

EXHIBIT 8

Adams, Matthew

From: Thornton, Rob [rthornton@nossaman.com]
Sent: Thursday, January 05, 2012 9:21 AM
To: Yost, Nicholas C.; Adams, Matthew; Whitfield, Peter (ENRD)
Cc: Boucher, Leanne
Subject: HonoluluTraffic.Com v. Federal Transit Administration; Construction Contract Provision and Statement Regarding Reversibility of Construction
Attachments: Honolulu Construction Contract WOFH SP 5.6.pdf

Nick,

This follows up on discussion on December 29, 2011 among you, Matt Adams, Peter Whitfield and me. During the December 29 conference call you agreed that Plaintiffs would not seek an injunction or restraining order in the above matter prior the end of June 2012 based on the City's description of the planned construction through June 30, 2012 and provided the City provided to Plaintiffs (1) a copy of the relevant provision of the construction contract regarding delay costs in the event construction is enjoined, and (2) a statement regarding the reversibility of construction planned through June 30, 2012.

In response to your request, I have enclosed the relevant section from the West Oahu/Farrington Guideway Construction contract.

I am also providing the following statement prepared by the City regarding reversibility of construction planned through June 30, 2012.

"Permanent construction work for the Honolulu Rail Transit Project anticipated through June 30, 2012, may consist of utility relocations, drilled shaft foundations and guideway columns within the West O'ahu-Farrington Highway Guideway contract. All the work will be constructed below the ground surface, except for the guideway columns. If the Project were to be terminated on or before June 30th, restoration work could be done to restore the construction area to a condition that would allow future utilization and/or development of the public and private property impacted from the Project's construction. This restoration work could include removing the top 5 to 10 feet of the drilled foundation shafts and the removal of any columns. Utility relocations will remain in place since the utility owners' operations will not be impacted by the relocations. The Maintenance and Storage Facility ("MSF") contract work prior to June 30, 2012, will be limited to early site clearing and trenching work. No permanent construction work on the MSF is anticipated prior to June 30th. The restoration work described above could be completed within 3 to 4 months from the time of termination."

Rob Thornton

6/22/2012

Honolulu High-Capacity Transit Corridor Project

(4) If the Design-Builder does not provide a written notice of a claim for additional compensation or additional Contract Time, any subsequent claim for additional compensation, additional Contract Time, or both, is waived.

(5) If the City agrees with the Design-Builder's request for additional compensation or Contract Time the parties shall negotiate a Change Order setting forth their agreement. If the City disagrees, the Design-Builder shall continue promptly with the Work.

(6) Should the Design-Builder disagree with the City's determination of the claim, the Design-Builder may pursue remedies as set forth in Section SP-7.4.

SP-5.4 Claims Based on Oral Directives

Chapter 5, Section 5.4 of the GCDB is amended by adding new subsection (c) as follows:

(c) Notice to Sureties. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design-Builder's responsibility. A copy of Design-Builder's notice to Surety shall be delivered simultaneously to the City. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

SP-5.5 Overtime Inspections

Chapter 5, Section 5.5 Overtime inspections of the GCDB is amended by being deleted in its entirety.

SP-5.6 Delay; Time Extensions; Unforeseeable Delays; Suspension

Chapter 5, Section 5.6 (d), Other unforeseeable delays, of the GCDB is amended by being deleted in its entirety and replaced with the following SP 5.6 (d), Force majeure events:

(d) Force majeure events:

(1) Time Extensions. The City will issue Change Orders to extend the completion deadlines as the result of any delay in the critical path on Baseline Schedule caused by a force majeure event. It shall be the responsibility of the Design-Builder to demonstrate to the City that the delay in the critical path is attributable solely to the force majeure event. The term "force majeure" shall mean any event beyond the control of the Design-Builder, not due to an act or omission of the Design-Builder, any Subcontractors, their employees, agents and officers or any other Person for whom the Design-Builder may be legally or contractually responsible, and to the extent that the event (or the effects of which event) could not have been avoided or prevented by due diligence and use of reasonable efforts by the Design-Builder. [HAR 3-125-18]

(2) Additional Compensation. The City will issue Change Orders to compensate the Design-Builder for reasonable, verifiable additional direct costs incurred arising from force majeure events as defined below, excluding delay damages except for any force majeure event which is determined to be a City-caused delay, at the sole discretion of the City. The term "force majeure" is limited to the following:

(A) Any floods (fifty (50)-year or greater) within one mile of the Project; any Windstorm (Cat-3 or more severe) within one mile of the Project; or any earthquake exceeding 3.5 on the Richter scale and epicentered within twenty-five (25) miles of the specific location of damage on the Site; exceeding 5.0 on the Richter scale and epicentered within 50 miles from the specific location of damage on the Site; or exceeding 6.5 on the Richter scale and epicentered within seventy-five (75) miles from the specific location of damage on the Site; in all cases based on the final determination regarding the location and

Honolulu High-Capacity Transit Corridor Project

magnitude of the earthquake published by the National Earthquake Information Center in Golden, Colorado;

(B) Any epidemic, blockade, rebellion, war, riot, act of terrorism or sabotage, or civil commotion;

(C) Any spill or release of Hazardous Materials by a third party at, near or on the Site which occurs after the Proposal Due Date and is required to be reported to the City;

(D) The discovery at, near, or on the Site of any archaeological, paleontological, biological, or cultural resources, or any species presently or in the future listed as threatened or endangered under the federal or state endangered species act; provided that the existence of such resources was not identified in the Contract Documents;

(E) The suspension, termination, interruption, denial or failure to obtain, nonrenewal, or amendment of any Environmental Approval, except as otherwise provided in the Contract;

(F) Any change in a Governmental Rule or change in the judicial or administrative interpretation of or adoption of any new Governmental Rules which is materially inconsistent with Governmental Rules in effect on the Proposal Due Date and materially affects the Contract; and

(G) Any court action seeking to restrain, enjoin, challenge, or delay construction of the Project or the granting or renewal of any governmental approval for the Project, except to the extent that the court action is due to an act or omission of the Design-Builder or any Subcontractor, and could not have been avoided or prevented by due diligence and use of reasonable efforts by the Design-Builder;

(2) The term "force majeure" specifically excludes from its definition the following matters which might otherwise be considered force majeure:

(A) Any climatic conditions, storms, floods (less than fifty [50]-year), droughts, fires, Windstorms (less than Cat-3), earthquakes (3.5 or lower on the Richter scale), landslides, or other catastrophes as measured, recorded, or experienced within proximity to the Project;

(B) Strike, labor dispute, work slowdown, work stoppage, secondary boycott, walkout, or other similar occurrence;

(C) The suspension, termination, interruption, denial or failure to obtain, or nonrenewal of any permit, license, consent, authorization, or approval (including all Governmental Approvals other than Environmental Approvals) which is necessary for the performance of the Work or the maintenance of the Project;

(D) Any change in a Governmental Rule (excluding material changes in Environmental Laws) which was proposed or was otherwise foreseeable at the Proposal Due Date or does not materially affect the Contract;

(E) The Work or the presence on the Project Site of any third party, including, but not limited to, that of other contractors or personnel employed by the State of Hawai'i; by other public bodies; by railroad, transportation, or utilities; or by private enterprises or any delay in progressing such Work by any third party as indicated or disclosed in the Contract Documents or ordinarily encountered or generally recognized as inherent in the Work;