

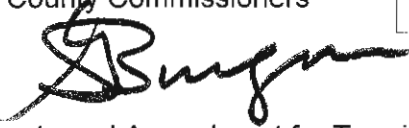
Memorandum

MIAMI-DADE
COUNTY

Date: February 5, 2008

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

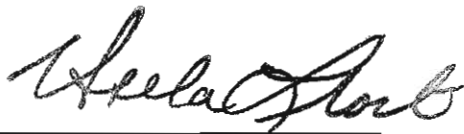
From: George M. Burgess
County Manager



Subject: Executed Copy of Contracts and Amendment for Terminal Wide Improvements Project

Supplement #2 to
Agenda Item No 8(A)1(F)

Attached please find an updated executed copy of the Contract and Amendment One for the Terminal Wide Improvements Project.



Assistant County Manager

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:

Total Unit and L.S. Price Items \$118,600,000.00

Dedicated Allowance Account No. 1 \$635,000.00

Dedicated Allowance Account No. 2 \$300,000.00

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,

By: _____
Mayor or designee

(MIAMI-DADE COUNTY SEAL)

Approved for Form and Legal Sufficiency

(Assistant County Attorney)

ATTEST: Harvey Ruvin Clerk

By: _____
Deputy Clerk

CONTRACTOR (If Corporation)

(Corporate Name)

By: _____
President

Attest: _____
Secretary

CONTRACTOR (if Partnership or Corporate Joint Venture)

(A) PARTNERSHIP OR
CORPORATE JOINT VENTURER:

Dragados USA
(Corporate Name)

By: _____
President

Attest _____
Secretary

(B) PARTNERSHIP OR
CORPORATE JOINT VENTURER:

MCM Corp.
(Corporate Name)

By: _____
President

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

for MCM-Dragados J.V.
/s/

MIA Terminal Wide Improvement Program, Project No. 756A/D Package 1 and 2

Amendment One

In consideration of the County's agreement to accept a modified bid amount submitted by Contractor 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 may 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 contractor 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", "increased costs" or "delay" as more fully defined below: ; 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, analysis and site visits and based on the bid documents, consisting of Plans, specifications and addenda ("Cost Overruns").
- 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 Contractor'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 Contractor 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 if caused by the failure of the Contractor to coordinate the work in accordance with this Section.
- f. Even though Contractor agrees to undertake the aforementioned responsibility for constructability reviews, as set forth in the above paragraph, nothing herein shall be interpreted as Contractor having to provide design services or assuming responsibility for errors and omissions in the design documents.; however, as a point of clarification, the contractor does agree to point out constructability issues, including discovered patent defects in the plans. and or discovered inconsistencies between the plans and the Florida Building Code, and as otherwise limited herein.
- g. In furtherance of Contractor'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 Contractor shall proceed to complete the work as contemplated by the Plans and Specifications until such time as the issue is resolved under a resolution mechanism procedure to be established between the parties.

- h. 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, Contractor may be compensated for such extra work pursuant to those Sections of the Contract dealing with Extra Work and payment therefore.
- i. 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.
- j. 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, or its constituent parts, at Miami International Airport, either as a direct contractor to the County or as a subcontractor performing work for another entity.
- k. To effectuate this disclaimer and waive, each member of the Joint Venture shall execute appropriate releases of both the County and any prime contractors for whom the Contractor, or any constituent member thereof, is performing work at the airport as a subcontractor..
- l. Notwithstanding any other language in the contract to the contrary, Contractor shall not be entitled to compensation in the event that hurricanes or other weather events cause the Contractor to demobilize, secure the work site, and protect the work in place, nor shall the Contractor be entitled to compensation for remobilization after a hurricane or other weather event.
- m. The Contractor further agrees, with respect to the work to be performed under a dedicated allowance account, that the Contractor 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

(A) PARTNERSHIP OR
CORPORATE JOINT VENTURER:

DRAGADOS USA
(Corporate Name)

By: [Signature]
President

Attest _____
Secretary

(B) PARTNERSHIP OR
CORPORATE JOINT VENTURER:

MCM Corp.
(Corporate Name)

By: [Signature]
President

Attest _____
Secretary

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

NAME OF MANAGING JOINT VENTURER: MCM DRAGADOS JV. (CORPORATE SEAL)

By: [Signature]
Signature of Authorized Representative of Joint Venture

By: [Signature]
Signature of Authorized Representative of Joint Venture

Witnesses as to Above

APPROVED AS TO FORM & LEGAL SUFFICIENCY:

MIAMI-DADE COUNTY ATTORNEY

By: _____

Title: _____