

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

SUBJECT: APPROVAL OF PROPOSED SETTLEMENT

**SKANSKA BUILDING USA, INC. v. THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA - CASE NO. CASE NO. 10-59510 CA 11
(ASSOCIATED WITH MIAMI CENTRAL SENIOR, PHASE IV, PROJECT
A0101303)**

This matter involves a settlement of litigation of claims asserted by Skanska Building USA, Inc. (Skanska) against the School Board (Board) arising out of a contract entered into between the Board and Skanska in connection with the above subject project.

BACKGROUND:

On May 10, 2006, the Board commissioned and entered into a Construction Manager at-Risk Agreement (Agreement) with Skanska to perform pre-construction services for a total fee of \$245,000 for Miami Central Senior Phases II, III and IV (Projects A0101301, A0101302 and A0101303 respectively). Guaranteed Maximum Price (GMP) Amendments were subsequently approved by the Board for the construction of Phases II and III of the Project. On March 25, 2009, and prior to a GMP Amendment being presented to the Board for the construction of Phase IV of the Project, the Board approved terminating Skanska for convenience only as to Phase IV of the Project. At the time of the termination, Skanska had not yet performed the bidding and GMP proposal portions of the pre-construction services for Phase IV of the Project.

Following the termination for convenience, Skanska claimed it was entitled to receive the full balance of the unpaid total pre-construction services fee, additional compensation for extra pre-construction services and reimbursement for termination expenses. Facilities staff asserted that Skanska was not entitled to receive a service fee for that portion of the pre-construction because Skanska had not performed on Phase IV of the Project, and that Skanska was not entitled to payment for any other claims. On November 12, 2010, Skanska filed a lawsuit against the Board for the aforementioned claims as well as interest and attorney's fees.

PROPOSED SETTLEMENT:

A proposed settlement of Skanska's claims has been agreed to by the parties pending approval by the Board. Upon approval of the proposed settlement by the Board, Skanska shall be paid the amount of \$62,000 from the remaining unpaid balance of the pre-construction services fee of \$70,000 and the Board shall retain the amount \$8,000

as a credit for that portion of pre-construction services not performed by Skanska at the time of the termination for convenience. As other litigation is pending between Skanska and the Board with regard to Phases II and III of the Project, the parties will execute limited releases only as to the pre-construction services for Phase IV part of the Project.

Outside legal counsel, the School Board Attorney's office and administrative staff agree with this recommendation as being in the best interests of the Board. A copy of the Settlement Agreement will be made available under separate cover prior to the Board meeting of April 13, 2011.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, approve the proposed Settlement Agreement in the case of Skanska Building USA, Inc. v. The School Board of Miami-Dade County, Florida – Case No. 10-59510 CA 11 (Associated with Miami Central Senior, Phase IV, Project A0101303).