

PALM BEACH COUNTY

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

[X]

Consent

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Regular

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Workshop

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Public Hearing

Submitted By: Department of Airports

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Amendment No. 9 to the contract with PBS&J, Inc. approved by the BCC on February 6, 2001 (R-2001-0194) for Consulting/Professional Services for the Department of Airports.

Summary: This amendment will add the document addressing "Additional Contract Requirements for Federally Funded Projects" to the original contract as required by the Federal Aviation Administration (FAA). There is no Fiscal Impact associated with this amendment. **Countywide (JCM)**

Background and Justification: Upon legal review, it was recommended that the FAA document concerning "Additional Contract Requirements for Federally Funded Projects" be added as an amendment to the original agreement. This amendment will add FAA language covering certain terms and conditions applicable to all contracts funded in whole or part by Federal funds including, but not limited to, AIP funds.

Attachments:

- 1. Amendment No. 9 with PBS&J, Inc. – (2 Originals)**

James Pelly
Department Director

Date


County Administrator

Date _____

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2006	2007	2008	2009	2010
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	=====	=====	=====	=====	=====
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes _____ No _____
Budget Account No: Fund _____ Department _____ Unit _____ Object _____
Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is no Fiscal Impact associated with Amendment No. 9.

C. Departmental Fiscal Review: CM Summer

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Sam Dunk 8-28-06
OFMB
8/28/2006 MM 8-25-06

Dr. J. Jast 8/29/06
Contract Dev. and Control
6 Jones 8/29/06
As Amendment 8, this
amends a contract that
has exceeded its
term.

B. Legal Sufficiency:

James C. Murphy
Assistant County Attorney

C. Other Department Review:

Department Director

REVISED 9/03
ADM FORM 01

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

**AMENDMENT # 9 TO CONTRACT
BETWEEN PALM BEACH COUNTY**

AND

PBS&J

FOR

AIRPORTS GENERAL CONSULTING SERVICES

This Amendment # 9 made and entered into the ____ day of _____, 2006 between Palm Beach County, Florida ("County") and PBS&J, a corporation authorized to do business in the State of Florida, having its office and principal place of business at 3230 Commerce Place, Suite A, West Palm Beach, Florida 33407 (CONSULTANT), with Federal Tax I.D. Number 59-0896138.

WITNESSETH

WHEREAS, on February 6, 2001, the County entered into an Agreement (R-2001-0194) with the CONSULTANT for the CONSULTANT to provide General Airport Consulting Services for Palm Beach County Department of Airports, for a period of 24 months with up to two (2) additional twelve (12) month renewals at the County's option (the Contract); and

WHEREAS, on February 26, 2002, the County approved Amendment #1, on June 18, 2002 Amendment #2, on February 4, 2003 Amendment #3, on July 15, 2003 Amendment #4, on March 30, 2004 Amendment #5, on January 11, 2005 Amendment #6, on November 15, 2005 Amendment #7 and on August 15, 2006 Amendment #8 to Agreement (R-2001-0194) with the CONSULTANT; and

WHEREAS, Article 26 of the Contract requires the CONSULTANT to comply with certain Federal Aviation Administration (FAA) mandated provisions; and

WHEREAS, The FAA requires that certain terms and conditions be applicable to all contracts funded in whole or part by Federal funds including, but not limited to, AIP funds.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and such other good and valuable consideration, the receipt of which the parties hereby acknowledge, the parties agree to the following terms and conditions:

1. The parties hereby agree to amend the Contract to include Additional Contract Requirements for Federally Funded Projects as outlined in Exhibit "E" (attached).
2. Except as specifically amended herein, all other terms and conditions of the Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused the Ninth Amendment to the Contract to be signed by the Chairman of the Board of County Commissioners and the Seal of said Board to be affixed hereto and attested by the Clerk of said board, and the CONSULTANT, PBS&J, has caused these present to be signed in its corporate name by its duly authorized officer, John B. Zumwalt, III, acting on behalf of said CONSULTANT, and the Seal of said CONSULTANT to be affixed hereto and attested by the Secretary of said CONSULTANT, the day and year first written above.

ATTEST:

**PALM BEACH COUNTY, FLORIDA
BOARD OF COUNTY COMMISSIONERS**

SHARON R. BOCK
Clerk & Comptroller

By: _____
Deputy Clerk

By: _____
Tony Masilotti, Chairman

WITNESS:

CONSULTANT:

Monica M. Vazquez
Signature

By: PBS&J
Company Name

Monica M. Vazquez
Name (Type or Print)

[Signature]
Signature

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

John B. Zumwalt, III
Chairman

Name (Type or Print)

By: _____
County Attorney

Title

**APPROVED AS TO TERMS
AND CONDITIONS**

(Corporate Seal)

By: [Signature]
Department Director

EXHIBIT "E"

**ADDITIONAL CONTRACT
REQUIREMENTS FOR FEDERALLY
FUNDED PROJECTS**

EXHIBIT "E"

**ADDITIONAL CONTRACT REQUIREMENTS FOR
FEDERALLY FUNDED PROJECTS**

The following terms and conditions are applicable to all contracts funded in whole or part by Federal funds including, but not limited to, AIP funds.

ACCESS TO RECORDS AND REPORTS

The Contractor shall maintain an acceptable cost accounting system. The Contractor agrees to provide the Sponsor, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982, SECTION 520 - GENERAL CIVIL RIGHTS PROVISIONS

The contractor assures that it will comply with pertinent statutes, Executive orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport a program, except where Federal assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon. In these cases the provision obligates the party or any transferee for the longer of the following periods: (a) the period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits or (b) the period during which the airport sponsor or any transferee retains ownership or possession of the property. In the case of contractors, this provision binds the contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

The bidder/offeror certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder/offeror/contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

CIVIL RIGHTS ACT OF 1964, TITLE VI - CONTRACTOR CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1.1 Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

1.2 Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

1.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

1.4 Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

1.5 Sanctions for Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination, or suspension of the contract, in whole or in part.

1.6 Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

DISADVANTAGED BUSINESS ENTERPRISES

Contract Assurance (§26.13) - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

(1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

RIGHTS TO INVENTIONS

All rights to inventions and materials generated under this contract are subject to regulations issued by the FAA and the Sponsor of the Federal grant under which this contract is executed.

TRADE RESTRICTION CLAUSE

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

TERMINATION OF CONTRACT

- a. The Sponsor may, by written notice, terminate this contract in whole or in part at any time, either for the Sponsor's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Sponsor.
- b. If the termination is for the convenience of the Sponsor, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
- c. If the termination is due to failure to fulfill the contractor's obligations, the Sponsor may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Sponsor for any additional cost occasioned to the Sponsor thereby.
- d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Sponsor. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
- e. The rights and remedies of the sponsor provided in this clause are in addition to any other rights and remedies provided by law or under this contract.