

Office of School Board Attorney
Johnny Brown, Board Attorney

**SUBJECT: BETTER CONSTRUCTION, INC. v. THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA, Case No. 94-1319 CA (27) 14**

On January 22, 1997, the Board approved a settlement with Better Construction, Inc. to resolve a judgment entered against the Board in the subject lawsuit. After the Board approved that settlement, counsel for Better Construction insisted the Board accept responsibility for any damages under the performance bonds that had been issued for five projects the contractor was working on before termination. It was Better Construction's position that the Board was responsible for the cost to complete the projects while the contractor would be responsible for any claims by subcontractors under the payment bonds. It was confirmed to the Court that the School Board would be responsible to pay the performance bond claims in light of the judgment.

Negotiations with the contractor's and the surety's counsel were engaged in an effort to determine the amount of the performance bond claims that the School Board would be obligated to pay. Pursuant to those negotiations, it was estimated that performance bond claims would not exceed \$900,000. On May 7, 1997, the Board authorized settlement and agreed to undertake responsibility for the performance bond claims of Fireman's Insurance Company of Newark, New Jersey on two Elementary School projects. There was no specific amount requested in that authorization, however, an \$825,000 payment was negotiated with the surety for these performance bond claims.

In July 1998, pursuant to litigation with its surety company, the Court ordered Better Construction to pay \$475,000 to the Fireman's Fund. In October 2000, Better Construction returned to Circuit Court claiming that approximately \$350,000 of the \$475,000 payment was for performance bond claims that the School Board was required to repay to Better Construction. The School Board's Outside Counsel defended the claim based upon the dismissal of the prior case and the releases, which appeared to relieve the Board of further responsibility. On October 9, 2002, after an evidentiary hearing, the Court agreed with Better Construction and ordered the School Board to make an additional payment of approximately \$350,000, plus interest, for the performance bond claims. The School Board appealed, and on August 13, 2003, the Third District Court of Appeal affirmed the Circuit Court's decision, without a formal opinion. That opinion is now final, therefore, the School Board is obligated to pay the final judgment including interest at the legal rate of 9%.

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Interest has been calculated through September 15, 2003, to enable the Administration sufficient time to secure payment. The amount of the final judgment, including interest through September 15, 2003, is \$397,354.30.

A detailed memorandum explaining the judgment and requesting the School Board to authorize payment has been provided to the Board under separate cover.

RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the payment of \$397,354.30 to Better Construction, Inc. in accordance with the settlement authorized by the Board on January 22, 1997 and May 7, 1997, and pursuant to the final judgment entered against the School Board by the Circuit Court of Miami-Dade County, Florida, on October 9, 2002.

JB:pr