



**OFFICE OF ECONOMIC AND SMALL BUSINESS DEVELOPMENT
Governmental Center Annex**

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MEMORANDUM

DATE: March 9, 2021

TO: Greg Balicki, Director
Water and Wastewater Services, Engineering Division

THRU: Sandy-Michael McDonald, Director *SM*
Office of Economic and Small Business Development

FROM: Maribel Feliciano, Assistant Director *MF*
Office of Economic and Small Business Development

SUBJECT: CBE Evaluation for Change Order No. 18
Contract No. PNC2117206C1- Utility Analysis Zone- 122
Prime Contractor: Man Con, Inc.

The Office of Economic and Small Business Development (OESBD) has conducted an evaluation of Man Con, Inc.'s CBE Participation for Contract No. PNC2117206C1-Utility Analysis Zone (UAZ)-122. This evaluation is for Change Order No. 18 for emergency grout removal services performed to keep the project on a critical path. The overall CBE goal for this contract is 30% and Man Con's CBE commitment is 30.73%. An overview is provided as follows:

Contract Overview and CBE Attainment for UAZ- 122

<u>Firm Name</u>	<u>CBE Participation</u>	<u>Verified Amount</u>
Amos Supply, Inc.	9.18%	\$ 1,286,212.44
Betancourt Construction, Inc.	0.00%	\$ 0.00
Compass Point Surveyors, PI	1.59%	\$ 224,022.50
E & N Construction, Inc.	10.65%	\$ 1,492,515.88
Rocklan Earth Services	1.97%	\$ 275,445.65
Totals:	23.39%	\$ 3,278,196.47

- Original Contract Amount and Time: \$13,369,728.55 and 607 Days
- Approved Change Orders Nos. 1-17 Amounts and Time: \$668,486.43 and 0 Days
- Revised Contract Amount and Time: \$14,038,214.98 and 607 Days
- Total Amount Paid to CBE Contractors to date: \$3,278,196.47
- Total Payments to Prime Contractor to date: \$14,007,023.84
- CBE Attainment to date: 23.4% (\$3,278,196.47/ \$14,007,023.84)

Proposed Change Order No. 18 Amount and Time: \$405,950.00 and 0 Days

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OESBD Chronology and Enforcement History:

Bid No. PNC 2117206C1- Utility Analysis Zone (UAZ) -122

Contract Award: 3/5/19

Contract Term: 607 Days

Man Con, Inc.'s CBE attainment as of this date is 23.4% which is 7.33% short of their CBE commitment. The following is a chronology and enforcement history documenting OESBD's efforts to afford Man Con, Inc. with opportunities to make-up the goal deficit:

3-21-19: OESBD received a letter from Triple Nickel Paving, Inc., a CBE subcontractor for Man Con, Inc., to withdraw their participation due to an overwhelmed schedule. Triple Nickel Paving, Inc. originally agreed to provide paving services at 3.53% of the overall contract value.

3-27-19: Man Con, Inc. submitted a request to OESBD to delete Triple Nickel Paving, Inc. and substitute them with E & N Construction, Inc., another CBE certified firm, to provide paving services at 13.19% of the overall contract value.

4-8-19: OESBD sent a formal response back to the prime contractor approving the substitution of Triple Nickel Paving with E & N Construction to provide paving services at 13.19%. The CBE commitment for Man Con, Inc. remains at 30.73%

4-15-19: Received the 1st MUR for this project. CBE Attainment is 0.00%

7-24-19: OESBD received the latest MUR for this project. The CBE Attainment is 6.34%.

9/10/19: OESBD received the MUR for this project. Man Con, Inc.'s CBE attainment is 11.32%.

10-10-19: OESBD received a letter from CBE subcontractor, Rocklan Earth Services, Inc., requesting to withdrawal from the abandonment, grouting and utility installation work total value of \$993,312.50. Rocklan Earth Services, Inc., felt that due to the inconsistencies in the existing build-up that it would be too risky of an endeavor to undertake. However, Rocklan had agreed to continue to provide the trucking services as needed. As a result of this action, Rocklan's CBE participation for this contract decreased from 11.68% to 1.97%.

11-1-19 to 3-1-20: Received the most recent MURs from Man Con, Inc. and found that the CBE utilization increased from 13.18% to 21.7%

3-12-20: OESBD sent a CBE goal deficit notice to Man Con, Inc. informing them that the current CBE attainment is 21.7% which is 9.03% short of their 30.73% CBE commitment. In addition, OESBD requested a Plan of Action (POA) from Man Con, Inc. to get a formal response of how they were going to address the shortfall. Man Con was given the deadline of March 19, 2020 to submit their action plan.

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4-4-20: Received an E Mail from Man Con, Inc requesting an extension for submitting their POA due to a shortage of personnel due to the COVID-19 Pandemic.

4-22-20: Drafted and sent a Notice to Cure to Man Con for failure to submit an MUR for that month. The requested MUR was submitted at the end of April 2020.

5-4-20: A Notice to Cure for a goal deficit was drafted for signature for Man Con, Inc. due to their CBE attainment for the project which was 25.9% as of that date 4.83% short of their commitment for the contract. The project was at 85% completion at the time the notice was drafted.

5-5-20: After informing OESBD management that the NTC was prepared and drafted, a meeting was scheduled for May 8, 2020, in lieu of sending the NTC to discuss the reasons for the shortfall.

5-8-20: Man Con, Inc. met with OESBD to discuss the goal shortage. As a follow-up measure after the conclusion of the meeting, OESBD requested that Man Con, Inc. submit a formal response citing the specific reasons for the CBE shortfall.

6-15-20: OESBD received an additional request from the prime contractor to extend the deadline for the submission of the plan due to Man Con, Inc.'s personnel shortage as a result of following COVID -19 protocol. The extension was granted until the end of June 2020.

7-2-2020: OESBD received a written response from Man Con, Inc. citing reasoning for the CBE Goal shortfall. They attributed the goal deficit to the following chain of events which transpired during the course of the project:

- A work change directive from the County from an aerial crossing to a horizontal directional drill at Middle River Canal. This work change directive was due to existing field conditions were better than anticipated. However it eliminated the scope of work assigned to CBE subcontractor, Betancourt Construction valued at \$143,000 or 1.12% of the overall contract value.
- The withdrawal of CBE subcontractor, Rocklan Earth Services, Inc., due to their inability to complete \$658,400.77 of grouting and abandonment work, \$104,000 in drainage improvements and \$230,000 of utility installation work for this project. The total amount of this work was \$992,400.70 or 11.68% toward Man Con, Inc.'s 30.73% CBE commitment. OESBD has received a written request from Rocklan Earth Services, Inc. confirming their withdrawal from this project.

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- Unused line items to be provided by CBE subcontractor, Amos Supply in the amount of \$313,787.56 due to overestimated quantities.
- Acceleration of the project schedule of asphalt lift installation due to the influx of seasonal residents which eliminated \$24,052.50 from CBE subcontractor, Compass Point Surveyors.
- Unforeseen Change Orders in the estimated amount of \$1,611,704.38 not included in the CBE shortfall. This includes the proposed emergency Change Order No. 18 for grout removal to ensure the functioning of the sanitary sewer which served the Florida Medical Center. These change orders were unforeseen not allowing work stoppage and were performed by the prime to keep the project on a critical path.

9-8-20: After receiving the information and verifying the accuracy with all of the CBE subcontractors who participated on the project. OESBD sent a copy of the letter to the user agency project manager to review and verify the accuracy of the shortfall justification provided by Man Con, Inc. The user agency responded to the Mail and verified that the shortfall justifications provided were accurate.

10-1-20 to -1-1.21: Received MURs from the Man Con, Inc. and found that the CBE utilization had increased from 24.75% to 24.79%.

1-20-21: OESBD received the request from the user agency to prepare a CBE Evaluation for Change Order No. 18, Bid No. PNC2117206C1- Utility Analysis Zone (UAZ- 122).

1-27-21: OESBD contacted Man Con, Inc. to inquire if any of the requested funds for Change Order No.18 were going to be paid to CBE subcontractors. Man Con, Inc. responded that they did not contact any CBEs due to the critical nature of the damages which caused a sewage backup at a local hospital. Man Con, Inc. responded that due to a masonry plug fail which allowed grout to flow in a functional sanitary sewer that served the Florida Medical Center, an emergency notice to proceed was issued to the contractor on site who was able to solve the issue without compromising the normal operation of the hospital. The user agency has verified all of this information. According to the prime contractor, this project is complete and they do not anticipate any more CBE attainment for this project. All of Man Con, Inc.'s CBE subcontractor team has been paid in full including retainage. The prime stated that they were unable to achieve their CBE commitment due to the change in work scope and unforeseen conditions which included the withdrawal of two (2) of their original CBE subcontractors which further reduced their CBE attainment.

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Compliance Comments:

Man Con, Inc.'s CBE attainment to date is estimated at 23.4% which is 7.33% short of their 30.73% CBE commitment for this contract. The current attainment is based upon paid amounts verified through the independent payment verification process. Although Man Con, Inc. eliminated \$1,611,704.38 from their own work scope and awarded an additional \$1,039,168.38 to their CBE subcontractor, E & N Construction, Inc. OESBD has informed the prime contractor that they were short of their CBE commitment throughout the duration of the contract.

The purpose of this evaluation is to assess Man Con, Inc.'s efforts to meet their CBE commitment leading up to this phase of the project. Per this evaluation for Change Order No. 18, Man Con, Inc. has failed to meet the CBE Program Requirements set forth in the Broward County Business Opportunity Act of 2012 (the Act), as amended, No. 2018-33. Per Section 1.81.7(a)(1) of the Broward County Equal Opportunity Act of 2012, as amended, "Failure by the Prime Contractor to carry out any of these requirements shall constitute a material breach of contract, which shall permit the County to terminate its contract with the Prime Contractor." Due to Man Con, Inc.'s failure to meet their CBE commitment, they are in breach of contract. This information will be reflected in the prime contractor's evaluation when the final compliance review is completed.

cc: Luz Sanchez, Construction Project Manager, WWS
James Vose Jr., Small Business Development Specialist, OESBD