

Memorandum



Date: February 21, 2008

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

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Claims Settlement Agreement with Solo Construction Corporation for the Midfield Expansion Phase III Part C, Project No. 95087M11 at Miami International Airport

Amended
Agenda Item No. 12(A)(3)

RECOMMENDATION

R#192-08

It is recommended that the Board approve the attached mediated settlement agreement between Miami-Dade County and Solo Construction Corporation relating to the construction of the Midfield Expansion Phase III Project No. 95087M11 at Miami International Airport in the amount of \$2,250,000.

SCOPE

Miami International Airport (MIA) is located primarily within Commission District Six (Rebecca Sosa); however, the impact of this agenda item is countywide in nature as Miami International Airport is a regional asset.

FISCAL IMPACT/FUNDING SOURCE

This settlement is for \$2,250,000. The project is funded by Capital Improvement Program Airport Revenue Bonds

	<u>Original Contract Values</u>	<u>Previous Adjustments to Values</u>	<u>Current Totals</u>	<u>Total Paid</u>	<u>Current Balance</u>
BASE:	\$23,993,015.89	\$0.00	\$23,993,015.89	\$19,623,681.39	\$4,369,334.50
CONTINGENCY:	\$2,399,301.59	\$0.00	\$2,399,301.59	\$2,396,045.40	\$3,256.19
DEDICATED:	<u>\$544,930.16</u>	<u>\$0.00</u>	<u>\$544,930.16</u>	<u>\$34,840.44</u>	<u>\$510,089.72</u>
TOTALS	\$26,937,247.64	\$0.00	\$26,937,247.64	\$22,054,567.23	\$4,882,680.41

	<u>Original Contract Duration</u>	<u>Previous Adjustments to Duration</u>	<u>Current Totals</u>
BASE DURATION:	890	0	890
CONTINGENCY:	<u>0</u>	<u>0</u>	<u>0</u>
TOTAL DURATION:	890	0	890

TRACK RECORD/MONITOR

No information has been entered into the Capital Improvements Information System (CIIS) regarding this contractor.

BACKGROUND

By resolution R420-02, the County entered into a contract with Solo Construction (Solo) to perform the Midfield Expansion Phase III Project No. 95087M11 for a maximum total contract amount of \$26,937,247.64. The project was located in the middle of Miami International Airport's airfield in a high traffic area near three runways and several taxiways

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and involved the demolition and removal of existing facilities and utilities, the construction of new taxiways with pavement markings and signage, a high speed runway exit, pollution control systems, box culverts with water and sanitary sewer drainage, a utility corridor with power and communication lines, airfield lighting and power, and the installation of an emergency generator. The project was substantially completed on December 22, 2005.

Solo Construction filed a total of 30 separate claims alleging that it incurred additional costs as a result of, among other things, delays, increased material and labor costs, and extra work. Seeking to recover these alleged damages, Solo sued the County. After extensive discovery, twenty claims remained for a total sum claimed amount of \$4,259,158.64, plus interest and costs.

Mediations were held on three separate occasions after which Solo agreed to resolve this matter with the County for the sum of \$2,250,000.

Of the original authorized total contract amount of \$26,937,247.64, a total of \$22,054,567.23 has been paid out leaving a current contract balance of \$4,882,680.41. Of this remaining amount a total of \$1,383,915.40 represents retainage and liquidated damages withheld, \$513,345.91 represents unused contingency and dedicated allowance accounts, and \$2,985,419.10 represents the difference between the estimated quantities and the actual quantities used in this unit price contract. As a result, there are sufficient funds remaining in the contract to cover the settlement amount. After paying Solo the settlement amount, the contract balance will be \$2,632,680.41. This amount will revert to the County and added back into the MIA Capital Improvement Program budget.

The terms of the settlement agreement also include the following:

1. Of the \$2,250,000, the total sum of \$124,598.41 will remain withheld to pay wage underpayments by Solo Construction's subcontractor APAC Southeastern, Inc.
2. As a condition of payment of the settlement amount, Contractor shall furnish to the County a final release from each CSBE subcontractor performing work on the project.
3. As a further condition of payment of the settlement amount, Contractor shall furnish to the County a final release or a Consent of Surety from each non-CSBE subcontractor.
4. Solo Construction will also release the County from all claims and causes of action arising out of or in connection to the Project.

MDAD recommends settlement of this matter in the amount of \$2,250,000 as being in the best interest of the County in order to avoid litigation and to resolve all the outstanding issues and claims.

PROJECT:	MIA Midfield Phase III Part C
PROJECT NO.:	95087M11
CONTRACT NO.	95087M11
PROJECT DESCRIPTION:	Demolition and removal of existing facilities and utilities. Construction of new taxiways, high speed runway exits, drainage system, pollution control system including 8,000 and 10,000 gallon oil/water separators. Construction of 10'

X 5' box culvert with water and sanitary sewer.
Construction of utility corridor with power and
communication lines, airfield lighting, and
power. Installation of an emergency power
generator and the expansion of the airfield
lighting vault.

PROJECT LOCATION: Miami International Airport

APPROVAL PATH: Board of County Commissioners

USING DEPARTMENT: Aviation Department

MANAGING DEPARTMENT: Aviation Department

PRIME CONTRACTOR: Solo Construction Corporation

COMPANY PRINCIPAL(S): Randy Pierson, President
Ricky Pierson, Vice President
Ruth Pierson, Secretary
Shirley Pierson, Treasurer

COMPANY QUALIFIER(S): Randy Pierson

COMPANY EMAIL ADDRESS: info@SoloConstruction.com

COMPANY STREET ADDRESS: 3855 Commerce Pky.

COMPANY CITY-STATE-ZIP: Miramar, FL 33025

YEARS IN BUSINESS: 29

**PREVIOUS CONTRACTS WITH
WITH COUNTY IN THE PAST:** 2 totaling \$14,826,607

CSBE CONTRACT MEASURES: 9% Based on the contract award amount,
this equates to \$2,375,308.57.

CSBE ACHIEVED: 4.3% Paid to date \$946,478.82

**SUBCONTRACTORS AND
SUPPLIERS (SECTION 10-34
MIAMI-DADE COUNTY CODE)** S & S Construction
Roberts Traffic Corporation
APAC-Southeast, Inc.
Fisk Electric Company



Assistant County Manager



MEMORANDUM

(Revised)

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

DATE: February 21, 2008

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

SUBJECT: Amended
Agenda Item No. 12(A)(3)

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

Amended

Veto _____

Agenda Item No. 12(A)(3)

Override _____

2-21-08

RESOLUTION NO. 192-08

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT OF THE LAWSUIT BETWEEN SOLO CONSTRUCTION CORPORATION AND MIAMI-DADE COUNTY, CIRCUIT COURT CASE NO. 06-00825 CA 02, IN THE AMOUNT OF \$2,250,000, RELATING TO CONSTRUCTION OF THE MIDFIELD EXPANSION PHASE III, PROJECT NO. 95-087M-11, AT MIAMI INTERNATIONAL AIRPORT; AUTHORIZING THE MAYOR OR DESIGNEE TO EXECUTE THE AGREEMENT AND ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THE AGREEMENT, SUBJECT TO APPROVAL OF THE COUNTY ATTORNEY AS TO LEGAL SUFFICIENCY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the attached Settlement Agreement ("the Agreement") in the amount of \$2,250,000, from which \$136,598.41 representing wage underpayments shall be withheld, between Solo Construction Corporation and Miami-Dade County, Circuit Court Case No. 06-00825 CA 02, relating to the construction of the Midfield Expansion Phase III, Project No. 95-087M-11 at Miami International Airport, in substantially the form attached hereto and incorporated herein; authorizes the County Mayor or designee to execute the Agreement in substantially the form attached hereto, and to execute all other documents necessary to implement the Agreement, subject to approval of the County Attorney as to legal sufficiency, and all subject to Solo's agreement that this Settlement Agreement not preclude enforcement by the Department of Small Business Development of the Notice of Violation issued on February 4, 2008 on this project.

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 |
| Dorin D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

The Chairperson thereupon declared the resolution duly passed and adopted this 21st 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.

D.F.

Daniel Frastai

In the Circuit Court of the 11th Judicial
Circuit in and for Miami-Dade County,
Florida

Case No. 06-00825 CA 02

Solo Construction Corporation

v.

Miami Dade County

**AGREEMENT for FINAL SETTLEMENT, RELEASE, INDEMNITY and
WAIVER OF CLAIMS BETWEEN MIAMI- DADE COUNTY
and SOLO CONSTRUCTION CORP.**

This Agreement is entered into this 9th day of January, 2008 between Miami-Dade County, a political subdivision of the State of Florida ("County") and Solo Construction Corporation, ("Contractor") as follows:

Whereas the County contracted with Contractor for the construction of County Project Midfield Expansion Phase III Project No. 95-087M-11 ("Project"); and

Whereas Contractor has filed this lawsuit ("Lawsuit") seeking additional compensation in connection with the Project, and the County has filed a counterclaim against Contractor; and

Whereas the County and the Contractor have determined to settle all disputes arising out of the Project pursuant to the terms of this Agreement and this Lawsuit, and the parties have engaged in mediation pursuant to Court order, and

The parties agree, subject to the approval of the Board of County Commissioners and the County Mayor as follows:

1. County will pay to Contractor:

- a. retainage in the total amount of \$1,383,915.40, provided however, that the amount of \$124,598.41 shall be permanently withheld on account of wage underpayments by Contractor's subcontractor APAC Southeastern, Inc. (for a net payment of \$1,259,316.99); and
- b. additional compensation in the total amount of \$866,084.60.
- c. If possible, these sums may be authorized through a work order and shall be paid from unused contract funds. The balance of unused contract funds shall be returned to the County.

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2. Contractor agrees to accept these two amounts as full accord and satisfaction of all monies due it under or in connection with the Project, and the work performed on the Project, including but not limited to work performed by Contractor, by its Surety, and by their subcontractors, materialmen and suppliers, and in full accord and satisfaction of all claims asserted in the Lawsuit.

3.a) As a condition of payment Contractor shall furnish a final release from each CSBE subcontractor performing work on the Project indicating that the CSBE subcontractor has been paid in full for its work on the Project.

3. b) As a further condition of payment, Contractor shall furnish a final release from each non-CSBE subcontractor or supplier performing work on the Project, indicating that the subcontractor or supplier has been paid in full for its work on the Project, or a Consent of Surety, in compliance with County Ordinances.

4. In consideration of the payment by County to Contractor of these amounts Contractor releases County, and its officers, employees and agents, from and waives and relinquishes any and all claims, disputes or causes of action it has or may have, whether known or unknown, against County, and their officers, employees and agents arising out of or in connection with the Project or the work performed or to be performed under the Project, including, but not limited to, those claims previously asserted in connection with this Project, and those claims that could have been asserted in connection with this Project, whether known or unknown. Contractor will indemnify County, its officers, employees, and agents, from any claims from its subcontractors and suppliers in connection with this Project.

5. By accepting the work, County waives all claims against Contractor, except that County expressly reserves all rights:

(1) to require the repair or replacement of defective work under the warranty and guaranty provisions of the Contract Documents;

(2) to require the repair or replacement of latent defects in the work to the extent provided by Florida law;

(3) to enforce those provisions of the Contract Documents which specifically provide that they survive the completion of the work; and

(4) to enforce the terms of the Payment Bond against Surety in the event that timely claims may be made by any covered third parties.

6. Each party will file a voluntary dismissal with prejudice, of its pending claims against the other in the lawsuit. Each party will bear its own costs in connection with the lawsuit.

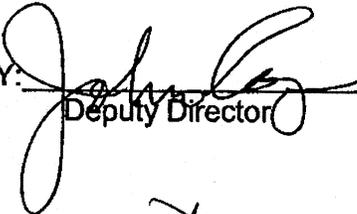
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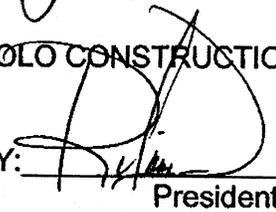
7. The parties acknowledge that they have read this Agreement, understand it, and have consulted with their respective attorneys before executing this document.

8. The parties accept the terms of this Agreement, and have agreed to its terms solely for their own convenience, without admitting liability.

MIAMI-DADE COUNTY Aviation Department

BY:  _____
Deputy Director

SOLO CONSTRUCTION CORPORATION

BY:  _____
President