

Resolution 2018-19: 56

Settlement Between RJSCB and Homeguard Environmental Services, Inc. - Phase 1

By Vice Chair Schmidt

WHEREAS, the Rochester School Facilities Modernization Program Act (“the 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 Act, the RJSCB has certain enumerated powers to act as agent for the District, the City, or both; and

WHEREAS, the RJSCB approved the award of the general contractor contract to Manning Squires Hennig Co., Inc. (“MSH”) for the School 17 project in Phase I (Resolution 2012-13: 14); and

WHEREAS, the RJSCB entered into a contract with MSH (Resolution 2012-13: 14) dated July 2, 2012 (the “Contract”), to perform the scope of services defined in the contract documents as the general contractor’s scope of work; and

WHEREAS, MSH entered into a subcontract with Homeguard Environmental Services, Inc. (“Homeguard”) for the School 17 project in Phase 1 (the “Subcontract”); and

WHEREAS, in 2014, Homeguard initiated a lawsuit, arising out of the Subcontract, against MSH, The Pike Company, Landon & Rian Enterprises Inc., Gilbane Building Company, the District, the City and the RJSCB, in the State of New York, Supreme Court, County of Monroe Index No. 14-05394 (the “Action”); and

WHEREAS, the Board authorized Harter, Secrest & Emery LLP (“HSE”) to enter into settlement discussions with Homeguard and the other parties to the Action to attempt to resolve the Action (Resolution 2017-18: 158); and

WHEREAS, HSE has recommended to the Board that it fully and finally resolve the Action through the payment of \$46,666.67 to Homeguard in exchange for a release and the discontinuance of the Action with prejudice; and

WHEREAS, the RJSCB considered the recommendations of HSE and after due deliberation, it determined that it is in the best interest of the RJSCB to resolve the Action on the terms set forth above and avoid the burden, uncertainty, delay, expense and distraction of continued litigation.

THEREFORE, BE IT RESOLVED:

1. The proposed settlement between the RJSCB and Homeguard as set forth above is hereby approved; and
2. The Chair and HSE are authorized in the name and on behalf of the RJSCB, to execute any necessary instruments to effectuate the settlement described above.

Second by Board Member Jones

Approved 7-0