

Avaltroni, Robert

From: Hoffer, Mark
Sent: Tuesday, September 03, 2002 5:09 PM
To: Avaltroni, Robert; Gilsenan, Michael; Smyth, Virginia
Subject: WTC Contract Addendum

Here is the suggested Addendum. I haven't run it by EPA yet, but it can be used as a talking piece with the contractors. I'll obviously try to keep EPA from changing anything.



addendum.wpd

ADDENDUM No. ____

ADDENDUM TO CONTRACT NO. _____, dated _____, by and between The City of New York (the "City"), acting by and through the New York City Department of Environmental Protection ("DEP") and _____ ("Contractor").

Supply and Service Agreement

1. Article 6.5: ADD a new Paragraph C, as follows:

C. The Contractor shall be obligated to pay, satisfy and discharge any claims for theft, disappearance or destruction of personal property made by the owners of buildings where work is being performed by the Contractor, and/or by the owners/occupants of apartments where work is being performed by the Contractor, to the extent such claims are not otherwise covered in full by the proceeds of insurance maintained by the Contractor with respect to the performance of work hereunder.

As security for the faithful performance by the Contractor of the foregoing obligation, DEP is hereby authorized, in addition to the ten percent (10%) retainage referred to in Paragraph B above, to deduct and retain a further five percent (5%) of the value of all work certified for payment in each partial payment voucher, up to an aggregate total of \$100,000. All monies deducted and retained by DEP pursuant to this Paragraph C may be applied by DEP, in its sole and absolute discretion, to pay, satisfy and discharge any such claims, if such claims are not otherwise paid, satisfied or discharged by the Contractor within 30 days after demand by DEP. If at any time, because of payments made by DEP out of such monies for such purpose, a total of less than \$100,000 is available to pay, satisfy or discharge such claims, DEP is hereby authorized to resume deducting and retaining a further five percent (5%) of the value of all work certified for payment in each partial payment voucher, the intent being that a fund of \$100,000 shall always be available to DEP as security for the faithful performance by the Contractor of such obligation.

DEP is authorized to continue using any monies deducted and retained pursuant to this Paragraph C to pay, satisfy and discharge such claims for a period of six (6) months after completion of all work hereunder. Upon the expiration of six (6) months after completion of all work under the Contract, DEP shall refund any remaining portion of the monies deducted and retained pursuant to this Paragraph C to the Contractor.

2. ADD a new Article 26, as follows:

Article 26, Waiver of Right to Assert Mechanic's Liens.

In consideration of the mutual covenants and agreements contained in the Contract, the Contractor agrees as follows:

The Contractor agrees to look solely to DEP for payment of all sums due and owing to it for work performed hereunder, and the Contractor hereby waives and relinquishes any right to assert a mechanic's lien or other lien against any real property where work is being performed hereunder to secure or collect payment of such sums, including any buildings or apartments where such work is being performed.

The Contractor agrees to insert a similar provision in any subcontract for labor, equipment, or materials entered into by the Contractor for purposes of performing work hereunder, requiring the subcontractor or supplier to look solely to the Contractor for payment of any sums due to the subcontractor or supplier, and to relinquish any right to assert a mechanic's lien or other lien against any such real property to secure or collect payment of such sums.

AGREED TO AND ACCEPTED:

[Name of Contractor]

By _____
Title:

Date: _____

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