

Office of School Board Attorney  
Walter J. Harvey, Board Attorney

**SUBJECT:       REQUEST APPROVAL OF PRE-LITIGATION SETTLEMENT OF CLAIMS BY DIPOMPEO CONSTRUCTION CORP., RELATED TO SIZING OF MAIN ELECTRICAL SERVICE WIRING AND CONDUIT FOR PARTIAL REPLACEMENT PHASE I, SOUTHWEST MIAMI SENIOR HIGH SCHOOL, PROJECT NO. 00363500**

This matter involves a pre-litigation settlement of claims by the Contractor, DiPompeo Construction Corp. "Contractor," arising out of a hard-bid contract for the construction of Partial Replacement Phase I, Southwest Miami Senior High School, Project 00363500 "Project."

#### **BACKGROUND**

After the Contractor commenced work on the Project, a dispute arose due to an alleged error in the architectural drawings prepared by Wolfberg-Alvarez & Partners (A/E). The dispute pertains to concerns to the appropriate sizing of the main electrical service wiring and conduits for the Project. Based on a clarification subsequently issued by the A/E concerning the dispute, the Contractor asserted that additional work would be required and, as a result, asserted claims for (i) additional compensation in the amount of approximately \$312,000 and (ii) an extension of the Contract term up to August 13, 2012, to complete the additional work. In reliance on the A/E's position that the Contractor's claims were without merit, District staff directed the Contractor to proceed with the alleged additional work pursuant to the General Conditions of the Contract so that the project could be completed prior to the beginning of the 2012-13 school year. In accordance with the Contract, the Contractor could only pursue its claims for compensation through formal legal action. Thereafter, the Contractor and District staff, with assistance from the A/E, began settlement discussions in an effort to resolve the Contractor's claims prior to the filing of any formal litigation.

#### **PROPOSED SETTLEMENT**

On May 10, 2012, a tentative agreement was reached with the Contractor to fully resolve the Contractor's disputed claims relating to the appropriate sizing of the main electrical service wiring and conduits. The Settlement Agreement states that the District shall pay the Contractor the total amount of \$120,542.42 within ten (10) business days and extend the date required for substantial completion of Phase I of the Project. The work is from April 30, 2012, to May 31, 2012, with no extension of the August 13, 2012,

substantial completion date for the Project. In addition, the Contractor agrees to waive any and all claims for additional extensions of time and any and all claims for additional time-related compensation for all matters, known or unknown, through May 9, 2012. District staff will pursue recovery of these additional costs from the A/E and its insurer to the extent appropriate and allowable under the terms and conditions of the A/E's agreement.

The proposed Settlement Agreement is recommended as being in the best interest of the Board, and District staff is in agreement with the proposed Settlement. In addition, all facilities are expected to be available for use by the beginning of the 2012-2013 opening of schools. A copy of the proposed Settlement Agreement executed by the Contractor and Administration will be provided to the Board members under separate cover prior to the June 13, 2012, Board Meeting.

**RECOMMENDED:**

That The School Board of Miami-Dade County, Florida (i) approve the proposed pre-litigation Settlement Agreement between DiPompeo Construction Corp. and the Board as specifically identified, (ii) authorize the Superintendent to execute payment in the manner amount of \$120,542.42 and in prescribed and as more fully described in the Settlement Agreement, and (iii) approve the Settlement Agreement and Release for the Partial Replacement Phase I, Southwest Miami Senior High School, Project No. 00363500.