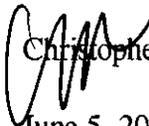




# Memorandum

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To: The Honorable Carlos Alvarez, Mayor, Miami-Dade County  
The Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners, Miami-Dade County

From:  Christopher Mazzella, Inspector General

Date: June 5, 2009

Subject: Executive Summary and Transmittal of the OIG's Final Audit Report on the *Miami-Dade Aviation Department's Professional Services Agreement with Howard, Needles, Tammen & Bergendoff, dated September 7, 1966 (as Amended on April 2, 1985), for Consulting Engineering Services; Ref. IG07-78A*

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## *Introduction*

Attached please find the Office of the Inspector General's (OIG) Final Audit Report on the above-captioned subject. The Dade County Port Authority (DCPA) authorized and approved this PSA on September 7, 1966, pursuant to Board Resolution R-951-66. By way of that resolution, the then effective Trust Agreement, dated October 1, 1954, was incorporated by reference into the PSA's scope of services. This Trust Agreement has since been amended and restated as of December 15, 2002; however, the only amendment to the PSA occurred on April 2, 1985, pursuant to Board of County Commissioners of Dade County (BCC) Resolution R-447-85.<sup>1</sup> HNTB currently provides bond engineering services to MDAD pursuant to the PSA's 1985 amended terms. During our audit period (October 1, 2002 through September 30, 2007), MDAD paid HNTB \$26,157,841 in fees, or an average of \$5.2 million per year, for providing bond engineering and other consultant engineering services, under this PSA.

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<sup>1</sup> Of note, the earliest dated records obtained by the OIG mention that HNTB provided consultant engineering services at MIA under a 1959 PSA for MIA's "Initial Improvement Program" construction and other improvements financed by a \$21 million bond issue, the proceeds of which were deposited in the "Improvement Construction Fund." In this 1959 PSA, there was reference to a 1958 PSA, wherein HNTB was hired to provide consulting engineering services related to MIA construction and other improvements, other than those included in the "Initial Improvement Program," financed by a \$10 million bank loan, the proceeds of which were deposited in the "Special Construction Fund." Thus, it appears that HNTB has been continuously providing bond/consultant engineering services to MDAD since the late 1950's.

As mentioned, MDAD's capital program currently operates under an amended and restated Trust Agreement, dated December 15, 2002, which is the successor Trust Agreement to the one dated October 1, 1954. Under the Trust Agreement, MDAD obtains financing for its "Improvement Program" and for repairing and renovating MDAD buildings and facilities financed or refinanced using Trust Agreement bond proceeds. Trust Agreement Section 705 *Employment of Engineers* requires MDAD to "employ an independent engineer or engineering firm or corporation" to perform and carry out the duties imposed on what the Trust Agreement calls the "Consulting Engineer" (CE). Under this trust agreement, the CE has two basic functions as bond engineer: one is to ensure that MDAD uses bond proceeds to construct only approved projects and the other is to ensure that MDAD maintains the completed facilities in such a manner as to sustain their revenue generating capacity.

### *Summary*

The purpose of the audit was to ensure that the PSA is being properly managed and that MDAD is adequately monitoring HNTB, who serves as Consulting Engineer for Trust Agreement services and who, in addition, provides other professional engineering services for MDAD.

A copy of this report, as a draft, was provided to MDAD and to HNTB for their comments, on April 3, 2009, although our recommendations were directed solely at MDAD. MDAD and HNTB both provided responses to the draft report and they are attached to our final report as OIG APPENDIX A and APPENDIX B, respectively.

We believe this is the first audit by any County entity of the professional services agreement between MDAD and the engineering firm of HNTB, as Consulting Engineers, since the inception of the 1966 PSA. Our audit has a primary recommendation, in addition to five other recommendations for improvement in areas where we believe there is a need for better administration and greater involvement by MDAD in the management of its construction and related activities.

The OIG's primary recommendation is that MDAD should initiate a competitive solicitation seeking proposals from firms wishing to provide the bond engineering services required by the 2002 Trust Agreement and in conformity with the 2003 resolution, which, among other things, unified the two property and revenue streams into one unified Airport System and, thus, one unified bond engineering function as required by the Trust Agreement.

MDAD addresses our primary recommendation by deferring to comments made by the U.S. Bank National Association (Co-Trustee to the 2002 Trust Agreement and successor in interest to Wachovia Bank, National Association). In its response, MDAD stated that it had asked the Trustee and Co-Trustee for their comments on our draft report and that the

Co-Trustee responded in a letter, dated May 4, 2009, to Mr. José Abreu, Aviation Director. MDAD included the Co-Trustee's response with its response to our draft report (see APPENDIX A). The Co-Trustee, in view of the current circumstances concerning MDAD's capital improvement plan (CIP), asks that MDAD defer any replacement of the current CE, until the current anticipated completion date of the CIP has occurred, which is targeted for sometime in 2011.

While we respect the Co-Trustee's position, we are, nonetheless, concerned that this end-date, like the North Terminal Development Project completion date, is a moving target. Construction activity on the CIP will likely not be completed for several more years, as delays continue to beleaguer the project. Moreover, the current CIP surely is not the same CIP that was in place when the 1954 Trust Agreement was instituted. CIPs, in general are, are dynamic, and evolving programs, as its user needs change. And, although the main projects under the current CIP are coming to an end, albeit, not anytime soon, CIP activity will continue. MDAD's need for a bond engineer will exist until all bond proceeds have been paid back to the bondholders. By 2011, the incumbent bond engineer will have served continuously for 45 years pursuant to the original, non-competitive agreement. While no one has ever been able to provide a reasonably accurate completion date for the North Terminal Development Project, we ask that MDAD establish a definite date for when it will seek re-procurement of a successor bond engineering professional services agreement.

We also note that the Co-Trustee specifically limited its comments to HNTB's CE services; that is, it did not address HNTB's other activities. HNTB's non-CE activities, for example, North Terminal Development Project schedule reviews, whether service order authorized or not, have HNTB appearing to become a DAC (Dade Aviation Consultants) replacement. This end stage, at a minimum, will also last for decades. Our issue is that MDAD justifies using HNTB for the non-CE services because it is the CE and is familiar with MDAD. Apparently, it is MDAD's thinking that it is efficient and effective to have HNTB continue performing these services, notwithstanding the fact that it is performing these non-CE services, under a non-competitive award piggybacked on its primary role. The OIG is concerned that MDAD may be tempted to continue using this justification, which will also allow MDAD to continue to follow a bad contracting precedent, rather than maintaining the role of the CE as a stand-alone role.

Regarding our first recommendation, that MDAD should consider amending this PSA to include a stated duration and amount, MDAD acknowledges that this PSA "should have been issued with a finite term and dollar limit, because that is the best and standard practice for issuing contracts." However, MDAD does not indicate whether it will attempt to amend the current contract or add such provisions to any future PSA for CE services. Accordingly, we reiterate our recommendation since we believe that MDAD could amend this PSA with a stated duration and a not-to-exceed dollar amount. This recommendation is exclusive of our primary recommendation that MDAD should initiate a competitive

solicitation seeking proposals from firms wishing to provide the bond engineering services required by the 2002 Trust Agreement. This re-procurement process should not be delayed.

Our second recommendation is that MDAD should use its service order system to authorize, control, and monitor contract deliverables and budgets. MDAD states that it uses an annual budget amount as its control over HNTB costs and that such budget has not been exceeded. Notwithstanding, MDAD indicated that it will implement the OIG's recommendation. MDAD states that, in the future, it "will issue an annual service order for the budgeted indirect costs attributable to HNTB" and will issue separate service orders for HNTB performed inspections (other than those required for HNTB to meet the Trust's annual inspections requirement) and recertifications, whose costs currently are commingled in the annual budget amount with HNTB's Trust work costs. With regards to a singular "annual service order" as proposed by MDAD for HNTB's annual indirect costs, we believe that such a service order should include, at a minimum, a showing of the discrete tasks (e.g., contractor pay requisition review, design review and approval, etc.) associated with each of the various individual projects listed in MDAD's CIP, staffing assignments, salary rates, and estimated other direct costs. Indeed, instead of one massive annual service order, we would suggest that MDAD issue discrete service orders for each Trust-required work activity.

Our third recommendation is that MDAD should require HNTB to segregate its charges according to the work performed, e.g., Trust work versus non-Trust work. MDAD states that HNTB already does so. Apart from its past/current practice, MDAD, in the future, will adopt the OIG's recommendation and change its current practice. MDAD states that it will issue separate work orders for building inspections and recertifications, and HNTB's annual indirect costs. These steps will provide additional cost segregation, which the OIG believes is necessary in order for MDAD to better manage HNTB's activities.

The report's fourth recommendation is that MDAD should consistently apply HNTB charges for similar work to the same fund. MDAD acknowledges that in two of the OIG's cited instances of questionable postings, MDAD initially had misapplied the charges to the incorrect fund but that it already corrected the mischarges in its accounting records. The remaining OIG cited instances have, according to MDAD, "an immaterial effect on financial reporting." While the amount may be immaterial for financial reporting purposes, MDAD should have adequate procedures to prevent such mispostings from occurring in the future and to timely detect and correct those that do occur.

Finally, the OIG recommends that MDAD competitively solicit and award certain services provided by HNTB that the OIG believes are not required of a CE under the Trust Agreement. MDAD "disagrees in principle with this finding" although its response does not clearly state why it disagrees with the OIG. MDAD does make a statement defending its position, however, that we believe exemplifies precisely why the OIG believes that such services should be competitively solicited and awarded:

[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.

MDAD states it accurately—HNTB performs an oversight function. In addition, MDAD stresses that HNTB provides no design services to the department. Notwithstanding, HNTB's current service order work is not oversight; it is active engagement in program management. Similarly, we believe its inspections and recertifications work is program management activity, not oversight. We note in our report that HNTB, is undoubtedly, well qualified to perform such work and there may be synergy with its other activities, in having it do the work. This relationship, however, does not mean that it should be doing the work. The OIG believes that HNTB issuing recommendations on operational issues, which may be later evaluated by HNTB in its objective oversight function, creates a personal impairment to its independence. Accordingly, we disagree with MDAD on this issue, and reiterate our recommendation

Although no OIG recommendation was directed at HNTB, it, nonetheless, responded to our draft audit report. In its response, HNTB emphasizes that its billings have never exceeded MDAD's budget for its services. HNTB asserts that "This is a testament to the appropriate checks and balances established by MDAD while still allowing the CE [HNTB] 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."

Additionally, HNTB defends its inspections and recertifications work as "Trust" work. The OIG agrees with HNTB's stated position that such work is "in keeping with the department's responsibility under the Trust to maintain their facilities..." We, however, disagree with HNTB's implied position that it is acceptable for a bond engineer to perform these operational services. The CE's role is to evaluate and report on MDAD's management thereof, not to participate in it. As described by HNTB in its response to the OIG, its inspections/recertification reports "are used by MDAD as the scope documents for the selection of an A/E firm to provide design services to address remedial requirements." Clearly, this puts HNTB in an operational role, one-step removed from the preparation of actual design documents.

Lastly, HNTB mentions that the OIG did not note in its draft report that, in its review of HNTB invoices, under the subject PSA and over the 5-year audit period that it found "only one (1) minor overbilling of approximately \$300 among the \$21 million of billings, and that error has been corrected and credited back to MDAD."

## *Conclusion*

As we previously noted, the subject PSA is a highly unusual, if not an unprecedented, contractual relationship for a Miami-Dade County department to maintain. This arrangement is an over 40-year old continuously operational contract originally awarded without competitive solicitation to a vendor that has never been required to submit any form of proposal, competitively solicited or not, to maintain the contract. While this contract is over 40 years old, the relationship goes back even farther. We note that contracts for bond engineers at other County departments are periodically subject to competitive solicitation, which can result in a change in the department's bond engineer. Other County bond engineering agreements have also had maximum authorized compensation amounts, whereby management returns to the BCC for additional appropriations. Conversely, with the subject PSA, management has never had to seek additional appropriations or spending authority. Thus, we believe that MDAD's handling of the PSA has been and is today a questionable government business practice, notwithstanding whatever successes, benefits, and efficiencies that MDAD and HNTB have enjoyed through the years.

For MDAD to align itself so closely, in a noncompetitive environment, with one firm to provide an essential service for so long a period is undesirable. Bond engineers, in general, enjoy a preeminent role in any organization in which they serve because of the importance of their positions as Trustee representatives and protectors of bondholder investments. In this case, HNTB's influence, however, may be unduly enhanced by its long service duration rather than the impact of its independent technical expertise. Arguably, it is to the point that given HNTB's institutionalization within the MDAD capital improvements program that MDAD would consider it untenable to replace HNTB now, or at any time in the near future.

Putting the benefits of its institutional knowledge aside, it is HNTB's continuous employment as the bond engineer—at least since the late 1950s—that calls for us to recommend that MDAD initiate a competitive solicitation for bond engineering services. In the realm of public contracting, we strongly believe that no firm should hold a de facto right to serve in the same capacity in perpetuity—or at least until MDAD ceases financing a capital improvements program through the issuance of revenue bonds. We emphasize that we are not saying or even implying that HNTB has not been providing quality services, effectively and efficiently or that we question its integrity. But that does not mean that MDAD should not consider a change, nonetheless.

## *Requested Follow-up*

The OIG requests that MDAD submit a follow-up report to the OIG in 90 days, on or before September 4, 2009, regarding the implementation of our recommendations and the timeline for a new solicitation or amendment to the current PSA.

cc: George Burgess, County Manager  
Ysela Llort, Assistant County Manager  
José Abreu, Director, Miami-Dade Aviation Department  
Anne S. Lee, Chief Financial Officer, Miami-Dade Aviation Department  
Max Fajardo, Deputy Aviation Director  
Cathy Jackson, Director, Audit and Management Services Department  
Charles Anderson, Commission Auditor  
Denis Morales, Chief of Staff, Office of the Mayor  
HNTB Corporation (under separate cover)  
Clerk of the Board (copy filed)