the proposed allowance(s) submitted by the CM for each project to ensure that the amount included as part of the agreed to GMP is reasonable and adequate to cover the anticipated cost of each allowance item. It should be noted that OSF has developed guidelines for the actual pricing of allowance items by the CM once the particular design element has been completed by the Project Architect.

As to the audit report's assertion that because subcontractor bids were not sealed, were either not received, or not opened and viewed simultaneously by the CM, District project manager and A/E, it therefore subjects the bidding process to increased risks and doubt about its competitiveness, it should be noted that the CM At-Risk contract simply states that "bids from Subcontractors shall be in writing and shall be opened and reviewed with the Architect and Owner prior to award by the CM" (see Article 6.5.4 of the standard CM At-Risk contract). There is no District requirement that subcontractor bids be "sealed" for CM At-Risk projects. Likewise, SREF Section 4.1(6)(f)3.c, presently no longer in effect, stated that the CM should "prepare and issue bid packages, open or assist in the opening and evaluation of bids", but makes no mention of "sealed" bids.

The audit report references language in SREF Section 4.1(6)(f)3.a & c (1999 version) which refers to maintaining a list of potential bidders and subcontractors, soliciting bidders (including minority participation), and opening or assisting in the opening and evaluation of bids from at least two bidders for each trade package. However, such language should not be misconstrued as an SREF requirement, but rather as stated in the main paragraph of SREF Section 4.1(6)(f), these services may be included (but are not mandated) under the bidding phase. Again, it should be noted that this entire section has been stricken from the SREF 2007 version.

1.2 Management Response to Recommendation:

The GMP negotiated for each CM At-Risk project is considered to be the total price for the project and is not intended to be determined on a "line by line" item basis. The reason for that practice is that once the GMP is finalized, the CM assumes the risk for

executing and administering the project as agreed to by the parties and set forth in the Contract Documents (regardless of market fluctuations, materials price escalations, labor shortages), for properly and efficiently coordinating and scheduling the work of all subcontractors, and the responsibility for the performance of all subcontractors and all other risks. Typically, the CM is not permitted to request additional monies to offset any cost increases due to factors other than unforeseen conditions or scope changes requested by the owner. Although certain subcontracts entered into by a CM may be less than the agreed to prices contained in the negotiated GMP, conversely the CM may experience any number of unanticipated cost overruns throughout the course of the project for which they will not be entitled to request nor receive additional compensation from the District to complete the work. These are the very basic premises of the CM-At-Risk delivery method.

The audit report cites a schedule of changes to subcontractors' bids for 10 sampled projects. The differences are shown as both increases and decreases to various subcontracts, the net sum of which is \$1,950,711. These amounts were included in the original GMPs and the District did not overpay as may be inferred from the audit report. Insofar as decreases in subcontractor prices occurring after bidding/during construction, the current CM At-Risk Agreement contains no specific provisions or procedures requiring that the Board receive a credit for cost savings realized by the CM, not involving a change in the work set forth in the contract documents (see additional comments under Response to Finding #7). Conversely, as a fundamental principle of the "At-Risk" CM contract, the District is not responsible for any cost increases in subcontracted amounts.

Nonetheless, staff agrees that any potential for abuse of subcontractor price changes by CM's should be eliminated and believes that the audit report's recommendation to compare subcontracts may be warranted on a project by project basis as a risk assessment management tool. Likewise, the review of major capital projects upon their completion by an independent auditor is already being considered by OSF and Management and Compliance staff for selected projects, the results of which will be used to for process improvements and if necessary, recommended changes to current rules and/or procedures.

1.3 Management Response to Recommendation:

The substitution of subcontractors during the project by CM firms is always reviewed and approved by District staff, although staff acknowledges that accurate and complete documentation of such substitutions was not always included in project files. Staff agrees that any request from the CM for subcontractor substitution will be adequately reviewed and documented in the project files.

1.4 Management Response to Recommendation:

Staff acknowledges that the preferred practice is for CM At-Risk projects to be bid after Construction Documents are 100% complete and this is the current OSF practice for all

construction projects. Typically, projects may include a minimal amount of allowances and qualifications from the CM and/or their subcontractors since most, if not all, of the entire project scope, design and specifications are fully defined. However, due to various exigent circumstances (e.g., school occupancy deadlines, class size reduction requirements, accelerated building program to deliver student stations, impact of major hurricanes, budget considerations, etc.) several of the projects sampled in the audit report were bid and awarded utilizing phased and/or fast-tracked (i.e., pullout packages) delivery methods with Construction Documents that were less than 100% complete in order to allow for an earlier start of construction. The bidding of CM At-Risk projects with an incomplete set of documents can lead to a greater number of allowances and contingency adjustments due to final design changes, as well as an increase in qualifications and/or exclusions from the CM.

1.5 Management Response to Recommendation:

As part of the pre-construction services required by the CM At-Risk contract, the CM is required to prepare and provide to the District project estimates at the end of schematic design, design development and construction documents. The purpose of these estimates is to ensure that the projected cost of work is within the established budget for each respective project. Furthermore, at the time of GMP negotiation, the District's negotiation team also has at its disposal additional cost estimates prepared by the Project Architect and an independent estimator. Once the GMP is finalized, the CM is required to submit a GMP book which includes, but is not limited to, a copy of the CM's cost estimate submitted prior to the actual bidding of the work, as well as the final cost estimate (i.e., GMP summary) agreed to by the parties.

Due to the fact that several of the projects examined in the audit report were bid with approximately 50% construction documents and under adverse market conditions present during that period (see additional comments under Response to Finding #4), the District was unable to derive the maximum benefit of having the CM prepare and submit an accurate cost estimate from a complete set of documents prior to the actual bidding of the work. Therefore, it is quite possible that the increase from the CM's estimate to the actual agreed to GMP price mentioned in the audit report was a result of this "perfect storm" (i.e., a combination of market conditions and incomplete documents).

The current practice of not bidding until construction documents are at or near 100% completion is already minimizing instances where the GMP exceeds the proposal submitted by the CM. Consequently, CM At-Risk major capital contracts negotiated by OSF staff over the last two years have been awarded for GMP amounts that are significantly less than the GMP proposals submitted by CM firms, as well as estimates prepared by the Project Architects and independent estimators. The figures are as follows:

- A total of 93 CM At-Risk major capital projects awarded since April 2006, for a combined GMP sum of approximately \$1.225 billion.

- The GMP proposals submitted by CM firms for these projects totaled approximately \$1.360 billion (resulting in a negotiated savings of approximately \$135 million) and were also lower than the estimates prepared by the Project Architects and the independent estimates by over \$48 million and \$45 million, respectively.

1.6 Management Response to Recommendation:

Staff agrees that GMP files must contain accurate and complete records related to relevant project information. In fact, OSF staff currently ensures that GMP negotiation files contain the following information:

- Final cost estimates prepared by the CM, Project Architect and an independent estimator.
- Copy of current project budget sheet (signed and dated by designee from Capital Budgets).
- The CM's GMP proposal, which shall include, but not limited to, the following documents:
 1. A GMP summary of proposed cost of work, reflecting the recommended subs for each bid package, as well as identifying the portion of the work to be self-performed (if any) and proposed allowances (if any).
 2. Summary of all bids (by bid packages) received on bid opening day.
 3. Bid opening sign-in sheet.
 4. Breakdown of proposed MWBE sub-contractor participation (by bid package & percentage of work).
 5. Breakdown of proposed General Conditions.
 6. CM's proposed Qualifications and Assumptions (if any), including explanations/justifications for the use of non-low bidders (if any).
 7. CM's approved schedule for completion of the work.
 8. Value engineering recommendations (if any) and proposed alternates (if any).
 9. Breakdown of "extraordinary" cost items (if any).
 10. Proposed savings from participation in the District's Tax Exempt Direct Purchase program (if any).
 11. Copy of the CM's estimated cost for this project prepared and submitted prior to bid opening.
- Signed checklist of the front-end documents received by the CM.
- Final negotiated GMP summary reflecting total cost of work (including direct cost of work items and CM General Conditions).
- The CM At-Risk GMP negotiation meeting form (FM-6998) which serves as a sign-in sheet reflecting the names of parties present during negotiations, GMP approval form reflecting the total GMP amount agreed to by the parties, owner contingency, amount of construction materials & equipment to be purchase thru the District's DPO program and tax savings related thereto, total amount of allowances and agreed to project duration.
- Copy of agenda item approved by the Board awarding the GMP contract.

Keeping a complete and accurate set of the above documents (as well as any other relevant project information) in each and every GMP file should be more than sufficient to memorialize the terms and conditions agreed to by the CM and staff during negotiations and will take steps to ensure that the above listed documents are systematically filed in the respective project files. However, staff believes that the additional recommendation to keep “negotiation notes” which may include strategies discussed during negotiation meetings is unwarranted.

Response to Finding #2 “Pullout Projects”

“Pullout” projects are separately awarded construction projects for stand-alone components of a main project and are typically used for such items as demolition of existing portable classrooms, on-site/off-site work or any other component that would facilitate acceleration of the overall completion of the main project.

The audit report states that greater transparency is needed in disclosing “pullouts” to the Board. While the extensive use of “pullouts” should be discouraged, all “pullout” projects exceeding \$1.0 million are taken to the Board for approval. Such Board items provide descriptions of the scope of work and link the “pullout” to the main project. Any construction project, including “pullouts” valued under \$1.0 million is assigned to a Board-approved, pre-selected Miscellaneous Construction Management at-Risk firm, in accordance with Board rules, OSF procedures and as permitted by Florida Statutes. An example of the disclosure process that takes place in extraordinary instances occurred on one of the projects cited in the audit report. On January 18, 2006, Board Item F-35 (see Exhibit #4) which awarded the construction of a modular classroom addition for the conversion of Winston Park Elementary to a K-8 Center, specifically disclosed the following: “In order to accommodate the sixth grade on campus for the 2006/07 school year, separate projects have been initiated through miscellaneous CM-At-Risk contracts amounting to \$4,000,000.”

The primary purpose of “pullout” projects is to expedite the required work at a particular school. The project cost data for the “pullout” remains in the budgetary data for the main project and is tracked by the same school location number. The “pullout” project number is distinguished by a different suffix or variation of the ending digits of the project number. Consequently, the aggregate cost of the main project including “pullouts” is readily available and is the amount used to calculate the cost per student station, as required by the State of Florida.

There may be some duplication of general conditions and overhead associated with a “pullout” project, however, management’s decision to use a “pullout” is based on the benefit that can be derived primarily in terms of project acceleration to complete work for a fixed date (e.g. August school opening); this, in Staff’s estimation outweighs any added cost. In some instances the acceleration may actually result in a cost savings by fixing costs at an earlier date and allowing for further development of bidding documents prior to award. .

Many of the instances where “pullout” projects were extensively used occurred in 2005 and 2006, when aggressive delivery schedules were required to mitigate the lingering impact of three hurricanes that affected Miami-Dade County. Since February 2007, the use of “pullout” projects has been substantially reduced as a consequence of adherence to the practice of developing 100% design documents for bidding prior to GMP negotiations.

2.1 Management Response to Recommendation:

The Office of School Facilities will continue its current practice of developing full 100% design documents prior to bidding and negotiating GMP contracts thereby minimizing the need for “pullout” projects. In order to effectively deliver the District’s building program, however, it is imperative that management retain the flexibility to adjust business decisions in response to changes in market conditions and/or the District’s strategic goals. The use of “pullout” projects is a crucial element which must be used judiciously as market conditions and priorities shift. The selective use of “pullouts” is generally beneficial to the District but will be limited to situations where critical work elements must be expedited. In future instances where “pullout” projects may be required, OSF will continue to inform the Board in accordance with established procedures.

Response to Finding #3 “Project’s General Conditions Costs”

Staff concurs with the audit report that each General Condition (GC) proposal needs to be carefully reviewed to ensure that the rates charged by the CM and agreed to by the negotiation team are reasonable and in line with local industry standards. Furthermore, staff also agrees that the GC’s for most typical projects should not exceed 30.25%. However, it is important to note that there are a number of cost of work factors (job condition multipliers) which have a significant impact on the GC’s given the presence of certain market conditions (see Table #1 below showing analysis utilizing RS Means).

Given the fact that the projects cited in the audit report as having excessively high GC costs were bid in exigent circumstances (i.e., accelerated building program to deliver student stations, unprecedented construction boom in Miami-Dade County, several major hurricanes, etc.), staff believes that in order to make an accurate and valid assessment of the GC percentages highlighted in the report (i.e., 32%, 33% and 34%) these extenuating factors must be taken into account by the reviewing auditors.

3.1 Management Response to Recommendation:

The basic components of GC, which represent management costs attributable to the Construction Manager (CM), are broken down as follows:

- Overhead and Profit (CM Fee) – The CM’s overhead is a component of the CM’s Fee which represents that portion of the CM’s office expenses attributable to each specific project (including general & administrative costs, and the CM’s capital expense). Likewise, the CM’s profit is a component of the CM’s Fee which represents the return expected to be realized by the CM once all operating expenses have been paid for each project. The total CM Fee can vary depending on a number of factors, such as: a) size and complexity of the project (e.g., new construction vs. renovation & remodeling), b) market conditions (e.g., anticipated increases in cost of labor & materials), c) project duration, d) site constraints (e.g., phasing requirements) and e) whether the project is executed by multiple phases and/or fast track packaging (e.g., projects awarded with less than 100% complete set of documents pose a greater risk factor for the CM). Accordingly, the range of the actual CM Fee paid by the District for major capital projects over the last two (2) years is only from 6% - 13%.
- Bonds and Insurance – The CM must provide and maintain the requisite Bonds and Insurance coverage for the duration of the project, in accordance with the criteria established by the District. The actual cost of Bonds and Insurance varies depending on the size (cost) and duration of the project, as well as the CM’s financial condition, size of the company, prior performance and length of time in business. It should be pointed out that most of the projects selected for examination were awarded during a time when CM’s were required to procure a Builder’s Risk policy for each project with required limits of coverage in the amount of the awarded project. Due to the impact of several major hurricanes and the limited number of insurance companies offering this type of coverage, the cost for Builder’s Risk policies (in particular windstorm coverage for high risk areas such as South Florida) skyrocketed over the last few years. As a result, the District implemented its own “umbrella” policy to provide the adequate level of Builder’s Risk coverage for capital projects (see Agenda Item E-69, Board meeting of October 11, 2006). Therefore, no meaningful comparison of GC rates charged to the District can be made without accounting for the cost of Builder’s Risk coverage from both the “standard” rates and the CM’s negotiated amounts for each respective project. The rate for the cost of Bonds and Insurance paid by the District for major capacity projects since the implementation of its “umbrella” policy ranges from 3% - 5%.
- General Conditions – The GC includes the cost to be incurred by the CM in managing and administering the performance of the work. Although there are generally accepted industry standards for GC categories (e.g., on-site supervision, job site mobilization, temporary fencing, trash disposal & cleanup, etc.) the actual GC cost factors may vary from project to project. Moreover, the actual GC cost may be impacted by factors such as: a) level of on-site supervision required due to project duration & complexity; b) additional considerations for an occupied school site vs. a new site (e.g., safety of students & staff, mitigate disruption of school operations, site constraints for mobilization & on-site parking of CM & subcontractors, etc.); c) maintenance of traffic issues, safety devices & barriers, and procuring of jobsite security services, if needed. The range for the cost of GC’s

negotiated by the District for major capital projects over the last two (2) years is between 6% - 12%.

Given the above, the range of CM management costs (total fees) negotiated by the District over the last two years for major capital projects (i.e., 15% - 30%) is not only within the acceptable level of fees stipulated in the audit report (i.e., 16% - 30.25%), but is below the average of almost 50% contemplated by RS Means (see Table #1 below) under “unfavorable job conditions” which certainly characterized the construction environment within which the OSF was operating during the audited period. Moreover, in order to ensure that the GC’s proposed by a CM are reasonable and in line with industry standards, the District’s negotiation team carefully reviews the various cost factors included in the GC’s to determine whether they are in accordance with the specific project requirements and duration, as well as comparing the proposed GC to the estimates prepared by the Project Architect and those of a third-party independent estimator.

With regard to the comparison of estimated GC versus the CM’s actual expenses, it should be noted that an accurate assessment of said comparison can only be made once final project close-out has taken place. The reason is that GC’s are usually not expended in a straight-line manner, but rather in a “bell curve” fashion with the tail end of the project (i.e., occupancy, warranty and close-out) bearing a disproportionate length of time. In addition, the smaller CM firms may not have the same level of sophistication and updated systems technology to maintain a comprehensive and accurate accounting of all GC expenses incurred throughout the duration of the project.

Likewise, the comments contained in the report regarding the absence of additional storage containers and office equipment may be inconclusive given that unless the worksite is visited throughout the duration of the project, there may be periods during which certain equipment may not be located on-site at the time of the visit. Moreover, in the event that there are not sufficient trailers located on-site, this may result in an increase in the cost of off-site storage, handling and transporting of materials by the CM. These additional costs would be absorbed by the CM’s overhead and not charged directly through the GC’s.

Insofar as the requirements of SREF 4.1(6) (f) 4.b regarding the Truth In Negotiation Act provisions, the Board Attorney’s Office has indicated that this section referred to the disclosures which must be made by the CM at the time of negotiating a fee for pre-construction services with the District and not for the negotiation of a GMP nor any post-GMP cost savings. We should point out that this section has been stricken from the latest version of SREF (2007).

3.2 Management Response to Recommendation:

Whenever a CM is assigned to a primary & pullout projects or concurrent primary projects, the District’s negotiation team always reviews the proposed GC for each project to ensure the absence of “over-laps” by the CM.

3.3 Management Response to Recommendation:

There is no specific SREF requirement to maintain a Site Log for each and every project, and this has been confirmed with the School Board Attorney's Office. Rather, SREF Section 4.1(6)(f)4.b (since stricken from the 2007 version) simply recommended that the CM "keep a log of all site visits and observations".

Whether or not to require that the CM keep a Site Log depends largely on the complexity, duration and status of the project. For example, if a project is not progressing in a manner that is satisfactory to the District, then the CM may be required to maintain such a log to document the satisfactory staffing of the project and ongoing subcontractor presence. The decision on whether to require such a daily log should be made by the Project Team.

TABLE #1
ANALYSIS OF TYPICAL CM MARKUPS USING RS MEANS ¹

	BOTTOM OF RANGE - NORMAL MARKET CONDITIONS	TOP OF RANGE - NORMAL MARKET CONDITIONS	WITH UNFAVORABLE JOB CONDITIONS
	1	1	1
GC	10.00%	15.00%	19.05%
OVERHEAD AND PROFIT	5.00%	15.00%	19.05%
INSURANCE (W/O BUILDER'S RISK)	2.00%	3.00%	3.00%
BOND	0.60%	2.50%	2.50%
GC	1.1	1.15	1.1905
OVERHEAD AND PROFIT	1.155	1.3225	1.41729025
INSURANCE (W/O BUILDER'S RISK)	1.1781	1.362175	1.459808958
BOND	1.1851686	1.396229375	1.496304181
TOTAL MARKUPS	18.52%	39.62%	49.63%

NOTE: Builders Risk rose up to 5% on these jobs prior to district provided blanket coverage and must therefore be removed from all contracts to normalize the numbers prior to any comparisons

JOB CONDITION MULTIPLIERS

UNFAVORABLE ECONOMIC CONDITIONS	5.00%
UNFAVORABLE HOISTING CONDITIONS	5.00%
INEXPERIENCED CONTRACTOR	10.00%
LABOR SHORTAGE	10.00%
MATERIAL STORAGE AREA NOT AVAILABLE	2.00%
SUBCONTRACTOR SHORTAGE	12.00%
WORK SPACE NOT AVAILABLE	5.00%

¹ RSMeans Building Construction Cost Data 65th Annual Edition 2007

Response to Finding #4 “GMP Allowances”

Allowances are contract amounts specifically meant to cover undefined items of the work and are commonly used in the construction industry. Typically, allowances are incidental amounts of the contract totaling less than 10% of total construction cost and serve the purpose of allowing a project to proceed without the need to finalize an otherwise minor aspect of the project.

The Office of School Facilities acknowledges that excessive allowance amounts (generally over 10%) are not desirable and should be avoided whenever possible. Higher than customary allowances were applied to some projects selected for this audit; however, as described below, underlying causes can be attributed to unique circumstances which existed in 2005/2006. Further, the chart provided below indicates that this practice has drastically diminished over the past two years.

Of the eleven projects sampled in the audit report, five were cited as having a high allowance rate of over 10% of their respective GMPs, the three most notable being Winston Park Elementary School (46%), Henry Flagler Elementary School (22.5%), and Shenandoah Elementary School (15.6%). These calculations have been derived by deducting the full allowance amount from the GMP and determining the percentage rate of the remaining balance. OSF respectfully disagrees with the method used in the audit report for calculating allowances. For example, the allowance amount for Winston Park is 34% instead of 46%, when factored as a percentage of the contracted GMP amount rather than only the “hard” construction dollars. Further, a recent (March 2008) State of Florida Auditor General’s report on this same issue utilized the full GMP contract amount to derive the allowance percentage. Nonetheless, irrespective of which calculation method is used, OSF staff concurs that either figure (34% or 46%) is higher than usual or desirable.

The three projects identified above were all modular (prototype) classroom building additions at existing schools sites, awarded between October 2005 and January 2006 which were intended to be occupied by August 2006. These prototype two and three-story classroom buildings were developed in 2005 as part of the District’s accelerated building program intended to more than triple the previously planned work and to meet the State of Florida’s Class Size Reduction Constitutional Amendment. Consequently, these projects were planned, funded, designed, bid and constructed under an accelerated schedule, necessitating the use of abbreviated site development plans and only cursory review of existing utility and site conditions.

An additional mitigating circumstance during this period in 2005, was that Miami-Dade County was impacted by three hurricanes, (Katrina, Rita and Wilma), in August, September and October 2005, causing significant flooding, wind damage, loss of electricity and extensive disruption to the entire area over a three month span. This occurred precisely at the time when plans were being prepared for bidding in order to occupy the projects by August of 2006.

The factors outlined below all converged in the fall of 2005, resulting in the need to fast-track projects and to utilize allowances to an added degree:

- Accelerated Building Program to meet the Class Size Reduction Constitutional Amendment requirements
- Development of multi-story modular (prototype) classroom building additions
- Local market conditions – (construction boom in Miami-Dade County causing a unprecedented demand on building trades)
- Impact of hurricanes Katrina, Rita and Wilma.

The three projects cited were awarded between October 2005 and January 2006. During this four month period alone, the District awarded 26 major capacity projects, (providing student stations), amounting to more than \$200 million. Of the 26 awarded projects, 20 projects were substantially completed prior to the start of school in August 2006 resulting in the delivery of over 13,000 student stations.

A comprehensive analysis of all capacity projects over \$7.0 million awarded during the 2006-07 fiscal year and the 2007-08 fiscal year follows along with the eleven projects sampled by the audit report. The eleven projects analyzed in the auditor's report ranged from 0% to 34% for allowances and averaged 12.2% (see Table #2). The 2006-07 list of awards ranged from 0% to 9% and averaged 2.7% (see Table #3). The 2007-08 totals show a further reduction ranging from 0% to 6.5% and averaging 0.8% (see Table #4).

**TABLE #2
AUDIT FINDINGS
(11 PROJECTS SAMPLED)**

SCHOOL NAME	PROJECT NUMBER	CONTRACT AMOUNT	ALLOWANCE AMOUNT	ALLOWANCE % OF CONTRACT
R. RENICK ED. CENTER	ADA02051/ADA8151	\$ 90,513	\$ 0	0
JOSE MARTI MIDDLE	ADA030012	937,146	0	0
AMERICAN SENIOR HIGH	00136900	1,757,349	157,025	8.9
KENDALE ELEMENTARY	00138500	2,311,472	270,000	11.7
MIAMI LAKES ELEMENTARY	00140100	11,085,484	438,000	4.0
HENRY FLAGLER ELEMENTARY	00140500/00209203	10,060,026	1,635,900	16.3
EARLY CHILDHOOD CENTER 1	00170000/01	16,006,897	0	0
BAY HARBOR ELEMENTARY	00223100	11,425,023	155,500	1.4
E.B.THOMAS ELEMENTARY	00361500	176,646	0	0
SHENANDOAH ELEMENTARY	00290900	4,822,297	1,339,600	27.8
WINSTON PARK ELEMENTARY	A01092	14,286,702	4,900,200	34.3
TOTAL		\$ 72,959,555	\$ 8,896,225	12.2 %

4.1 Management Response to Recommendation:

A careful analysis of all current bid awards over the past two years demonstrates that allowance amounts have been greatly reduced to an acceptable level and that the relatively high rates for projects awarded primarily before 2006-07 were a result of unique market conditions, other external factors and the District's accelerated building program. It is imperative that management retain the flexibility to make judicious use of allowances on a project by project basis.

TABLE #3
2006-07 CAPACITY PROJECTS (OVER \$7 MILLION)

SCHOOL NAME	PROJECT NUMBER	CONTRACT AMOUNT	ALLOWANCE AMOUNT	ALLOWANCE % OF CONTRACT
DEVON AIRE ELEMENTARY	00140600	\$23,256,443	\$125,511	0.5
STATE SCHOOL "UU-1"	A01020	34,995,606	336,887	1.0
STATE SCHOOL "PP-1"	A01026	33,503,553	484,081	1.4
STATE SCHOOL "MM-1"	A0725	34,893,847	769,827	2.2
STATE SCHOOL "JJJ"	A0742	75,665,488	2,204,016	2.9
MIAMI LAKES ELEMENTARY	00140100	11,085,484	1,144,454	9.1
MIAMI CAROL CITY SENIOR HIGH	A0101801	12,588,992	438,000	3.5
MIAMI CENTRAL SENIOR HIGH	A0101301	17,116,534	48,198	0.3
STATE SCHOOL "E-1"	00253000	34,223,084	0	0
STATE SCHOOL "BB-1"	A01112	32,992,362	1,643,180	4.9
STATE SCHOOL "P-1"	00252700	32,338,687	1,157,101	3.6
RUTH K. BROAD/ BAY HARBOR K-8	00223100	11,425,023	544,049	4.8
STATE SCHOOL "W-1"	A01032	23,940,560	1,140,027	4.8
NORTH MIAMI SENIOR HIGH	A01015	85,680,845	2,516,170	2.9
TOTAL		\$463,706,508	\$12,551,501	2.7 %

TABLE #4
2007–08 CAPACITY PROJECTS (OVER \$7 MILLION)

SCHOOL NAME	PROJECT NUMBER	CONTRACT AMOUNT	ALLOWANCE AMOUNT	ALLOWANCE % OF CONTRACT
STATE SCHOOL "QQQ-1"	0025480	\$39,541,921	\$700,000	1.8
JOHN A. FERGUSON SENIOR HIGH	00408200	10,139,488	663,331	6.5
MIAMI CENTRAL SENIOR HIGH	A0101302	14,770,212	0	0
VINELAND K-8 CONVERSION	00408900	8,528,974	0	0
LEEWOOD K-8 CONVERSION	00409100/00467300	10,719,277	346,300	3.2
LAW ENFORCEMENT STUDIES SR.	00362800	35,400,000	0	0
SOUTHWOOD MIDDLE	A01135	11,474,861	0	0
STATE SCHOOL "TT-1"	A01106	31,695,360	0	0
STATE SCHOOL "YYY-1"	00254700	35,209,242	82,500	0.2
G. HOLMES BRADDOCK SR. HIGH	00140800	13,500,000	50,000	0.4
CORAL WAY K-8 CENTER	00395800	9,524,679	0	0
TOTAL		\$220,504,014	\$1,842,131	.8 %

As stated above, the Office of School Facilities acknowledges that excessive allowance amounts (generally over 10%) are not desirable and should be avoided whenever possible. The analysis presented in Tables #3 and #4 clearly indicates that the District's deliberate practice since 2006-07 of completing construction bidding documents to the fullest extent possible is resulting in a drastic reduction of allowances.

Response to Finding #5 **"Payment Review Process"**

5.1 Management Response to Recommendation:

OSF staff concurs with the audit report that all documents should be placed in the official contract files. The regular reconciliations performed by District Contract Management staff will now be placed in the payment files. The repayment by the construction manager (CM) referred to in the audit report was the result of additional credits to the District agreed to by the CM and implemented through a credit change order. This was not an overpayment to the CM.

5.2 Management Response to Recommendation:

Releases of Lien (Releases) are neither a statutory nor technical requirement. A payment bond is required and provided for subcontractor protection. The District is lien proof and exempt from lien laws in the State of Florida. Releases are requested from the CM to provide a level of added protection to the subcontracting community. Consent of Surety under the bond is acceptable in lieu of Releases of Lien and serves the same purpose – protection of the subcontractors. Releases of lien are not required

for the first payment (and sometimes subsequent payments) nor for general conditions, self-performed work and retainage releases. The Releases are reviewed by the project architect (AE) as required by the *M-DCPS Capital Construction Procedures Manual*, the AE contract and the *Contractor's Requisition for Partial Payment Affidavit and Release of Claim on Preceding Requisition FM-3071*. The CM, on *FM-3071*, provides a sworn statement that the Subcontractors and Suppliers have been paid through the prior requisition. The AE, (not the district's PM), signs the form "as to releases of lien for prior requisition." The AE is charged with using its professional judgment in evaluating the adequacy of Releases of Lien and may for example recommend payment to CM while an on-going dispute with a subcontractor makes it impossible to obtain the release. A release executed by the subcontractor without an amount is a valid release. The AE may obtain releases from the CM between payments. All releases reviewed by the AE may not be contained in the payment files. Although OSF staff acknowledges that 100% of all payments were not accompanied, in the payment files, by releases; however, though not required, 87% were found in the payment files by the auditors.

Response to Finding #6 "Project Expenditure Controls"

The audit report confirms that cost control features and procedures are in place to ensure the District pays reasonable prices for services and to limit budget overruns. OSF staff concurs with the audit report that certain extraordinary and unforeseen circumstances may cause certain purchase orders to be paid from contingency funds; however, these are subsequently restored through the monthly "F-20" School Board items, which propose the effectuation of the necessary transfers to the Board for approval. Information system capabilities are being improved to avert such situations in the future.

6.1 Management Response to Recommendation:

As part of the District's budget controls, budget adjustments, increases or decreases, require Board approval. Consequently, there may be occasions where there is a timing difference due to the Board Meeting Schedule or Fiscal Year-End closing. In cases where such timing differences would jeopardize compliance with the Prompt Payment Act or potentially delay a critical project element, the owner's contingency fund is charged and subsequently replenished when the adjustment is posted. This is by no means a standard operating procedure and is isolated to those instances where there could be a negative impact to the project schedule.

In order to mitigate this issue, in October 2007 OSF and Information Technology Services staff implemented the first phase of a new budget application (WCBU) which has streamlined the process of posting budget adjustments to the financial system and allows for multiple year budget planning and development. In addition, Phase II, which is underway and will go into production in November 2008, will provide project managers with detailed budget information, allowing them to review and manage the net

available balances in their projects prior to processing work orders. This capability had not been available up to now because of the District's outdated financial system.

Response to Finding #7

“Construction Contract Requirements for Cost Savings Credits”

The audit report acknowledges that the District's current CM-At-Risk contract delineates the rights, duties and deliverables of each party to the contract. While OSF Staff concurs that the current contract does not include a specific “savings provision,” savings resulting from reductions in scope are returned to the District and reported to the Board as credit change orders. Staff strongly endorses the recommendation that an independent audit be performed on each major project and OSF is already working with Management and Compliance Audits to facilitate this service. The results of those audits will serve as the basis for improving current contracts and procedures, as well as in the performance evaluation of the CM firms.

7.1 Management Response to Recommendation

The Construction Manager at-Risk Agreement contains no specific provisions or procedures requiring that the Board receive a credit for cost savings realized by the CM, unless it involves a change in the work set forth in the contract documents. However, the Board does regularly realize savings in the form of credit change orders due to changes or reductions in the work as ordered by the Board, changes in the design due to value engineering, changes or substitutions of products utilized in the work, etc.

This finding could be interpreted as recommending that the CM reimburse the Board for any savings achieved through effective and efficient construction management, where there was no reduction or sacrifice in the quantity and quality of the work, and no violation of other provisions of the contract. Staff sees no legal basis for such a position which could contravene provisions of the contract requiring the CM to be fully responsible for all construction means and methods. While the contract does allow the Board to audit the CM's financial records, when necessary, each and every expenditure on the part of the CM is not monitored pursuant to the terms and conditions of the current GMP Contract. Upon approval of the GMP contract by the Board, the CM acts as a general contractor for the construction, holds all subcontracts, and must perform all work for a fixed price pursuant to the contract documents, with all its attendant risks (i.e. “CM at-Risk”). As such, the GMP contract is not a cost-plus contract, with the CM receiving a fixed fee for construction management, without guaranteeing the overall GMP. Where appropriate, staff has obtained from the CM and is reviewing financial records, copies of subcontracts, etc., particularly in those instances the CM has requested excessive change orders that could have the effect of increasing the GMP.

As its title “Competitive Negotiations” makes clear, SREF 1999 4.1(6)(e) is referring to pre-construction competitive negotiations between the CM and the Board and does not relate to post-GMP savings. Also, that provision of SREF, which was recommended

rather than mandated, has been deleted from the 2007 edition of SREF, along with all of the other provisions related to Construction Management/Construction Program Management. Irrespective of whether there is such a requirement or not, it is the intent of OSF to include this type of provision in the District's procedures which are currently being updated with the assistance of the School Board Attorney's Office and outside legal counsel.

With regard to the recommendation that an audit be performed on each major project, staff is already working with Management and Compliance Audits to arrange for independent audits to be performed on selected projects. The results of those audits will be taken into account for purposes of improving our contracts and procedures, as well as in the performance evaluation of the CM firms.

Response to Finding #8 "Compliance with OSF Policies and Procedures"

As stated in the audit report, OSF has detailed policies and procedures in place that govern the CM-At-Risk process and contain adequate controls and safeguards. OSF staff acknowledges that maintaining the most current information in project files must be improved. As noted throughout the management responses, due to the unprecedented volume of school construction undertaken since 2004, the timeliness of some clerical functions have not kept pace with the volume of work delivered. Additional in-house resources have already been assigned and a broader realignment of staff will be implemented following the opening of schools in August 2008 to place a greater emphasis on these important activities.

8.1 Management Response to Recommendation

Staff agrees with the recommendation to ensure full compliance with written policies and procedures for all construction contracts. OSF staff does take those procedures seriously and endeavors to follow them. Staff will take steps to better ensure that the written documentation demonstrating compliance with those procedures is placed in and maintained in the project files.

As to the accompanying table in Section 8 of the audit report entitled "Analysis of Compliance With OSF Policies and Procedures", staff has serious concerns with the manner in which the data is presented and the damning conclusions reached by sampling such a small and type specific number of projects. These projects were, for the most part, awarded under exigent circumstances (as detailed in prior sections of Management's Response) and are not representative of the District's compliance with procedures overall. As to each of the items listed in the chart, the following responses are provided:

List of Prequalified Subcontractors – This procedure applies only to those projects for which specific M/WBE Subcontracting Assistance levels had been established. For

many of the projects reviewed, M/WBE Subcontracting Assistance levels were not applicable at the time of the commissioning of the CM firms for those projects.

A/E and PM Present at Bid Opening – Upon review of the projects listed, staff's recollection is that the PM and A/E were indeed present at virtually all of the bid opening meetings for these projects. There may have been a few instances where either the A/E and/or the PM were not available due to exigent circumstances, hurricanes, rebids of certain parts of the work, etc.

CM to Use Lowest Subcontractor's Bids except where Justification Exists – With regard to a CM's use of bids other than the submitted low bidders, the CM must always provide an explanation and/or justification for their decision. It is very important to understand that the low bid proposal by a subcontractor may not always represent the best value to the owner. Factors such as the prior experience and performance of the subcontractor with similar projects, whether the bid proposal is complete and complies with the specifications required by the contract documents, whether their bid is qualified by certain exclusions and/or limitations, the subcontractor's bonding capacity and qualifications of its supervisory staff, may serve to support a CM's request to use a subcontractor other than the low bidder. In addition, in the instance of a multi-phase and/or fast-tracked project, such as with pull-out projects, the benefit of maintaining the same subcontractor to ensure meeting critical scheduling milestones for project completion and to diminish overlapping conflicts in the overall project may be a significant consideration in a CM's request to utilize a subcontractor other than the low bidder. Although staff acknowledges that the explanations and/or justifications for rejecting a low bidder have not always been adequately memorialized in every GMP file, staff can affirm that the CM has always provided an explanation and/or justification to the District's negotiation team for each request to choose a non-low bid subcontractor.

A/E Recommendation Letter of GMP Acceptance – The A/E's recommendation of acceptance of the GMP and the other information cited in this item are delineated in the CM at-Risk Negotiation Meeting Sign-in sheet. These documents are required and provided for every CM at-Risk project negotiation and are executed by each member of the project team, including the A/E, at the time negotiations are finalized. As such, each of the items of information contained on that document is adopted by the A/E in its recommendation to accept the GMP. Typically, this form is included as an attachment to the A/E's cover letter for acceptance of the GMP.

Complete Project Budget in Project File – The complete project budget for every capital project is maintained in the project files of the Department of Capital Construction Budgets. That budget information is shared with the project team throughout the duration of the project, particularly during the design phases and prior to the negotiation of the GMP for each project.

Files contain a detailed breakdown of negotiated general conditions for projects – Staff is not aware of any specific requirement or particular need for a detailed breakdown of general conditions for each and every project. The project team carefully analyzes the

general conditions proposed by the CM on all projects, including breakdowns detailing those figures where appropriate, at the time of GMP negotiations. With regard to the projects reviewed, particularly for the pull-out projects delivered through the Miscellaneous CM at-Risk contract, all general conditions are calculated pursuant to the pre-negotiated rates included in the master CM agreement. This would also to apply to groups of small projects, such as safety-to-life and ADA projects, and to time and materials contracts.

Response to Finding # 9 “Project Completion Schedule”

One of the first steps taken by the Office of School Facilities (OSF) management in the development of the District’s ambitious building program initiated in 2004 was to accelerate all standard construction schedules and instill a sense of urgency in the delivery of the projects. Construction contracts were awarded with deliberately shortened schedules with the intent that classroom addition projects at existing school sites be designed and completed by the following August, in time for the opening of the new school year.

It is important to note that, as defined by contract, construction time is the number of calendar days from the date of Board award to the official substantial completion date,. The eventual occupancy date is typically 30 to 90 days after substantial completion, depending on the project’s complexity and contingent on any additional building code compliance inspections that may be required for occupancy.

Time extensions to construction contracts are not uncommon due to a variety of justified reasons; among them Owner requests, scope changes, state or regulatory agency requirements, unforeseen conditions and adverse weather conditions may provide a legitimate basis for extending the contract time without adversely impacting the eventual occupancy date of a project. Such time extensions are presented to the Board as change orders for adjustment of contract time and typically do not carry an increase in cost to the Board.

The methodology used in the audit report for the 22 projects sampled identifies the time extensions adjusting the original substantial completion date and does not necessarily relate to the building occupancy date. Audit finding #9 identifies 12 of the 22 projects sampled as being behind schedule; however, it is noteworthy that six of the 12 projects are “pullouts” at just two schools: Winston Park K-8 Conversion and Early Childhood Center-1. Although considering “pullouts” projects in the audit sample may be statistically valid, it is Management’s opinion that only the main or primary projects should have been considered since a “pullout” is merely a minor component of the overall scope of work. Additionally, two projects cited as being behind schedule are two relatively minor ADA accessibility correction projects which do not affect the occupancy of a school and are frequently delayed deliberately to minimize disruption at school sites.

9.1 Management Response to Recommendation:

As noted above, Management acknowledges that considering “pullout” projects in the audit sample may be statistically valid; however, it is Management’s opinion that only main projects should have been considered since half of the delayed projects were “pullouts” which are merely components of the overall scope of work.

In order to provide a more comprehensive and perhaps more statistically robust snapshot of OSF’s performance as it relates to timeliness of project delivery, a more comprehensive analysis of all capacity projects (providing classrooms) from July 2004 through June 2008 is provided with this response (see Table #5); that analysis clearly indicates that projects are consistently being delivered on time for occupancy with minimal and inconsequential time extensions. During this four-year period, **132 capacity projects were awarded, providing more than 100,000 student stations, valued at more than \$1.5 billion in construction costs. Of those 132 projects, 109 projects have been completed and occupied as of August 1, 2008 and 104 (95.4%) were completed in time for the originally scheduled occupancy date. Only 5 projects (4.6%) were completed after the originally scheduled occupancy date and these were all awarded between October 2005 and January 2006, during a highly unusual period when three hurricanes impacted Miami-Dade County and delayed all on-going work. The median time extension for the 109 occupied projects was only 16 days.**

It is therefore unfortunate that there was such a small and seemingly unrepresentative sample of projects selected for review in the audit report for the four-year period, when the attached analysis so clearly demonstrates that the overwhelming majority of construction projects were successfully and timely delivered by the District.

Regardless, as noted above, Management continues to place greater emphasis on substantial completion dates rather than occupancy dates to avoid additional administration costs. Any determination of liquidated damages resulting from excessive contractor related delays is reviewed on a case by case basis by OSF and legal staff, as they relate to project specific conditions and are acted upon in accordance with contract provisions, including Board action where required.

MIAMI-DADE COUNTY PUBLIC SCHOOLS
CAPACITY PROJECTS AWARDED (July 2004 through June 2008)

No.	Date Awarded Month Year		Facility Name	Project Number	Substantial Completion Date	Time Extension in Days (-Early)	Completed In Time For Occupancy
1	July	2004	Natural Bridge Elementary (Modular)	A0825S3661	03/22/05	0	YES
2	July	2004	Treasure Island Elementary (Modular)	A0825S5481	07/11/05	169	YES
3	July	2004	Redland Middle (Modular)	A28256761CM	04/07/05	0	YES
4	Aug.	2004	Linda Lentin K-8 Center	A0834	04/28/06	111	YES
5	Oct.	2004	Carol City Middle (Modular)	A01009	03/23/05	0	YES
6	Oct.	2004	North Dade Middle (Modular)	A01010	03/23/05	0	YES
7	Oct.	2004	Barbara Goleman Senior (Modular)	A0825S7751	07/07/05	(-1)	YES
8	Oct.	2004	Coral Park Elementary (Modular)	A01000	08/05/05	5	YES
9	Oct.	2004	Miami Springs Middle (Modular)	A01007	04/27/05	0	YES
10	Oct.	2004	Palmetto Middle (Modular)	A01008	03/30/05	0	YES
11	Nov.	2004	Meadowlane Elementary (Modular)	A0825S3141	08/05/05	5	YES
12	Nov.	2004	American Senior	00136900	06/05/05	0	YES
13	Nov.	2004	Snapper Creek Elementary (Modular)	00138700	04/27/05	0	YES
14	Nov.	2004	Avocado Elementary (Modular)	A0825W0161	05/24/05	(-1)	YES
15	Nov.	2004	Campbell Drive Elementary (Modular)	00139100	06/01/05	(-4)	YES
16	Nov.	2004	Claude Pepper Elementary (Modular)	A01109	06/01/05	(-9)	YES
17	Nov.	2004	Kendale Lakes Elementary (Modular)	00139400	06/01/05	0	YES
18	Nov.	2004	Redondo Elementary (Modular)	A01108	05/13/05	7	YES
19	Nov.	2004	Irving & Beatrice Peskoe El.(Modular)	A0825W4391	04/07/05	0	YES
20	Nov.	2004	Leisure City K-8 Center (Modular)	A0825W2901	07/20/05	6	YES
21	Dec.	2004	Flamingo Elementary (Modular)	00137200	07/26/05	11	YES
22	Dec.	2004	Henry H. Filer Middle (Modular)	00137400	07/11/05	17	YES
23	Dec.	2004	Joella C. Good Elementary (Modular)	A0825S2181CM	07/15/05	(-11)	YES
24	Dec.	2004	Crestview Elementary (Modular)	00137600	06/20/05	3	YES
25	Dec.	2004	Hubert O. Sibley Elementary (Modular)	00137700	06/15/05	(-6)	YES
26	Dec.	2004	Seminole Elementary (Modular)	00138000	05/13/05	(-5)	YES
27	Dec.	2004	Sweetwater Elementary (Modular)	00138200	07/11/05	0	YES
28	Dec.	2004	Zora Neale Hurston Elementary (Modula	00138400	06/10/05	(-1)	YES
29	Dec.	2004	Sylvania Heights Elementary (Modular)	00138800	06/28/05	(-13)	YES
30	Dec.	2004	Caribbean Elementary (Modular)	00139200	06/17/05	0	YES
31	Dec.	2004	Florida City Elementary (Modular)	00139300	07/08/05	0	YES
32	Dec.	2004	Pine Villa Elementary (Modular)	00139500	08/02/05	2	YES
33	Jan.	2005	Hialeah-Miami Lakes Senior (Modular)	00137500	07/01/05	0	YES
34	Jan.	2005	Charles David Wyche, Jr. El. (Modular)	00137300	07/01/05	0	YES
35	Jan.	2005	Norland Middle (Modular)	00137800	07/01/05	0	YES
36	Jan.	2005	North Miami Beach Senior (Modular)	00137900	07/29/05	(-70)	YES
37	Jan.	2005	Dr. Bowman Foster Ashe El. (Modular)	00138900	08/03/05	3	YES
38	Jan.	2005	Miami Killian Senior	A0855	08/04/06	(-75)	YES
39	Jan.	2005	Southwest Miami Sr.	A0854	11/07/06	20	YES

MIAMI-DADE COUNTY PUBLIC SCHOOLS
CAPACITY PROJECTS AWARDED (July 2004 through June 2008)

<i>No.</i>	<i>Date Awarded Month Year</i>		<i>Facility Name</i>	<i>Project Number</i>	<i>Substantial Completion Date</i>	<i>Time Extension in Days (-Early)</i>	<i>Completed In Time For Occupancy</i>
40	Jan.	2005	Bel-Aire Elementary (Modular)	00139000	07/18/05	0	YES
41	Jan.	2005	Campbell Drive Middle (Modular)	00139800	07/22/05	(-8)	YES
42	Jan.	2005	Cutler Ridge Middle (Modular)	00139900	08/01/05	9	YES
43	Feb.	2005	S/S "NN1" - Country Club Middle	A0726	11/16/06	(-94)	YES
44	Feb.	2005	Kendale Elementary (Modular)	00138500	08/01/05	3	YES
45	Feb.	2005	Redland Elementary (Modular)	00139700	07/05/05	(-13)	YES
46	Feb.	2005	David Fairchild Elementary (Modular)	00138300	08/03/05	3	YES
47	Feb.	2005	Kenwood K-8 Center (Modular)	A01113	07/30/05	0	YES
48	Feb.	2005	Cutler Ridge Elementary (Modular)	00139600	08/04/05	4	YES
49	Mar.	2005	S/S "Y1" - Norma Butler Bossard Elem.	A01030	07/07/06	18	YES
50	Mar.	2005	S/S "YY1" - Jorge Mas Canosa Middle	A01019	03/05/07	0	YES
51	Mar.	2005	Kinloch Park Elementary	A01004	02/24/07	0	YES
52	Mar.	2005	Lawton Chiles Middle (Modular)	00156900	08/01/05	3	YES
53	May	2005	E. B. Thomas Elementary (PLC)	A0851	06/12/07	16	YES
54	May	2005	Ponce De Leon Middle	A01003	08/10/07	170	YES
55	May	2005	S/S "SS1" - South Dade Middle	A01029	05/31/07	85	YES
56	May	2005	Miami Beach Senior	A0795CM02	7/14/09 projected	In Construction (Phased)	
57	July	2005	S/S "WWW" - Westland Hialeah Senior	A0811	11/26/07	42	YES
58	July	2005	South Dade Senior - Repl. S/S "CCC1"	A01017	01/17/08	0	YES
59	Aug.	2005	Miami Jackson Senior	A0799CM	11/27/07	(-3)	YES
60	Oct.	2005	Palm Lakes Elementary (Modular)	00140200	01/04/07	177	NO
61	Oct.	2005	Highland Oaks Middle Relief (Leased)	00170300	10/02/06	258	NO
62	Oct.	2005	Shenandoah Elementary (Modular)	00290900	08/13/06	29	YES
63	Oct.	2005	Coral Reef Elementary (Modular)	00289600	07/25/06	10	YES
64	Oct.	2005	John A. Ferguson Senior (Modular)	00178500	08/07/06	23	YES
65	Oct.	2005	Coral Reef Senior (Modular)	00142800	07/27/06	12	YES
66	Oct.	2005	Citrus Grove Middle (Modular)	00168000	10/17/06	108	NO
67	Nov.	2005	Ernest R Graham Elementary (Modular)	A01105	08/04/06	20	YES
68	Nov.	2005	John I. Smith Elementary (Modular)	00177600	01/04/07	177	YES
69	Nov.	2005	Henry M. Flagler Elementary (Modular)	00140500	08/13/06	32	YES
70	Nov.	2005	Kensington Park Elementary (Modular)	00147000	08/03/06	19	YES
71	Nov.	2005	Rockway Middle (Modular)	A01134	08/09/06	25	YES
72	Nov.	2005	Miami Palmetto Senior (Modular)	00178200	08/04/06	20	YES
73	Nov.	2005	Pinecrest Elementary (Modular)	00178100	07/31/06	16	YES
74	Nov.	2005	Centennial Middle (Modular)	A01131	08/12/06	28	YES
75	Dec.	2005	John F. Kennedy Middle (Modular)	A01154	08/13/06	0	YES
76	Dec.	2005	Ojus Elementary	A0821	07/10/07	9	YES
77	Dec.	2005	South Hialeah Elementary (Modular)	A01153	03/02/07	(-84)	YES
78	Dec.	2005	South Miami K-8 Center (Modular)	A01107	02/23/07	(-119)	YES

**MIAMI-DADE COUNTY PUBLIC SCHOOLS
CAPACITY PROJECTS AWARDED (July 2004 through June 2008)**

No.	Date Awarded Month Year		Facility Name	Project Number	Substantial Completion Date	Time Extension in Days (-Early)	Completed In Time For Occupancy
79	Jan.	2006	Winston Park K-8 Center (Modular)	A01092	01/06/07	175	NO
80	Jan.	2006	North County Elementary (Modular)	00177200	07/31/06	16	YES
81	Jan.	2006	Palm Springs Elementary (Modular)	00177300	07/31/06	16	YES
82	Jan.	2006	Hibiscus Elementary (Modular)	00177500	08/04/06	20	YES
83	Jan.	2006	Scott Lake Elementary (Modular)	00177400	07/27/06	12	YES
84	Jan.	2006	Coral Terrace Elementary (Modular)	00177900	08/13/06	29	YES
85	Jan.	2006	Howard Drive Elementary (Modular)	00178400	08/13/06	29	YES
86	Jan.	2006	Perrine Elementary (Modular)	00178300	10/05/06	82	NO
87	Feb.	2006	Young Women's Preparatory	00305900	08/13/06	0	YES
88	Mar.	2006	Frank C. Martin K-8 Center	A01093	08/09/07	28	YES
89	Apr.	2006	S/S "U1" - Spanish Lake Elementary	A0820	12/11/07	62	YES
90	Apr.	2006	S/S "V1" - West Hialeah Gardens Elem.	A0823	08/18/07	34	YES
91	Apr.	2006	S/S "A1" - Goulds Elementary	A01125	08/19/07	50	YES
92	Apr.	2006	Early Childhood Center 1	00170000	08/11/07	67	YES
93	Apr.	2006	Early Childhood Center 2	00170100	08/18/07	74	YES
94	Apr.	2006	Ponce De Leon Middle	A01003	08/10/07	30	YES
95	May	2006	S/S "D" - Aventura Waterways K-8 Cent	A0798	04/14/08	(-17)	YES
96	May	2006	S/S "CC1" - Coconut Palm K-8 Academy	A01031	01/18/08	(-14)	YES
97	May	2006	S/S "DD1" - Mandarin Lakes K-8 Academ	A01089	01/18/08	(-14)	YES
98	May	2006	Miami Lakes K-8 Center	00140101	07/31/06	7	YES
99	June	2006	Miami Central Senior	A01013	08/19/07	51	YES
100	June	2006	Early Childhood Center 3	00170200	08/18/07	74	YES
101	June	2006	Holmes Elementary	00223400	08/07/07	49	YES
102	July	2006	S/S "JJJ" - Hialeah Gardens Senior	A0742	1/09/09 projected	In Construction	
103	July	2006	S/S "MM1" - Hialeah Gardens Middle	A0725	05/30/08	114	YES
104	July	2006	S/S "PP1" - Andover Middle	A01026	05/30/08	114	YES
105	July	2006	S/S "UU1" - Zelda Glazer Middle	A01020	05/30/08	114	YES
106	July	2006	Devon Aire K-8 Center (Modular)	00140600	08/19/07	50	YES
107	Sept.	2006	Miami Lakes K-8 Center (Modular)	00140100	08/18/07	49	YES
108	Sept.	2006	Miami Carol City Senior (Modular)	A0101801	07/24/07	24	YES
109	Nov.	2006	Miami Central Senior (Ph II Cafet.)	A0101301	7/31/08 projected	In Construction	
110	Nov.	2006	Young Men's Prep. & Buena Vista Comp	00305805	07/11/07	0	YES
111	Dec.	2006	S/S "E1" - Arch Creek Elementary	00253000	06/09/08	0	YES
112	Jan.	2007	William Lehman Elementary (Modular)	00138600	08/01/07	1	YES
113	Apr.	2007	Ruth Broad Bay Harbor K-8 Ctr. (Modul	00223100	8/11/08 Projected	In Construction	
114	Apr.	2007	S/S "BB1" - Sunny Isles Beach Commun	A01112	8/11/08 Projected	In Construction	
115	Apr.	2007	S/S "P1" - Dr. Rolando Espinosa K-8	00252700	8/11/08 Projected	In Construction	
116	June	2007	North Miami Senior - Repl. S/S "BBB1"	A01015	6/01/09 Projected	In Construction	
117	June	2007	S/S "W1" - Dr. Manuel Barreiro Elem.	A01032	8/01/08 Projected	In Construction	

**MIAMI-DADE COUNTY PUBLIC SCHOOLS
CAPACITY PROJECTS AWARDED (July 2004 through June 2008)**

No.	Date Awarded Month Year		Facility Name	Project Number	Substantial Completion Date	Time Extension in Days (-Early)	Completed In Time For Occupancy
118	July	2007	S/S "QQQ1"	00254800	5/10/09 Projected		In Construction
119	Sept.	2007	Miami Lakes K-8 Ctr. (Phased Remodeli	00140105	8/11/08 Projected		In Construction
120	Sept.	2007	John A. Ferguson Senior (Modular)	00408200	7/28/09 Projected		In Construction
121	Oct.	2007	Miami Central Senior (Ph III Classrooms	A0101302	3/01/09 Projected		In Construction
122	Nov.	2007	Leewood K-8 Conversion (Modular)	00409100	7/28/08 Projected		In Construction
123	Nov.	2007	Vineland K-8 Conversion (Modular)	00408900	7/28/08 Projected		In Construction
124	Dec.	2007	Southwood Middle (Modular)	A01135	11/10/08 Projected		In Construction
125	Dec.	2007	Law Enforcement & Forensic Studies Sen	00362800	1/12/09 Projected		In Construction
126	Dec.	2007	Young Men's Prep. & Buena Vista Comp	00305800	7/23/08 Projected		In Construction
127	Jan.	2008	S/S "TT1" - @ Keys Gate New K-8	A01106	6/11/09 Projected		In Construction
128	Feb.	2008	S/S "YYY1"	00264700	7/14/09 Projected		In Construction
129	Feb.	2008	Frank C. Martin K-8 Center	A0109301	7/17/09 Projected		In Construction
130	Apr.	2008	E. W. F. Stirrup Elementary (Modular)	00407900	4/15/09 Projected		In Construction
131	Apr.	2008	G. Holmes Braddock Senior	00140800	5/12/09 Projected		In Construction
132	June	2008	Coral Way K-8 Center (Modular)	00395800	1/02/09 Projected		In Construction

LEGEND

	Occupancy on-time without time extension
	Occupancy with less than 90 days time extension
	Occupancy with more than 90 days time extension
	Occupancy later than scheduled occupancy date

NOTES (as of 8/1/2008):

- 1.) Of 132 total Projects awarded, 109 Projects have been completed and occupied, as follows: 104 of 109 (95.4%) Projects completed in time for the originally scheduled occupancy date 45 of 109 (41.3%) Projects completed ahead of the originally scheduled occupancy date 53 of 109 (48.6%) Projects completed with time extension of 90 days or less in time for the originally scheduled occupancy 11 of 109 (10.1%) Projects completed with time extension of more than 90 days 5 of 109 (4.6%) Projects completed after the originally scheduled occupancy date
- 2.) The projects at five schools that were completed after the originally scheduled occupancy date were awarded between October 20 2006, immediately after 3 hurricanes. Additionally, 5 of the 11 schools with time extensions of more than 90 days were in the 3.) The median time extension for the 109 completed projects was 16 days.

Response to Audit Finding #10 “Project Closeout”

As stated in the audit report, District closeout procedures for construction projects are documented and well organized. OSF staff acknowledges that due in large part to the unprecedented volume of school construction undertaken since 2004 the desired timeliness of project closeout activities has not kept pace with the volume of work delivered. As noted in the report, measures had already been implemented to augment in-house staff with specialized consultants to focus exclusively on project closeout. A further realignment of staff will be implemented following the opening of schools in August 2008 to focus additional resources on this important activity.

10.1 Management Response to Recommendation:

A program management firm was hired to assist the District with closeout of construction projects and began work in August 2005. Their original scope of work was to closeout a list of 118 projects; and although the 17 projects in the audit sample were not included in the original group, six were small Maintenance/ADA projects which have already been closed or are in the closeout process.

To date, through the assignment of additional work, the consulting firm has closed-out a total of 275 projects and continues to perform in a satisfactory manner. The effectiveness of the program management firm will continue to be assessed and necessary adjustment will be made, as warranted.

It is important to note that projects which are lacking only documentation are being handled by the closeout team. The team has now been expanded to include of four district professional technical employees and three contracted project managers from the consulting firm; additional District resources will be assigned following the opening of schools in August 2008. Projects which require corrections that go beyond the scope-of-work originally contracted for, will be closed-out and forwarded to the Planning Department for inclusion in the deficiencies database and included in a project at the particular school or facility as funding allows in future issues of the Five-Year Capital Plan.

10.2 Management Response to Recommendation:

Quality control and close-out procedures are in place and are followed by each project manager in accordance with M-DCPS Facilities Planning, Design & Construction Procedures Manual. Final retainage is not released until all requirements identified on the closeout checklist (Page 7-15) are received by the project manager and the Release of Retainage FM-5477 is executed by the Architect, Construction Manager, Project Manager, Executive Director and the Construction Officer. Once the form is executed by all parties it is submitted to Document Control where the project file is reconciled prior to payment.

EXHIBIT #1

Office of Superintendent of Schools
Board Meeting of October 20, 2004

October 6, 2004

Rudolph F. Crew, Ed. D., Superintendent of Schools

**SUBJECT: PROPOSED PLAN OF ACTION TO DELIVER A MINIMUM OF
15,000 STATIONS FOR THE 2005 SCHOOL OPENING**

COMMITTEE: FACILITIES MANAGEMENT

At the September Board meeting, I indicated to the Board that a detailed plan would be presented in October increasing the total number of student stations to be delivered from 5,825 to a minimum of 15,000 for the 2005 school opening. Listed below are all projects adding capacity to be delivered under this timeline. In total, 50 school sites have been identified to accommodate an estimated 17,940 student stations. Of these, 11 were previously funded and scheduled for 2005 school opening, 11 were previously funded but not scheduled for 2005 school opening, and 28 are unfunded new capacity projects now proposed for funding and delivery for the 2005 school opening. These new stations will be delivered through the construction of prototypical modular buildings, which on the average have a construction duration of 5 to 6 months, and have been found to be a very effective way to reduce overcrowding and class size. The list below has been reviewed by the ACCESS Center staff and has received their full endorsement. Each of these schools is currently overcrowded and this condition will only be exacerbated by implementation of the class-size amendment.

Although preliminary site investigations have already been conducted for suitability and readiness for development, adjustments to the total number of stations may be required. Because of the quick pace that we must maintain to achieve our total goal of a minimum of 15,000 student stations by July of 2005, I am recommending that the Board authorize my office to make any adjustments to the list of projects, with the understanding that I will make the Board aware of any changes as we go along. While it is our intent to complete all items awarding the construction contracts for these projects prior to the distribution of the agenda for the Facilities Management School Board Committee meetings, there may be instances where the negotiated cost of the final items may not be available at the time the Committee meeting agendas are distributed. However, the items will be distributed prior to the Committee meeting.

2005 School Openings (FUNDED)		
ACCESS CENTER	PROJECT NAME	Student Stations
	PLC "D1" at Brentwood Elementary	280
	Joella Good Elementary (Modular)	242
	Meadowlane Elementary (Modular)	198
	North Twin Lakes Elementary	130

I	SS "TT" @ Bob Graham K-8 Ed. Ctr.	483
I	Carol City Middle (Modular)	242
I	North Dade Middle (Modular)	242
I	Barbara Goleman Senior (Modular)	275
I	American Senior	180
I	American Senior (Modular)	275
II	Natural Bridge Elementary (Modular)	242
II	Treasure Island Elementary (Modular)	242
III	Coral Park Elementary (Modular)	242
III	Hialeah Elementary	218
III	Miami Springs Middle (Modular)	242
IV	PLC "H1" @ Auburndale Elementary	280
IV	S/S "FF" @ Key Biscayne Elementary	743
IV	S/S "XX" @ Coral Way Elementary	483
IV	Coral Gables Senior	830
V	Kenwood K-8 (Modular)	242
V	Howard McMillan Middle	600
V	Palmetto Middle (Modular)	242
V	Miami Palmetto Senior	220
VI	State School "Z1" @ Miami Heights Elementary	580
VI	Air Base Elementary	60
VI	Whigham Elementary Relief	280
VI	Avocado Elementary (Modular)	242
VI	Peskoe Elementary (Modular)	242
VI	Leisure City Elementary (K-8) (Modular)	242
VI	Redondo Elementary (Modular)	242
VI	Claude Pepper Elementary (Modular)	242
VI	Redland Middle (Modular)	242
Sub-Total 1		9,745

**2005 School Openings
(ADDITIONAL PROJECTS TO BE FUNDED)**

ACCESS CENTER	PROJECT NAME	Student Stations
I	Flamingo Elementary	286
I	Charles David Wyche, J. Elementary	286
I	Henry H. Filer, Middle	242
I	Hialeah Miami Lakes Senior	275
II	Crestview Elementary	286
II	Hubert O. Sibley Elementary	286
II	Norland Middle	242
II	North Miami Beach Senior	550
III	Seminole Elementary	242
III	Sweetwater Elementary	286
V	David Fairchild Elementary	242
V	Zora Neal Hurston Elementary	286

V	Kendale Elementary	242
V	William Lehman Elementary	286
V	Snapper Creek Elementary	286
V	Sylvania Heights Elementary	286
V	Bowman Foster Ashe Elementary	286
V	Coral Reef Elementary	242
VI	Bel-Aire Elementary	242
VI	Campbell Drive Elementary	286
VI	Caribbean Elementary	286
VI	Florida City Elementary	286
VI	Kendale Lakes Elementary	286
VI	Pine Villa Elementary	286
VI	Cutler Ridge Elementary	242
VI	Redland Elementary	286
VI	Campbell Drive Middle	286
VI	Cutler Ridge Middle	572

Sub-Total 2	8,195
Total	17,940

Funding in the amount of up to \$100,000,000 will be secured for the new work through proceeds from issuance of a bond anticipation note which will ultimately be retired with a future Certificate of Participation. (E-71)

RECOMMENDED: That The School Board of Miami-Dade County, Florida:

- 1) approve the preliminary list of additional projects as noted above, for funding, construction and delivery in time for the 2005 school opening;
- 2) authorize an amendment to the educational facilities work plan to reflect \$100M in new funding for the new work; and
- 3) authorize the Superintendent to make adjustments as needed to the list of projects above.

RFC/OFC/ARC

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EXHIBIT #2

JUNE 2004

SCHOOL

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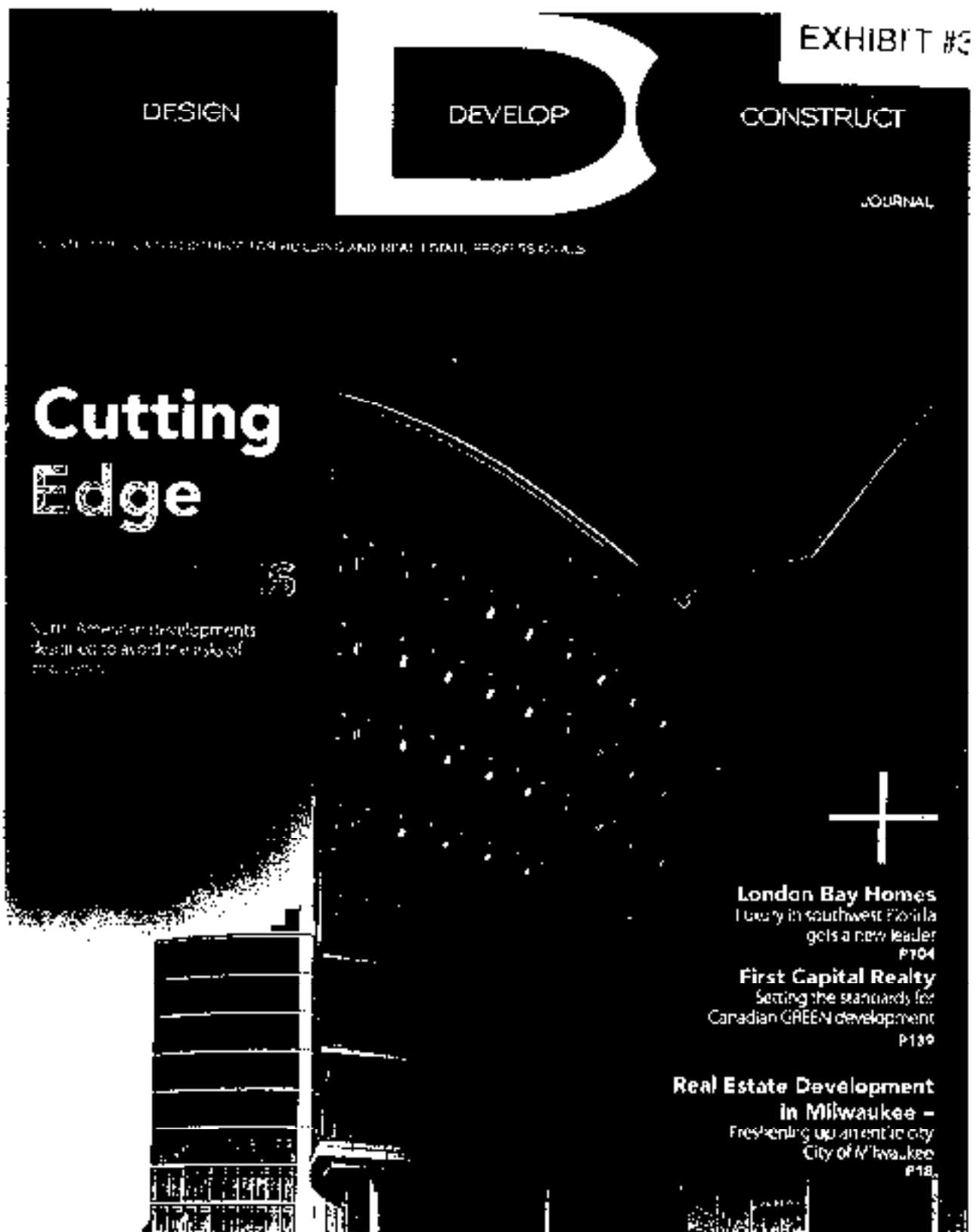
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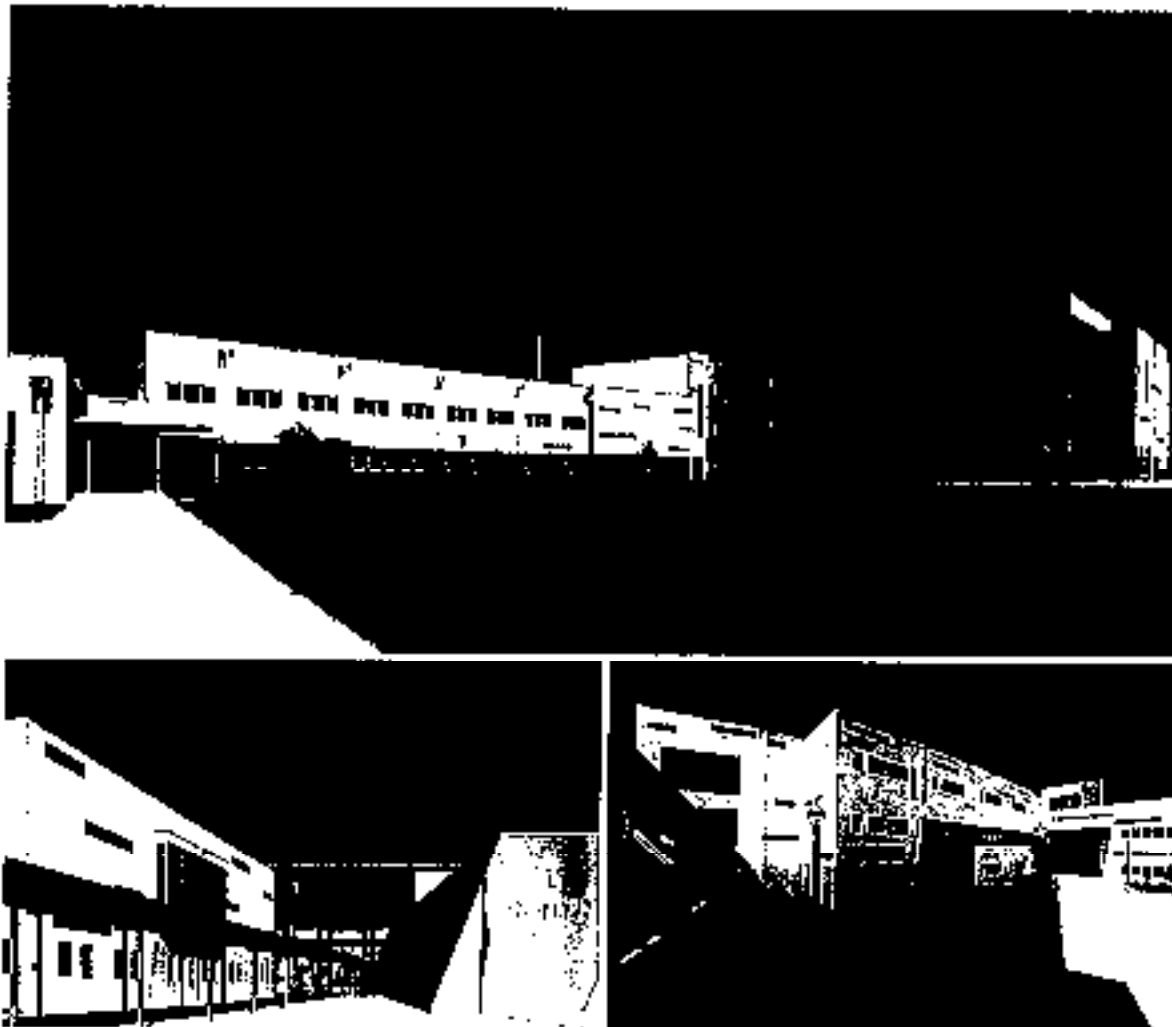
Showcase

**Managing Environmental,
Safety, and Health Issues**

**Facts on the
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Through Science**





Eco-Friendly Design:

Construction Projects at Public Schools

Miami-Dade County Public Schools is using green design to help solve the problem of overcrowding in schools. A new school will be built in the city of Miami, designed to be an eco-friendly building.

The new school will be built in the city of Miami, designed to be an eco-friendly building. The school will be built in the city of Miami, designed to be an eco-friendly building.

The school will be built in the city of Miami, designed to be an eco-friendly building. The school will be built in the city of Miami, designed to be an eco-friendly building.

>>Miami-Dade County Public Schools
 12000 SW 12th Ave, Suite 100, Miami, FL 33155
 Local News: 305-375-1234

The school will be built in the city of Miami, designed to be an eco-friendly building. The school will be built in the city of Miami, designed to be an eco-friendly building.

EXHIBIT #4

Office of Superintendent of Schools
Board Meeting of January 18, 2006

January 5, 2006

Office of School Facilities
Rose Diamond, Chief Facilities Officer

**SUBJECT: APPROVAL OF GUARANTEED MAXIMUM PRICE (GMP)
JASCO CONSTRUCTION COMPANY, INC.
PROJECT NO. A01092
K-8 CONVERSION - MODULAR CLASSROOM ADDITION
WINSTON PARK ELEMENTARY SCHOOL
13200 SW 79 STREET, MIAMI, FLORIDA**

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

At its meeting of July 13, 2005, the Board commissioned Jasco Construction Company, Inc. as CM-at-Risk for a "one, two or more story prototype addition at various sites". This contract provides for construction services to the Board and a Guaranteed Maximum Price (GMP) for construction.

The GMP for Modular Classroom Addition, by the Construction Manager, Jasco Construction Company, Inc. is \$14,266,702 (contingency included \$1,298,701). The Project Architect's estimate is \$14,426,003 and the independent cost estimate is \$14,126,635. This GMP covers all required work and includes subcontracts, materials, contingency, general conditions, bond, and overhead and profit.

Fund Source

Fund	0394
Program	2379
Location	5961

Description

This project is for a new 3-story modular building, consisting of 617 student stations, administration area, typical MLC classrooms, including art, music, ESE, 2 foreign language, computer, 2 PE and 20 intermediate classrooms, PE shelter with storage and office, new emergency generator, fire alarm and P/A replacement for the existing school, new hardcourts, PE field restoration, landscape, irrigation, drainage, on-and-off-site water main extensions, fire lane and parent drop-off.

In order to accommodate the sixth grade on campus for the 2006/07 school year, separate projects have been initiated through miscellaneous CM-A; Risk contracts amounting to \$4,000,000. Additionally, the kitchen/dining expansion, renovation and remodeling will be done through a separate GMP.

This project is scheduled for substantial completion within 365 calendar days from the Notice to Proceed with guaranteed delivery of the classroom building (1st floor) by July 15 2006

The Project Architect, Wolfberg Alvarez & Partners and staff recommended approval of the GMP

The Principal/Owner of Jasco Construction Company, Inc. is Mr. Esteban L. Suarez. This company is located at 13317 SW 124 Street, Miami, Florida 33186.

MAYBE Eligibility
None

RECOMMENDED: That The School Board of Miami-Dade County, Florida, approve the GMP for Jasco Construction Company, Inc., Project No. A01092, K-8 Conversion - Modular Classroom Addition, Winston Park Elementary School, in the total amount of \$14,286,702 which includes building cost, site cost and a contingency in the amount of \$1,298,791

JAVnc

Page 2 of 2

The School Board of Miami-Dade County, Florida, adheres to a policy of nondiscrimination in employment and educational programs/activities and programs/activities receiving Federal financial assistance from the Department of Education, and strives affirmatively to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin.

Title VII of the Civil Rights Act of 1964, as amended - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of gender.

Age Discrimination in Employment Act of 1967 (ADEA), as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

The Equal Pay Act of 1963, as amended - prohibits sex discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled.

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

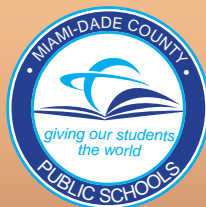
The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

Florida Educational Equity Act (FEEA) - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

Florida Civil Rights Act of 1992 - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

School Board Rules 6Gx13- 4A-1.01, 6Gx13- 4A-1.32, and 6Gx13- 5D-1.10 - prohibit harassment and/or discrimination against a student or employee on the basis of gender, race, color, religion, ethnic or national origin, political beliefs, marital status, age, sexual orientation, social and family background, linguistic preference, pregnancy, or disability.

Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 295.07 (Florida Statutes), which stipulate categorical preferences for employment.



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