

The Virgin Islands Consortium

Main Street Project In More Danger Than Previously Thought; Gustav James, Randolph Bennett No-Shows At Hearing

VIC News / **Published On November 23, 2016 10:39 AM /**

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ST. THOMAS -- After learning that the U.S. Department of Transportation's Federal Highway Administration (F.H.W.A.) had suspended the contract awarded to Tip Top Construction for the Main Street Revitalization Project in Charlotte Amalie — some \$8.4 million of federal monies — concluding that the performance bond obtained by contractor Tip Top Construction may have been in default because of a payment and performance bond deemed as unacceptable, The Consortium spoke with Dept. of Public Works Commissioner Gustav James, who defiantly denied the F.H.W.A.'s conclusion, and said the project would be back on track soon.

But at a Senate hearing called by the Economic Development, Agriculture and Planning Committee, chaired by Senator Janette Millin Young, Mr. James's statement was contradicted by testifiers.

F.H.W.A. said in a letter it understood that the payment and performance bond was contingent on a "teaming agreement" between Tip Top Construction and Prestige Building Company, 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."

Public Works Commissioner Gustav James [told this publication](#) pointblank that the federal government was wrong.

"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.

Yet neither Mr. James nor Property and Procurement Commissioner Randolph Bennett -- both of whom were invited to the hearing -- attended.

And those who attended, including Attorney General Claude Walker, and former Public Works Federal Highway Program Manager Wystan Benjamin, who was fired, contradicted Mr. James's assertion that the federal government was wrong.

Mr. Walker said there were rules within the territory's procurement laws "that would prohibit that, and even federally, if it's done, and it's not stated upfront," he said, speaking about the manner in which the payment and performance bond was obtained. Mr. Wystan explained the problem in layman's terms, stating that Tip Top Construction basically allowed Prestige Building Company, which is based in Marlton N.J., to acquire the payment and performance bond and in turn gave Prestige Building Company the job's profits and called the deal a teaming agreement.

"Who in their right mind bids on a job and because of whatever hardships that they have, must team after the fact, and in return have to assign all their checks, all their compensation as a result of what's earned on that project, to another contractor?" asked Mr. Benjamin rhetorically. "That's just standard procurement rules and laws across the country." Mr. Benjamin is also suing the government for the manner in which he was fired.

Mr. Bennett, in his written testimony, also said that Tip Top Construction did not reveal during the bidding process that it would be teaming with another company to secure the payment and performance bond; a revelation that weakens Mr. James's stance that nothing was wrong with the contract.

"On February 29, 2016, the Department of Property and Procurement alerted Tip Top Construction, that neither its "Teaming Agreement" nor subcontract with Prestige Building Company had been approved nor accepted by the Government of the Virgin Islands, and that its actions constituted a breach of contract. The Department provided opportunities to Tip Top Construction to remedy this issue and provide guarantees to the Government that it had cured the identified breaches and was capable of delivering under the terms of the Contract it signed with the Government of the Virgin Islands," reads Mr. Bennett's [testimony](#).

Tip Top Construction did not have a representative at yesterday's hearing, although one was invited.

Losses in the tens of millions for Main Street Businesses

Also present at the hearing was Sebastiano Cassinelli Paiewonsky, chairman of the board of the St. Thomas-St. John Chamber of Commerce. Under questioning from Senator Jean Forde, who is not part of the committee but has been troubled the stalling the of the project, asked Mr. Paiewonsky whether merchants in Charlotte Amalie have suffered losses because of the project's delay.

Mr. Paiewonsky did not give a figure, stating that it would require a study to come up with a definitive number. But "we're talking tens of millions" of dollars, he said.

Feature Image: During an October 4 press conference at Government House on St. Croix, Governor Kenneth Mapp admonished his new Public Works team to ensure that the department was doing its job of maintaining the territory's infrastructure. (Credit: Ernice Gilbert, VIC)