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VIA ELECTRONIC CORRESPONDENCE

April 10, 2017

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File No: 8.DC.52 & 77

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
RE: DOJ No. 90-5-1-1-4022/1
Tom.Mariani@usdoj.gov

Chief, Clean Water Enforcement Branch
Water Protection Division
Attn: Brad Ammons
U.S. Environmental Protection Agency, Region 4
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Ammons.Brad@epa.gov

Rachael Amy Kamons
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Florida Department of Environmental Protection
Southeast District – West Palm Beach
3301 Gun Club Road, MSC 7210-1
West Palm Beach, FL 33406
Attn: Compliance/Enforcement Section
Jason.Andreotta@dep.state.fl.us

RE: Consent Decree (Case: No. 1:12-cv-24400-FAM)
Reference DOJ Case No. 90-5-1-1-4022/1
Section XI, Paragraph 52 – Force Majeure
Section XVII, Paragraph 77 – Notices
Force Majeure Notification Letter for Consent Decree Appendix D-2, Capital Improvement Project 1.2, Oxygen Production located at the South District Wastewater Treatment Plant

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), Miami-Dade County (County) notified United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP), via email, on March 27, 2017 of a delay in the Appendix D-2 Capital Improvement Project (CIP) 1.2 Oxygen Production located at the South District Wastewater Treatment Plant (SDWWTP), 23300 S.W. 88 Avenue, Miami, FL. A delay has occurred in the execution of this project when the County did not receive bids for the compressor equipment needed for CD 1.02 SDWWTP Oxygen Production. Acquisition of this equipment is considered critical to the overall completion schedule for this project due to the extended period needed for fabrication and delivery of equipment on-site in support of construction which is more than a year in duration.

In accordance with Section XI, Paragraph 52, this notification letter shall further describe and explain the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; County's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; a statement as to whether, in the opinion of the County, such event may cause or contribute to an endangerment to public health, welfare or the environment, and documentation to support the force majeure claim.

Initial schedule challenges

In the course of setting up the process to address all of the Consent Decree projects, the County recognized the need to bring on additional staff to meet the aggressive schedules mandated by the Consent Decree. This was done by contracting with a professional consultant team of experts (led by AECOM) to assist the County in Program Management and oversight of multiple Design Services contracts. The process for hiring Engineering firms in the State of Florida is regulated under Florida Statute 287.055 "The Consultants Competitive Negotiation Act". As detailed in the First Status Report to the Court dated August 29, 2014, there was a lengthy delay in procuring the Program Management and Design Professional Firms. This resulted in a late start in the validation and design of several projects, specifically those with CD compliance dates ending 2016 through 2019, which includes this project. In addition, dates for downstream activities have been affected as is evident in the County's requests for modification of interim milestones. (Five requests submitted to EPA/FDEP in 2016 and three in 2017 to date.) Overlapping/expediting of interim activities planned to complete respective projects in accordance with the final CD milestone date has proven to be a challenge.

Explanation and description of the reasons for the delay

CD CIP 1.2 includes (1) upgrade of existing Joy Compressor No. 3 from 100 to 125 ton/day unit, (2) installation of a new Joy Compressor No. 4 rated at 125 ton/day, and (3) construction of a new two story Electrical Building including installation of new ancillary electrical equipment (i.e., two 5000 kVA Transformers, two 5 kV Switchgears, two 15 kV Switchgears) needed to power Compressors No. 3 and 4.

To expedite the overall construction schedule for this project, the compressors were procured separately from the procurement of the general contractor due to an extended period needed for shop drawing review, fabrication, testing, and delivery of Compressor No. 4 which is estimated to take 400 days. Because the existing Joy Compressor No. 3 was to be upgraded, WASD believed it was cost effective to procure the same manufacturer not only to upgrade Compressor No. 3 but also to provide new Compressor No. 4. In addition, it would provide cost savings on training operations staff on the use of new technology. Thus, Ingersoll Rand (IR), the manufacturer of the Joy Compressor No. 3, was contacted early in the design phase to assist the design consultant, CH2M, in the development of the technical specifications and contract documents needed for the procurement of Compressors No 3 and 4. During this time, IR became a registered Vendor with Miami-Dade County and joined the County's Contract Pool 6819, accepting all terms and conditions of this specific Contract.

The compressors were advertised on February 2, 2017 under the County's Contract Pool 6819. Two pre-bid meetings were scheduled, February 8, 2017 and March 1, 2017. Attendees included Condo and IR. Question and answer period ended March 08, 2017. Bids were due March 24, 2017. No bids were received by the County.

Actions taken or to be taken to prevent or minimize the delay

As a result of not receiving bids on March 24, 2017, the County conducted a post solicitation briefing with IR on March 28, 2017. IR's main reason for not submitting a bid was the County's indemnification language included in the terms and conditions which were previously accepted by IR in joining the 6819 Contract Pool. IR was requested to provide the County with their proposed modifications to the indemnification language for consideration by County attorneys. Modifications were received March 30, 2017 and are currently under review.

Depending on the outcome of the negotiation between the County and IR, the County will consider the available options to determine the best course of action to execute this project, minimizing delays.

Anticipated duration of the delay

The County anticipated issuing Notice to Proceed (NTP) to IR on June 5, 2017 starting the preparation of shop drawings for fabrication of Compressor No. 4. If the County cannot come to contract terms with IR, the County anticipates a major project delay extending the substantial completion date. This additional time would be required for the following: (1) CH2M to modify the design and contract documents, opening the contract to other compressor manufacturers that would replace, rather than upgrade Compressor No. 3, eliminating the need to engage IR, (2) re-initialize procurement of the compressors with the revised contract documents, (3) re-initialize procurement of the general contractor with revised design and contract documents, and (4) fabrication of two new compressors. If the County can come to contract terms with IR, the County anticipates a project delay of 90 days for completion of negotiations and re-initializing the procurement process which would extend the substantial completion date from September 13, 2019 to December 12, 2019.

Schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay

WASD has taken or will take the following steps (in sequence) to prevent or mitigate delay or the effect of the delay:

1. Consider and negotiate contract terms and conditions with Ingersoll Rand
2. Determine best available options

3. Revise contract documents (i.e., contract, drawings, specifications) and re-initialize procurement process for compressors and general contractor

Rationale for attributing such delay to a force majeure event

As defined in Section XI, Paragraph 51, "Force Majeure," is defined as any event arising from causes beyond the control of the County. It is out of the County's control to control the actions of bidders during the procurement process. Although it was identified that IR disagrees with the County's indemnification language during procurement of the Compressors and this was the lead reason IR did not submit a bid, it was IR's responsibility to bring any issues with County's contract language to the attention of the County before agreeing and accepting to the County's terms and conditions in joining the County's 6819 Contract Pool. Due to IR's actions, the County would not have been aware or realized IR had any issues with County's terms and conditions until they were raised during the procurement of the compressors which has led to a project delay.

Cause or contribute to an endangerment to public health, welfare or the environment

The upgrade and installation of two new 125 ton/day oxygen compressors at the SDWWTP will ensure continued, uninterrupted production, of pure oxygen needed to sustain and support biological treatment of the incoming wastewater required to achieve effluent limits; however, there is no indication that it presents an immediate endangerment to the public health, welfare or the environment.

Should you have any questions regarding this matter, please call me at (786) 552-8894.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Sincerely,

A handwritten signature in blue ink that reads "maricela j. fuentes". The signature is written in a cursive, lowercase style.

Maricela Fuentes, P.E.
Assistant Director, Capital Projects

cc: Jonathan A. Glogau
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