

DEP ACCO

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Sent By: COLE CONSULTING CORPORATION C; 914 346 0045;

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Frank Schiano

**Cole
Consulting
Corp.**Elmsford Executive Park, Building 6
2299 Saw Mill River Road • Elmsford, New York 10523
TELEPHONE 914 • 346 • 0000 • FACSIMILE 914 • 346 • 0045

DATE: 06 September 2002
TO: Carol Ferris
 NYC DEP
FAX: 718-595-3278
FROM: Akin A. Cole
SUBJECT: ADDENDUM NO.5 - CONTRACT WTC-AMB
PAGES: 2

**FAX
TRANSMITTAL**

- ◆ This is to acknowledge receipt of Addendum No. 5 regarding the above-referenced WTC contract.
- ◆ I wish to point out certain concerns regarding the addendum:
 - 1) First paragraph does not provide for the verification or validation of claims for theft, disappearance, destruction of/or damage to property by building owners and their occupants. This suggests that claims are automatically attributed to the environmental consultant(s) and its employees without a built-in process of verification or validation. It does not address potential fraudulent claims by owners of buildings and/or their occupants. It leaves the consultant(s) open to such fraudulent claims.
 - 2) The additional 5% retainage called for as additional security to the fidelity bond in place for this project is excessively high. This amounts to a 15% retainage of the entire contract amount plus the costs of obtaining a fidelity bond. The agency should consider waiving this additional 5% retainage because of the additional financial burden it places on the respective consultants.
 - 3) The third paragraph calls for release of any retainage owed to the consultant three(3) months following the completion of all work. If this money were placed in a bank, it would yield interest over the duration it is maintained in the bank. Since the agency has presumably divested this money into interest-yielding instruments, the agency should consider and be willing to pay interest on the substantial amounts to be withheld.
 - 4) Article 26, Waiver of Right to Assert Mechanic's Liens. I think this paragraph needs to relate Lien waivers to payments withheld for specific reasons. The consultant(s) should be able to have recourse

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Cole Consulting Corporation

NYC
06 September 2002
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to the collection of unattached monies owed by its client and not paid promptly or in a timely fashion including the possible use of a mechanic's lien.

- ◆ Please revise your addendum with consideration to the issues raised in my facsimile to bring about an early contract resolution.