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VIA ELECTRONIC CORRESPONDENCE

May 18, 2017

CCN: 61058
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
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Florida Department of Environmental Protection
Southeast District – West Palm Beach
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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 – Potential Delay
Section XVII, Paragraph 77 – Notices
Potential Delay Notification Letter for Consent Decree Appendix D-2, Capital Improvement Project 2.19, Co-gen Facility located at the Central 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 May 5, 2017 of a delay in the Appendix D-2 Capital Improvement Project (CIP) 2.19 Co-gen Facility located at the Central District Wastewater Treatment Plant (CDWWTP), 3989 Rickenbacker Causeway, Miami, FL 33149. A delay has occurred in the execution of this project during its procurement phase as explained below which may delay the CD compliance date of March 31, 2019.

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; 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.

Explanation and description of the reasons for the delay

On September 3, 2014, the Board of County Commissioners (“BCC”) approved Ordinance No. 14-77 to accelerate CD projects through the County’s procurement process (the “Acceleration Ordinance”). See Section 2-8.2.12 of the Code of Miami-Dade County, attached hereto as Attachment A. The County’s standard procurement process requires contracts to be reviewed by a commission committee and subsequently by the BCC prior to being awarded and executed. The Acceleration Ordinance accelerates the procurement process by authorizing the County Mayor or his designee to take certain actions, including the award and execution of contracts, which are only subject to ratification by the BCC. However, in order for the County Mayor or his designee to award such contracts, there must be no bid protests, the contractor must meet certain ratings and submit required documentation and the base value of a recommended award cannot exceed the base estimate by more than ten percent (10%). As described below, the procurement for CD 2.19(2)a does not meet the requirements of the Acceleration Ordinance. Therefore, the item is being processed for approval through the County’s standard procurement procedures. This may result in a delay to the CD compliance date of March 31, 2019.

CD 2.19 includes installation of two new cogeneration engines, cogeneration building improvements, replacement of biogas pipeline and installation of biogas conditioning system. The project is executed through three separate child projects or subprojects: CD 2.19(1) Installation of two new Cogeneration engines, CD 2.19(2)a Replacement of biogas pipeline and installation of biogas conditioning system, CD 2.19(2)b cogeneration building improvements. The delay reported herein is related to subproject CD 2.19(2)a.

During the procurement of the contractor for subproject CD 2.19(2)a, two bids were received by the County on February 15, 2017; one from Poole & Kent Company of Florida (P&K) with a total bid price of \$38,319,800 (including dedicated allowances and contingencies) and the other from PCL Construction Inc. with a total bid price of \$39,517,600. The construction cost estimate as advertised was \$32,275,595. As per the AACE International Recommended Practices, the estimate was developed based on a Class 2 Opinion of Probable Construction Cost (OPCC) in August 2016. The lowest bid price was 18.7% higher than the advertised construction cost estimate including allowances.

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

After obtaining BCC approval and awarding P&K, the County will initiate negotiation with the Contractor with an objective of shortening the construction duration by considering accelerated construction methods and additional resources necessary to achieve the CD compliance date. Depending on the outcome of the negotiation between the County and P&K, 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 anticipates a maximum project delay of 144 calendar days extending the CD compliance date from March 31, 2019 to August 22, 2019. This additional time would be required to comply with the County's procurement process and approvals.

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

The County will take the following steps (in sequence) to prevent or mitigate delay or the effect of the delay:

1. Obtain BCC approval and issue NTP to P&K
2. Consider and negotiate contract construction duration with P&K
3. Determine best available options
4. Consider issuance of change order to P&K with revised contract documents (i.e., contract, drawings, specifications)

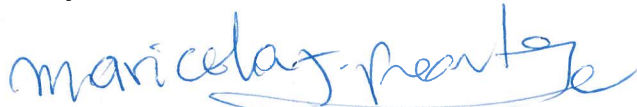
Cause or contribute to an endangerment to public health, welfare or the environment

Sudden loss of cogeneration engines due to non-performing biogas conditioning system could result in partial loss of power to the CDWWTP and temporary equipment shutdown. Consistent lack of cogeneration units would also result in loss of heat for the anaerobic digesters. 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 was 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,



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

Attachment: **Attachment A:** Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance

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David Wood (CD PMCM)
Scott Eckler (CD PMCM)
Andrea Suarez Abastida (CD PMCM)
Abby Diaz (CD PMCM)

Attachment A
Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement
Programs Acceleration Ordinance

CODE OF MIAMI-DADE COUNTY

MIAMI-DADE WATER AND SEWER DEPARTMENT CONSENT DECREE AND CAPITAL IMPROVEMENT PROGRAMS ACCELERATION ORDINANCE. (Â§ 2-8.2.12)

(1) This Section of the Miami-Dade County Code shall be referred to as the Miami-Dade Water and Sewer Department Consent Decree and Capital Improvement Programs Acceleration Ordinance.

(a) The Miami-Dade Water and Sewer Department Consent Decree Work consists all those projects needed to comply with the Consent Decree approved on April 9, 2014 by the United States District Court for the Southern District of Florida.

(b) The Miami-Dade Water and Sewer Department Capital Improvement Program consists of only those projects approved by the Board of County Commissioners as part of the Multi-Year Capital Plan.

(2) The County Mayor or Mayor's designee shall, subject to the funding limitations set forth in the Multi-Year Capital Plan approved by the Board of County Commissioners, be authorized to accelerate the processing, procurement, and award of any contract and agreement of the County for Consent Decree Work and other required Capital Improvements contracts to maintain the operational effectiveness and capacity of the water and sewer systems, including any contracts related to the purchase of goods and services, construction and professional services.

(3) All actions taken under this Ordinance shall be subject to review by the Office of Management and Budget to ensure adequate funding for each project and that appropriate operational and maintenance funding is in place for the foreseeable future and to ensure compliance with contract documents and all applicable resolutions, ordinances, and statutes.

(4) With respect to any Consent Decree Work or other required Capital Improvement Contract, the County Mayor or Mayor's designee is authorized to:

(a) Draft, Issue or Advertise Invitations to Bid, Requests for Proposals, Requests for Qualifications, Notices to Professional Consultants, or any other competitive procurement document.

(b) Award and reject bids, proposals, or other offers received in connection with any competitive procurement. However, in the event that any proposed award of a contract is protested, the Board of County Commissioners shall award such contract as provided for in Section 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21 governing the bid protest process. Unless previously authorized and delegated, the County Mayor or Mayor's designee may not waive competitive bids in the award of a contract without the approval of the Board of County Commissioners. The authority to award or reject is granted where:

i. the base value of a recommended award does not exceed the base estimate by more than ten percent (10%); and

ii. the contractor or consulting firm receiving the award has a rating of 2.5 or higher in the Capital Improvement Information System (CIIS) database and has no outstanding debts, no goal deficits, and has submitted required insurance, bonds, affidavits and documentation provided for by the time of award; and

iii. none of the bidders have filed a timely bid protest.

(c) Appoint selection evaluation committees to obtain professional services in accordance with Section 2-10.4 of the Code of Miami-Dade County and Section 287.055 of the Florida Statutes.

(d) Amend contracts and extend the time for completion of any contract for construction, materials or professional services, including waivers of liquidated damages and other compensable and/or non-compensable time extensions.

(e) Negotiate and settle claims, and issue settlement agreement(s) or change orders for additional work under contracts and amendments where:

i. the change order or claim does not exceed ten percent (10%) of the base contract amount; and

ii. the contingency allowance shall be utilized to ensure minimal disruption in work flow and shall be documented on the appropriate contingency authorization draw. Change orders shall be submitted to replenish the contingency account in a timely manner; and

iii. the limitations provided in (4)(e)(i) above shall not apply to any change order or amendment related to emergency actions impacting remediation, public safety, health requirements or recovery from natural disaster.

(f) Re-allocate unspent monies among projects within the approved Multi-Year Capital Plan.

(g) Apply for, execute, and receive any federal or state grant in connection with any project, and execute any ancillary documents required to effectuate such grant.

(h) Apply for, execute and enter into joint participation agreements with any local, state or federal government entity for the completion of a project.

(i) Issue and evaluate Requests for Qualifications for Professional Services, if the RFQ and evaluation process is otherwise consistent with Section 2-10.4 of the Code of Miami-Dade County. In the event that the County Mayor or Mayor's designee is unable to negotiate a contract with the most qualified firm, the County Mayor or Mayor's designee is authorized to negotiate, sequentially, with the remaining firms in order of qualifications. Alternately, the County Mayor or Mayor's designee may at any time reject all qualifications received. Except as noted herein, nothing contained in this Section shall otherwise modify the substantive or procedural requirements of Section 2-10.4 of the Code of Miami-Dade County.

(j) All procurement activities advertised or placed for public notice under the authority of this Ordinance shall be reported to the Infrastructure and Capital Improvements Committee (or the applicable committee to which the Miami-Dade Water and Sewer Department matters are assigned) at the next available meeting for Committee review and approval. The Committee shall have the authority to require that specific projects be removed from the authority granted under this Ordinance and that the award of such projects be subject to future Committee and Board approval. After being reported to the applicable Committee, all procurement activities advertised or placed for public notice under the authority of this Ordinance shall be reported to the Board at the next Board meeting following the report to the Committee.

(k) In addition to the reporting requirement set forth in Section (4)(j) above, the Miami-Dade Water and Sewer Department shall also request that, at the Chair of the Board's discretion, a discussion item pertaining to the overall procurement activities of the Miami-Dade Water and Sewer Department be placed on the agenda of the full Board on a quarterly basis.

(5) The Mayor or Mayor's designee shall provide a report to the Board of County Commissioners on the status of Consent Decree Work and other required Capital Improvement projects at least every thirty (30) days. The report shall at a minimum identify upcoming advertisement for contracts, their estimated contract value, qualifications for award beyond requisite licensing, and the proposed methodology for award. With respect to each contract award, the report shall also provide proposed contract measures, including Small Business Enterprise (SBE) goals and Community Business Enterprise (CBE) goals. Upon review of the report, the Board may by resolution duly adopted limit or condition the advertisement, award or other rights conferred upon the Mayor or Mayor's designee under this Section for specific projects.

(6) Any act undertaken pursuant to the authority set forth in this Ordinance is subject to ratification by the Board of County Commissioners and shall be brought directly to the Board at the next available meeting and will not be subject to the 4-Day Rule. Any resolution ratifying an act undertaken pursuant to the authority set forth in this Ordinance shall include an effective date provision that provides that it will become effective upon approval by the County Mayor of the resolution and the filing of the Mayor's approval with the Clerk of the Board, which approval may be provided before the expiration of the ten (10) day mayoral veto period. Any contract, change order, settlement, modification, adjustment, or extension granted pursuant to any authority herein shall contain a termination for convenience clause or such other provision as necessary to specify that the action is revocable if not ratified by the Board of County Commissioners. The specification shall also include a sufficient release such that, in the event that the Board of County Commissioners does not ratify such item, the contractor is not entitled to lost profits or other consequential or indirect damages; however, the contractor is eligible for payment for any work done prior to failure of the ratification.

(7) The powers conferred in this Ordinance shall be supplemental to, and not in derogation of, any other powers or authority granted elsewhere in any ordinance, statute or resolution.

HISTORY: (Ord. No. 14-77, Â§ 1, 9-3-14)