

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

THE CITY OF ALBUQUERQUE,

Plaintiff,

vs.

Case No. D-202-CV-2021-03520

ENVIRONMENTAL LIGHTING FOR
ARCHITECTURE, INC., HDR ENGINEERING,
INC. f/k/a INFRACONSULT, LLC, BRADBURY
STAMM CONSTRUCTION, INC., DALKIA
ENERGY SOLUTIONS, LLC f/k/a CITELUM US, INC.
a/k/a DALKIA EDF GROUP, BIXBY ELECTRIC, INC.,
DEKKER / PERICH / SABATINI, LTD., and MWI, INC.,

Defendants.

COMPLAINT FOR BREACH OF CONTRACT,
NEGLIGENCE AND STRICT LIABILITY

Plaintiff, The City of Albuquerque (hereafter “City”), for its Complaint, states:

Parties, Jurisdiction and Venue

1. The City is a municipal corporation incorporated under the laws of New Mexico.
2. Defendant Environmental Lighting for Architecture, Inc. (hereafter “ELA”), is incorporated in the State of California and is authorized to and doing business in New Mexico.
3. Defendant HDR Engineering, Inc. f/k/a InfraConsult, LLC (hereafter “HDR”), is incorporated in the State of Nebraska and is authorized to and doing business in New Mexico.
4. Defendant Bradbury Stamm Construction, Inc. (hereafter “Bradbury Stamm”) is a New Mexico corporation with its principal place of business located in Bernalillo County, New Mexico.
5. Defendant Dalkia Energy Solutions, LLC f/k/a Citelum US, Inc. and a/k/a Dalkia EDF Group (hereafter “Dalkia”) is incorporated in the State of Massachusetts and is authorized to and doing business in New Mexico.

6. Defendant Bixby Electric, Inc. (hereafter “Bixby”), is a New Mexico corporation with its principal place of business located in Bernalillo County, New Mexico.

7. Defendant Dekker / Perich / Sabatini Ltd. (hereafter “Dekker”), is a New Mexico corporation with its principal place of business located in Bernalillo County, New Mexico.

8. Defendant MWI, Inc. (hereafter “MWI”), is a New Mexico corporation with its principal place of business located in Bernalillo County, New Mexico.

9. Jurisdiction and venue are proper before this Court.

Allegations Common to All Counts

10. The City incorporates the prior allegations of this Complaint as though fully set forth herein.

11. In April of 2012, the City and HDR entered into a contract whereby HDR agreed to provide engineering services for the Central Avenue Bus Rapid Transit Project (hereafter “ART”).

12. HDR engaged Dekker as an architectural subconsultant for ART.

13. In November of 2015, the City and Bradbury Stamm entered into a contract whereby Bradbury Stamm agreed to provide Construction Manager at Risk and general contractor services for ART. Under the contract, Bradbury Stamm is responsible and liable for all acts and omissions of the subcontractors and suppliers.

14. Bradbury Stamm engaged Bixby and MWI as electrical subcontractors for ART.

15. Bixby and MWI obtained submittals for light fixtures for ART from ELA. HDR and Bradbury Stamm reviewed and accepted the submittals. ELA designed and manufactured the light fixtures.

16. In March 2017, Bixby and MWI began installing approximately 1047 ELA light

fixtures for ART. The lighting installation was substantially completed and work billed by December of 2017.

17. In September of 2017, the City and Dalkia entered into a global management performance contract whereby Dalkia agreed to convert all the streetlights in the City to Light Emitting Diode (LED) fixtures. Through said contract, Dalkia also agreed to maintain all City owned streetlights including the newly installed lights, poles and infrastructure associated with the installation of the lighting manufactured by ELA.

18. The lighting which was designed and manufactured by ELA as part of the ART project began failing.

19. On or about March 20, 2020, Dalkia employees performed a field inspection and discovered seven (7) light fixtures missing along Central Avenue. The arms remaining on the poles showed significant wear in the “socket” that appears to have allowed the “ball” section of the plumbizer mount to slip out of the socket and for the lighting fixtures to fall.

20. On May 26, 2020, a light fixture fell on Central Ave NE & Louisiana Blvd.

21. During a windstorm on September 8, 2020, approximately twenty-eight (28) light fixtures fell or were found, upon inspection by Dalkia, to be worn and unsafe

22. All of the light fixtures that fell were designed and manufactured by ELA. The majority of the light fixtures were installed by Bixby; the remaining fixtures were installed by MWI.

23. None of the fixtures that fell were reusable.

24. On October 23, 2020, Dalkia produced an investigative report to the City regarding the fallen fixtures. Dalkia concluded that the set screws provided by ELA allowed for too much movement and that, over time, the neck of the fixture and the housing was being worn out and spread open. The fixtures would slide out of place, detach from the arm, and fall.

25. The falling light fixtures create an immediate threat to the safety of pedestrians and drivers utilizing the roadways. The fixtures weigh approximately 25 lbs and fall from heights as tall as 25 feet.

26. Lack of roadway lighting creates an immediate threat to the safety of pedestrians and drivers utilizing the roadways during hours of low natural light.

27. ELA designed and manufactured a hang straight clamp and cable system (the “ELA retrofit”) intended to serve as a safety measure to prevent the fixtures from falling. This ELA retrofit was intended to address the fixtures still in place.

28. On or about December 29, 2020, the City directed Dalkia to remediate approximately 1700 ELA streetlights including those installed during the ART project by installing the ELA retrofit. The ELA retrofit to prevent additional lights from dropping has an approximate cost to the City of \$276,000.00. The City also directed Dalkia to replace 45 failed arm and fixture assemblies at a cost to the City of about \$218,000.00.

29. Dalkia purchased 47 replacement arms and fixtures with a sleeve mount attachment to replace the damaged arms and failed or fallen fixtures.

30. On or about March 24, 2021, one of the new sleeve mount fixtures on Central Avenue in the City designed by ELA and installed by Dalkia had a failure that resulted in the manufacturer installed housing detaching from the rest of the fixture body. The fixture did not fall because ELA had added a safety cable to the design.

31. To date, thirteen (13) of the new arms and fixture types have been installed and three (3) were discovered to have failed in this manner. Three fixtures were removed and upon removal it was discovered that four (4) set screws internal to the fixture housing were dislodged, causing the LED board and dome to dangle.

32. On or about March 30, 2021 an ELA team arrived at the Dalkia warehouse in

Albuquerque to perform inspection and repairs of the failed sleeve mount fixtures, both the installed and removed as well as the uninstalled units. ELA concluded that undersized treaded components were suspect. ELA replaced the undersized components.

33. To date, forty-six (46) fixtures have detached from the arm and either fallen to the ground or required removal because they were only being held in place by electrical wiring. Many other mounts show significant wear.

34. The ELA retrofit does not restrict the fixture movement at the plumbizer mount. Continued movement will wear out the assembly and require fixture and arm replacement in the near future. Retrofitted fixtures sway on windy days and change the illumination pattern on the street below.

35. The fixtures, both originally installed and retrofitted/remediated streetlights, continue to fail, placing the public in extreme danger of grievous personal injury and property damage.

36. By separate letters dated March 3, 2021, the City notified all the Defendants of its concerns about the light fixtures.

COUNT I – BREACH OF CONTRACT BY DEFENDANTS

37. The City incorporates the prior allegations of this Complaint as though fully set forth herein.

38. Defendants HDR, Bradbury Stamm, Dalkia, ELA, Bixby, Dekker, and MWI breached their contractual obligation to the City.

WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages in an amount to be determined at trial and presently believed to exceed \$2,500,000.00, for prejudgment and post-judgment interest, for its costs and for such further relief as may be proper.

COUNT II – NEGLIGENCE OF DEFENDANTS

39. The City incorporates the prior allegations of this Complaint as though fully set forth herein.

40. Defendants, and all of them, either directly or by and through their subcontractors and agents, were negligent and failed to follow appropriate, recognized standards of care for engineers, construction workers, electricians, architects and subcontractors doing the same or similar work.

WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages in an amount to be determined at trial and presently believed to exceed \$2,500,000.00, for prejudgment and post-judgment interest, for its costs and for such further relief as may be proper.

COUNT III – STRICT LIABILITY OF DEFENDANTS

41. Plaintiff incorporates the prior allegations of this Complaint as though fully set forth herein.

42. ELA defectively designed and manufactured the lighting which was furnished to the City and is therefore liable for the damages sustained by the City.

43. Defendants, either directly or by and through their subcontractors and agents, are strictly liable to Plaintiff for its compensatory damages.

44. Defendants' actions, as aforesaid, constituted willful, wanton, reckless and intentional misconduct and were in conscious disregard of the rights of the City and of the safety of the public, for which the City is entitled to recover punitive damages from Defendants in an amount to be proven at trial, and believed to exceed \$10,000,000.00.

WHEREFORE, Plaintiff prays for judgment against Defendants for compensatory damages in an amount to be determined at trial and presently believed to exceed \$2,500,000.00,

for punitive damages in an amount to be determined at trial and presently believed to exceed \$10,000,000.00, for prejudgment and post-judgment interest, for its costs and for such further relief as may be proper.

THE ROEHL LAW FIRM, P.C.

/s/ Jerrald J. Roehl _____

Jerrald J. Roehl

Katherine Channing Roehl

Attorneys for Plaintiff

300 Central Avenue

SW Suite 2500 East

Albuquerque, NM 87102

phone: 505.242.6900

fax: 505.242.0530

jerry@roehl.com; kc@roehl.com