

Mr. Danny Espino, Vice Chair

SUBJECT: SCHOOL CONSTRUCTION TASK FORCE
COMMITTEE: FACILITIES & CONSTRUCTION
LINK TO STRATEGIC PLAN: EFFECTIVE & SUSTAINABLE OPERATIONAL PRACTICES

Miami-Dade County Public Schools (MDCPS) is committed to providing safe and modern learning environments for all students. Over the years, M-DCPS has undertaken numerous school construction projects to meet the growing needs of our student population. These projects have included the construction of new schools, the renovation of existing facilities, and the installation of modern technology and equipment.

All MDCPS construction projects fall under the oversight of the Office of Capital Improvement, which is committed to building the future in a safe, encompassing, and responsible manner. This office manages the design, pre-construction, construction, and warranty of capital projects of all MDCPS facilities.

During the last two years there have been several audit findings that have raised concerns regarding the processes and procedures that are in place to manage District construction projects. During the September 19, 2022, Audit and Budget Advisory Committee (ABAC) meeting, the committee was presented with an Internal Audit Report titled "Audit of The District's Construction Warranty Process." This audit found that of the ninety-two work orders reviewed fifty-three work orders with repair expenses totaling \$151,276, were no longer under warranty, due to time limitations, but that there was no documentation or other definitive evidence to demonstrate that these projects were not under warranty. Two of the work orders totaling \$5,132 were not clear as to the location of the item requiring repair to determine if it was under warranty. Fourteen repairs totaling \$23,093, were under warranty but were paid for by the District. The audit found that the District lacked a consistent, standardized tracking mechanism to identify warranty status efficiently and effectively and therefore had no true way to ascertain if taxpayer dollars were being spent on projects that should have been covered by warranties.

The May 2023, State of Florida Auditor General's Operational Audit found that MDCPS was 159 days late in reporting to the Florida Department of Education (FDOE) the annual average construction cost per student station and actual cost of completed construction projects, as required by State law. During the 2021 calendar year, the District completed four new construction projects totaling \$41.4 million and this information was due to the State by March 25, 2022. The District submitted the required project information on August 31, 2022.

Multiple concerns have been raised by the Builders Association of South Florida (BASF) and The Associated General Contractors (AGC) regarding issues related to non-compliance with the Florida Prompt Pay Act and construction retainage. As it relates to public construction projects, the Florida Prompt Pay Act requires that public jobs be paid within 25 days of invoice approval. Potential failure to meet these deadlines is of great concern, specifically to small construction companies that require prompt payment to be able to purchase needed supplies and pay their employees. Retainage in construction projects refers to the portion of a contract price that is withheld as a form of security against the contractor's performance. The retainage percentage is typically 5% and it is held until the project is completed and accepted by the District. The retainage is then released to the contractor after the final inspection. An informal survey conducted by AGC in 2021 of its members who conduct business with the District, found that 70% of respondents had final retainage payments withheld an average of 19-25 months after substantial completion had been achieved. The same survey found that 70% of respondents claimed that the longest it had taken MDCPS to release final retainage had been 25 months. Florida statutes regulate the withholding of construction retainage to within 30 days for projects under \$10 million and within 30 days or up to 60 days if the project is over \$10 million. The concern voiced by contractors is that the process for the retainage to be released needs to be reviewed to allow for expedited access to the final payment once projects are completed.

To increase the transparency, efficiency, and effectiveness of the District's school construction process, and ensure alignment and compliance with pertinent State statutes and Board Policy, the Board may benefit from the establishment and implementation of a School Construction Task Force. This task force will be responsible for identifying the root causes of inefficiencies in this process and developing solutions for, among other things, improvement to general contract conditions, deadlines required by State and Federal Law, compliance with the Florida Prompt Pay Act, improved construction retainage and project close out practices, and the development of procedures to improve the tracking of project warranties.

The School Construction Task Force's role is strictly advisory. This task force will not interfere with or contradict Board Policy 6320.03 (BIDS AND AWARD OF CONSTRUCTION CONTRACTS PROCEDURES AND REGULATIONS) or any other pertinent State law or regulation. Instead, the task force will review school construction related inefficiencies regularly and make recommendations to the Board.

The School Construction Task Force shall remain in existence from its inception for no more than 120 days to provide the Board policy recommendations. The Task Force shall sunset upon presenting the Board with its recommendations unless extended by an affirmative vote of the Board. To ensure stakeholder and community involvement, each Board Member will appoint one member and an alternate to the task force from the school construction field, specifically contractors, engineers, or architects that have done business with the District within the last five years.

District participation will be ensured by the Superintendent of Schools appointing two staff members from the Facilities Construction Committee. These two members of the School Construction Task Force will be ex officio (non-voting) members.

This item seeks to direct the Superintendent of Schools to establish a School Construction Task Force. The task force will work towards achieving the objectives outlined in this item and provide recommendations on its operations, including staff support, meeting frequency, reporting to the Board, and any other suggestions regarding its composition.

This item has been reviewed and approved by the General Counsel's Office as to form and legal sufficiency.

**ACTION PROPOSED BY
MR. DANNY ESPINO:**

That the School Board of Miami-Dade County, Florida, authorize the Superintendent of Schools to explore the feasibility of creating a School Construction Task Force as delineated in this item and to make recommendations as to the proposed task force's operations, inclusive of but not limited to, staff support, number of meetings, issuance of reports to the Board, and any further recommendations by the August 9, 2023 Facilities Construction Committee Meeting.