



Ms. Carla Rossiter-Smith, MSM PMP
Chief Procurement Officer
Hernando County
15470 Flight Path Drive
Brooksville, FL 34604

Mr. Eric Van de Boogaard
Construction Projects Coordinator
Hernando County
1525 E. Jefferson Street
Brooksville, FL 34602

Re: ***CONTRACT: 21-C00008 Hernando County Fire Station #5***

Dear Ms. Rossiter-Smith and Mr. Van de Boogaard:

For your consideration, New Vista Builders Group, LLC (“NVBG”) addresses Hernando County’s claim to assert \$22,000.00 in liquidated damages (“LDs”) on the above-referenced project (the “Project”).

In addition to such an assessment of LDs being a significant impact to a small business like NVBG as well as its small-business and minority subcontractors, the assessment under the circumstances presented on this Project is unsubstantiated and simply unfair. Which has been impacted by the pandemic and the related changes to the construction industry, affecting labor and materials, which continues to take place today.

It is our position, NVBG and its subcontractors performed the work, and at no time did the County ever assert that NVBG was lacking manpower or that NVBG was not appropriately performing the Work. The County ultimately took beneficial occupancy of the Project and has maintained such occupancy throughout. The County nonetheless asserts six (6) days of LDs prior to beneficial occupancy and 152 days of LDs after beneficial occupancy. In doing so, the County ignores the substantial delay caused by the County in the performance of its obligations under the Contract that also impacted NVBG’s ability to reach substantial completion and final completion.

The County’s and its agents’ acts and omission affected the time for substantial and final completion, for which the County improperly seeks LDs. On July 14, 2023, NVBG requested a substance completion walkthrough and development of punchlist because it had achieved substantial completion at that time. Contrary to statutory requirements that the County provide a single punch list, the County provided three separate punch lists that spanned several months, also violating the thirty-day timeframe provided by the statutes. The architect provided a punchlist on August 8; the MEP engineer provided a punch list on September 6; and the civil engineer provided a punch list on November 7.

6375 Harney Rd. Suite 105
Tampa, FL 33610
813/200-8340 – info@newvistabuildersgroup.com
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In addition to the failures in providing the punch list timely and in accordance with the statutes, the County and its agents failed to timely and reasonably provide other documents. NVBG requested the as-builts and EOR certification from the County's engineer on August 25. The County's engineer did not provide feedback until September 12, an unreasonable 18 calendar days later. NVBG submitted updated as-builts on September 26, and the engineer provided feedback on September 26. NVBG responded quickly and timely on September 27. The engineer did not submit its EOR Certification until 10/27, a month later. NVBG submitted the asbuilts and EOR certification to the building department that same day. These facts reflect that NVBG was acting quickly and timely. Despite this, the County wants NVBG to pay LDs.

Lastly, it is my understanding that LDs cannot be assessed after beneficial occupancy, especially when the basis of the alleged delay is paperwork and not performance. The County is not suffering any damages after beneficial occupancy. If necessary, I can request our counsel to provide information on this legal issue.

In addition to the above issues with the County's assessment of LDs and statutory violations, NVBG is evaluating the County's potential violation of the Prompt Payment Act regarding NVBG's Payment Application 19 ("PA19"). PA19 was submitted on February 27, 2024, and the County did not timely reject PA19 within the time limitations in the Prompt Payment Act. In fact, it failed to respond altogether but also refused to pay NVBG. It appears that the County violated the Prompt Payment Act, which would entitle NVBG to the payment, plus interest at 2% per month and attorneys' fees.

I have signed the Final Certificate Completion, clarifying that while we agree Final Completion has been reached NVBG disagrees on the reflected date. NVBG provided conditional releases of lien, which are acceptable as contemplated by statute. NVBG has valid and enforceable pay-when-paid clauses with its subcontractors, and therefore, NVBG is not required to prepay its subcontractors to get final payment from the County. Once the county issues final payment to NVBG, it will pay its subcontractors from those funds.

NVBG is not looking for a fight with the County, but it cannot financially accept the County's assessment of LDs under the above circumstances, NVBG prefers to resolve all issues with the County amicably and close out the Project.

Remain at your service for further discussion.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lazaro Fernandez', is written over a blue horizontal line. Below the signature, the name 'Lazaro Fernandez' and title 'Vice President' are printed in black text.

Lazaro Fernandez
Vice President

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