



AGENDA

SPECIAL PUBLIC MEETING SOLID WASTE AUTHORITY OF PALM BEACH COUNTY

**Tuesday, December 3, 2013
9:30 A.M.**

LOCATION:

**PBC Governmental Center
301 N. Olive Avenue, 6th Floor
Jane M. Thompson Memorial Chambers
West Palm Beach, FL 33401**

I. Call to Order / Roll Call

Mayor Priscilla Taylor, Chair
Vice Mayor Paulette Burdick, Vice Chair
Commissioner Mary Lou Berger, Secretary
Commissioner Hal Valeche
Commissioner Shelley Vana
Commissioner Steven Abrams
Commissioner Jess Santamaria

II. Proof of Publication of Meeting

- III. Renewable Energy Facility #1 Refurbishment Project
Siemens Energy, Inc., Air Pollution Control System
SWA Purchase Order #90760/BE&K Purchase Order #5003501-43388**

Recommendation: Authorize the Executive Director to execute a Settlement Agreement between the Solid Waste Authority of Palm Beach County (Authority) and Siemens Energy, Inc., Environmental Systems & Services (Siemens) providing for a negotiated settlement of the material and workmanship deficiency issues related to the equipment designed and supplied by Siemens subject to Legal Counsel review and approval.

IV. Adjournment

NOTICE OF SPECIAL MEETING

The Solid Waste Authority of Palm Beach County announces a Special Meeting to which all persons are invited.

DATE & TIME **Tuesday, December 3, 2013 at 9:00 AM**

PLACE: Board of County Commissioners Chambers
Palm Beach County Governmental Center
301 North Olive Avenue, 6th Floor
West Palm Beach, FL 33401

PURPOSE: **To approve a settlement of a construction claim between the Solid Waste Authority and Siemens Energy, Inc., Environmental Systems & Services.**

A copy of the agenda may be obtained by visiting www.swa.org or writing or calling the Solid Waste Authority of Palm Beach County, 7501 North Jog Road, West Palm Beach, FL 33412 (561) 640-4000 ext. 4210.

PLEASE TAKE NOTICE AND BE ADVISED that if a person desires to appeal any decision made by the Solid Waste Authority of Palm Beach County with respect to any matter considered at subject meeting, (s)he will need a record of the proceedings and, for such purpose, will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Published by order of Mark Hammond, Executive Director of the Solid Waste Authority of Palm Beach County.

/s/ Sandra Vassalotti
Clerk to the Authority

PUBLISHED: **November 25, 2013**
Monday
Palm Beach Post



November 25, 2013

MEMORANDUM

TO: Mayor Priscilla Taylor, Chair
and Solid Waste Authority Board Members

SUBJECT: Renewable Energy Facility #1 Refurbishment Project
Siemens Energy, Inc., Air Pollution Control System
SWA Purchase Order No. 90760/BE&K Purchase Order
No. 5003501-43388

RECOMMENDATION: Authorize the Executive Director to execute a Settlement Agreement between the Solid Waste Authority of Palm Beach County (Authority) and Siemens Energy, Inc., Environmental Systems & Services (Siemens) providing for a negotiated settlement of the material and workmanship deficiency issues related to the equipment designed and supplied by Siemens subject to Legal Counsel review and approval.

BACKGROUND:

In June of 2008, pursuant to Board approval, the Authority initiated a project to refurbish Renewable Energy Facility #1. The project was completed on a design-build basis with a budget of approximately \$205 million. The general contract was awarded to BE&K Construction Company, LLC, (BE&K) who was responsible for providing the engineering and contract administration on a lump sum basis, and construction provided on a cost plus basis that included a maximum target expended man-hour limit. The major equipment was supplied by the Authority under an Owners Tax Saving Program with the purchase orders issued by the Authority and BE&K providing the technical specifications and procurement administration. Subject to final reconciliation, the total project cost is estimated to be under \$180 million.

The refurbishment work scope included, among other things, a complete upgrade of the air pollution control system including the replacement of the spray dry absorber, the replacement of the electrostatic precipitator with a pulse jet fabric filter bag house, and the addition of an activated carbon powder injection system. The design and supply of this system was awarded to Siemens Energy, Inc., Environmental Systems & Services under a lump sum purchase order of approximately \$6,372,000.

During construction of the project, several issues in workmanship and material quality were noted. Siemens addressed the issues by providing replacement materials and components. The field installation was provided by BE&K. This corrective work resulted in additional labor costs of approximately \$284,300.

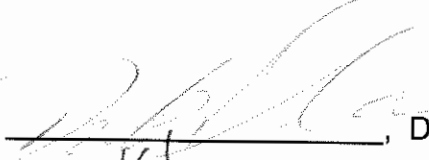
During commissioning and initial operation, additional issues were encountered regarding the filter bag assemblies that manifested as premature bag failure and excessive particulate build up on the filter bags and in the pulse jet filter bag house that houses them. The failures were attributed in part to incorrect metallurgy of the bag support cages supplied by Siemens and in part to excessive moisture levels introduced in the bag house during startup and commissioning. Siemens agreed to replace the nonconforming filter bag cages and to share in the cost of new filter bags and the associated installation totaling approximately \$827,200.

Authority Staff and the Consulting Engineer, having conducted several negotiation sessions over the past year, recommend approval of a settlement agreement with Siemens to close out all of the issues related to the supply of the air pollution control system in the amount of \$800,000, which is comprised of \$411,738.47 owed to Siemens and to be retained by the Authority and a payment from Siemens to the Authority of \$388,261.53.

BUDGET IMPACT: None. The Authority incurred approximately \$1,111,500 in additional costs of which the settlement amount covers \$800,000. The difference of approximately \$311,500 was funded from the project contingency.

ATTACHMENTS: Draft Settlement Agreement

REVIEWS:

Director: , Date: 11/25/13

Chief Officer: , Date: 11-25-13

Finance:
(as required) _____, Date: _____

Managing Director: , Date: 11-25-13

Legal Counsel:
(as required) _____, Date: _____

Executive Director: , Date: 11-26-13

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Settlement Agreement") effective as of November 11, 2013 (the "Effective Date"), is by and between Siemens Energy, Inc, Environmental Systems & Services ("Siemens") and Solid Waste Authority of Palm Beach County ("Owner"). The parties to this Agreement shall be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

A. On May 15, 2009, BE & K Construction Company, LLC acting as agent for Owner and Siemens entered into Purchase Order No. 5003501-43388 (the "Purchase Order") for the supply of air quality control equipment for the Owner's West Palm Beach, Florida facility (the "Project").

B. During the performance of the Purchase Order a number of issues have arisen between the Parties resulting in claims, demands, costs and damages and negotiations between representatives of the Parties were held, and such negotiations have resulted in a mutually acceptable proposal to resolve these and other currently known and identified issues of contention and the Parties desire to settle and resolve all such claims, demands, costs and damages.

NOW THEREFORE, in consideration of the promises and the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound thereby, the Parties agree as follows:

1. Settlement Net Value. The Parties agree that the total monetary value of this Settlement Agreement is \$800,000.00 which is comprised of \$411,738.47, heretofore owed to Siemens and to be retained by the Owner, plus a payment to Owner from Siemens of \$388,261.53 ("Settlement Net Value"), which is due and payable from Siemens to Owner net thirty (30) days from the date of this Settlement Agreement.
2. Settlement Compensation. The Parties agree that payment of the Settlement Net Value by Siemens to Owner is full and final compensation for all and any claims by Owner under the Purchase Order. In consideration of such payment, the Parties do hereby agree that all outstanding claims, demands, costs and damages of any nature whatsoever arising out of the Project are hereby satisfied and the Parties waive any further claims under the Purchase Order with the exception of Siemens's fabric filter baglife warranty obligations with that continue under the Purchase Order.

Miscellaneous.

(a) Successors and Assigns. This Settlement Agreement is binding upon the Parties' successors and assigns.

(b) Effect on Purchase Order. Except as modified by this Settlement Agreement, all terms and conditions of the Purchase Order shall remain in full

force and effect, including without limitation, the indemnification obligations of the Parties under the Purchase Order. In the case of any conflict between the Purchase Order and this Settlement Agreement, the terms and conditions of this Settlement Agreement shall control.

(c) Governing Law. This Settlement Agreement shall be governed by the laws of the State of Florida, without regard to conflicts of law provisions thereof.

(d) Entire Agreement. The Parties agree that this Settlement Agreement contains the full, final and entire understanding and agreement between the Parties with regard to the subject matter hereof. This Settlement Agreement shall supersede all previous negotiations, proposed agreements or settlements, whether written or oral related to the Parties disputes arising under the Purchase Order. This Settlement Agreement shall not be modified or altered in any way except in a writing executed by the Parties. No waiver of rights under this Settlement Agreement is binding unless in writing and signed by the Party waiving such rights.

(e) Not Used.

(f) Due Authority. Each Party warrants and represents to the other that the person executing this Agreement on its behalf is authorized to do so.

Deleted: Confidentiality. The Parties agree that the existence and contents of this Settlement Agreement are to remain confidential.

(g) Headings; Construction. The headings set forth in this Settlement Agreement are for convenience only and shall not be considered as part of this Settlement Agreement in any respect nor shall they in any way affect the substance of any provisions contained in this Settlement Agreement. Each Party has reviewed and discussed this Settlement Agreement with counsel and agrees that this agreement shall not be construed by applying any rule of construction providing for interpretation against the drafting Party.

(h) No Admission. This Settlement Agreement does not constitute an admission by either Party with respect to the validity of any claims, counterclaims, or defenses made by the other Party relating to the Purchase Order, and each Party enters into this Agreement solely to avoid the uncertainties of litigation, and in recognition of the mutual business interests of each that are served by this Settlement Agreement.

(i) Recitals. The Recitals to this Agreement are incorporated herein as a part of this Settlement Agreement.

(j) Counterparts. This Settlement Agreement may be executed in two or more counterparts all of which will be considered one and the same agreement and each of which will be deemed an original.

(Signatures on next page)

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SIEMENS

DRAFT

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representative to execute this Settlement Agreement, effective as of the date first written above.

By: _____
[NAME]
[TITLE]

SIEMENS

By: _____
[NAME]
[TITLE]

Siemens Energy, Inc.

501 Grant Street
4th Floor
Pittsburgh, PA 15219-4429

Tel: (412)562-7300
Fax: (412)562-7254

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