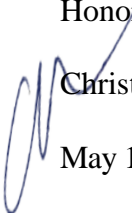




Memorandum

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To: Honorable Carlos Alvarez, Mayor, Miami-Dade County

From:  Christopher Mazzella, Inspector General

Date: May 13, 2010

Subject: *OIG Final Report Re: Acquisition of Scheduling Consulting Services for the Miami-Dade Fire Rescue Department Training Facility Construction Project; Ref. IG09-66*

Attached please find the Office of Inspector General's (OIG) final report regarding the above-captioned matter. This investigation involved reviewing the manner in which the Miami-Dade Fire Rescue Department (MDFR) acquired the professional services of an "Owner Scheduling Independent Consultant" via a pass-through arrangement with the general contractor, MCM Corporation (MCM). As a pass-through, the Owner's scheduling consultant was paid by MCM and paid with funds from the construction contract's contingency allowance account.

The OIG found that this arrangement contravenes sound contract administration principles, subverts the qualification and selection process, and creates an undesirable conflict of interest—an owner's consultant should not be paid by the entity that he is overseeing. County procurement processes for the acquisition of professional services were circumvented and construction contingency funds were used for non-conforming expenses. The means and methods employed by MDFR, in this case, put at risk the department's reputation in managing and overseeing its own construction projects.

The report contains three recommendations. Accordingly, a status report regarding these recommendations is being required by the OIG. The OIG requests receiving the status report on or before June 30, 2010.

Attachment

cc: Hon. Sally Heyman, Chair, Health, Public Safety and Intergovernmental Committee
Robert A. Cuevas, County Attorney
George M. Burgess, County Manager
Alina Hudak, Assistant County Manager
Herminio Lorenzo, Fire Chief, Miami-Dade Fire Rescue Department
George Navarrete, Interim Director, Office of Capital Improvements
Miriam Singer, Director, Department of Procurement Management
Charles Anderson, Commission Auditor
Robert Meyers, Executive Director, Miami-Dade Commission on Ethics
Jose M. Mitrani, P.E.
MCM Corporation
Clerk of the Board (copy filed)

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INTRODUCTION & SYNOPSIS

In August 2009, the Miami-Dade County Office of the Inspector General (OIG) began an investigation after receiving an anonymous complaint alleging that the Miami-Dade Fire Rescue Department (MDFR) improperly acquired the professional services of an “Owner Scheduling Independent Consultant” through a *Change Proposal Request* (CPR) submitted by general contractor MCM Corporation (MCM) in connection with the construction of a training facility (the Training Facility Project).¹

The OIG investigation substantiated the allegations. We determined that in October 2008, MDFR attempted to hire Mr. Jose Mitrani, P.E., as a part-time County employee in the position of Engineer IV to oversee the performance of MCM. However, Mr. Mitrani could not be hired as a County employee as planned. Thereafter, rather than recruiting another individual for employment or engaging scheduling consulting services through either of the two MDFR architect and engineering (A&E) professional services agreements (PSAs), or engaging Mr. Mitrani’s services directly by awarding him a PSA, MDFR effectuated the retainer of Mr. Mitrani through the general contractor’s contingency allowance account.

Specifically, at the request of MDFR, MCM, the general contractor, submitted CPR #16 on June 4, 2009 requesting total payment authorization for \$173,818 to be drawn from the contingency allowance account to pay for Mr. Mitrani’s services. Not surprisingly, MDFR approved the request—also on June 4, 2009—since MDFR initiated it. Not only did the CPR authorize funds prospectively for Mr. Mitrani’s services, it also approved \$42,216 as “back pay” for the services he provided MDFR in connection with the Training Facility Project, for the period beginning in October 2008, and continuing to June 2009.

This highly irregular contracting arrangement was even acknowledged by Mr. Mitrani to pose a “perception problem,” about which he advised the MDFR Deputy Chief and the MDFR Senior Division Manager of the Facilities and Construction Division. MDFR executives, nevertheless, proceeded with the pass-through arrangement.

Mr. Mitrani provided services to MDFR without any written agreement. There was no written scope of work describing his duties. Even after the aforementioned CPR was approved in June 4, 2009, there still is no written scope of services. There is no written agreement between the County and Mr. Mitrani regarding the fee for his professional services, nor is there any written

¹ The Training Facility Project is formally identified as Contract No. RFQ TR01-02, Project No. A05-FIRE-01-CON ESP.

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agreement between Mr. Mitrani and MCM outlining the pass-through arrangement using the contingency allowance account. Mr. Mitrani was not “selected” by MDRF using any type of a competitive process. His qualifications were not evaluated against other candidates. MDRF’s pseudo engagement of Mr. Mitrani utilizing the general contractor’s contingency allowance account is highly irregular and intuitively inappropriate. Mr. Mitrani oversees MCM’s performance as the Owner’s consultant, yet he is paid by MCM.

We do not question that MDRF desired its own scheduling consultant. However, those services need to be acquired transparently and in accordance with established County procedures. Moreover, we believe that this arrangement goes well beyond a “perception problem.” It is more than just an appearance of a conflict; it is an apparent conflict. This arrangement violates the very essence of good construction administration practices and subverts the qualification and selection process for the engagement of professional services, in violation of County ordinances and administrative orders.²

OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs and the power to review past, present and proposed County and Public Health Trust programs, accounts, records, contracts, and transactions. The Inspector General is authorized to conduct any reviews, audits, inspections, investigations, or analyses relating to departments, offices, boards, activities, programs, and agencies of the County and the Public Health Trust. The Inspector General shall have the power to review and investigate any citizen's complaints regarding County or Public Health Trust projects, programs, contracts, or transactions. The Inspector General may exercise any of the powers contained in Section 2-1076, upon his or her own initiative.

² The OIG makes no determination whether the professional services rendered herein meets the scope of services governed by Florida Statutes Section 287.055 entitled, *Acquisition of professional architectural, engineering, landscape architecture, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties*, as incorporated into A.O. 3-39; or whether Mr. Mitrani’s services would fall within the scope of professional services governed by A.O. 3-38, the County’s *Master Procurement Administrative Order*. Because there was no written solicitation describing the services sought by MDRF and no written scope of work describing the consultant’s tasks, functions and the deliverables to be produced, the OIG does not opine on which of the two administrative orders is applicable. However, we acknowledge that the process required by FSS 287.055 and A.O. 3-39 is generally more strict and, thus, for purposes of this report, we apply A.O. 3-38.

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The Inspector General shall have the power to require reports from the Mayor, County Commissioners, County Manager, County agencies and instrumentalities, County officers and employees and the Public Health Trust and its officers and employees regarding any matter within the jurisdiction of the Inspector General.

RELEVANT GOVERNING AUTHORITIES

Acquisition of Professional Services

The acquisition of professional services is governed (at a minimum) by A.O. 3-38, entitled the *Master Procurement Administrative Order*. (See OIG comment at footnote 2.) A.O. 3-38 governs “professional services other than those professional services whose selection is governed by Sec. 287.055 F.S. and Secs. 2-10.4 and 2-10.4.01 of the Miami-Dade County Code.”³

A.O. 3-38 requires, at a minimum, that professional services be acquired through a qualitative or competitive process, which may involve a solicitation for requests for qualifications (RFQ), requests for proposals (RFP), or an invitation to bid (ITB). In the absence of a selection process, professional services may be acquired through the processing of the contract award as a bid waiver. Bid waivers for expenditures up to \$100,000 may be waived by the Department of Procurement Management Director. Requests for waiver are prepared by the user department and submitted to the DPM Director. Waivers exceeding \$100,000 must be authorized by the Board of County Commissioners.

The Training Facility Construction Contract

The construction contract to build MDRF’s training facility was awarded to MCM in November 2008 under the delegated authority of the Mayor (or Mayor’s designee). The base contract amount to build the facility is \$22,179,168. The contract contains a contingency allowance of 5% or \$1,108,958 (for new construction pursuant to Section 2-8.1(h) of the Code of Miami-Dade County).

“Contingency Allowance” is defined in the contract documents, *Instructions to Prospective Contractor*, as

... an account that establishes a specific amount of time and/or money to be used to perform unknown or unanticipated work, as

³ Sec. 2-10.4 is entitled *Acquisition of professional architectural, engineering, landscape architectural or land surveying and mapping services*. Sec. 2-10.4.01 is entitled *Community Business Enterprise Program for Architectural, Landscape Architectural, Engineering, and Surveying and Mapping Professional Services*.

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directed by the Engineer, ***which is necessary to satisfactorily complete the project to its' full capacity, functional ability and comply with all safety and health requirements.*** Any time or money within the Contingency Allowance account not directly authorized for use by the Architect or Engineer, remains with the County. (Emphasis added.)

The contract's *General Covenants and Conditions*, Section 31 *Contingency Allowance Account*, describes authorizations for payment from the account. In short, it states that an "account has been established for the work of this Contract" and that the extra work, as directed by the Architect or Engineer, is work that it "required in order to complete the project to its full capacity, functional ability and comply with all safety and health requirements."

BACKGROUND: THE PROJECT AND PROJECT PERSONNEL

The MDFR Training Facility Construction Project

The Training Facility is located at 9300 NW 41st Street in Miami. The design is composed of a 44,000 square foot multiple-story training facility, main administration building and associated support facilities which include: classrooms, dormitory space, a hazardous materials training area, exercise room, pool, and paved access roads and parking. Groundbreaking for the Training Facility occurred in December 2008, and construction began in January 2009. The contractual substantial completion is June 24, 2010. The total project budgeted cost is over \$27 million.

MCM Corporation

MCM is located at 6201 SW 70th Street in Miami. MCM is a family-owned corporation that provides construction and construction management services for a variety of large-scale construction projects in South Florida. MCM was one of two firms that bid on this project. It had the lowest bid and was awarded the contract in November 2008.

Architect & Engineering (A&E) Firms

Spillis Candela & Partners, Inc. d/b/a Spillis Candela DMJM (Spillis Candela)⁴ is the A&E of record for this project. Spillis Candela designed the project and prepared contract and bid documents. During the construction phase of the project, Spillis Candela provides construction administration services, which includes reviewing and approving the contractor's submitted progress schedule,

⁴ Spillis Candela's parent company is the global technical services firm, AECOM.

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schedule of shop drawing submissions, schedule of values, and any other schedules required of the contractor pursuant to its contract.⁵

Brown and Brown Architects was awarded a PSA not to exceed \$150,000 for various professional services to be provided during the construction phase of the Training Facility Project. Among the many services to be rendered, Brown and Brown is “[t]o provide monitoring of the facility’s overall construction schedule and identify (if any) potential variances between schedules and probable milestone / completion dates and to provide any corrective action recommendations.”⁶

Mr. Joseph Mitrani, P.E.

Mr. Mitrani has a Bachelors Degree in Civil Engineering and a Masters Degree in Construction Management. He is a tenured professor at Florida International University. Locally and around the state of Florida, Mr. Mitrani provides his professional services to various clients, including Miami-Dade County Public Schools.⁷

MDFR Project Personnel

Mr. Alfonso Ledo holds the position of MDFR Construction Manager III. He first became involved in the Training Facility Project in 2001. He is the MDFR project/construction manager for the Training Facility Project. Mr. Ledo is supervised by Mr. Angel Lamela, Division Manager of the MDFR Facilities and Construction Division.

Mr. Lamela is a licensed architect and general contractor. He previously worked for the City of Hialeah for the past 18 years, where he held the position of City Architect. He joined MDFR in July 2008. Mr. Lamela reports to Deputy Chief Alfredo Suarez, who is the head project executive over the Training Facility Project. Deputy Chief Suarez has been involved with the Training Facility Project from its inception approximately sixteen years ago. Mr. Suarez reports directly to MDFR Director Herminio Lorenzo. MDFR falls under the management purview of Assistant County Manager Alina Hudak.

⁵ Spillis Candela PSA dated December 5, 2005, Article 4.9.3 *Construction Administration Services*

⁶ Brown and Brown PSA dated August 22, 2006, Section II – *Professional Services*

⁷ The OIG does not contest Mr. Mitrani’s qualifications. He is highly regarded and all comments regarding his performance on this project have been extremely positive. We do not doubt the benefit of his services to MDFR. This report, however, examines the process in which his services were retained.

INVESTIGATION

Investigation Overview

This investigation was conducted in accordance with the *Principles and Standards for Offices of Inspector General, Quality Standards for Investigations* as promulgated by the Association of Inspectors General.

This investigation is predicated on an anonymous complaint received by the OIG alleging that Mr. Mitrani was retained by MDFR by bypassing the normal process for the acquisition of professional services; that the mechanism by which Mr. Mitrani is being compensated is suspect; and that it is inappropriate to use construction contingency funds to pay for an owner's consultant. Our investigation substantiated these three allegations. A fourth allegation—that Mr. Mitrani was hired because of his friendship with Deputy Chief Suarez—was unsubstantiated even though our investigation determined that Deputy Chief Suarez was a former student of Professor Mitrani's and that Deputy Chief Suarez recommended his former professor for the assignment.

During the course of the investigation, OIG Special Agents reviewed documents including, but not limited to, county contracts, hiring policies, personnel files, correspondence, security procedures, administrative orders, pay requests, construction documents, construction schedule analysis, and project files relating to the Training Facility Project. Finally, OIG Special Agents conducted interviews of witnesses including Mr. Mitrani; Messrs. Lorenzo, Suarez, Lamela, and Ledo, as well as other personnel from MDFR; Assistant County Manager Hudak; and contractors working on the project.

The Initial Attempt by MDFR to Hire Mr. Mitrani as a County Employee

In the latter half of 2008, as ground-breaking for the Training Facility Project grew near, Chief Lorenzo, Deputy Chief Suarez, and Mr. Lamela agreed that it would be appropriate, in light of the importance of the project, for MDFR to hire an employee to oversee scheduling efforts by MCM, the general contractor. They selected Mr. Mitrani and offered him part-time employment, for no more than twenty hours per week, in the position of County Engineer IV. MDFR computed Mr. Mitrani's hourly rate to be \$65 per hour, which they projected as the hourly rate for the Engineer IV position. No other candidates were considered for the position.

In January 2009, several months after Mr. Mitrani had already begun working on the Training Facility Project—but before he had received any compensation for his work, it was determined that he could not be hired by the County. Thereafter, various MDFR officials, including Chief Lorenzo and Deputy Chief Suarez,

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attempted to obtain a waiver for him. They were unsuccessful in their efforts. However, during this entire time, Mr. Mitrani was still working on the project on behalf of MDFR.

The Subsequent Use of Construction Contract Contingency Funds to Pay for Mr. Mitrani's Services

After the efforts to obtain a County waiver for Mr. Mitrani failed, MDFR management decided to access the construction contract's contingency allowance account as a way to pay for Mr. Mitrani's services. As will be more fully described, Chief Lorenzo, Deputy Chief Suarez, and Mr. Lamela each advised Special Agents of the OIG that they believed the construction contract's contingency funds could be used for a wide range of needs related to the project, including the hiring of an owner's consultant. However, Chief Lorenzo acknowledged that no other consultants had been hired with contingency funds, and that the Miami-Dade County Attorney's Office was not consulted on the issue.

At the request of MDFR, MCM submitted CPR #16, dated June 4, 2009, **(attached as Exhibit 1)** that authorized MCM to fund payment to the Owner's Scheduling Consultant. CPR #16 authorizes \$173,818 to be encumbered for payment to Mr. Mitrani for his services. Specifically, it authorizes immediate payment of \$42,216 for services already rendered through May 31, 2009 and it sets aside the remaining \$115,500 to be paid in bi-weekly installments for services rendered from June 1, 2009 to August 27, 2010. Additionally, the CPR notes that each bi-weekly invoice for CRP #16 would include a 10% mark-up to account for the retainage that is automatically deducted from each pay request, thus not affecting Mr. Mitrani's compensation. Thereafter, at the end of the project MCM would credit back the 10% mark-up to the County. Lastly, CRP #16 includes a one-time \$300 processing fee to cover the administrative costs of processing Mr. Mitrani's bi-weekly payments.

CPR #16 was executed on behalf of MDFR by Mr. Lamela, even though Mr. Ledo, the Training Facility Project construction manager, normally signed the CPRs associated with the project. Mr. Ledo informed OIG Special Agents that when Mr. Lamela advised him that the decision had been made to hire Mr. Mitrani through MCM, using the CPR process to access contingency funds, he objected to the arrangement and refused to sign CPR #16. Because he disagreed with the decision to hire Mr. Mitrani in this manner, Mr. Ledo drafted a memorandum dated June 1, 2009 **(attached as Exhibit 2)** in which he explained the basis for his objection. In that memorandum, Mr. Ledo provided his professional opinion that the hiring arrangement raised a conflict of interest since the owner's consultant should not be paid by the entity (the general contractor) that he is overseeing. Mr. Ledo opined that the Owner's representative should

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be engaged and compensated directly by the Owner or through the Owner's Representative/Architect's contract—but that it was not in the County's best interest to allow the general contractor to pay the scheduling consultant, as a subcontractor, to oversee its work.

The Issuance of an MDFR Employee Identification/Access Card

In the fall of 2008, despite the fact that Mr. Mitrani was neither a County employee nor a retained consultant, MDFR issued him an employee ID card that allowed him free access to MDFR facilities, including headquarters and the executive offices. MDFR officials, including Chief Lorenzo, have admitted that the Consultant was granted a privilege not accorded to other contractors, who must obtain access approvals on a daily basis.

Interview of Mr. Mitrani

OIG Special Agents interviewed Mr. Mitrani, who stated that he was first contacted towards the end of the summer of 2008 about assisting MDFR on the Training Facility Project.⁸ He was not an MDFR employee, and was told that the process for becoming an employee with MDFR was going to be slow. He negotiated a salary with Deputy Chief Suarez and Mr. Lamela based on a County engineer job classification that had an annual salary of approximately \$90,000. The position called for Mr. Mitrani to work twenty hours each week, at an hourly rate of \$60 per hour.⁹

Mr. Mitrani stated that in January 2009, he was issued an MDFR ID card that allowed him access, among other locations, to the Executive Suite and the Facilities Section at the MDFR headquarters facility. Around the same time, he was notified that he could not be hired by the County.

Mr. Mitrani stated that in spite of the complication in the hiring process, he continued to work on the project. He explained that either Mr. Lamela or Deputy Chief Suarez, or both, came to him and advised that MDFR would be using the contingency funds to hire him. Mr. Mitrani stated to the OIG that he did not like the idea of being paid by the contractor that he was overseeing. In fact, he did

⁸ The Consultant could not recall whether he was contacted by Deputy Chief Suarez or Mr. Lamela.

⁹ The Consultant added that when he performs consulting work for Miami-Dade County Public Schools he charges \$170 per hour, and his fees for private consulting range between \$250 and \$350 per hour. In his interview with OIG Special Agents, he stated that his hourly rate was \$60 per hour. When OIG Special Agents interviewed Deputy Chief Suarez, we were advised that the rate was \$65 per hour. However, because there is no PSA, contract or other written work scope, and no detailed invoices for compensation, we are unable to determine what Mr. Mitrani's rate of pay actually is.

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see this as a perception problem and advised Mr. Lamela and Deputy Chief Suarez of this concern. Mr. Mitrani did say, however, that even though it was a perception problem, he would not be influenced by the arrangement.

Mr. Mitrani stated that he received his first payment for his services on the project in June of 2009, in the amount of \$42,000, which was retroactive pay for services rendered from October of 2008. He stated that all of the payments for his services on the project have been in the form of checks from MCM.

Mr. Mitrani stated that he has provided similar consultant services to the County on the South Dade Performing Arts Center Project. He explained that he was retained as a sub-consultant through the architectural firm. When asked if MDFR could have retained him on the Training Facility Project through an existing architectural or engineering (A&E) agreement (namely the A&E firms of Brown and Brown or Spillis, Candela and Partners) he stated that he was under the impression that the idea had been researched by MDFR but was either disregarded or deemed not feasible.

Interview of Fire Chief Herminio Lorenzo

OIG Special Agents also interviewed Fire Chief Lorenzo. Chief Lorenzo emphasized that due to the Training Facility Project's complexity, he wanted to ensure that MDFR was protected by having a respected construction professional looking out for its best interest. Chief Lorenzo stated that Mr. Mitrani was recommended to work on the project by Deputy Chief Suarez and Mr. Lamela, both of whom advised him that Mr. Mitrani was widely respected in the construction field, and also possessed impressive academic and teaching credentials. Chief Lorenzo acknowledged that no other candidates were considered for the position.

Chief Lorenzo stated that Mr. Mitrani began working for MDFR on the project around the time of the ground-breaking. Chief Lorenzo further stated that after he learned that Mr. Mitrani could not be hired as a County employee, he spoke to Assistant County Manager Hudak and the County's Director of Human Resources, in an attempt to obtain a waiver that would allow Mr. Mitrani to be hired immediately. Around the same time that the request for waiver was denied, MDFR began to consider the possibility of hiring Mr. Mitrani through the general contractor, MCM, and using the contract's contingency allowance account as a means to pay him. Chief Lorenzo stated that his understanding was that contingency funds could be used for a wide range of needs related to the project, including the hiring of an owner's consultant.

Chief Lorenzo explained that although the consultant is receiving his pay from MCM, he did not believe a potential conflict of interest existed because MDFR

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would still be in control of approving the payments from the contingency allowance account. He added, however, that no other consultants had been hired and paid through the contingency, and that the County Attorney's Office was not consulted on the issue. Chief Lorenzo mentioned that he spoke to ACM Hudak about that matter and advised her that MDFR had found a way to hire Mitrani, and that ACM Hudak agreed to it. However, he also stated that the conversation was brief and did not mention the use of contingency funds.

Lastly, with regard to the issuance of an ID card, Chief Lorenzo stated that some consultants and contractors are given passes to the MDFR headquarters building if they are working in the building for an extended period of time. He added that MDFR only has one type of an identification card, which is the employee ID card, and does not have a separate card available to issue to contractors. Chief Lorenzo stated that any member of the MDFR Executive Staff can authorize the issuance of the ID card.

Interview of Deputy Fire Chief Alfredo Suarez

OIG Special Agents interviewed Deputy Chief Suarez, who stated that he is responsible for total oversight for the Training Facility Project, and has been involved with it from its inception in 1993. He stated that prior to the start of construction, he met with Fire Chief Lorenzo and discussed the potential problems that could occur. Deputy Chief Suarez stated that he recommended that MDFR hire Mr. Mitrani, who he knew to be an expert in construction administration and in the evaluation of change orders. After Deputy Chief Suarez was informed that Mr. Mitrani did not qualify for County employment and after the failed attempt to obtain a waiver, Deputy Chief Suarez sought to obtain authorization to hire Mr. Mitrani through the construction contract's CPR process. Deputy Chief Suarez stated that Mr. Mitrani would be providing forensic scheduling oversight and that ACM Hudak agreed that the construction contingency could be used to hire him for that purpose. Deputy Chief Suarez reiterated that the contract with MCM did not describe a process for hiring consultants for the type of service that Mr. Mitrani would perform, so he believed that the construction contingency funds could be used for that purpose.

Deputy Chief Suarez was asked whether he had considered retaining the services of Mr. Mitrani as a sub-consultant through one of the A&E firms already working on the project. As for the A&E firm of Brown and Brown Architects, Deputy Chief Suarez stated that the firm had attempted to charge an 11% pass-through charge for its evaluation of a schedule of value that Mr. Mitrani asked to be reviewed by a third party. Additionally, he felt that the firm was upset because it did not get the contract to provide construction administration on the project.

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As for the A&E firm of Spillis Candela, Deputy Chief Suarez stated that the firm was proven to be weak in the area of construction administration, and as such, he needed to bring in Mr. Mitrani to supplement the team.

Interview of Anthony Valino, Project Manager, Spillis Candela

Mr. Valino is employed by Spillis Candela and has been assigned as the project manager for the Training Facility Project since approximately April 2009. Mr. Valino confirmed that he was not approached by Deputy Chief Suarez or any other MDFR project personnel about adding Mr. Mitrani as a sub-consultant for construction administration and scheduling services.

Interview of Angel Lamela, MDFR Division Manager

OIG Special Agents also interviewed Mr. Lamela. He provided much of the same information provided by others interviewed related to the attempted hiring process and the decision to use the contingency allowance account to pay for Mr. Mitrani's services. However, he noted that the decision was not his—it was either the Chief's or the Deputy Chief's decision. Mr. Lamela said that at first, he was hesitant to go along with the idea, but since Mr. Mitrani was actually going to be working for MDFR, not for MCM, he became more comfortable with the concept.

Mr. Lamela stated that MCM prepared CPR #16 at his request. Mr. Lamela stated that he signed CPR #16 instead of the MDFR Project Manager, Alfonso Ledo, because Mr. Ledo "expressed hesitation" about signing the form. Mr. Lamela further stated that Mr. Ledo informed him that using the CPR process might not be the appropriate way to acquire Mr. Mitrani's services, as it could result in the perception of a conflict of interest.

Mr. Lamela stated that he did not believe the arrangement with MCM to be a conflict of interest because he knew that Mr. Mitrani had high ethical standards, and that he would always have MDFR's best interests in mind. Mr. Lamela added that, in his opinion, the contingency funds could be used for unforeseen construction issues on the project, and he did not see an issue with using those funds for hiring an owner's consultant, although he stated that he had never done so on this or any prior project. He stated that MCM waived the 10% mark-up fee, which it is allowed to charge pursuant to the terms of the contract, because MCM would not be providing any supervision over Mr. Mitrani's work.

Lastly, Mr. Lamela confirmed that Mr. Mitrani was issued an MDFR ID card. He added that Mr. Mitrani was the only contractor on the project that was issued an identification card that provided access to the MDFR headquarters facility because he visited the facility more frequently than the other contractors. Mr.

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Lamela stated that the other contractors are issued daily passes by security personnel each time they visit the headquarters facility.

Interview of Alfonso Ledo, MDFR Construction Manager

Mr. Ledo, MDFR's construction/project manager for the Training Facility Project, was also interviewed by OIG Special Agents. He stated that he objected to the arrangement whereby Mr. Mitrani was going to be paid through MCM's contingency allowance account. Mr. Ledo stated that he thought that it was a conflict of interest to pay the overseer through the company that he is supposed to supervise. Mr. Ledo advised Mr. Lamela that he would not sign CPR #16 even though, as the project manager, he has signed most, if not all, of the other CPRs prepared on the project.

Because he disagreed with the decision to hire Mr. Mitrani in this manner, Mr. Ledo drafted a memorandum, dated June 1, 2009, in which he explained the basis for his objection. In that memorandum, Mr. Ledo provided his professional opinion that the hiring arrangement raised a conflict of interest, since it was not in the best interest of MDFR to allow MCM to pay the owner's scheduling consultant. However, Mr. Ledo also stated during his interview that in his opinion, Mr. Mitrani has a wealth of knowledge in construction administration and has been doing a good job for the County on this project.

Interview of Assistant County Manager Alina Hudak

ACM Hudak was aware of the chronology of events concerning the attempted hiring of Mr. Mitrani. She recalled having an informal conversation with Fire Chief Lorenzo where he informed her that MDFR had identified another way to retain the services of Mr. Mitrani. ACM Hudak, however, did not know the manner in which his services were compensated. ACM Hudak was advised that Deputy Chief Suarez stated to the OIG that he had received her permission to retain Mr. Mitrani's services utilizing a change proposal request. She stated in her interview that perhaps Deputy Chief Suarez had misunderstood her, as she recalled telling MDFR to hire Mr. Mitrani with a professional services agreement. She stated to the OIG Special Agents that she did not have any knowledge of, nor did she authorize, the use of contingency funds to pay for Mr. Mitrani's services. She also noted that she is not involved with any of the change orders on this project.

Interview of Juan Campos, Project Manager, MCM Corporation

OIG Special Agents interviewed Mr. Juan Campos, who is MCM's project manager on the Training Facility Project. He advised that at a meeting,

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approximately one week before June 4, 2009 (date of CPR #16), MDFR stated that it was decided to pay Mr. Mitrani through the contingency allowance account. Mr. Gus Fernandez, MCM Senior Project Manager, advised the MDFR officials that he would first need to seek the approval of MCM's principals before he could agree to the pass-through arrangement. Mr. Campos advised the OIG that he prepared the language of CRP #16, which was then reviewed by Mr. Fernandez and the MCM principals.

OIG Special Agents asked Mr. Campos if he considered the pass-through arrangement to pose a conflict of interest, as Mr. Mitrani's job is to oversee the work of the contractor who is paying him. Mr. Campos said that he was hesitant at first, but went along with it because it was only a pass-through. He noted that MCM was doing this as a favor to MDFR. He also stated that MCM would be returning the 10% mark-up fee to MDFR at the end of the project, and that MCM was only charging \$300 for payroll processing, noting that MCM is probably losing money on this arrangement. Mr. Campos again stated that the arrangement was done as a favor to MDFR.

Failure to Acquire Professional Services in Accordance with County Procedures

Mr. Mitrani's services, as an Owner's Scheduling Consultant, falls within the ambit of construction administration services. One appropriate way to have retained his services would have been to add him as a sub-consultant to the Spillis Candela team. The professional services agreement between the County and Spillis Candela allows the Owner to review and consent to the qualifications of the individuals proposed to staff the project. As the Owner's representative on the project, whose work scope includes the review and approval of the contractor's submitted schedules, it would have been a logical fit to retain the services of Mr. Mitrani under Spillis Candela's work scope.

Nevertheless, MDFR could have retained the services of Mr. Mitrani, independent of any other A&E firm, by awarding him a stand-alone professional services agreement, similar to the \$150,000 PSA awarded to Brown and Brown. In accordance with A.O. 3-38, MDFR could have solicited qualifications for a "forensic scheduling consultant" and chosen such an individual based on his/her experience and qualifications. In the event that MDFR was not open to considering any other candidates, MDFR could have (and should have) openly justified its choice and awarded Mr. Mitrani a PSA via a bid waiver. However, due to the overall compensation amount (over \$100,000), the award of the PSA would have required the Board of County Commissioners approval.¹⁰

¹⁰ Any such PSA would have also had to have been retroactive to approximately October 2008, when Mr. Mitrani began working on the project.

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Compensating Mr. Mitrani's services through the construction contract's contingency allowance account shields the arrangement from scrutiny. Moreover, even as a pass-through, the arrangement lacks the most basic tenants of public contracting: some form of a written agreement.

Noticeably absent to the entire arrangement is a written scope of services describing the work Mr. Mitrani is to perform and how he is to be compensated. Based on our repeated requests for written documentation and the absence of any production, we can presume that there is no written agreement between Mr. Mitrani and MDFR, or even between Mr. Mitrani and MCM for that matter. Invoices are submitted by Mr. Mitrani to MCM on a monthly basis for—what appears to be—a monthly lump sum charge of \$7,583.33. There is no detail on the one-page invoice stating an hourly rate or the number of hours worked. (See **Exhibit 3** composite for monthly invoices.)

Non-conforming Use of Contingency Allowance Account

For new construction, a contingency allowance account of 5% of the contract price is included in each construction contract award.¹¹ Contingency funds are to be used to “perform unknown or unanticipated work, as directed by the Engineer, which is necessary to satisfactorily complete the project to its’ full capacity, functional ability and comply with all safety and health requirements...”¹²

MDFR executives opined to OIG Special Agents that they could use the contingency allowance account for the purposes of paying for an Owner's Scheduling Consultant. However, the contract's criteria for the contingency allowance precludes such use. The task of reviewing and approving the contractor's submitted schedules is neither an “unknown” nor “unanticipated” task. Scheduling consulting services falls squarely within the work scope of construction administration; it is expressly included in both Spillis Candela and Brown and Brown's PSAs. Moreover, it would be highly irregular for the A&E to direct the contractor to do this work when it is expressly in the A&E's work scope. Finally, the consulting services of a scheduling consultant, while it may be beneficial to the overall project and keeps the project on track—does nothing to “complete” the project. Completing the project, i.e. getting the facility built, is the responsibility of the contractor. Contingency funds are, thus, part of the construction contract, which allows the Owner to pay for unforeseen and unanticipated costs, in connection with getting the facility built, without requiring a BCC-approved change order.

¹¹ Section 2-8.1(h) of the Code of Miami-Dade County.

¹² *Instruction to Bidders* in the aforementioned construction contract.

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No Commission on Ethics Advisory Opinion Sought

It is clear from the interviews conducted by OIG Special Agents that those involved, including Mr. Mitrani, acknowledged that—at a minimum—a “perception problem” existed. Mr. Mitrani stated that he communicated his sentiments to Deputy Chief Suarez and Mr. Lamela. Mr. Ledo, MDFR’s project manager, even opined that the arrangement constituted a conflict of interest, as Mr. Mitrani would be getting paid by the same company that he was hired to oversee; he expressed his concerns to his superiors. No one at MDFR sought an advisory opinion from the Miami-Dade County Commission on Ethics (COE) even though the COE’s jurisdiction covers A&E consultants and it issues a significant number of advisory opinions relative to A&E arrangements.

Nevertheless, we believe that this arrangement goes beyond a mere perception problem, and that there is an apparent conflict of interest. Our belief is buttressed by the fact that MCM is foregoing its contractually allowable mark-up cost and is processing Mr. Mitrani’s payments out of the contingency allowance account as a “favor” to MDFR. Clearly, it is in MCM’s best interest to curry favor with MDFR. As such, the OIG will be forwarding this report (upon finalization) to the COE for its independent determination.

RESPONSE TO THE DRAFT REPORT & OIG COMMENT (*italicized*)

This report, as a draft, was provided to Messrs. Mitrani, Lorenzo, Suarez, Lamela, Ledo, Valino and Campo, and to ACM Hudak, for their discretionary written responses. The OIG received only one response to the draft report, which came from MDFR Fire Chief Lorenzo. It is attached and incorporated herein as Appendix A. We appreciate receiving the response.

In its response, MDFR explains that the complex structural requirements of the Training Facility Project required MDFR to have a “professional, knowledgeable construction project management and scheduling function to comprehensively follow the course of the construction efforts” of the project. As such, Mr. Mitrani was identified as having those attributes and was retained by MDFR. MDFR also attributes Mr. Mitrani’s involvement to the project being on time and within budget.

Regarding the means in which Mr. Mitrani was retained, the Fire Chief writes that “it was never the intent of MDFR to circumvent or bypass any required formal process.” The Fire Chief states that they (Deputy Chief Suarez, Mr. Lamela and himself) all earnestly believed that the MCM contract’s contingency fund could be used by the Owner (MDFR) to pay for the construction project management function, i.e. for the Owner’s scheduling consultant. MDFR explains that by retaining Mr. Mitrani’s services through MCM’s contract, with MCM foregoing its

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mark-up, it saved approximately \$15,000. As for MCM's statement that it was doing the department "a favor," the Fire Chief questions how this could be the case since MCM had already been awarded the contract and, thus, how could MCM benefit from any post-contract award favor. *Clearly, one could think of several ways.*

Regarding the OIG's concern that Mr. Mitrani (even if as MCM's sub-contractor) did not have a written scope of work for the services he was expected to perform, MDFR states that Mr. Mitrani's "role and responsibilities were verbally discussed in great detail with him by Chief Suarez and other facilities managers and personnel. As part of its response to the OIG, MDFR provides a 22-bullet point listing of Mr. Mitrani's "Illustrative Construction Management Tasks." *The listing is quite comprehensive and goes well beyond forensic scheduling services, but at least MDFR has finally put something in writing.*

Lastly, MDFR addresses Mr. Mitrani's assignment of an employee ID card, which gave him unrestricted access the headquarters building. The Fire Chief writes that Mr. Mitrani was not just simply a construction contractor but the Owner's consultant and, as such, required access to the MDFR Facilities Division. *The problem is that technically, Mr. Mitrani was MCM's (the construction contractor) sub-contractor. He was never a MDFR consultant nor a county employee but he was issued an ID approximately seven months before there was a formal relationship to pay for his services passed through the MCM contingency fund.*

CONCLUSION & RECOMMENDATIONS

We appreciate the significance of the Training Facility Project, and MDFR's desire to hire a respected construction professional to oversee its scheduling. However, that motive should not, and cannot, justify retaining an Owner's scheduling consultant through the general contractor, and using the construction contingency to pay for the consultant's services. The means and methods employed by MDFR, in this case, puts at risk the department's reputation in managing and overseeing its own construction projects.

After learning that their first choice could not be hired by the County, MDFR could have reached out to another of the many highly qualified construction professionals who undoubtedly reside in South Florida. MDFR could have also issued Mr. Mitrani a stand-alone PSA limited to scheduling oversight services. As a bid waiver, the PSA would have required BCC approval. Instead of openly proceeding through the front door, MDFR shielded the arrangement by ushering Mr. Mitrani through the back door via manipulation of the CPR process.

The actions of MDFR created a conflict of interest. Construction contingency funds were used for non-conforming expenses. Moreover, we are particularly

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concerned that from the onset of construction, MDFR issued a non-employee an MDFR employee ID card that provided Mr. Mitrani with unqualified access to the MDFR headquarters building, including its executive offices. MDFR exposed the County to a wide range of security and liability issues.

Accordingly, by way of this report, the OIG recommends that:

1. MDFR immediately cancel CPR #16. Unspent funds should be returned to the contingency account balance. Should MDFR wish to continue the services of Mr. Mitrani, MDFR should procure his services through one of the existing A&E agreements for this particular project or directly by awarding him a stand-alone PSA, justified as a bid-waiver, in accordance with A.O. 3-38. The formality of the contracting arrangement is even more important now as the construction period nears a close and the possibility of claims increases.
2. Prospectively, MDFR strictly comply with County authorities, including relevant Administrative Orders, when acquiring consultant services. MDFR should be required to utilize the services of OCI in obtaining A/E services.
3. MDFR revamp its security identification procedures to ensure that only qualified employees are issued ID cards that provide access to its facilities. Consultants deemed necessary to have access to MDFR facilities should be required to undergo a formal application process that includes the request by MDFR project managers and authorization by MDFR management. It should identify the contracts, agreements, and projects that the consultant is engaged on and identify when such contracts, agreements, and projects are concluded in order to deactivate the ID and seek its return.

The OIG requests that we are provided with a status report in 45 days, or by June 30, 2010, regarding MDFR's adoption and implementation of these recommendations.

APPENDIX A

**Response Submitted by the
Miami-Dade Fire Rescue Department**

Memorandum



Date: April 23, 2010

To: Christopher Mazzella, Inspector General
Office of the Inspector

From: Herminio Lorenzo, Fire Chief
Miami-Dade Fire Rescue Department

Subject: OIG Draft Report, IG09-66

The goal of Miami-Dade Fire Rescue Department (MDFR) when embarking on the construction of the Training Complex was to complete the project within or even under the budgetary allocation, minimize construction delays and costs, provide for employee safety, and ensure critical construction milestones were achieved.

The construction of the Training Facility was one of the most unique and challenging projects that has been achieved in Miami Dade County in the last fifty years. During the bid development, the Department of Procurement decided that the construction and fire prop vendor should be solicited separately. This posed a potential problem as the fire prop vendor and construction company must retain open communication and coordination to ensure proper accountability. As MDFR experienced a tragedy in 2003 when firefighter recruit Wayne Mitchell died during a controlled burn exercise, safety of MDFR personnel in the Training Complex was paramount. Logistical or communication shortfalls that may occur between the fire prop vendor and the construction company proved to be a great concern. This along with the complexity of the Training structures necessitated a seasoned technical construction expert to advocate for MDFR from the onset of the project. MDFR identified a significant need to have a professional, knowledgeable construction project management and scheduling function to comprehensively follow the course of the construction efforts of the Training Complex.

Mr. Jose Mitrani was identified to possess significant attributes that would benefit the Department regarding the timely completion of the Training Complex. Although the OIG report indicated that Mr. Mitrani did not have a "*specific written scope of work*", his role and responsibilities were verbally discussed in great detail with him by Chief Suarez and other facilities managers and personnel. (Attachment 1)

Although the allegation that "*Mr. Mitrani was retained by MDFR bypassing the normal process for the acquisition of professional services*" was substantiated, the OIG report indicates "*one appropriate way to have retained his services would have been to add him as a sub-consultant to the Spillis Candela Team*". It was the intention of MDFR to obtain Mr. Mitrani services within the same spirit that would have permitted him to serve as a sub-consultant to the Spillis Candela Team. MDFR opined that hiring Mr. Mitrani through the use of the contingency fund to be appropriate since it would be under the charge of "*necessary to satisfactorily complete the project to its full capacity, functional ability and comply with all safety and health requirements*". The statement that "*instead of openly proceeding through the front door, MDFR shielded the arrangement by ushering Mr. Mitrani through the back door via manipulation of the CPR process*" needs clarification. That statement could not have been asserted if MDFR would have utilized either of the Architectural/Engineering firms to engage Mr. Mitrani. With these two avenues available, it seems counterintuitive that MDFR would have purposely manipulated the CPR process and hired him through the "*back door*". MDFR's use of the "*back door*" was based only on our ability to save the 11% pass through amount that would have been charged by the

Architectural/Engineering firms, and to serve MDFR as an objective advisor in matters pertaining to the actual work of the Architectural/Engineering firms related to this project.

As is evident in the testimonies of Deputy Chief Suarez, Mr. Lamela, and myself, we earnestly believed the contingency fund could be used to perform the construction project management function for the Training Complex. We proceeded in good faith and accomplished to acquire solid construction project management in the most cost effective fashion. Therefore, the decision that MCM would employ Mr. Mitrani for this project was based on the 11% pass through that would have been charged by the Architectural and Engineering firm of Brown & Brown (saving the tax payers approximately fifteen thousand dollars). The interpretation of the OIG of an apparent conflict of interest is based on the assumption that MCM is *"processing Mitrani's payments out of the contingency allowance account as a 'favor' to MDFR. Clearly, it is in MCM's best interest to curry favor with MDFR"*. This belief seems contrary to the fact the MCM had been awarded the construction contract, was actively engaged in the construction of the Training Complex, and would not benefit from any real or perceived *"favor"*. We would counter that based upon MCM's commitment to professionalism they allowed a construction watchdog to serve in their employ to ensure that highly technical and complex structures of the Training Complex would be completed in a timely fashion while meeting required safety guidelines.

The statement that *"moreover, we are particularly concerned that from the onset of construction, MDFR issued a non-employee an MDFR employee ID card that provided Mr. Mitrani with unqualified access to MDFR headquarters building, including its executive offices"* requires clarification. As is stipulated throughout your report, Mr. Mitrani is the Owner's (MDFR) Consultant and not simply a construction contractor and therefore required to have access to the MDFR Facilities Division. As indicated, this practice is not unique to Mr. Mitrani as other consultants working for MDFR have been issued access cards to facilitate their work assignments. Access cards are issued based on the unit of assignment and limited in nature, with access to most MDFR areas within normal business hours. MDFR Access cards are granted by division managers through the Management Information Technology Division. Additionally, MDFR leases space to United States Southern Command whose employees are issued an MDFR access card with 24 access to the Building. It is the purview of the Department Director to determine the access and security level of their Department. As such, MDFR closely monitors the issuance of access cards and maintains historical access information by card holder.

For the record and public knowledge, it was never the intent of MDFR to circumvent or bypass any required formal process. It was our intention to exhibit transparency in our actions throughout this process. Even though your report states, *"the ends does not justify the means"*, it is important to report that the successful completion of this project will be achieved in the next few months on time and within the allocated budget. This achievement is in no small part directly attributable to the *"forensic construction administration expert"* accessed by MDFR for the sole purpose of protecting the safety of our employees and the interest of the public.

In the future, MDFR will work closely with the Department of Procurement, County Attorney's Office, and other County agencies to ensure all appropriate procurement guidelines are followed. It is as always our intention to work cooperatively with other County departments to ensure County processes are followed and avoid even the perception of conflicts of interest.

HL/vs

c: Alina Tejeda-Hudak
Assistant County Manager

Jose Mitrani
Illustrated Construction Management Tasks

- Provide MDFR with expertise and assistance on general construction management, project management, project engineering, contract administration, and any other construction and civil/structural engineering, building code, and permitting issues MDFR might need assistance with on the Training Facility project. This includes, but is not limited to:
- Reviewing, analyzing, commenting, and recommending approval/rejection of preliminary, initial, baseline, and monthly updated project schedules
- Ascertaining that project schedules, including preliminary, initial, baseline, and schedule updates, contain the necessary activities to completely, accurately and consistently reflect the project scope of work
- Ascertaining that project schedules, including preliminary, initial, baseline, and schedule updates, incorporate proper and reasonable logical relationships between activities, consistent with the contractor's proposed means and methods and projected construction sequencing and operations
- Ascertaining that project schedules, including preliminary, initial, baseline, and schedule updates, contain activities with reasonable and realistic activity durations, consistent with the contractor's proposed resources, crews, etc., for the project
- Verifying that project schedule updates reflect reasonable forecasts of project progress and accurate historical data correlation to actual progress on the job
- Verifying that project schedule updates reflect reasonable and realistic forecasts of project substantial completion
- Verifying that project schedule updates reflect accurate reporting of project costs expended
- Verifying the correctness, appropriateness, and reasonableness of contractor's proposed schedule modifications, and that these modifications accurately reflect actual sequencing and operations in the project
- Reviewing, analyzing, commenting, and recommending approval/rejection of construction cost schedule of values
- Providing MDFR with independent forecasts of project progress and substantial completion
- Providing MDFR with independent forecasts of the impact of delays on project progress and substantial completion
- Assisting MDFR in cost control functions - monitoring and reviewing actual costs versus estimated/projected project costs
- Providing assistance with constructability evaluations and analyses
- Providing assistance with value engineering and evaluation of value engineering proposals proposed by the contractor
- Providing assistance with construction permitting issues in a project with eleven separate permits and one building requiring threshold inspection plans
- Providing assistance with construction inspection issues in a project with eleven separate permits and one building requiring compliance with threshold inspection plans
- Providing assistance with product control issues
- Identifying trouble spots and devising and implementing corrective actions with the project team
- Attending weekly jobsite meetings and any other meetings required to deal with the items listed above.
- Reviewing, commenting and providing input and help in evaluating change orders
- Reviewing, commenting and providing input and help in evaluating claims

OIG Exhibits

IG09-66



DATE: Jun.04.09

PROJECT: Miami Dade Fire Rescue Traing Facility

TO: Spillis Candela DMJM
Attention: Antonio Valino

RE: Owner's Scheduling Consultant Services thru Aug.27.10

DESCRIPTION:

At the Owner's request, MCM will fund through the Owner's Contingency the Owner's Scheduling Consultant Services rendered thru Aug.27.10. The total amount to be distributed is \$157,716. The distribution will be as follows: An initial payment of \$42,216 for services rendered thru May 31,2009 and \$115,500 for services between Jun.01.09 thru Aug.27.10 distributed bi-weekly to Jose Mitrani as an independent Consultant and billed monthly to MDFR in an amount equal to the distribution for the month. In addition this amount will include a 10% markup to account for the monthly retainage contractually reduced from MCM's invoice, but not applicable to the consultant. At the end of the project, MCM will credit back the 10% Markup once final payment is processed.

The cost for this additional work is as follows:

Table with columns for item description and TOTALS. Items include LABOR (\$300), MATERIAL (\$0), EQUIPMENT (\$0), SUBCONTRACTS (\$157,716), Subtotal (\$158,016), Contractual Markup (Waived) (\$0), Retainage Markup @ 10% (\$15,802), Subtotal (\$173,818), Bond & Insurance (2.0%) (\$0), and TOTAL (\$173,818).

This proposed change is limited to the work described herein, and does not include any other work not listed on the attached Direct Cost Analysis.

TIME EXTENSION REQUEST COST

Below please find a projection of days anticipated to perform the above noted work. MCM reserves its rights to address any real cost associated with the additional time required (below noted), at a later date.

TOTAL OF THIS CHANGE ORDER REQUEST

ADD [checked] DEDUCT [] \$ 173,818

The Contract Time will be revised to reflect:

ADD [] DEDUCT [] N/A

MCM Construction Manager

Handwritten signature of MCM Construction Manager

JUNE .04.09

Having received the above, I hereby certify that to the best of my knowledge and belief, the vendor pricing data submitted reflects adequate values and that the Contractor is entitled to payment and time within the limits above.

MDFR Owner/Owner's Agent

Handwritten signature of MDFR Owner/Owner's Agent

0604-09

Architect/Engineer

Signature

Date





DIRECT COST ANALYSIS

This constitutes the support for the Direct Cost on this Change Order Request

DATE:Jun.04.09

CPR# 16

PROJECT:Miami Dade Fire Rescue Traing Facility

RE:Owner's Scheduling Consultant Services thru Aug.27.10

LABOR

MCM

Item	DESCRIPTION	UNIT	MHRS	U. COST	SUB. TOT
1	Administrative costs for invoice processing and accounting.	1	LS	\$300.00	\$300

SubTotal= \$300

MATERIAL

Item	DESCRIPTION	UNIT	QTY.	U. COST	SUB. TOT
------	-------------	------	------	---------	----------

SubTotal= \$0

EQUIPMENT

Item	DESCRIPTION	UNIT	QTY.	U. COST	SUB. TOT
------	-------------	------	------	---------	----------

SubTotal= \$0

SUBCONTRACTS

Jose Mitroni

Item	DESCRIPTION	UNIT	QTY.	U. COST	SUB. TOT
1	Owner's Scheduling Consultant for Services Render thru Aug.27.10	LS	1	\$157,716	\$157,716

SubTotal= \$157,716



MIAMI-DADE COUNTY, FLORIDA

Miami-Dade Fire Rescue Department

CONTRACT CONTINGENCY ALLOWANCE

EXPENDITURE AUTHORIZATION

Contract Title: Miami-Dade Fire Rescue Training Facility

Contract No: RFQ TR01-02

Date: 6/4/2009

Proposal Item No: 16

Allowance Draw No: 2

	Contract Amount	Previously Used:	Previously Approved:	Balance:
Contingency Dollars:	\$1,108,958.00	\$107,210.00	\$107,211.00	\$1,001,747.00
Contingency Duration:	56 Days	0 Days	0 Days	56 Days

Contractor: Munilla Construction Management, LLC dba MCM

YOU ARE HEREBY REQUESTED TO MAKE THE FOLLOWING CHANGES IN THE PLANS AND SPECIFICATIONS FOR THIS PROJECT AND TO PERFORM THE WORK ACCORDINGLY, SUBJECT TO ALL CONTRACT STIPULATIONS AND COVENANTS.

Description of work authorized:

At the Owner's request, MCM will fund through tgh Owner's Contingency the Owner Scheduling Consultant Services to be rendered through August 27, 2010. The total amount to be distributed is \$157,716.00. The distribution willbe as follows. An inital payment of \$42,216.00 for services rendered thru May 31, 2009 and \$115,000.00 for services between June 1, 2009 and August 27, 2010 disctributed bi-weekly to Jose Mitrani as an independent Consultant and billed monthly to MDFR in an amount equeal to the disctribution for the mont. In addition this amount will include a 10% markup to account for the monthly retainage contractually reduced from MCM's invoice, but not applicable to the consultant. At the end of gthe project, MCM will credit back the 10% Marckup once final payment is processed. THIS IS INCLUDED IN MCM CPR # 16 APPROVED BY ANGEL LAMELA.

Total Contingency Allowance (this request): \$173,818.00

This payment authorization includes not only all direct costs of the contractor such as labor, material, job overhead, and profit markup but also includes all costs for modifications or changes in sequence of work to be performed, delays, rescheduling, disruptions, extended direct overhead or general overhead, acceleration, material or other escalation which includes wages, and other impact costs.

CONTRACT DESCRIPTION

The Miami-Dade Fire Rescue Department (MDFRD) Training Facility will be located at 9300 NW 41st Street, Miami, Florida 33178. The design is composed of a 44,000 square foot (approximately) multiple story fire rescue training facility, main administration building and associated support facilities inclusive of classrooms, dormitory space, haz-mat area, confined space area, exterior live (Continued below)

SEE ATTACHED JUSTIFICATION

		<u>Contractor</u>	
Accepted for Contractor, By: _____	Signature _____	Title: _____	Date: _____

JUSTIFICATION:

The above described change in plans and/or specifications is necessary for the following reasons. At the Owner's request, MCM will fund through tge Owner's Contingency the Owner Scheduling Consultant Services to be rendered through August 27, 2010. The total amount to be distributed is \$157,716.00. The distribution willbe as follows. An inital payment of \$42,216.00 for services rendered thru May 31, 2009 and \$115,000.00 for services between June 1, 2009 and August 27, 2010 discitbuted bi-weekly to Jose Mitrani as an independent Consultant and billed monthly to MDR in an amount equeal to the disctribution for the mont. In addition this amount will include a 10% markup to account for the monthly retainage contractually reduced from MCM's invoice, but not applicable to the consultant. At the end of gthe project, MCM will credit back the 10% Marckup once final payment is processed. THIS IS INCLUDED IN MCM CPR # 16 APPROVED BY ANGEL LAMELA.

TIME EXTENSION

No time extension can be provided to a Contract without proper processing through a Miami-Dade County Change Order, unless such an extension is specified in the General Covenants and Conditions of this contract.

CONTRACT DESCRIPTION (Continued)

props, exercise room, apparatus area, pool and paved access roads and parking. The scope of services shall include construction and permitting of the Training Complex and design and construction of specialized Fire Training Props.

June 1, 2009

Re: Letter to File

Miami-Dade Fire Rescue Department (MDFRD) Training Facility
Construction Contract with MCM (Munilla Construction Management) RFQTR01-02
Change Proposal Request (CPR) No. 16 (Owner's Scheduling Consultant Services)

To Whom It May Concern:

I am writing this "letter to file" as an explanation of why I refused to sign at the Owner/Owner's Agent authorization line of CPR No. 16 for MCM on behalf of the Miami-Dade Fire Rescue Department, as I have for other CPR's.

I am not in agreement with this Change Proposal because I see it as a "conflict of interest" that the Scheduling Consultant, who is performing a service to the Owner, be hired as a sub-contractor/sub-consultant through the General Contractor (MCM) using Construction Contingency allocated funds. It is my professional opinion, as project manager, that these Scheduling Consulting Services, even though the Owner is paying for them ultimately since the Owner pays for the construction contract, should be obtained directly by the Owner, through an Owner's Representative or through the Architect of Record, not through the General Contractor. The General Contractor is the entity which has the obligation, per contract, to provide the schedule to the Owner which the Scheduling Consultant is hired to review and provide consulting services to the Owner about. It is not in the best interest of the Owner to have the General Contractor involved in the payment process of this Consultant if any conflict were to arise.

I expressed my concerns to my supervisor, Angel H. Lamela, Facilities and Construction Division Manager for the MDFRD, and told him I had decided I would not sign this CPR. He accepted my decision and he said he did not feel comfortable with it either but he had been instructed by his superiors to go ahead and approve the CPR and he would.



Alfonso J. Ledo
Project Manager
Section Manager/Construction Manager 3
Facilities and Construction Division
Miami-Dade Fire Rescue Department



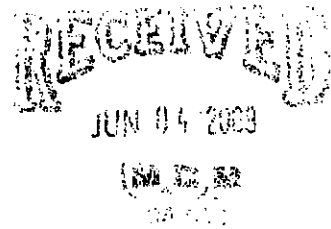
José D. Mitrani P.E.

Consulting Engineer

Statement

May 31, 2009

MCM Corp.
Engineers and General Contractors
6201 S.W. 70th Street, 2nd Floor
Miami, FL. 33143



ATTN: Mr. Gus Fernandez

Re: MDRR

This statement reflects fees for professional services rendered to May 31, 2009.

Time Charges \$42,216.00

OK to process for payment
as per telephone
conversation with Juan on
June 12th. - Laura

Please make payment out to José D. Mitrani P.E. and remit the same to 10642 S.W. 129th Place, Miami, Fl. 33186.

Thank You

10642 SW 129 Place
Miami FL 33186



José D. Mitrani P.E.

Consulting Engineer

Statement

June 15, 2009

MCM Corp.
Engineers and General Contractors
6201 S.W. 70th Street, 2nd Floor
Miami, FL. 33143

ATTN: Mr. Gus Fernandez

Re: MDR

This statement reflects fees for professional services rendered June 2009.

Time Charges \$7,583.33

APPROVED

Juan M. Campos 7/16/09

Please make payment out to José D. Mitrani P.E. and remit the same to 10642 S.W. 129th Place, Miami, Fl. 33186.

Thank You

RECEIVED
JUN 17 2009

MCM
08-630

José D. Mitrani P.E.

Consulting Engineer

Statement

July 15, 2009

MCM Corp.
Engineers and General Contractors
6201 S.W. 70th Street, 2nd Floor
Miami, FL. 33143

ATTN: Mr. Gus Fernandez

Re: MDR

This statement reflects fees for professional services rendered July 2009.

Time Charges \$7,583.33

APPROVED

Juan M. Campos 7/16/09

Please make payment out to José D. Mitrani P.E. and remit the same to 10642 S.W. 129th Place, Miami, Fl. 33186.

Thank You

RECEIVED

JUN 17 2009

MCM
08-630

José D. Mitrani P.E.

Consulting Engineer

Statement

August 15, 2009

MCM Corp.
Engineers and General Contractors
6201 S.W. 70th Street, 2nd Floor
Miami, FL. 33143

ATTN: Mr. Gus Fernandez

Re: MDFR

This statement reflects fees for professional services rendered August 2009.

Time Charges \$7,583.33

Juan M. Campos 8/26/09



Please make payment out to José D. Mitrani P.E. and remit the same to 10642 S.W. 129th Place, Miami, Fl. 33186.

Thank You

RECEIVED
JUN 17 2009

MCM
08-630