

Resolution 2021-22: 99
Authorization to Engage in Mediation

By Board Member Perrin

WHEREAS, the Rochester School Facilities Modernization Program Act (“School Modernization Act”) established the Rochester Joint Schools Construction Board (“RJSCB” or “Board”), a seven voting member board consisting of equal representation by the City of Rochester (“City”) and the Rochester City School District (“District”), as well as a member jointly selected by the City and the District; and

WHEREAS, under the School Modernization Act, the RJSCB has certain enumerated powers to act as agent for the District, the City, or both; and

WHEREAS, the authorizing legislation for Phase 2 of the Rochester Schools Modernization Program (“RSMP”) was signed into law by the Governor of the State of New York on December 17, 2014; and

WHEREAS, the amended Act authorized up to 26 projects in Phase 2 of the RSMP including a District Wide Technology program which involves technology upgrades and infrastructure work at several of the possible projects; and

WHEREAS, the RJSCB contracted with Hewitt Young Electric, LLC (“HYE”) for the electrical construction work for the East Campus Project (the “Project”); and

WHEREAS, on September 13, 2021, HYE commenced an action in NYS Supreme Court, Monroe County against the RJSCB seeking to recover damages for breach of contract and *quantum meruit*, arising out of HYE’s contract to perform electrical construction work on the Project (the “Action”); and

WHEREAS, the RJSCB has answered HYE’s complaint, denied the substantive allegations and asserted counterclaims in connection with HYE’s deficient performance on the Project; and

WHEREAS, RJSCB filed a third-party complaint in the Action for indemnity, contribution, breach of contract and negligence against the Project’s construction manager (The Pike Company), architect (Cannon Design, Inc.) and electrical engineer (Popli Design Group) based on their actions or inactions relative to the unauthorized and unapproved installation of an electrical bus duct system by HYE (Resolution 2021-22:96); and

WHEREAS, during the Executive Session of the RJSCB on April 11, 2022, the RJSCB’s General Counsel Bond, Schoeneck & King (“BSK”) briefed the Board on the status of the Action and the potential next steps in the litigation process; and

WHEREAS, the RJSCB considered the recommendations of BSK and, after due deliberation, it determined that it is in the best interests of the RJSCB that it attempt to resolve the Action through settlement discussions facilitated by third-party, non-binding mediation.

NOW THEREFORE, BE IT RESOLVED:

1. It is in the best interests of the RJSCB that it attempt to resolve the Action by way of settlement discussions facilitated by third-party, non-binding mediation; and
2. BSK is hereby authorized in the name and on behalf of the RJSCB to enter into settlement discussions through mediation with HYE and the other named parties in the Action and report back to the Board on the status of those discussions; and
3. The execution and delivery of any such settlement agreements, or other documents, instruments or agreements deemed necessary or advisable in connection therewith, shall require the approval of the RJSCB.

Second by Board Member Dudley

Approved 6-0