

**TESTIMONY OF RANDOLPH N. BENNETT, M.A., L.P.C., COMMISSIONER,
DEPARTMENT OF PROPERTY AND PROCUREMENT
ON THE PUERTO RICO & U.S. VIRGIN ISLANDS DIVISION OFFICE OF THE
FEDERAL HIGHWAY ADMINISTRATION DECISION TO SUSPEND FEDERAL
ELIGIBILITY FOR C022DPWT15 (TTC) WITH TIP TOP CONSTRUCTION, INC. FOR
THE MAIN STREET ENHANCEMENT PROJECT**

**BEFORE THE 31st LEGISLATURE OF THE UNITED STATES VIRGIN ISLANDS'
COMMITTEE ON ECONOMIC DEVELOPMENT, AGRICULTURE AND PLANNING**

TUESDAY 22ND NOVEMBER, 2016 AT 10:00AM

**EARLE B. OTTLEY LEGISLATIVE HALL
CAPITOL BUILDING
ST. THOMAS, VIRGIN ISLANDS 00802**

Good Morning to the Honorable Janette Millin-Young, Senate Vice President and Chairperson on the Committee on Economic Development, Agriculture and Planning of the 31st Legislature of the United States Virgin Islands, other members of the Committee, other senators present, my fellow testifiers, and to the listening and viewing public.

I am Randolph N. Bennett, Commissioner of the Department of Property and Procurement. Thank you to the Honorable Chairperson for the invitation to present testimony today on the Department of Transportation Federal Highway Administration's Puerto Rico and U.S. Virgin Islands Office decision to suspend federal eligibility to the Main Street Enhancement Project under the contract awarded to Tip Top Construction, Inc. Please accept my apologies, as I am currently out of the Territory attending prior commitments and, therefore, I am unable to present testimony in person. However, I appreciate the opportunity to have my prepared testimony read into the Record.

My office received the November 7, 2016, letter from the Federal Highway Administration notifying the Territory of its decision to suspend federal eligibility for the Main Street Enhancement Project on November 14, 2016. This letter, addressed to both Commissioner Gustav James and myself was disappointing to receive to say the least. The Main Street Enhancement Project is long overdue and a top priority for this Administration. The improved roadway and sidewalks and beautification will bring tremendous benefits to this important part of the Virgin Islands economy – to the benefit of our local and visiting community.

Notwithstanding my disappointment in receiving this news, the Department of Property and Procurement understands and respects the Federal Government's need to perform its due diligence in the oversight of this project. We are committed to working with the Federal Government along with the Department of Public Works, to resolve the issue and have federal

eligibility for the project restored so that this project can resume and be completed without any further delay.

The Department of Property and Procurement issued an Invitation for Bids for this Project in the summer of 2013. Only two bids were received in response and Tip Top's bid at Eight Million Four Hundred Forty-One Thousand One Hundred and Eight Dollars (\$8,441,108.00), although lower, was initially rejected as non-responsive and not responsible because it was mathematically unbalanced and contained an unsigned DBE Certification from a subcontractor. Tip Top Construction subsequently sued the Government of the Virgin Islands alleging its bid was improperly rejected and sought an injunction to prevent the Government from entering into an agreement with the other bidder. After litigation, it was concluded that Tip Top's bid should not have been rejected because it was mathematically unbalanced. Since the Courts ruled that Tip Top's bid was not properly justified as non-responsive or was in fact responsive, Tip Top was eligible for the award as the lowest bidder per the requirements in 23 CFR §635.117. Therefore, on August 14, 2015, Tip Top received notification that its bid would be accepted and the pending contract with the other bidder was cancelled on that same date. On October 26, 2015, the Government issued a construction contract to Tip Top Construction in the amount of Eight Million Four Hundred Forty-One Thousand One Hundred and Eight Dollars (\$8,441,108.00) for the Main Street Enhancement Project.

The Federal Highway Administration's November 7, 2016, letter suspending federal eligibility for this project, focuses on the fact that all federal highway construction contracts in excess of \$10,000.00 must contain adequate termination clauses and that the issue surrounding Tip Top Construction's Payment and Performance Bond is grounds for termination. Tip Top

Construction provided the Government with its Payment and Performance Bond at 100% of the contract price.

In January 2016, the Department of Property and Procurement, the Department of Public Works and the Federal Highway Administration's Puerto and US Virgin Islands Division learned that subsequent to the issuance of the Contract, Tip Top Construction entered what it called a "Teaming Agreement" with Prestige Building Company, LLC, where Prestige would be responsible for providing for the payment and performance bond, and receive the proceeds under the contract for management and accounting purposes. Although the Payment and Performance Bond provided lists Tip Top Construction as the principle, Tip Top Construction did not disclose during the bidding process or before the signing of the contract, that it would enter into a separate agreement with another entity to secure its Payment and Performance Bond. 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.

Tip Top Construction responded to the Government's request for information. The Government reviewed the information submitted by Tip Top Construction, including an updated list of subcontractors. In updated submissions, Tip Top Construction did identify Prestige Building Company as a subcontractor. -By letter dated July 14, 2016, the Federal Highway Administration's Puerto Rico and US Virgin Islands Division informed the Government that the Main Street

Revitalization project and contract maintained federal eligibility. However, that changed on November 7, 2016.

Following receipt of the November 7, 2016, letter from the Federal Highway Administration's Puerto and US Virgin Islands Division, the Government's priority is to expeditiously address the concerns.

This concludes my testimony. I thank you again for the invitation and the opportunity to present testimony. I look forward to answering any questions you may have at a later date.