



Public Service Commission

State of North Dakota

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October 12, 2010

Mr. Jeff Olson
Liberty Mutual Surety
P.O. Box 34670
Seattle, WA 98124-1670

RE: Smith Contracting, Inc.
2010 Buechler/Velva Abandoned Mine Lands Project in Ward County
Performance and Payment Bonds 6662386 issued by First National Insurance Company
of America

Dear Mr. Olson:

As requested by your letter dated October 1, 2010, copies of the following documents are enclosed in order for you to initiate an investigation on Smith Contracting, Inc's. default on the 2010 Buechler/Velva Abandoned Mine Lands Project:

1. The packet of information that was provided to interested for bidders for the 2010 Buechler/Velva Project, including maps and drawings.
2. The AML Division's Standard Specifications for AML Reclamation Projects.
3. The list of attendees at the April 7th pre-bid on-site meeting for the Buechler/Velva Project.
4. Bid Tabulations for the April 19th bid opening for the 2010 Buechler/Velva Project.
5. April 21st letter from Project Manager Mark Knell to Smith Contracting requesting a proposed progress chart for the project.
6. Contract No. AM-588-10 that was signed by the three Public Service Commissioners and David Smith.
7. Performance and Payment Bonds issued by First National Insurance Company of America for the project.
8. Smith Contracting May 7th proposed equipment list and schedule.
9. The Notice to Proceed that was signed by Project Manager Mark Knell on May 17th and David Smith on May 19th.
10. The updated project schedule submitted by Smith Contracting on June 11th.

11. The June 23rd letter that the PSC's Project Manager sent to Smith Contracting on the payment process.
12. The June 28th letter that the AML Division sent to Smith Contracting with concerns about the slow start and progress of the Buechler/Velva Project.
13. Revised schedule submitted by Smith Contracting on July 2nd.
14. Corrected revised schedule submitted by Smith Contracting on July 6th.
15. Smith Contracting's August 4th request for Change Order 1 due to the site conditions.
16. The AML Division's August 10th letter to Smith Contracting and First National Insurance Company of America on the unsatisfactory progress on the Buechler/Velva Project, notice of a meeting at the project site, and response to issues raised in Smith Contracting's August 4th request for a change order.
17. August 17th letter from Gene Sawyer of Liberty Mutual acknowledging receipt of the AML Division's August 10th letter.
18. Smith Contracting's August 25th request for a change order to increase per unit prices and revised schedule.
19. Results of particle size and moisture analyses performed by Material Testing Services on two spoil samples (one of the wetter spoil material and the other of drier spoil) taken by the PSC's Project Manager on August 23rd at the project site in the presence of Smith's project supervisor.
20. September 1st letter from the Project Manager to Smith Contracting on the need to dewater work areas.
21. September 2nd letter from the AML Division denying Smith Contracting's August 25th request for a change order.
22. September 30th letter from the AML Division to Smith Contracting with Notice of Default for failure to perform the required work on the Buechler/Velva Project.
23. October 1st letter from Ronald Schmidt, Smith Contracting's attorney, to the AML Division on the work stoppage and contract dispute on the Buechler/Velva Project.
24. The AML Division's spreadsheet providing the details of the five invoices submitted by Smith Contracting and the payments that have been made to date. Also included are copies of the five invoices and records of the electronic payments that were made to Smith Contracting by the PSC.
25. PSC Project Manager was informed on September 10th that Smith Contracting had not paid J & S Heavy Haul, LLC's June 15th invoice for transporting equipment to the Buechler/Velva job site.
26. October 8th letter from Mouse River Oil Co. informing the PSC that Smith Contracting owes them \$16,455.33 for fuel.
27. Book 1 of the Project Manager's field notes made while work was occurring on the Buechler/Velva Project.
28. Book 2 of the Project Manager's field notes made while work was occurring on the project.

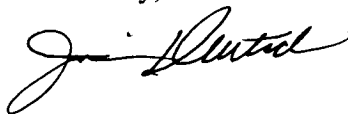
The contract price for the 2010 Buechler/Velva Project was \$1,225,500, the amount Smith Contracting bid April 19th for carrying out and completing the project. No change orders have been issued for this project. To date the PSC has paid Smith Contracting \$398,094.99, leaving a balance of \$827,427.01. If Smith Contracting had not defaulted on performing the required work

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on the Buechler/Velva Project, we estimate they could have been paid another \$80,000 or thereabouts for approximately 175,000 cubic yards of additional spoil (@ \$0.47/cu. yd.) that was moved prior to the work stoppage in mid September.

The documents listed above are available in an electronic format if you would also like copies in that format. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "James R. Deutsch". The signature is fluid and cursive, with a large initial "J" and "D".

James R. Deutsch
Director, AML Division

Attachments

cc: Smith Contracting, Inc.

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