

Memorandum



Date: January 18, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Correspondence from the Florida Department of Transportation re: Port of Miami Tunnel
Project –Settlement of Geotechnical Issues

Attached please find a letter from the Florida Department of Transportation (FDOT) transmitting information regarding the disposition of all existing geotechnical issues and multiple relief events on the Port of Miami Tunnel Project. As noted in the letter and as provided in the Master Agreement between the County and FDOT (Resolution No. R-889-07), FDOT will be drawing upon the County's Letter of Credit for our \$29.25 million share of the \$58.5 million settlement amount.

I will continue to provide the Board with updates as they become available from the FDOT. Please do not hesitate to contact me or Seaport Director Bill Johnson directly should you have any questions.

c: Gus Pego, FDOT District VI Secretary
Robert A. Cuevas, Jr., County Attorney
Charles Anderson, Commission Auditor
Deputy Mayors
Bill Johnson, Seaport Director



Florida Department of Transportation

RICK SCOTT
GOVERNOR

1000 NW 111 Avenue
Miami, Florida 33172-5800

ANANTH PRASAD, P.E.
SECRETARY

January 14, 2013

The Honorable Carlos A. Gimenez
Mayor, Miami-Dade County
Mayor's Office
Stephen P. Clark Center
111 NW First Street
Miami, FL 33128

Dear Mayor Gimenez:

Since the Port of Miami Tunnel project began, I have been providing bi-monthly construction updates. At this time, I would like to update you on the status of the claims that the Concessionaire has presented, and the resolution of those claims that will impact the Geotechnical Contingency Reserve.

The Port of Miami Tunnel project is being delivered under a Concession Agreement (CA) to Design, Build, Finance, Operate and Maintain (5 year construction, 30 year O&M). Prior to the procurement of this contract extensive geotechnical and geophysical test were conducted along the Tunnel Alignment to establish a Geotechnical Baseline Report (GBR) to describe the varying geology of South Florida. To address all the conceivable risks associated with the underground operations and the probabilities of their occurrence, the Department conducted a detailed Risk Analysis. The analysis served to establish and fund a Geotechnical Contingency Reserve along with a Risk Sharing Mechanism between the Department (and indirectly our funding partner Miami-Dade County) and the Concessionaire, whereby the Concessionaire is responsible for the first \$10 Million of changes, the Department and the County the next \$150 Million and the Concessionaire the last \$20 Million, for up to a combined total of \$180 Million of contract changes due to changed geotechnical conditions. Another Risk Sharing Mechanism of the contract is the limitation that the Concessionaire is only responsible for up to 8000 CY of formation grouting. The intent of this risk allocation structure was to avoid the Concessionaire unnecessarily including a large contingency risk value in their base bid for grout that may not be required.

The CA required the Concessionaire to perform Complementary Ground Investigation (CGI) following award of the contract to determine the exact nature of the ground and develop their subsurface methods plans. Following the CGI, the Concessionaire filed a Notice of Claim (Relief Event Notice) alleging two major changed conditions: (1) that the geotechnical conditions differed from those in the GBR in that the amount of fines and sands within certain soil layers was far less than indicated in the GBR thus requiring significant modification of the Tunnel Boring Machine (TBM) and muck handling plant to operate within that layer in a hydraulic mucking mode which they call Water Control Process (WCP); and, (2) that the amount of Formation Grouting necessary to stabilize this porous rock layer would significantly exceed the 8000 CY limitation specified in the Concession Agreement for formation grouting.

The Department disagreed with the assertion that the lack of fines was not indicated in the GBR and with the necessity for the large quantities of grout the Concessionaire claimed were needed for soil stabilization. After several meetings to discuss the issues without resolution, the Concessionaire requested to take the claims to the Technical Disputes Resolution Board (TDRB) established for the project. The TDRB conducted a hearing and ruled on the issues as follows: (1) that the geotechnical conditions did not differ from what was indicated in the GBR and that modifications to the TBM should not be compensable; and, (2) that the Formation Grouting was necessary for water control and should be compensated.

The Department and Concessionaire then began a series of meetings to settle the claims and determine the best way forward in consideration of the TDRB decision and the project schedule. The Concessionaire's interpretation of the ruling was that they should proceed to construct the tunnel entirely in Earth Pressure Balance (EPB) mode utilizing the necessary quantities of grout needed for water control. They estimated that this approach would require even higher quantities of grout and cause up to 3.5 months of delay to the tunneling operation at a cost of \$149 Million. We both agreed that this would not be in the best interest of the project and that they should proceed with their planned combination of EPB and WCP modes to construct the tunnel. The submitted cost for operating in the planned combination mode was \$96 Million. This number was updated several times and increased to as much as \$103 Million, but finally dropped to \$87 Million after adjusting for actual installed foundation grout volumes compared to their original conservative estimates.

Through subsequent negotiations, this number was lowered to \$58.5 Million and no additional contract time as a complete settlement of these claimed issues and additional open issues on the project through the date of the settlement agreement. The majority of recognized costs within the settlement are related to the documented cost of the additional grout associated with water control during the mining operation. This settlement also includes the costs of grout for the west bound tunnel bore and cross passages along with any risks for any of the issues encountered or raised to date. Only an extreme unforeseen event that was not the fault of the Concessionaire during the westbound tunnel bore would be compensable, thus it is unlikely that any additional claims on the Geotechnical Contingency Reserve will occur. The final settlement amount, \$58.5M, is approximately 40% of the Department and County funded Geotechnical Contingency Reserve. The settlement is well within the contractual parameters established in the contract and within the framework budget established for the project.

In accordance with the terms of the POMT Master Agreement among FDOT, Miami-Dade County and the City of Miami, Section 5 Contribution Amounts, the Geotechnical Contingency Reserve is funded jointly between FDOT and MDC in a 50/50 split. The \$58.5M settlement amount for the geotechnical issues will be funded from the Geotechnical Contingency Reserve and we will be providing the required notification to the County Finance Director of the upcoming draw on the County's Letter of Credit with Wells Fargo Bank for the County's share (\$29.25M) within the next few days.

As our partners, MDC and PortMiami have been kept informed and participated throughout the negotiation process and concur this was the best course of action given the TDRB ruling and the contract structure. It was appropriate and proper contract administration to settle the outstanding issues and clean the slate going forward, while also avoiding future litigation and financial exposure. The Department will continue to manage the contract in the best interest of the partners while maintaining the public trust during the remainder of the construction. The project schedule remains on track for opening to traffic in May 2014.

The Honorable Carlos A. Gimenez
January 14, 2013
Page 3

If you should have any questions on the topic, please do not hesitate to contact me. I am available to answer any questions at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Gus Pego". The signature is fluid and cursive, with a prominent initial "G" and a trailing flourish.

Gus Pego, P.E.
District Secretary

cc: Alina Hudak
Jack Osterholt
Bill Johnson
Kevin Lynskey