

# Memorandum



**Date:** January 20, 2005

Supplement to  
Agenda Item No. 11(A)2

**To:** Honorable Chairman Joe A. Martinez, and  
Members Board of County Commissioners

**From:** George M. Burgess,  
County Manager

**Subject:** Resolution Ratifying the County Manager's Action in Authorizing Capital  
Improvement Contracts Pursuant to Ordinance No. 00-104 (Expedite  
Ordinance)

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**This item supplements Agenda Item 11(A)2 amended Legistar No. 043455 (original Legistar No. 043242) to provide additional information concerning the contract awards for BND Engineers, Inc. and Magna Construction, Inc.**

## **BACKGROUND**

BND Engineers, Inc. is performing professional engineering services (project #E01-PW-02, EP-8) and Magna Construction, Inc. is performing the construction work (contract number 693509Q) for the Public Works Department. Three new contract awards involving these firms are being submitted for ratification as Agenda Item 11(A)2. These three awards were administratively approved pursuant to Ordinance 00-104 prior to any disclosure of performance issues involving either Magna or BND Engineers. On December 7, 2004, the Governmental Operations and Environmental Committee forwarded the ratification item to the Board with a favorable recommendation with unrelated committee amendments.

The attached January 3, 2005 Office of the Inspector General (IG) memorandum reports the details of an on-going investigation regarding these two firms, BND Engineers, Inc. and Magna Construction, Inc. The IG's preliminary investigation has uncovered construction deficiencies on a drainage improvement project. The alleged deficiencies generally relate to the shallow depth of the drainage trench, substitution of inferior materials and overpayments. Furthermore, the investigation reveals that the certified inspection reports completed by BND Engineers, Inc. were incorrect by failing to note non-compliance with the required depth on construction work performed by Magna Construction, Inc.

## **BND Engineers, Inc.**

In addition to the above drainage improvement project, BND Engineers, Inc. was administratively awarded a contract by the Aviation Department as the design consultant for the MIA Tract One Apron Drainage, Grading and Pavement Improvement Project on October 27, 2004. The IG has been advised that preliminary design work has already begun on this project. However, in light of the investigation, Aviation is not issuing additional service orders to BND on the Tract One project. Additionally, Aviation is also suspending issuance of construction inspection work orders to BND until the completion of the IG's investigation. The proposed ratification of this award (contract # F178A / project # E03-MDAD-05) appears on Item 11(A)2 on handwritten page 5.

It is recommended that project E03-MDAD-05 be pulled from the ratification list at this time and staff continue to hold issuance of additional work until the conclusion of the investigation with the instruction to staffers to allow BND to proceed with what has already been assigned. Upon completion of investigation, staff shall prepare and submit a new recommendation to the Board as to termination or continuance of this contract.

**Magna Construction, Inc.**

In addition to the above drainage improvement project, Magna Construction, Inc. has two new drainage improvement program projects (contract numbers 20030247 and 20030248) listed on handwritten page 6 of Item 11(A)2. The associated contract documents are presently being held in the Clerk of the Board's office by request of the Public Works Department and have not been executed on behalf of the County.

It is recommended that contract numbers 20030247 and 20030248 be pulled from the ratification list at this time with the instruction to staff to continue to withhold the execution of both contracts pending the outcome of the IG investigation. If Magna is found culpable, staff shall rescind the award and award to the second lowest priced, responsive and responsible bidder providing that they agree to honor their original pricing in their bid.

Attachment



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Deputy County Manager

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**Office of the Inspector General  
 Miami-Dade County**

# Memorandum

To: The Honorable Joe A. Martinez, Chair  
 Board of County Commissioners

The Honorable Dennis C. Moss, Vice-Chair  
 Board of County Commissioners

George M. Burgess  
 County Manager

From: Christopher Mazzella  
 Inspector General

Date: January 3, 2005

Re: OIG Investigation of Public Works Department (PWD) Contract PW 693509Q  
*Quality Neighborhoods Improvement Program (QNIP 2)* and PWD Consultant  
 Contract E01-PW-02, EP-8 for *General Engineering Construction Management  
 Services*

By way of this memorandum, I want to formally advise you of my office's investigation of the two above-captioned contracts. In the last week, there have been several emails exchanged between Office of the Inspector General (OIG) personnel and Miami-Dade County (County) personnel from the Miami-Dade Transit Department (MDT) and the Miami-Dade Aviation Department (MDAD) relative to the engineering firm BND Engineers, Inc. (BND). As the OIG investigation is still on-going and it would be premature to reveal all aspects of the investigation, I want to share what I believe is germane to currently proposed county contracts/contractors. This information is being provided solely to assist you in making whatever decision(s) or taking whatever action(s) you feel appropriate.

With regards to the aforementioned email discussions, BND is the proposed Disadvantaged Business Enterprise (DBE) sub-consultant to Parsons Transportation Group, Inc. on MDT's *North Corridor Project*. This project has not yet been awarded; it is currently scheduled for Board of County Commissioners (BCC) approval on January 20, 2005. Similarly, BND is also the proposed DBE sub-consultant to URS Engineering,

Inc. on the *Transit MIC Earlington Heights Final Design Contract*, which is scheduled for BCC approval on January 20, 2005. The OIG has been advised that, thereafter, the two MDT projects will then be placed before the Citizens Independent Transportation Trust (CITT) for approval.

With regards to the discussions emanating from the Aviation Department, BND is the design consultant for the project entitled *Tract One Apron Drainage, Grading and Pavement Improvement Project*. According to MDAD personnel, this project includes both design work and construction inspection services, and has been awarded to BND under the authority of the Expedite Ordinance (No. 00-104). This MDAD project is scheduled for BCC ratification on January 20, 2005.

The OIG has been advised that preliminary design work has already begun on this project. However, in light of the investigation, MDAD is holding BND from performing more work on the *Tract One Project* and is also suspending issuance of construction inspection work orders to BND until the conclusion of this investigation. MDAD is also re-inspecting BND's previous projects for full compliance with contract requirements.

It is with this backdrop that I feel it imperative to notify you about our investigation of the QNIP 2 Contract. A little over one month ago, in late November, the OIG was alerted to suspected construction deficiencies on a drainage improvement project located in the vicinity of SW 184<sup>th</sup> Street and SW 139<sup>th</sup> Court (Commission District 9). Work on this project (Work Order No. 2 of aforementioned QNIP 2 Contract) took place between February and April 2004. The alleged deficiencies generally related to the depth of the drainage trench, substitution of inferior materials and monetary overpayments. The construction work on Work Order No. 2 (as well as other work orders issued to the contractor under this project) was inspected by BND. BND has a professional services agreement (Contract No. E01-PW-02, EP-8) with the Public Works Department to provide engineering construction management services.

Based on the initial allegation and information learned through the course of the investigation, OIG and PWD personnel re-inspected several locations along the drainage trench of this work order. The re-inspection consisted of PWD personnel excavating several points in order to measure the trench depth. OIG personnel were also present in the field to observe the re-inspections. The re-inspection revealed that the certified inspection reports were incorrect by large margins, a few by over fifty percent (50%) of the required depth. The specified trench depths are calculated to ensure an appropriate percolation rate, and thus proper drainage. Each trench is several blocks in lengths, and the initial installation was, with no doubt, disruptive to the residents of the neighborhood. Based on confirmation of the deficiencies, PWD is developing a remediation plan to ensure proper drainage in the originally devised area. We would hope that this could be accomplished without further inconvenience to the residents.

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The re-inspections, thus far, have involved construction work performed by Magna Construction, Inc. The OIG has reason to believe that the problem extends beyond one construction firm, and therefore we will be expanding our inspection efforts to other contractors performing construction work in other regions of the County. We will keep you apprised of our inspection/re-inspection results.

As it relates to BND, while this investigation is by no means complete, PWD has withheld payment to it. In reference to the suspended payments, Mr. Basil S. Williams, President of BND, contacted the Deputy Inspector General by telephone, in my [the Inspector General's] presence, and explained to us that his company had no responsibility for the falsified inspections performed by his employee. According to Mr. Williams, his engineering firm neither supervises nor manages its employees assigned to perform inspection services under its consulting management agreement with PWD.

The OIG takes umbrage with this abdication of responsibility. Services rendered under the PWD agreement are for construction, engineering and inspection (CE&I) services. The task calls for monitoring the performance of the contractors, i.e. inspecting the work. These are professional services wherein a 2.1 multiplier, plus reimbursable expenses, is the applicable form of payment. BND is not a mere temporary employment agency—it is an engineering firm.

The OIG maintains that it should be in this County's best interest to ensure that companies that we engage must both perform professionally and responsibly. And while at this juncture the prevalent focus of the investigation is on the construction deficiencies, we cannot simply ignore the responsibility of those providing CE&I services to the County. Consequently, the failure by BND to take responsibility for its inspections services at PWD must be considered when awarding other contracts to it involving other County departments. Indeed, we would submit, and I am sure you would agree, that statements of responsibility on one contract, to one department, should be viewed as a statement of responsibility to the County as a whole.

As stated earlier, this investigation is on-going. The OIG continues to work with PWD to re-examine suspected deficiencies. Our investigative efforts are being worked in conjunction with the State Attorney's Office. And while this memorandum is not being provided to the companies named herein as a "draft report," copies are being furnished to them for information only. This memorandum will also be filed with the Clerk of the Board.

As stated from the onset, this information is being provided solely to assist you in making whatever decision(s) or taking whatever action(s) you feel appropriate. This office will keep you apprised on any developments to the fullest extent possible.

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cc: Hon. Katherine Fernandez Rundle, State Attorney  
Eleventh Judicial Circuit, Miami-Dade County

Mr. Basil S. Williams, President  
BND Engineering, Inc.

Mr. Mitchell Touino, President  
Magna Construction, Inc.

Clerk of the Board (copy filed)

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