



pennsylvania
DEPARTMENT OF GENERAL SERVICES

August 7, 2015

Mr. Kevin Swain
Walsh Heery Joint Venture
333 Technology Drive, Suite 205
Canonsburg, PA 15317

Mr. Robert Monser
Walsh Heery Joint Venture
1717 Arch Street, Suite 3730
Philadelphia, PA 19103-2029

Re: Payment of Contractors and Subcontractors – SCI Phoenix

Dear Mr. Swain and Mr. Monser:

The purpose of this letter is to emphasize what should be obvious: the successful completion of the SCI Phoenix project relies upon Walsh Heery Joint Venture's (Walsh/Heery) timely payments to the myriad of subcontractors and suppliers working on the job. Although the Department of General Services (DGS) is not responsible for guaranteeing payment to or performance by your subcontractors and suppliers, we expect Walsh/Heery to submit accurate invoices for properly installed contract work and to pay every subcontractor and supplier in accordance with Article 7.8 *Payment of Subcontractor by DBC Governed By Prompt Payment Act* of the General Conditions for the Prison Expansion Design-Build Contract, the Prompt Payment Act (62 Pa. C.S. §§ 3931 – 3939), and your subcontracts and purchase orders payment terms.

Since the scope of scheduled work spans the entire project site and the completion date approaches, numerous subcontractors and suppliers are increasingly complaining about non-payment for base contract work and failure to pay for what they term as 'extras'. Article 7.9 *Failure of DGS to Make Progress Payment* states:

If DGS fails to pay some or all of an accepted Application for Payment for any cause which is the fault of the DBC and not the fault of a particular Subcontractor, the DBC shall pay that Subcontractor, upon demand made by the Subcontractor at any time after the accepted Application for Payment should otherwise have been issued, for its Work to the extent completed, less the retained percentage.

Despite DGS' ongoing offer to process bi-weekly invoices, Walsh/Heery has, to date, not accepted this offer and has apparently struggled to submit accurate monthly invoices. Several days, if not weeks, pass between when Walsh/Heery submits the first draft of the invoice and then when Walsh/Heery submits a corrected, accurate invoice. Walsh/Heery bears the full responsibility for submitting timely invoices that reflect the actual, acceptable work installed since their prior invoice. As DGS has not issued a change order on this project for over a year, I can only believe that the 'extras' are for prior approved change orders which have been and continue to be paid by DGS based upon the amount actually invoiced by Walsh/Heery.

DGS has consistently paid approved invoices within approximately 5 weeks of receiving an approved invoice from our Construction Manager, Hill International, Inc. (Hill). For example, Walsh/Heery submitted an acceptable invoice #31 (for work performed in February) on 3/30/15, Hill reviewed and signed it 4/1/15, DGS approved it 4/17/15 and the Treasury Department paid the invoice on 5/11/15. DGS and Walsh/Heery both agree that project invoices have been paid in full

through February 2015, reflected in Application for Payment #31. Application for Payment #32 (for work performed in March), however, was not submitted in approved form until 6/17/15 and has an estimated pay date of 8/10/15. Application for Payment #33 (for work performed in April) was also recently approved and should be paid by early September.

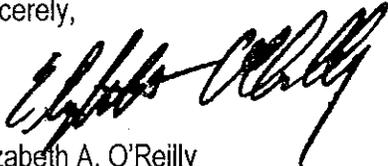
Walsh/Heery's delay between submitting #31 and #32 may be attributable to their request for an extension of time to complete the project. DGS and Hill carefully examined the request, but that review did not preclude Walsh/Heery from submitting monthly invoices, even though the schedule required to be submitted as part of the invoice process did show completion beyond the current extended completion date of 11/20/15. In accordance with the Contract, DGS will continue to withhold part of an acceptable Application for Payment if Walsh/Heery's accompanied schedule indicates a completion date beyond 11/20/15.

To ensure a transparent atmosphere with regard to payment status on every invoice, effective immediately, DGS will post approved applications for payment on our home webpage so that interested parties can see on a monthly basis what has been submitted and approved in line item format. We will post the pay date for each invoice as soon as it becomes available. We will also be posting a scanned copy of the Walsh/Heery Contract and Contract Bond, which includes the payment bond on this project.

I trust this sets forth in very explicit terms DGS' growing concerns about the impact of cash flow on the completion of the project. DGS demands that Walsh/Heery pay all outstanding subcontractors invoices immediately and also take all necessary action to improve the accuracy and reduce delays in submitting timely monthly invoices. As always, DGS is happy to attend site meetings to clarify any confusion on this or any other pending issues.

If you have any questions, please contact me at 717.787.7095.

Sincerely,



Elizabeth A. O'Reilly
Deputy Secretary of Public Works

Cc: Dan Weinzierl, DGS
Edmond Olivieri, DGS
Daniel Walsh, Walsh Construction
Mark Dickinson, Hill International, Inc.