



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

Legislative Analysis

Airport & Seaport Committee

December 4, 2009

9:30 A.M.

Commission Chamber

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**Miami-Dade County Board of County Commissioners
Office of the Commission Auditor**

**Legislative Notes
Airport & Seaport Committee
Meeting Agenda**

December 4, 2009

Written analyses and notes for the below listed items are attached for your consideration:

Item Number(s)

3(A)
3(C)

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Esq., Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements--Analysis prepared by:
Bia Marsellos

**VEMIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 3(A)
File Number: 092688
Committee(s) of Reference: Airport and Seaport Committee
Date of Analysis: December 4, 2009
Type of Item: First Amendment to Professional Services Agreement

Summary

This resolution approves the First Amendment to the Professional Services Agreement (PSA) between Miami-Dade County and Brown & Brown Architects to increase the amount of the contract by \$802,000 to a new maximum of \$3,809,500. This Amendment includes a CBE goal of 20% of the \$800,000 increased amount, in addition to the 18% DBE goal assigned to the original Agreement.

- The memorandum states this is only a contract limit increase and not a budget increase. What does this mean? *Response from MDAD, the increase in contract is not obligating any budget or project budget to the contract. The budget for each project will be obligated by future service orders and not by the contract.*
- This amendment refers to the Professional Services Agreement. Is this the same as a Project Specific Services Agreement? *Response from MDAD, This is not a Project Specific Service Agreement. The Project Specific Agreement is for one project only. This is a Professional Service Agreement and is not project specific.*

On May 11, 2004, the Board of County Commissioners (BCC) adopted, R-542-04, the **Project Specific Services Agreement** with Brown & Brown Architects, for MIA Terminal Security, Project No. A02-MDAD-01 at Miami International Airport in the amount of \$3,007,500 for a term of the later of (a) up to five (5) years, or (b) until all services orders issued during term are completed.

- The First Amendment refers to a Professional Services Agreement, however, the original award was for a Project Specific Services Agreement. There are no options to renew stated in the original award.

Brown & Brown was selected to provide architectural/engineering design and construction administration services for seven (7) projects. However, Miami-Dade Aviation Department (MDAD) re-evaluated its financial capacity and Capital Improvement Program (CIP) priorities in March 2008 and placed three (3) of the seven projects, J011A, J012A & G004A, on hold and identified Buildings 700, 704,

707, 845, 896, 3040 & 3050 as non-performing assets that offered rent-producing opportunities. By placing three projects on hold, those funds became available and the firm, Brown & Brown was authorized to produce design and construction documents for the non-performing assets listed above. However, in June 2008, the three projects that were placed on hold in March 2008, were once again given a higher priority and were resumed.

- Who authorized placing three projects on hold and utilizing Brown & Brown services for Buildings 700, 704, 707, 845, 896, 3040 & 3050? Under what authority were funds utilized for work in Buildings 700, 704, 707, 845, 896, 3040 & 3050?
- What changed in MDADs financial capacity from March 2008, when three projects were placed on hold, to June 2008, when they were prioritized again? *Response from MDAD, the department periodically reviews the priority of projects to make use of available funds.*

The memorandum states that the selection of a new architectural/engineering consultant to prepare construction documents to correct the necessary repairs would take approximately one year. By using Brown & Brown, MDAD was able to reduce the project development duration by approximately one year.

- Is this amendment retroactive? *Response from MDAD, this amendment is not considered retroactive since we believe the contract is active and is short of funding.*
- Why is this being presented to the BCC over one and a half years after the decisions were made?

The memorandum states that the term of this agreement is five years from May 11, 2004, with three one-year renewal options and that MDAD has authorized two one-year extensions for the current contract expiration date of May 11, 2011. The remaining one-year extension will be authorized only if necessary.

- On March 6, 2009, MDAD issued a letter to Brown & Brown exercising two one-year extensions pursuant to Article 8.2.1.4 of the contract. However, Article 8.2.1.4 refers to fee adjustments.
- Why did MDAD extend two one-year extensions simultaneously on March 6, 2009?

The Memorandum states that MDAD, has an opportunity to take advantage of available matching State funds that may be available for Project L141A.

- What is the status of acquiring State funds?

Background and Relevant Legislation

On November 18, 2002, the Department of Procurement Management (DPM) advertised two Architectural/Engineering solicitations for MDAD, Terminal, Landside and Associated Structure Security and Airfield/Cargo/Remote Structure Security Project.

The Department of Business Development (DBD) conducted a Pre-Qualification Certification compliance review and on March 5, 2003, determined that three firms were in non-compliance based solely on the non-submittal of the Technical Supplemental Form, which was additional documentation requested for the purpose of utilization by the Consultant Selection Committee to provide firm project information.

Subsequently, DBD reviewed its Pre-Qualification Certification guidelines and determined that the Technical Supplemental Form would still be collected, however, it would not be a condition for obtaining certification. Upon review, DBD notified the Office of Capital Improvements Construction Coordination (CICC) on April 4, 2003, in the cases where the sole basis for disqualification was the missing Technical Supplemental Form, those firms should be deemed in compliance with respect to their Pre-Qualification Certification. As a result, some of the firms were no longer within the top three ranked firms due to the inclusion of the new responsive participants. Various proposers were dissatisfied with the revised compliance review.

On September 9, 2003, the BCC adopted Resolution R-977-03, to Waive the Short-Listing Requirements Established in Administrative Order 3-33 and Administrative Order 3-39.

- Administrative Order 3-33/3-39 provides for the consolidated Pre-Qualification process necessary for any architectural and engineering firm providing services to the County, which includes the submittal and approval of an affirmative action plan, technical certification and vendor registration.
- AO 3-33 stated that for Multiple Projects and Project Specific agreements to be awarded, a minimum of three respondents and a maximum of 15% of the total qualified list of participants received will advance from the First-Tier selection to the Second-Tier selection (short-listed).
- This criteria was amended by AO 3-39, which supersedes AO 3-33, establishing that a minimum of three (3) firms must be selected. The Consultant Selection Committee, by majority vote, may determine the maximum number of firms to advance from the First-Tier to the Second-Tier selection (short-listed).

Although, the original recommendation was to reject all proposals and re-solicit this project, the BCC, pursuant to the recommendation of MDAD and CICC, approved R-977-03, the Assistant County Attorney advised that the only way to resolve the matter was to amend the existing AO 3-33 by resolution, as there was no provision allowing a waiver. Therefore, R-977-03, waived the short-listing requirements to allow those firms who were short listed from both First-Tier meetings to proceed to the Second-Tier selection process and subsequently adopted R-542-04 on May 11, 2004 awarding the Project Specific Services Agreement to Brown & Brown.

Budgetary Impact

Contract Measures for First Amendment: 20% CBE goal (\$160,000)

Sub-consultants:

Vital Engineering, Inc. 10%

Louis J. Aguirre & Assoc. 10%

- How much has been achieved to date?

Prepared by: Bia Marsellos

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 3(C)
File Number: 092924
Committee(s) of Reference: Airport and Seaport Committee
Date of Analysis: December 4, 2009
Type of Item: First Amendments to twelve (12) Concession Agreements in South Terminal

Summary

This resolution approves Retroactive First Amendments to twelve (12) Lease and Concession Agreements relating to the South Terminal Area of Miami International Airport (MIA) and approves the relief package to the South Terminal Concessionaires that includes the following:

- Waiver of the Minimum Annual Guarantee (MAG) through to the end of the first year of operation;
- Adjusting and applying the MAG at the beginning of the second year to reflect the actual sales of the first full operating year; and
- Execution of waivers of claims by the Concessionaires.

According to the memorandum, each of the concessionaires experienced varying degrees of additional costs to build out their facilities as a result of the South Terminal completion delay. Miami Dade Aviation Department (MDAD) and the concessionaires made a number of assumptions relating to the volume of passengers and passenger traffic-flow patterns that have not materialized. The sales of the South Terminal have been severely impacted. MDAD, upon approval by the Board of County Commissioners (BCC), thought it prudent to waive MAGs paid before the opening of each facility.

- How much MAG revenue has been collected to date?
- Will MDAD be refunding funds upon approval of these amendments?

The memorandum states that, "MDAD has exercised its authority to offer these tenants another location in the North Terminal as long as they retain their struggling South Terminal retail-corridor stores."

- Which tenants have been offered additional locations in the North Terminal?

The memorandum states that “the current layout of the South Terminal does not maximize the passengers potential to shop”

- Who designed the layout?
- What was the cost of the design?

Another assumption stated in the memorandum is regarding a central security checkpoint located in the middle of the South Terminal. However, there are additional, more convenient checkpoints closer to the concourses, one to Concourse J and another to Concourse H.

- When the assumption of the centralized security checkpoint was made, did the other two checkpoints exist? If they did not exist, why were they added?

MDAD is recommending these accommodations to ensure the continued presence of a concessions program for the traveling public.

- What are MDADs options if the Amendments are not approved by the BCC?
- What provisions are in the contracts to protect the County in the event the concessionaires default?

Background and Relevant Legislation

Some of the issues raised during BCC and Committee meeting discussions during the award process of the various RFPs Packages were the following:

- Whether businesses located in areas where construction was underway would be assessed the same as everyone else;
- Concerns with formula used to determine the Minimum Annual Guarantees (MAGs);
- Whether the MAGs were based on something tangible;
- Revenues for the total retail package anticipated at approximately \$26 million;
- Concerns with projected numbers based upon terminal openings and operations;
- Providing that concessions be located in visible areas that were readily accessible to passengers;
- The lack of contract awards to local businesses and DBE participation;
- Preference to local businesses;
- Bid protests ;
- Following and enforcing the RFP process;
- Contract language making penalties mandatory;

Budgetary Impact

If the BCC approves the Amendments, what is the financial impact to MDAD, for all twelve amendments collectively?

Additional Information

Item No. 1-7 on hand written page 21, Host International, Inc., was originally part of the Retail Concession Package RFP MDAD-05-05. However, the award to Host International, Inc. was actually through the Bookstore Café Specialty Retail Project, RFP MDAD 01-07. The BCC adopted R-212-08 on

March 4, 2008. Resolution 212-08 is actually titled "Awarding Non-Exclusive Lease and Concession Agreement at MIA, RFP MDAD 01-07, to Areas USA, Inc. for the Bookstore Café Specialty retail Concept"

However, the last paragraph of the memorandum states that, "The supplement therefore recommended that the original award to Host of RFP 01-07 (South Terminal Books & Café) be approved by the Board, and that Areas USA be awarded through this bid waiver, the yet to be advertised second bookstore location."

The supplement the memorandum is referring to is a Report, Titled Supplement No. 2 to Award Recommendation, Legistar No. 080453.

The Requested Modification is not listed for this Lease on hand written pages 21-22. However, on hand written p. 154, the modification listed is the following:

- Commencing upon Beneficial Occupancy of South terminal Location H20500, Concessionaire shall pay the lesser of the MAG or the assigned retail category percentage fee (as determined by Sub-Article 3.05) of Gross Revenues in lieu of the MAG until the first anniversary date of Beneficial Occupancy for the South Terminal Location. On that anniversary date the Concessionaire shall commence payment of the Adjusted MAG. The Adjusted MAG is derived by taking the aggregate of the monthly percentage performance payments made during the first year of operation. Notwithstanding anything to the contrary contained in Sub-Articles 3.03, 3.04 and 3.11, or in any other Sub-Article this MAG adjustment applies only to the South Terminal concession location of the Concessionaire.

Prepared by: Bia Marsellos

Item No.	Project/ RFP No.	Award/Concessionaire	Recommended Modification
1-1	Retail Concession Program RFP MDAD-05-05 Package Five	Air Sun JV- Resolution R-903-06 Adopted on:7/18/06	Amend Lease and Concession Agreement Sub-article 3.01, Minimum Annual Guarantee, to require payment of a percentage fee in lieu of MAG payments for the first year and to start that year on the day of beneficial occupancy rather than the lease effective date.
1-2	Food Service Concessions RFP MDAD-01-05 Package Two	Areas USA, Inc. n/k/a Areas USA MIA, LLC- Resolution R-196-06 Adopted on: 2/9/06	Amend Lease and Concession Agreement Sub-articles 3.01 Minimum Annual Guarantee and 3.06 Annual Rental to require payment of a percentage fee in lieu of MAG payments for the first year, to start that year on the date of beneficial occupancy rather than the lease effective date, and shall not be required to pay annual rent for specified locations until the first anniversary date of beneficial occupancy for such locations.
1-3	Retail Concession Program RFP MDAD-05-05 Package Six	Brookstone Stores, Inc. Resolution R-904-06 Adopted on:7/18/06	Amend Lease and Concession Agreement Sub-article 3.01, Minimum Annual Guarantee, to require payment of a percentage fee in lieu of MAG payments for the first year and to start that year on the day of beneficial occupancy rather than the lease effective date.
1-4	Food Service Concessions RFP MDAD-01-05 Package One	Concessions Miami, LLC Resolution R-195-06 Adopted on: 2/9/06	Amend Lease and Concession Agreement Sub-articles 3.01 Minimum Annual Guarantee and 3.06 Annual Rental to require payment of a percentage fee in lieu of MAG payments for the first year, to start that year on the date of beneficial occupancy rather than the lease effective date, and shall not be required to pay annual rent for specified locations until the first anniversary date of beneficial occupancy for such locations.
1-5	Duty and Tax Free Concession Agreement RFP MDAD-03-04	Duty Free Americas Miami, LLC Resolution R-1226-05 Adopted on:11/1/05	Amend Lease and Concession Agreement Sub-articles 3.01 Minimum Annual Guarantee and 3.06 Annual Rental to require payment of a percentage fee in lieu of MAG payments for the first year, to start that year on the date of beneficial occupancy rather than the lease effective date, and shall not be required to pay annual rent for specified locations until the first anniversary date of beneficial occupancy for such locations.
1-6	Retail Concessions	Faber, Coe & Gregg of	Amend Lease and Concession Agreement Sub-article 3.01, Minimum Annual

	Program RFP MDAD-05-05 Package One	Florida, Inc. , operating as FABER MIA LLC Resolution R1108-06 Adopted on:10/10/06	Guarantee, to require payment of a percentage fee in lieu of MAG payments for the first year and to start that year on the day of beneficial occupancy rather than the lease effective date.
1-7	This Agreement was originally part of the Retail Concession Program, RFP MDAD-05-05. However, the award to Host International, Inc. was actually through the Bookstore Café Specialty Retail Project, RFP MDAD 01-07.	Host International, Inc.	The Requested Modification is not listed for this Lease on hand written pages 21-22. However, on hand written p. 154, the modification listed is the following: Commencing upon Beneficial Occupancy of South terminal Location H20500, Concessionaire shall pay the lesser of the MAG or the assigned retail category percentage fee (as determined by Sub-Article 3.05) of Gross Revenues in lieu of the MAG until the first anniversary date of Beneficial Occupancy for the South Terminal Location. On that anniversary date the Concessionaire shall commence payment of the Adjusted MAG. The Adjusted MAG is derived by taking the aggregate of the monthly percentage performance payments made during the first year of operation. Notwithstanding anything to the contrary contained in Sub-Articles 3.03, 3.04 and 3.11, or in any other Sub-Article this MAG adjustment applies only to the South Terminal concession location of the Concessionaire.
1-8	Retail Concessions Program RFP MDAD-05-05 Package Eight	Miami Concepts LLC f/k/a Miami-To-Go, Inc. Resolution R-1105-06 Adopted on:10/10/06	This amendment authorizes a name change from Miami-To-Go to Miami Concepts, LLC. In addition to the name change, amend Lease and Concession Agreement Sub-article 3.01, Minimum Annual Guarantee, to require payment of a percentage fee in lieu of MAG payments for the first year and to start that year on the day of beneficial occupancy rather than the lease effective date.
1-9	Foreign Currency Exchange & Business Center RFP 10-06	Lenlyn Ltd. d/b/a ICE Currency Services USA Adopted on:12/4/07	MDAD recommends adjusting the Annual Rental, in order to assist ICE with certain accommodations relative to the occupancy costs incurred by the Concessionaire. These actions will be mutually beneficial to both parties by allowing the Concessionaire to re-infuse freed up capital back into their respective operations and maintain a high level of service to the traveling public.

1-10	Retail Concessions Program RFP MDAD-05-05 Package Seven	Miami International Airport Pharmacy, Inc. Resolution R-905-06 Adopted on:7/18/06	Amend Lease and Concession Agreement Sub-article 3.01, Minimum Annual Guarantee, to require payment of a percentage fee in lieu of MAG payments for the first year and to start that year on the day of beneficial occupancy rather than the lease effective date.
1-11	Retail Concessions Program RFP MDAD-05-05 Package Three	Navarro at MIA, LLC f/k/a Navarro at MIA, Inc. Resolution R-902-06 Adopted on:7/18/06	Amend Lease and Concession Agreement Sub-article 3.01, Minimum Annual Guarantee, to require payment of a percentage fee in lieu of MAG payments for the first year and to start that year on the day of beneficial occupancy rather than the lease effective date.
1-12	Retail Concessions Program RFP MDAD-05-05 Package Two	Host International, Inc. Resolution R-901-06 Adopted on:7/18/06	Amend Lease and Concession Agreement Sub-article 3.01, Minimum Annual Guarantee, to require payment of a percentage fee in lieu of MAG payments for the first year and to start that year on the day of beneficial occupancy rather than the lease effective date.