



**DEPARTMENT OF
ENVIRONMENTAL
PROTECTION**

59-17 Junction Boulevard
Flushing, New York 11373

David B. Tweedy
Acting Commissioner

Tel. (718) 595-6576
Fax (718) 595-3557
dtweedy@dep.nyc.gov

Mark D. Hoffer
General Counsel
Bureau of Legal
Affairs

Tel (718) 595-6555
Fax (718) 595-6543
mhoffer@dep.nyc.gov

www.nyc.gov/dep

January 7, 2005

James Cox, Esq., Chief
Office of the New York City Comptroller
Law Division
1 Centre Street, Room 1200
New York, New York 10007-2341

PRIVILEGE & CONFIDENTIAL
CLAIM/ACTION/DISPUTE PENDING

Claim No.: 2004LW021897
Contractor: Termon Construction, Inc.
Contract No.: 20030010730
Project: WTC-ARD/WTC Indoor Air Remediation

Dear Mr. Cox:

I am writing in response to your request of October 13, 2004 addressed to First Deputy Commissioner David B. Tweedy. I am enclosing the requested information for the above-referenced claim filed by Steven A. Stallings, Esq., on behalf of Termon Construction, Inc. (Termon). The New York City Department of Environmental Protection's (NYCDEP) Bureau of Environmental Compliance provided this material.

Several allegations set forth in Termon's claim require clarification. Termon filed its claim with the Comptroller on October 6, 2004. Prior thereto, Termon filed a Notice of Dispute with DEP, dated August 19, 2004. A response to the Notice of Dispute, dated October 28, 2004, was rendered and sent to Termon, prior to my knowledge of the claim filed with the Comptroller. However, Mr. Stallings's statement that the only communication Termon had with DEP was my request for clarification concerning a change order is erroneous. Following receipt of Mr. Stallings September 30, 2004 clarification, he and I exchanged several messages, during which time I advised that DEP's response to Termon's Notice of Dispute would be forthcoming.

As I mentioned to you during our telephone conversation on December 8, 2004, the New York City Law Department's WTC Unit has the actual file containing Termon's Contract; however, Termon attached a copy to the Notice of Dispute filed with the Agency, so I am forwarding that copy for your review.

As is set forth in Acting Commissioner Tweedy's Response to Termon's Dispute, the United States Environmental Protection Agency (USEPA) funded this project through the Federal Emergency Money Act (FEMA). BEC staff



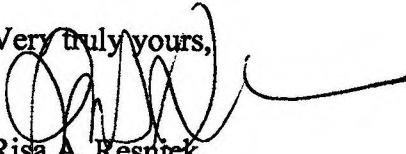
communicated with EPA, which was responsible for approving (or disapproving) any and all invoices for payment.

The following materials are enclosed:

- August 9, 2004 Notice of Dispute from Termon, with attachments;
- Sept. 8, 2004 letter from Termon asking that correspondence and payments be sent to Steven Stallings, Esq.;
- Oct. 28, 2004 Response to Notice of Dispute, signed by First Deputy Commissioner David B. Tweedy (in essence, denying claims for extra work and setting forth the procedure for payment of what the parties agree is due and owing);
- Nov. 16, 2004 letter from Steven Stallings, Esq., in response to First Deputy Commissioner Tweedy's response to the Notice of Dispute;
- Dec. 17, 2004 letter from Acting Commissioner Tweedy in response to the Nov. 16, 2004 Stallings letter;
- Pages 1-8 of the Scope of Work;
- Termon's estimate for 395 South End Avenue (via email);
- Termon Invoices, dated 9/8/03, 9/10/03 and 7/7/04, approved by EPA;
- FMS printout showing that payment for \$3,103.11, sought in the Notice of Dispute, was previously paid;
- FMS printout showing retainage amount remaining;
- July 9, 2004 memo from EPA outlining payment request submitted by Termon on April 8, 2004 (I have been unable to locate a copy of the April 8, 2004 letter);
- July 9, 2003 letter to Termon from Virginia Smyth of BEC regarding Termon's claims for additional compensation;
- September 23, 2003 letter to Termon from Virginia Smyth of BEC regarding Termon's claim for additional reimbursement; and
- December 16, 2004 Press Release regarding indictments of several members of one of Termon's subcontractors, Specialty Service Contracting, Inc.

Please note that despite several messages and the December 16, 2004 letter requesting an original, notarized signature on the Assignment of Payment request, I have not received such document and have therefore been unable to process the Assignment of Payment, as well as the payment itself.

If you have any questions, or require any additional information, please do not hesitate to contact R. Radhakrishnan (Krish) at 718-595-3721, Virginia Smyth at 718-595-4404 or myself at 718-595-6606.

Very truly yours,

Risa A. Resnick
Assistant Counsel

Encls.

c: D. Tweedy, R. Radhakrishnan, V. Smyth