

The Virgin Islands Consortium

Feds Suspend Main Street Revitalization Project Citing Breach Of Contract; Gustav James Responds

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Ernice Gilbert **November 15, 2016**



ST. THOMAS -- A letter obtained by The Consortium, written to Public Works Commissioner Gustav Jame and Property and Procurement Commissioner Randolph Bennett from the U.S. Department of Transportation's Federal Highway Administration (F.H.W.A.), says that the contract awarded to Tip Top Construction for the Main Street Revitalization Project in Charlotte Amalie -- some \$8.4 million of federal monies -- is invalid and therefore F.H.W.A. has suspended the contract until the issues are corrected.

The feds gave Mr. James and Mr. Bennett until November 21 to respond.

According to the letter, seen [here](#), federal regulation requires that all contracts exceeding \$10,000 shall contain suitable provisions for termination by the state/territory, including the manner by which the termination will be effected and the basis for the settlement. The payment and performance bond provides suitable provisions to meet this requirement. The contract executed for the Main Street project required a payment and performance bond from the contractor, according to the letter.

But F.H.W.A. said it understood that the payment and performance bond was contingent on a "teaming agreement" between Tip Top Construction and Prestige Construction, and argued that such a contingency was not acceptable since it was not disclosed during the bid package and was not approved by the Virgin Islands Department of Public Works during the award process. "In addition," the letter continued, "Prestige Building Company is not a signatory nor an approved sub-contractor for this contract."

F.H.W.A. added that since the payment and performance bond appears to be invalid, it constituted a breach of contract, "and consequently puts the contractor in default. Therefore F.H.W.A. will suspend federal eligibility of this contract as of the date this letter (November 7, 2016) until this matter is resolved."

Mr. James, speaking to The Consortium via telephone on Monday, said F.H.W.A.'s assessment that the bond obtained by Tip Top Construction was invalid is incorrect.

"They misinterpreted what a bond is," Mr. James said of F.H.W.A. "A bond is an insurance issued by a surety company, and in this case there are two bonds, payment bond and performance bond, which were issued on behalf of Tip Top Construction with respect to the Main Street Project." Mr. James said the bonds are binding upon Tip Top and the surety company, and remain in force until the full contracts Tip Top has entered into with the U.S. Virgin Islands are completed and satisfied. "And that's a fact," he added.

The surety company that issued the bond is Philadelphia-based Westchester Fire Insurance Company, which provides casualty insurance services, according to Mr. James.

Mr. James said the contract for the Main Street Revitalization Project was awarded only to Tip Top Construction, and that Prestige Building Company is a subcontractor of Tip Top Construction. But the so-called teaming agreement contract, also obtained by The Consortium (see first page [here](#)), appears to show more of a partnership. It says, "In order to maximize an effective solution for contract requirements, the parties have agreed to pool their complementary capabilities." It also says, "The parties recognize the efficiency of teaming and wish to team for the purpose of competitively performing the contract and contracted services."

The contract, however, does identify Tip Top as the contractor and Prestige Building Company as the subcontractor later in the agreement, with duties of both parties clearly outlined.

Mr. James said D.P.W. has been "back and forth" with F.H.W.A. He also expressed confidence that the matter would be resolved "well before" November 21, the deadline requested by F.H.W.A. for a response.

Senator Comments

In a press release issued on Monday, Senator Jean Forde, who obtained a copy of the letter, expressed concern that much-needed federal dollars could be lost.

"I have managed to obtain a copy of the correspondence suspending the funding, and must say that I was deeply disturbed by what I read," he said. "As such, I have written to Commissioner James in an attempt to get a complete picture of what has happened, why it happened, and what we can expect for the future regarding the Downtown Revitalization Project. In an economic and political atmosphere in which the Virgin Islands needs and will have to fight for every federal dollar we get, we simply cannot afford to leave monies on the table."

Mr. Forde said that as the chairman of the Committee on Education and Workforce Development, he is particularly concerned about the impact on workers who may be laid off or terminated as a result of the suspension of federal funding.

"The monies that will not be released to the territory over the coming weeks or months would otherwise employ workers who need to provide for their families, particularly with the holiday season upon us," Mr. Forde said. "As such, I call upon the Department of Public Works to take all possible steps to resolve this matter as soon as possible so that our people can get back to work, and so we can continue the process of revitalizing the Charlotte Amalie downtown area. We deserve better, and we must do better."