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VIA ELECTRONIC CORRESPONDENCE

February 7, 2017

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File No: 8.DC.19.82

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
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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
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Florida Department of Environmental Protection
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West Palm Beach, FL 33406
Attn: Compliance/Enforcement Section
Diane.Pupa@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 VI – Specific Capital Improvement Projects, Paragraph 19(i)
Section XVII, Paragraph 77 – Notices
Response to EPA and FDEP Comments on CD CIP 4.8 Force Majeure Follow-up Letter**

Dear Sir/Madam:

The Miami-Dade County (County) is in receipt of your request for additional information related to the September 8, 2016 Consent Decree (CD) Capital Improvement Project (CIP) 4.8 Rehabilitation of 54-inch PCCP Force Main in the City of Miami Force Majeure Follow-up Letter. With this letter, we restate EPA/FDEP's comments and questions and transmit Water and Sewer Department's responses and clarifications, and/or provide additional relevant information.

1. In its September 8, 2016 letter, Miami-Dade states "In order to complete the project by the CD deadline of April 9, 2017, it was essential that we issue the "Notice To Proceed" to the awarded

contractor on or before September 1, 2016.” This is due to having to do the work in the dry season (January 1 – May 31, 2017). Why did Miami-Dade wait until August 19, 2016 to issue its recommendation to award the contract, as that didn’t leave much time to issue the Notice To Proceed?

RESPONSE: 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 2018, which includes this project. Expediting the interim activities to complete the project by the final CD milestone date has proven to be a challenge.

CD Project 4.08 called for the rehabilitation of approximately two miles of 54-inch force main along a four mile corridor. Based on technical studies performed by Pure Technologies, Water and Sewer Department (Department) determined that the deterioration of the force main was most critical in the one mile segment at each end of the four mile stretch. Further, although not considered critical, the two miles of force main that was not part of the CD would most likely soon become an issue. The Department determined that the responsible course of action would be to rehabilitate the entire four miles of pipe. A rehabilitation project of this magnitude had not been attempted in the past by the Department. Based on industry research and articles published by both the EPA and the trade organizations, the Department decided that the use of a performance specification was the most prudent means of contracting this rehabilitation. Although this force main is typically not in service, it is a critical component of our system which must remain available during the rainy season to provide for increased flows anticipated during major rain events. Due to this requirement, the project had to be further segmented into two four month phases, the first of which was during the dry season of January through April 2017.

2. In its September 8, 2016 letter, Miami-Dade states “As with all Government Contracting, the need for a transparent and open procurement process is essential. With this transparency comes the risk of challenges to the process, such as the “Bid Protest.” Why would it not be reasonable for Miami-Dade to already build into its schedule time to allow for the “risks” of potential bid protests? Are such bid protests uncommon?

RESPONSE: Although Bid Protests are not frequent, they do occur on government contracts. As part of proactive mitigation efforts the Department put together a Prequalification Package that allowed them to identify and prequalify those firms engaged in all forms of Trenchless Technology, thereby removing the frequent basis of protest (low bidder not qualified to perform work). Further, by utilizing a Performance Specification versus a Prescriptive Design, the risk of a low bid not meeting the contract specification was reduced. Unfortunately, there is no way for Government to protect against an unfounded bid protest as was the case in this solicitation. The protesting firm withdrew its’ protest and forfeited the \$5,000 protest filing fee.

3. The actual Notice To Proceed was issued on September 19, 2016 and as noted in #1 above, Miami-Dade felt it could issue the Notice To Proceed as late as September 1, 2016 and still complete the work by the CD deadline of April 9, 2017. Miami-Dade should explain why it would need more than eighteen (18) days (the difference between September 1 and September 19). In addition, Miami-Dade should explain why it couldn't make up these eighteen (18) days by the original CD deadline of April 9, 2017.

RESPONSE: The County's realized delay was from August 19, 2016, when the recommendation of award was initially issued, through September 19, 2016 when the new recommendation of award and Notice to Proceed (NTP) was issued. The County acted quickly after the bid protest was withdrawn on September 12, 2016 to reissue the award recommendation and NTP within four (4) business days by September 19, 2016.

Typically, the Contractor will commence ordering material as well as initiate permitting and the shop drawing process upon award of contract (contractor at risk). Notice to proceed controls the start of the Contractor's ability to submit charges for the construction activity. As with most of our contracts, the Contractor anticipated starting permitting and material ordering in August prior to the issuance of the anticipated September 1, 2016 NTP. By obtaining the permits early, the Contractor could have commenced building access pits in late November and December without taking the force main out of service until dry season commencing January 1, 2017.

Although the Department issued the NTP almost immediately after the Bid Protest was withdrawn, the Contractor (from their perspective) lost the time from August 19 to September 19 in their start-up process. Immediately upon award of the contract, the Contractor submitted a claim for a 30-day non-compensable time delay.

In addition, in a letter submitted on January 18, 2017, the County notified EPA and FDEP of an additional circumstance potentially causing further delay of the project due to a defective valve.

4. Please explain why Miami-Dade cannot take additional measures to make up these 18 days during the implementation of this project.

RESPONSE: The contract for this project stipulated that construction be completed by the CD compliance date of April 9, 2017, from the originally anticipated NTP date (September 1, 2016). Because the contract construction completion date did not change in the second award (September 19, 2016), the completion date adjusted commensurately, rendering it past the CD compliance date. As stated previously, the Contractor has submitted a claim for a 30-day non-compensable time delay.

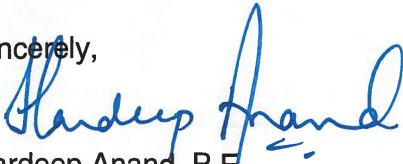
In addition, as stated in the September 8, 2017 CD CIP 4.8 follow-up letter the County indicated that the Department would be meeting with the Contractor to review an accelerated construction proposal and send an update letter regarding the outcome. On January 26, 2017, the acceleration proposal was submitted by the Contractor to the Department. The Department considers the proposal excessive; it substantially exceeds the stipulated penalties that would accrue as a result of the bid protest delay for which the Department is requesting a Force Majeure consideration.

The County remains committed to successfully meeting the requirements of the Consent Decree.

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,



Hardeep Anand, P.E.
Deputy Water and Sewer Director

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