

Memorandum



Date: **February 5, 2008**

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)(F)

From: George M. Burgess
County Manager

Subject: Recommendation to reject all bids, authorize award of the contract to the lowest bidder, The Tower Group, Inc. in the amount \$121,720,410.00 pursuant to concurrent negotiations held with both bidders, waive competitive bidding in connection with the rejection of proposals pursuant to Section 2-8.1 (b) of the County Code and Section 5.03(D) of the Home Rule Charter, and Chapter 255.20, Fla. Statute and waive bid protest procedures for the MIA North Terminal Development Program, 756A/D North Terminal Improvements Package 1 and Package 2 Project (MDAD Project Nos. A155N-01 (Package 1) and A155N-02 (Package 2))

This item was amended at the January 17, 2008, Airport & Tourism Committee, to award the contract for the original full scope to MCM-Dragados JV, thereby rejecting the County Manager's recommendation to award the contract to the lowest bidder, The Tower Group, Inc., under a negotiated reduced scope.

As part of this amendment, the Committee additionally directed staff, with the assistance of the County Attorney's Office, to negotiate with MCM-Dragados JV such that MCM-Dragados JV, and not Miami-Dade County, assumes the risks associated with increased costs, cost overruns, and delays on the project. After negotiations, MCM-Dragados JV has agreed to assume additional risk; however, certain risks remain with the County. A more detailed listing of these risks will be explained via supplemental memorandum.

Assistant County Manager



MEMORANDUM
(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: February 5, 2008

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)(F)

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Agenda Item No. 8(A)(1)(F)

Veto _____

02-05-08

Override _____

RESOLUTION NO. _____

RESOLUTION AWARDING MIA CONTRACT 756A/D NORTH TERMINAL IMPROVEMENTS PACKAGE 1 AND 2; TO MCM-DRAGADOS JV IN THE AMOUNT OF \$125,695,736; APPROVING MODIFICATION OF THE CONTRACT TO SHIFT RISK TO MCM-DRAGADOS JV; AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE THE CONTRACT AND TO EXERCISE TERMINATION, CANCELLATION, OR EXTENSION PROVISIONS CONTAINED THEREIN; WAIVING BID PROTEST PROCEDURES PURSUANT TO SECTION 2-8.4 OF THE CODE OF MIAMI-DADE COUNTY

WHEREAS, this Board desires to accomplish the purposes outlined in the a accompanying memorandum and documents, copies of which are incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby (1) awards MIA Terminal Wide Improvement Program, Project No. 756A/D Package 1 and 2, to MCM-Dragados JV in the amount of \$125,695,736 (2) approves of the modification to the contract in substantially the form attached hereto which shifts certain risks from the County to MCM-Dragados JV, (3) authorizes the County Mayor or his designee to execute the contract in substantially the form attached between MCM-Dragados JV and Miami-Dade County, and to exercise the termination, extension, and cancellation provisions contained therein, and (4) by two thirds vote of the members present waives the bid protest provision of the Code of Miami-Dade County pursuant to Section 2-8.4 of the Code of Miami-Dade County.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of February, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David M. Murray

CONTRACT SUMMARY

~~THIS CONTRACT~~ made and entered into as of the _____ day of _____, 20____, by and between Miami-Dade County, Florida, by its Board of County Commissioners, hereinafter called the Owner and MCM-Dragados J.V.

hereinafter called the Contractor:

WITNESSETH, that the said Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by the County, hereby covenants and agrees to furnish and deliver all the materials required, to do and perform all the Work and labor, in a satisfactory and workmanlike manner, required to complete this Contract within the time specified, in strict and entire conformity with the Plans, Technical Specifications and other Contract Documents, which are hereby incorporated by reference, for;

PROJECT TITLE: Miami International Airport – North Terminal Development Program
756A/D North Terminal Improvements Package 1 and Package 2

PROJECT NO: MDAD Project No. A155N-01 (Package 1)
MDAD Project No. A155N-02 (Package 2)

CONTRACT TIME: Completion of the Work within the Contract Time is of the essence. The Contract Time for this Work is 1083 calendar days from the effective date established in the Notice To Proceed.

LIQUIDATED DAMAGES: Liquidated Damages at the rate of \$8,000 per day will be deducted from the Contract Amount for each calendar day of delay in the completion of the Work under this Contract beyond the 1083 days from the date of the NTP due to a Non-Excusable Delay. In addition, Liquidated Damages at a rate of \$5,000 per day, up to a maximum amount of \$1,000,000 will be deducted from the Contract Amount for each day of delay in the completion of Phase 1 beyond 524 days from the date of the NTP due to a Non-Excusable Delay.

LIQUIDATED INDIRECT COSTS: Liquidated Indirect Costs recoverable by the Contractor, shall be \$8,000 per day for each day the project is delayed up to 580 days due to a Compensable Excusable Delay.

The Contractor agrees to make payment of all proper charges for labor and materials required in the aforementioned Work, and to defend, indemnify and save harmless the County and all its officers, employees and agents against and from all suits and costs of every kind and description, and from all damages to which the said County or any of its officers, agents and employees may be put, by reason of injury or death to persons or injury to property of others resulting from the performance of said Work, or through the negligence of the Contractor, its officers, agents or employees or through any improper or defective machinery, implements or appliances used by the Contractor, its officers, agents or employees in the aforesaid Work, or through any act or omission on the part of the Contractor, or its officers, agents or employees.

In consideration of these premises, the County hereby agrees to pay to the Contractor for the said Work, when fully completed, the total maximum sum of

One Hundred Twenty-Five Million Six Hundred Ninety-Five Thousand Seven Hundred Thirty-Six Dollars (\$125,695,736.00),

consisting of the following accepted items or schedules of Work as taken from the Bid Form:

<u>Total Unit and L.S. Price Items</u>	<u>\$118,600,000.00</u>
<u>Dedicated Allowance Account No. 1</u>	<u>\$635,000.00</u>
<u>Dedicated Allowance Account No. 2</u>	<u>\$300,000.00</u>

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CONTRACT SUMMARY (Cont'd)

General Allowance Account \$5,861,898.00

Inspector General Audit Account \$276,010.00

TOTAL MAXIMUM CONTRACT AMOUNT..... \$125,695,736.00

The Total Maximum Contract amount is subject to such additions and deductions as may be provided for in the Contract Documents. Partial and Final Payments will be made as provided for in the Contract Documents.

(Remainder of Page Intentionally Left Blank)

CONTRACT SUMMARY (Cont'd)

IN WITNESS WHEREOF, the above parties have caused this Contract to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI-DADE COUNTY, FLORIDA,

ATTEST: Harvey Ruvin Clerk

By: _____
Mayor or designee

By: _____
Deputy Clerk

(MIAMI-DADE COUNTY SEAL)

CONTRACTOR (If Corporation)

Approved for Form and Legal Sufficiency

(Corporate Name)

By: _____
President

(Assistant County Attorney)

Attest: _____
Secretary

CONTRACTOR (if Partnership or Corporate Joint Venture)

(A) PARTNERSHIP OR
CORPORATE JOINT VENTURER:

(B) PARTNERSHIP OR
CORPORATE JOINT VENTURER:

(Corporate Name)

(Corporate Name)

By: _____
President

By: _____
President

Attest _____
Secretary

Attest _____
Secretary

(ATTACH ADDITIONAL SHEETS FOR EACH JOINT VENTURER, AS NEEDED)

NAME OF MANAGING JOINT VENTURER:

(CORPORATE SEAL)

By _____
Signature of Authorized Representative of Joint Venture

Witnesses as to Above

Amendment One

In consideration of the County's agreement to accept a modified bid amount submitted by bidder after the initial bid opening date established for the solicitation of this Project, the Contractor agrees (1) to accept additional risk, liability and exposure, as set for the in this Amendment, which would otherwise have been the responsibility of the County under the Contract Documents for this Project, and (2) to perform the work for the fixed price established in the Contract established.

- a. This Amendment modifies and is incorporated into the contract between Miami-Dade County and the bidder relating to MIA Terminal Wide Improvement Program, Project No. 756A/D Package 1 and 2 ("the Contract"), inclusive of all contract documents which are a part of the Contract.
- b. The provisions of this Amendment shall be supplemental to the provisions of the Contract. Nothing in this Amendment shall serve to expand the County's exposure or responsibility for cost overruns, increased costs, extra work, or delay.
- c. It is the intent of this Amendment, for MDAD to be able to complete the Project within its original budget inclusive of the Alternates, Contingency and Allowance funds and , to the maximum extent possible within the limits of this Amendment and the Contract for Contractor to assume the risks associated with cost overruns (as more fully defined below), increased costs or delay; Therefore, all language currently existing in the contract which limits or waives the exposure, liability, or responsibility of the County for cost overruns, increased costs or delay shall be strictly construed in favor of the County.
- d. The Cost Overruns that Contractor has expressly agreed to absorb are those Cost overruns related to the work that a reasonable contractor would have reasonably foreseen based on diligent inquiry and analysis and site visits, the bid documents, consisting of Plans, specifications and addenda.
- e. Based on the above, Contractor additionally agrees that it is solely responsible for coordinating the work of the Contract with the County, Aviation Department, Architect, Engineer, Engineer of Record, the Bidder's subcontractors and suppliers, and other contractors working in the vicinity of the work; this responsibility includes but is not limited to responsibility to coordinate responses to RFI's and PCO's, a responsibility to provide constructability reviews of all responses to RFI's and PCO's, and a responsibility to facilitate communications between all listed parties ("Contractor's Expanded Responsibilities"). The Bidder shall not be entitled to extra compensation or contract time in the event a cost overrun, increased costs, necessary and ancillary extra work, or instance of delay is caused by the failure of the Bidder to coordinate the work in accordance with this Section. Even though Contractor agrees to undertake the aforementioned responsibility for constructability reviews, Nothing herein shall be interpreted as

Contractor assuming responsibility for errors and omissions in the design documents, except for constructability issues, patent defects in the plans, and or inconsistencies between the plans and the Florida Building Code, and as otherwise limited herein, for which the County has required the usual and customary professional liability insurances.

- f. In furtherance of MCM's absorption of such risks, in the event that site conditions differ from those that should have been reasonably expected by the Contractor, and there is a dispute as to whether the conditions in question require the performance of additional work that could not have been avoided, had the Contractor properly complied with Contractor's Expanded Responsibilities, the Bidder shall proceed to complete the work as contemplated by the Plans and Specifications until such time as resolved under paragraph h below..
- g. If in the reasonable discretion of the County, the difference in site conditions was significant and not foreseeable at the time of the bid and notwithstanding Contractor's compliance with its Expanded Responsibilities, the completion of the work as described by the Plans and Specifications requires additional work outside the scope of the original contract, then, Bidder may be compensated for such extra work pursuant to those Sections of the Contract dealing with Extra Work and payment therefore. However, the Contractor shall not be entitled to extra compensation where the site conditions make the work more difficult or costly to perform than the Contractor originally anticipated, but the work is otherwise possible to perform in accordance with the plans and specifications.
- h. The Contractor expressly disclaims and waives any claim arising out of or relating to interference of any kind between the work on this contract and any other work being performed by Contractor at Miami International Airport, either as a direct contractor to the County or as a subcontractor performing work for another entity. To effectuate this disclaimer and waiver, the Contractor agrees to execute separate release of both the County and Parsons-Odebrecht Joint Venture (POJV) in connection with claims under any contracts between the Contractor and POJV.
- i. The Contractor agrees that all disputes shall be resolved by a neutral arbitrator of the County's choice. This arbitrator shall, in the course of a single proceeding, to be held following final completion of the work, hear all disputes relating to entitlement to extra time or compensation as may be raised by the Contractor, and any claim for damages against the Contractor as may be raised by the County. Disputes in excess of \$100,000 dollars shall be determined by a panel of 3 neutral arbitrators. If the parties cannot agree on the identities of the three arbitrators within 30 days of submission of the claim, the dispute shall be governed by the rules of the American Arbitration Association for Complex Commercial Disputes. Arbitration shall take place in Miami-Dade County, Florida.
- j. Notwithstanding any other language in the contract to the contrary, Bidder shall not be entitled to compensation in the event that hurricanes or other weather events cause the Bidder to demobilize, secure the work site, and protect the work in place, nor shall the Bidder be entitled to compensation for remobilization after a hurricane or other weather event.
- k. The Bidder further agrees, with respect to the work to be performed under a dedicated allowance account, that the Bidder will complete all such work within the monies available in such aggregated account(s).

IN WITNESS WHEREOF, the parties by their duly authorized officials have executed this Agreement the day first above written.

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS**

BY: _____
Mayor

DATE OF EXECUTION: _____

ATTEST:

Deputy Clerk

The Contractor

BY: _____
President

Attest: _____
Secretary

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

MIAMI-DADE COUNTY ATTORNEY

By: _____

Title: _____