

**MIAMI-DADE COUNTY
OFFICE OF THE INSPECTOR GENERAL**



OIG APPENDIX A

Miami-Dade Aviation Department Response

IG07-78A

Memorandum

MIAMI-DADE
COUNTY

Date: May 5, 2009

To: Christopher Mazzella
Inspector General

From: José Abreu, P. E.
Aviation Director

Subject: Response to the Office of the Inspector General (OIG) Draft Report of the Professional Services Agreement with Howard, Needles, Tammen and Bergendoff (HNTB) for Consulting Engineering Services

The Miami-Dade Aviation Department (MDAD) thanks the OIG for the opportunity to include its response in the referenced draft report dated April 3, 2009. The Department's responses are detailed below; the OIG's findings are summarized in bold italics for reference.

Finding 1: MDAD's PSA with HNTB has no specific termination date or dollar limit.

Aviation Department's Response

The Aviation Department agrees in principle that the Consulting Engineer PSA should have been issued with a finite term and dollar limit, because that is the best and standard practice for issuing contracts. However, without presuming to know the thoughts of previous Aviation administrations, it is likely that HNTB's specialized knowledge of the Airports and rigorous professionalism were taken into account when choosing to leave the contract in place. In addition, because Section 705 of the original 1954 Trust Agreement required the approval of the Trustee to change the Consulting Engineer, and because the Trustee has continuously signaled its approval of HNTB as the Consulting Engineer, an attempted change to HNTB would likely have met objection from the Trustee.

Present Aviation management is assessing the various factors which must be considered before the contract is advertised. Foremost, as the Consulting Engineer is required by the Trust Agreement to protect the interests of the Trustee and Co-Trustee, as well as the interests of the bondholders, the Department has asked the Trustee and Co-Trustee for their position on the matter. Their response in the form of a letter from the Co-Trustee is appended to this memorandum.

We note that, in the attached letter from the Co-Trustee, the Co-Trustee reminds the County of the understanding that prevailed when Section 705 was changed in 2002. In 2002, the parties (which included the County, the Trustee, and the Co-Trustee) understood that the then-existing capital program would be completed in five years, and hence the effective date of the change to Section 705 permitting a change in the Consulting Engineer without Trustee approval was stated to be the date commencing on the fifth anniversary of the 2002 amendment. The Trustee and Co-Trustee were willing to amend Section 705 to eliminate Trustee approval of a change in the Consulting Engineer, but the amendment needed to follow the completion of the capital program. As we know, the capital program has been extended for various reasons, all of which call for a completion date currently estimated to be in 2011. Accordingly, the Co-Trustee

respectfully urges in the attached letter that no change be made to the Consulting Engineer until the current anticipated completion date of the capital program.

The Department is also assessing the impact of any proposed change on the capital program, which will be complete in a little over two years. Since very few major projects are planned for several years after the North Terminal is complete, there will be much less Trust work needed.

As these assessments require considerable time and analysis, they are far from complete at this time. The Department will keep the OIG apprised of its progress.

Finding 2: Most of HNTB's Consulting Engineer work is not controlled and monitored by the Aviation Department's service order system.

Aviation Department's Response

The Department establishes an annual budget for HNTB's Trust work and tracks its expenditures against that budget monthly. It is noteworthy that this budget has not been exceeded. Prospectively, beginning in fiscal 2009-10, the Department will issue an annual service order for the budgeted indirect costs attributable to HNTB. Separate service orders will be issued for inspections and recertifications.

As the OIG noted, HNTB's service-order-based (non-Trust) work is tracked in Aviation's PGTS system with correlating Service Order numbers, estimated hours, labor costs, applicable CPI-factor and a total not-to-exceed dollar amount. And although the OIG takes exception to using HNTB's internal service order number as Aviation's Service Order number, this practice facilitates cross referencing and tracking. The OIG also notes that all requisite approvals are obtained on the service orders, which further signifies appropriate Aviation Department oversight.

Finding 3: The Aviation Department should require HNTB to segregate its charges for the various services that it performs showing its fees to perform Trust work separately from those fees charged for non-Trust work.

Aviation Department's Response

HNTB does segregate its invoicing between Trust and non-Trust work. Trust and non-trust work are invoiced separately, with a discrete invoice for each internal HNTB service order. As noted above, beginning in fiscal 2009-10, the Aviation Department will issue annual service orders for Trust work as well, and each service order and its budget will be tracked within PGTS or its successor system.

Finding 4: MDAD should consistently apply charges for similar HNTB work to the same fund. Thirteen invoices totaling \$915,345 (5% of the entire invoice population) were not charged to the appropriate fund.

Aviation Department's Response

The two largest invoices cited by the OIG, for \$390,147 and \$320,632, were indeed incorrectly recorded in the wrong fund **initially** (in January and March 2006). However, at the end of March 2006 the Aviation Department discovered and corrected both errors as part of its standard reconciliation process. The remaining balance of \$204,565 is less than 1% of all the invoices in the OIG's population (100% of all invoices issued within the five-year audit period totaling \$26,157,841) and has an immaterial effect on financial reporting.

Finding 5: MDAD relies on HNTB to provide services that could be competitively solicited and awarded to other engineering firms. There has been about \$2.2 million of other engineering work (non-Trust) performed by HNTB.

Aviation Department's Response

The Department disagrees in principle with this finding. The work assigned to HNTB is mostly for inspections associated with their role in the disposition of responsibilities under the Trust Agreement. HNTB provides no design services to the department. All design services needed as a result of inspections are solicited and awarded to other engineering firms. HNTB's role is one of oversight and to provide recommendations on repair methodologies as they must concur with the results so they can state a position as part of their Trust Agreement responsibilities. Their performance of inspections guarantees the same. By comparison during the time period of the audit, the amount paid to HNTB for non-trust work as described in the audit represented less than 1% (.68) of the total A/E fees paid net of Dade Aviation Consultants fees.

If you have any questions, please contact Evelyn Campos, Professional Compliance Division Director, at 305-876-7390.

c: Honorable Harvey Ruvin, Clerk of the Courts
George M. Burgess, County Manager
Ysela Llorca, Assistant County Manager
Denis Morales, Chief of Staff, Office of the Mayor
Robert Cuevas, County Attorney
Cathy Jackson, Director, Audit and Management Services Department
Charles Anderson, Commission Auditor



■ CORPORATE TRUST

500 West Cypress Creek Road
Suite 560
Fort Lauderdale, FL 33309

May 4, 2009

Miami-Dade Aviation Department
Attn: José Abreu, P.E.
Aviation Director
P O Box 025504
Miami, FL 33122

Dear Mr. Abreu:

The undersigned is the Co-Trustee (as defined below) for the holders (the "Bondholders") of the Bonds issued under, in relevant part, that certain Amended and Restated Trust Agreement dated as of December 15, 2002 (the "Trust Agreement") by and among the County, The Bank of New York Mellon (successor in interest to JPMorgan Chase Bank), as trustee (the "Trustee"), and U.S. Bank National Association (successor in interest to Wachovia Bank, National Association), as co-trustee (the "Co-Trustee"). We are sending you this letter with respect to the draft report (the "Report") of the Office of Inspector General Miami-Dade County, (the "OIG") dated April 6, 2009. In relevant part, the Report relates to results of a review conducted by the OIG regarding certain services provided by the firm of HNTB Corporation ("HNTB"). HNTB serves as Consulting Engineer under the 2002 Trust Agreement, and, we understand from the Report, provides other services to MIA. Our letter relates to the activities of HNTB in its role as Consulting Engineer and not the other services noted in the Report.

Because of the many valuable services the Consulting Engineer is to provide under the Trust Agreement for the benefit of the Bondholders, we are very interested in the findings and recommendations in the Report and in determining if those have an impact upon the Bondholders.

We were pleased to note that the Report's ultimate conclusion (that is, to begin the process for (i) putting an end date on the service agreement with the Consulting Engineer and (ii) seeking persons to submit bids to serve as Consulting Engineer under the 2002 Trust Agreement) did not reflect comments critical of the services performed by HNTB. Rather, those conclusions seemed to tie primarily to the lack of an end date to the current service agreement and the period of time during which HNTB had served as the Consulting Engineer without a review of its services by the County.

In terms of the possible replacement of HNTB as Consulting Engineer and the timing of that replacement, we had two items to note. The first is that over the long period of time that we have been working with HNTB, we have come to appreciate the fact that its officers view seriously their duty to conduct services with the interests of the Bondholders in mind. We



believe this mind set to be of particular importance considering the roughly \$4,459,115,000 (soon to be \$5,059,115,000) in principal amount of the Bonds that are currently outstanding.

The second is to note that the prior version of the 2002 Trust Agreement (which prior version is generally referred to as the 1954 Trust Agreement) contained a provision that the replacement of the Consulting Engineer was subject to concurrence by the Trustee. This latter provision was amended in the 2002 Trust Agreement so that the approval rights were to expire in December, 2007. This latter date was selected because it would coincide with the date the CIP was expected to be largely completed, so that any possible substitution of a new Consulting Engineer would be potentially less disruptive to the timely completion of CIP than if there was still a significant amount of work to be done to complete the CIP. The completion date for the CIP, however, has been extended, and we now understand that the completion date for the CIP may be sometime in 2011. In light of the history with HNTB and the reasoning behind the shortening of the approval right to the replacement of the Consulting Engineer, we respectfully urge you to consider scheduling the re-procuring process for the Consulting Engineer to have the expected selection date coincide with the current anticipated completion date of the CIP.

We appreciate your consideration of the matters noted herein, and ask, if you would like to discuss this, that you please feel free to give me a call.

Very truly yours,

U.S. Bank National Association,
as Co-Trustee

A handwritten signature in black ink, appearing to read "P. M. Fowler", is written over a horizontal line.

By: Peter Fowler
Its: Vice President

cc: Anne Syrcle Lee, CFO/Miami-Dade Aviation Dept
Tim Abbott, Asst County Attorney, Miami-Dade County

**MIAMI-DADE COUNTY
OFFICE OF THE INSPECTOR GENERAL**



OIG APPENDIX B

HNTB, Inc. Response

IG07-78A

Christopher Mazzella
Inspector General
Miami-Dade County Office of the Inspector General
19 West Flagler Street, Suite 220
Miami, Florida 33130

HNTB

May 5, 2009

Dear Mr. Mazzella:

We are in receipt of your OIG Draft Report - IG07-78A, dated April 6, 2009. Thank you for allowing us the opportunity to provide written comments on your audit findings.

First, it was our pleasure working with all of the professionals from the Inspector General's Office during the past year as this audit was conducted. We do have several clarifications we would like to make regarding the report content to assure that it most accurately represents all the facts associated with our PSA and our services as the Consulting Engineer (CE) to the Trust Agreement, as well as other services authorized by MDAD through Service Orders.

In Section I. Introduction your report statement that "it appears that HNTB has been continuously providing consultant engineering services to MDAD since the late 1930's" requires correction. HNTB has been providing Consulting Engineer services as bond engineer to MDAD since the late 1950's. The PSA that was referenced in Footnote #1 of the audit report mistakenly used a date of 1939 when the actual contract date was 1959. After we contacted your office, we were advised that corrections to the draft report would be made. Our corporate records do indicate that services by HNTB prior to the dates required by the 1954 Trust Agreement as Consulting Engineer were for individual assignments in Dade County that were procured in accordance with the procurement practices at the time. These include among others the historic SW 1st Street movable bridge over the Miami River constructed in 1929 and the NW 12th Avenue movable bridge over the Miami River.

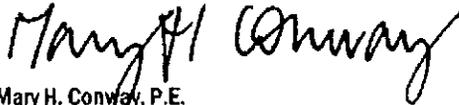
In various sections of the draft report there are references to the changed payment provisions between the 1966 PSA and the 1985 Amendment, wherein the 1-1/2% cap was eliminated and 100% of direct labor and expense costs became reimbursable. The Aviation Department practice has been to budget the CE service with an upper limit of 1-1/2 percent of the construction program. HNTB has never exceeded the budget established by MDAD for such services and, in fact, our total billing for the subject audit period was far less than the allocated MDAD budget as you highlighted in the draft report, i.e., \$21 million in actual fees for a \$2.5 billion construction program as opposed to 1-1/2% or \$38 million budgeted. This is a testament to the appropriate checks and balances established by MDAD while still allowing the CE the flexibility to perform its independent functions, such as verifying the accuracy and validity of capital fund expenditures, in accordance with the Trust and required due diligence.

Several sections of the draft report appear to indicate that HNTB "commingles its costs" regarding charges for CE services (or "Trust" work) and "non-Trust" work that is issued via individual service orders. HNTB has segregated our billings according to standard accounting practices concurred with by MDAD and based on our independent assessment of what should be reasonably and appropriately categorized as "Trust" versus "non-Trust" work. For example, the 40/50 year building re-certifications are in keeping with the department's responsibility under the Trust to maintain their facilities as the re-certification reports generated by the CE are used by MDAD as the scope documents for the selection of an A/E firm to provide design services to address the remedial requirements. Similarly, the Type II and III inspections protect the MDAD buildings in accordance with the Trust requirements by placing the responsibility of any damage and cost of repairs with the entity responsible, which in some cases is the building tenant.

We would also respectfully suggest that the final report mention that the comprehensive review by the OIG of HNTB's PSA over the audit period found only one (1) minor overbilling error of approximately \$300 among \$21 million of billings, and that error has already been corrected and credited back to MDAD. Again, we believe this is a testament to the professionalism and dedication of the MDAD and CE staff to protect the public interest by insuring the accuracy and legitimacy of all expenditures under the Trust.

HNTB values its long standing relationship with Miami-Dade County and the Aviation Department and fully intends to work with MDAD to implement any and all changes that may result from the report's recommendations. HNTB brings 95 years of engineering, architecture and planning expertise to the County and MDAD of which over 60 years have been providing services to the aviation industry and 80 years having been serving Miami-Dade County. We remain fully committed to continually honoring our corporate principles of integrity, trust and service excellence on behalf of Miami-Dade County.

Sincerely,

A handwritten signature in black ink that reads "Mary H. Conway". The signature is written in a cursive, flowing style.

Mary H. Conway, P.E.
Associate Vice President
Officer-in-Charge

cc: Jose M. Diaz, AIA