



Florida Department of Transportation

JED BUSH
GOVERNOR

THOMAS F. BARRY, JR.
SECRETARY

19 April 2000

SENT VIA FACSIMILE

Mr. J. B. Michael, Jr.
5852 Mistletoe Lane
Palm City, Florida
34990-5239

Mr. Warren Craven, P.E.
Craven Thompson Associates
3563 N.W. 53rd Street
Ft. Lauderdale, FL 33309

Mr. John Duke
EMSI
P.O. Box 680597
Orlando, Florida
32868

Re: State Project No. 97870-3300
Contract No. 19,967
State Road 821 (HEFT) from Quail Roost Drive to S.R. 874
DMG # 497 Clm-005-99
Notice of Termination

Gentlemen:

Contrary to what Mr. J. B. Michael may have been told by Mr. John Rowell regarding the Department's "plans to proceed . . . with the subject May 5, 2000 hearing" the Department does not wish to have this meeting.

On April 10, 2000, the undersigned on behalf of the Department sent to The deMoya Group, Inc., and to each member of the Disputes Review Board, an advance written notice that the Department was exercising its right to terminate the Three Party Agreement providing for a Dispute Review Board on the above referenced project.

It was the Department's intent in the letter dated April 10, 2000, that the Disputes Review Board discontinue further consideration of the issues presented by The deMoya Group, Inc., on its claims against the Department, and that The deMoya Group, Inc., and the Department would reserve their respective claims and defenses for presentation to a court of competent jurisdiction.

For the forgoing reasons the Department respectfully requests that the Board take no further action to consider this matter.

Turnpike District

M.F. 65, Pompano Beach Service Plaza, Pompano Beach, FL 33069 ♦ P.O. Box 9828, Ft. Lauderdale, FL 33310
Telephone: 954-975-4855 ♦ Fax: 954-970-1505

www.dot.state.fl.us

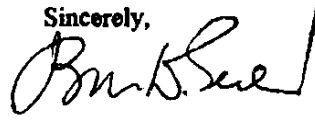


www.dot.state.fl.us



Please confirm your concurrence with the above state request as soon as possible.

Sincerely,



Bruce D. Seiler, P.E.
District Director of Operations

BDS:dmp

cc: Amando de Moya
Ken Morefield, Assistant Secretary
Jim Ely, Secretary Turnpike District
Greg Xanders, State Construction Engineer
Walt Lange, District Construction Engineer
John Rowell, Metric Engineering
Jack R. Leonard, Turnpike Legal



Florida Department of Transportation

JEB BUSH
GOVERNOR

April 10, 2000

THOMAS F. BARRY, JR.
SECRETARY

Mr. Armando de Moya
the de Moya Group, Inc.
12209 South Dixie Highway
Miami, Florida 33156

CERTIFIED MAIL Z 312664640

*Recd 4/12/00
ADM*

Re: FDOT Project No.: 97870-3300
Contract No.: 19,967
State Road 821 (HEFT); from Quail Roost Drive to SR 874
WPI No.: 6151891
FIN No.: 251873-1-52-01

Dear Mr. de Moya:

An attachment to the Supplemental Special Provisions for the subject project provides that a Dispute Review Board be established. To establish the Dispute Review Board, a Dispute Review Board Three Party Agreement was executed by the Florida Department of Transportation, the de Moya Group, and the three members of the Dispute Review Board. The termination of agreement clause in this agreement allows any party to terminate this agreement upon thirty (30) calendar days advanced written notice to the other parties. This letter is your notice that the Dispute Review Board is terminated on a thirty (30) calendar days after you receive this letter.

Sincerely,

Bruce D. Seiler, P.E.
District Director of Operations

BDS:dmp

- cc: Mr. J. B. Michael, Chairman, DRB
- Mr. Warren Craven, P.E., DRB Member
- Mr. John Duke, DRB Member
- Assistant Secretary Ken Morefield
- District Secretary Jim Ely
- Mr. Freddie Simmons, State Highway Engineer
- Mr. Greg Xanders, State Construction Engineer
- Mr. Walt Lange, District Construction Engineer
- Mr. John Rowell, Metric Engineering, Project Resident Engineer
- Mr. Jack Leonard, Esquire, Turnpike Legal



the de Moya Group inc.
Engineering • Construction • Management

April 13, 2000

Mr. J.B. Michael, Jr.
5852 Mistletoe Lane
Palm City, FL 34990-5239

Phone: 561-346-6115
Fax: 561-288-1914

Mr. Bruce Seiler, P.E.
FDOT Turnpike-Director of Operations
PO Box 9828
Ft. Lauderdale, FL 33310-9828

Phone: 954-975-4855
Fax: 954-970-1505
Certified Mail: 219837387

RE: FDOT Project No. 97870-3300
Contract No. 19.967
State Rd 821 (HEFT); from Quail Roost Drive to SR-874
DMG #497 CLM- 005-99
FDOT 4/10/00 DRB Three Party Agreement
Notice of Termination

Mr. Warren Craven
Craven Thompson & Associates
3563 NW 53 Street
Ft. Lauderdale, FL 33309-6311

Phone: 954-739-2002
Fax: 954-739-2266

Mr. John Duke
EMSI
PO Box 680597
Orlando, FL 32868

Fax: 407-876-4595

Date	7/13/00	Page	3
From	ARMANDO		
Co.	DE MOYA		
Phone #			
Fax #			
Post-It Fax Note	7671		
To	JOHN DUKE		
Co./Dept	EMSI		
Phone #			
Fax #	(407) 876-4595		

Gentlemen:

We are in receipt of the Department's 30 Day Notice of Termination of the Disputes Review Board (DRB) Three Party Agreement.

All parties are bound by the Three Party Agreement until its termination. All pending proceedings must be completed pursuant to the terms of the Agreement, although the termination stops initiation of new dispute resolutions.

At the present time we are in the middle of a hearing for a determination on the Contractor's entitlement to delay. The de Moya Group completed its presentation on April 3, 2000 and on April 5, 2000 the Department requested a 30-day continuance. The DRB has approved FDOT's request.

12209 So. Dixie Hwy. Miami, Florida 33156 • Ph 305/ 255-5713 • Fax 305/ 255-1935

12209 So. Dixie Hwy. Miami, Florida 33156 • Ph 305/ 255-5713 • Fax 305/ 255-1935

DRB Members
Mr. Bruce Seiler, PE
April 13, 2000
Page 2 of 2

All parties have agreed to the following dates for conclusion of the ongoing hearing:

Supplemental Position Papers	4/20/00
Rebuttals	4/28/00
Final Hearing	5/05/00

We will abide by the schedules outlined above and further expect that all parties abide by their respective obligations and responsibilities as specified in the Three Party Agreement.

As a reminder regarding the Contractor's entitlement to payment for the Extra Median Paving Work. This hearing was concluded on April 3, 2000 and we await the DRB decision in this matter.

The timing of the Department's actions are clearly aimed at discrediting the Disputes Review Board process. The Department has been provided with the de Moya Group's Position Statement and its complete Presentation. The Department has once again realized that the de Moya Group is entitled to a time extension. This realization has now prompted the Department to attempt circumvention of a DRB decision by providing a Notice of Termination prior to conclusion of the hearing itself. Our attorney's legal research has confirmed that the legal principles of waiver, estoppel and partial performance prevent the Department from terminating the Three Party Agreement at this time. From a layman's standpoint, logic and reason will yield a similar conclusion.

The Department has the opportunity to present its supplemental position, rebuttal and oral presentation as per the above schedule. Whether or not the Department avails itself of this opportunity does not impact the rendering of a final decision by the DRB.

Sincerely,



Armando de Moya
President

CC. Tom Barry, Secretary	Fax: 850-488-5526
Ken Morfield, Assistant Secretary	Fax: 850-488-5526
Jim Ely, Secretary, Turnpike District	Fax: 850-414-2622
Greg Xanders, State Construction Engineer	Fax: 850-487-4340
Walt Lange, District Construction Engineer	Fax: 954-583-6570



HP Fax Series 900
Plain Paper Fax/Copier

Fax History Report for
Duke at EMSI
407-876-4595
Apr 14 2000 10:42am

Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Apr 14	10:40am	Received	3052551935	1:05	3	OK

Result:

OK - black and white fax