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Water and Sewer
PO Box 330316 • 3071 SW 38 Avenue
Miami, Florida 33233-0316
T 305-665-7471

VIA ELECTRONIC CORRESPONDENCE

January 15, 2021

CCN: 63561
File No: 8.DC.20.52

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Tom Mariani
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
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Ammons.Brad@epa.gov

Rachael Amy Kamons
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Rachael.Kamons@usdoj.gov

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 – Potential Delay,
Section XVII, Paragraph 77 – Notices,
Update on Potential Delay Notification for Consent Decree Appendix D-2, Capital
Improvement Projects 1.11 General Electrical at SDWWTP**

Dear Sir/Madam:

In accordance with the provisions of Section XI, Paragraph 52 of the above referenced Consent Decree (CD), on June 28, 2019, Miami-Dade County (County) notified the United States Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP) of a Potential Delay of CD Capital Improvement Project (CIP) Project 1.11(1.1) Substations 9 thru 12. The purpose of this letter is to provide an update on the overall CD CIP 1.11 status to the EPA and FDEP and report an additional delay that has occurred on CD CIP Project 1.11(1.2) Generator Repairs. The delay has occurred in the Procurement phase of this

project when the Recommendation for Award was rescinded, thereby creating a potential delay in the overall project schedule.

In accordance with Section XI, Paragraph 52, this update 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 or the environment, and documentation to support the force majeure claim.

Background

The CD project description for 1.11 is the rehabilitation and replacement of electrical controls and wiring as needed. The project is being executed through three separate child projects or subprojects:

- CD 1.11(1.1) – Substations 9 thru 12: Currently under construction with Notice to Proceed (NTP) issued September 8, 2020 and Contract Substantial Completion April 30, 2022
- CD 1.11(1.2) – Generator Repairs: Award rescinded and bid solicitation cancelled on December 24, 2020. Bid documents will be revised and new bid solicitation issued.
- CD 1.11(2) – Replacement of primary feeders from Main Switchgear A & B to Effluent Pump Station Pumps 1 through 6 (Part of Project CD 1.05(2) Effluent Pumps Station): Currently under construction with NTP issued October 3, 2019 and Contract Substantial Completion July 23, 2021.

The scope of project Child Project CD 1.11(1.2) consist of furnishing all materials, labor and equipment necessary to rehabilitate existing generator enclosures and connect existing Generators 1 thru 4 to remote radiators. The work includes, but is not limited to, demolition and modification work; mechanical connections of existing generators to four (4) proposed remote radiator system units; electrical connections; furnishing and installing piping, valves, fittings, supports, wiring and all appurtenant items.

Explanation and description of the reasons for the delay

Project CD 1.11(1.2) has encountered delays during the Procurement Phase due to a need to cancel and rebid the project. During the initial bid for this project, the County issued a Notice of Project Cancellation for all bids on March 3, 2020 due to lowest bidder not being able to provide an extension of their bid bond. The County accelerated the re-bid process and re-advertised the project on March 12, 2020. A total of five bids were received on June 2, 2020. After an evaluation

of the bids, the County issued a Recommendation for Award Letter to the second lowest bidder on August 18, 2020. Following several meetings and review of supplemental documentation provided by the second lowest bidder, the County rescinded their Recommendation for Award on December 24, 2020, due to post-bid conditions being required by the second lowest bidder to complete the work based on the terms and conditions of the bid solicitation. Therefore, the project will need to be rebid.

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

For Project CD 1.11(1.2), the County will update the contract documentation and accelerate the re-bid of the project and re-advertise as soon as possible. The County will closely monitor progress in the procurement phase and will report any further delays to EPA immediately when it becomes known to the County.

Anticipated duration of the delay

The time impact of completing the procurement phase will remain undetermined until the County is able to issue a NTP to a responsible and responsive bidder for this project. The County will provide an update on the duration of the anticipated delays, upon completion of the analysis of the Contractor's baseline schedule.

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 to prevent or mitigate delay or the effect of the delay:

1. County to closely oversee the procurement phase and expedite the NTP if possible
2. County to work with the Contractors to mitigate any additional delays once construction begins
3. County to report further delay to EPA when issue arises

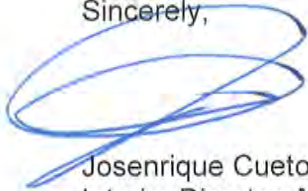
Cause or contribution to an endangerment to public health, welfare or the environment

Improvements performed under CD CIP 1.11 are needed to prevent failure of electrical controls or wiring which could result in plant shutdowns, wastewater overflows and effluent violations. There is no indication that delays in General Electrical present an immediate endangerment to the public health, welfare or the environment.

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.

Should you have any questions regarding this matter, please call me at (786) 552-8571.

Sincerely,



Josenrique Cueto P.E., ENV SP, LEED® Green Associate
Interim Director, Miami-Dade Water and Sewer Department

Attachment: Rescinding Recommendation for Award and Cancellation of CD 1.11 Emergency Generators 1 through 4 Rehabilitation South District Wastewater Treatment Plant, RPQ No. P0226R

ec: Anita Patel
Senior Assistant Attorney General, Complex Litigation,
Office of the Attorney General
PL 01 The Capitol
Tallahassee, FL 32399-1050
(850) 414-3694
anita.patel@myfloridalegal.com

Elizabeth Teegen
Senior Assistant Attorney General, Complex Litigation
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3699
Elizabeth.Teegen@myfloridalegal.com

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
Lisa.M.Self@dep.state.fl.us
Mike.Bechtold@dep.state.fl.us
Sed.wastewater@dep.state.fl.us
Meghan.Ticknor@dep.state.fl.us

Madame Mayor Daniella Levine Cava
Miami-Dade County
111 NW First Street 29th Floor
Miami, Florida 33128

Josenrique Cueto, Interim Director
Miami-Dade Water and Sewer Department
3071 SW 38th Avenue
Miami, Florida 33146

Jimmy Morales, Office of the Mayor
Miami-Dade County Chief Operations Officer
111 NW 1st Street 29th Floor
Miami, FL 33128
Josterholt@miamidade.gov

Henry N. Gillman
Miami-Dade Assistant County Attorney
Miami-Dade County Attorney's Office
111 NW First Street Suite 2810
Miami, Florida 33128

Richard Elliott, P.E., PMP
Environmental Engineer
Water Protection Division
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street. S.W.
Atlanta, GA 30303
Elliott.Richard@epa.gov

Paul Schwartz
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303
Schwartz.Paul@epa.gov

William A. Weinischke
Senior Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Bill.Weinischke@usdoj.gov



Water and Sewer
PO Box 330316 • 3071 SW 38 Avenue
Miami, Florida 33233-0316
T 305-665-7471
Construction Contracts Section
Tel: (786) 552-8989 – Fax: (305) 669-4053

December 24, 2020

VIA EMAIL: jdao@fecbuild.com

Florida Construction & Engineering, Inc.
155 Bentley Drive
Miami Springs, FL 33266-1426
Attn: Mr. Johnny Dao, President

**RE: Rescinding Recommendation for Award and Cancellation of
CD 1.11 Emergency Generators 1 through 4 Rehabilitation
South District Wastewater Treatment Plant, RPQ No. P0226R**

Dear Mr. Dao,

On July 6th, 2020, the Miami-Dade Water and Sewer Department issued a Recommendation for Award of the subject project to Florida Construction & Engineering, Inc. (FCE), but has yet to issue Notice to Proceed. This solicitation required that you provide the services of a dedicated vendor to provide certain equipment and portions of the work, which is only possible by subcontracting with the general contracting firm of Condo Electric, Inc.

During a bid review meeting, which occurred after the award recommendation, you were requested to provide a written statement on your firm's letterhead that you stand by your total bid and will honor your prices bid. In response, you provided the attached correspondence, wherein you stated that:

“As per bid documents, (Sheet S-6), Hood “I” shall be removed and replaced. FCE bid includes completion of this work item. However, by the time FCE received a quote from Condo Electric for Hood I, our bid package was already prepared. Therefore, our proposal does not included item I to be manufactured by ESI.

FCE is prepared to accept the award under the premises that Hood “I” won't be manufacture by ESI.”

Section 1.2 of the General Terms and Conditions of Contract MCC Plan 7360, under Contents of Solicitation and Respondent's Responsibilities, states that:

“It is the responsibility of the Respondent to become thoroughly familiar with the requirements, terms and conditions of this solicitation. Pleas of ignorance by the Respondent of conditions that exist or that may exist will not be accepted as a basis for varying the requirements of the County, or the compensation to be paid to the contractor.”

It was a requirement of the bid documents that bidders provide a price proposal based on the terms and conditions of this solicitation. The above statements in FCE's correspondence to the County has essentially varied the requirements of the bid. The timing by which you received the quote from Condo Electric, Inc. does not release FCE from the requirements of the solicitation.

In addition, the above statements in FCE's correspondence also conditions their bid, which is unacceptable. As Section 2.22 paragraph C of the Special Conditions of Contract MCC Plan 7360 states, "Furthermore, RPQ's may not be conditioned on an unapproved revision to any term of the Contract or any requirement not set forth in the applicable RPQ."

According to Section 1.4, Cancellation of Solicitation, the County reserves the right to cancel, in whole or in part, any solicitation when it is in the best interest of the County. Also, according to Section 2.22, it is noted that the County reserves the right to reject any and all prices submitted or cancel an RPQ at any time.

Therefore, the Miami-Dade Water and Sewer Department hereby rescinds the Recommendation for Award of RPQ No. P0226R to Florida Construction & Engineering, Inc. In addition, the County exercises it's reserved right and cancels the RPQ for this solicitation. The subject project will be re-advertised in the near future under a separate solicitation.

Finally, please make arrangements to retrieve your bonds, as this decision is final. Should you have any questions, please feel free to email me at Isaac.smith@miamidade.gov or contact me at (786)552-8989.

Sincerely,



Isaac Smith, Chief
Construction Contracts Division

- cc: Stephen Pollock (OIG)
Jose Enrique Cueto (WASD)
Daniel Edwards (WASD)
Li Gural (WASD)
Victor Delgado (WASD)
Jesus Salinas (WASD)
Margaret Moss (WASD)
Laurie Johnson (SBD)
Edith Brown (WASD)
Tory Champlain (PM/CM)
Clerk of the Board
All RPQ# P0226R Bidders