

**Lee County Board Of County Commissioners  
Agenda Item Summary**

Blue Sheet No. 20020915

**1. REQUESTED MOTION:**

**ACTION REQUESTED:** Consider authorizing the County's use of Kissinger Campo & Associates (KCA) to provide professional engineering services in a manner similar to the terms and conditions contained in the 7/8/02 Settlement Agreement between the Florida Department of Transportation (FDOT) and KCA.

**WHY ACTION IS NECESSARY:** It is appropriate for the Board to consider whether they wish to continue using KCA to provide professional engineering services to the County after the filing of a lawsuit by the state against KCA.

**WHAT ACTION ACCOMPLISHES:** The County will make an informed decision as to whether or not it should continue business with KCA in the same manner as the FDOT is doing pursuant to the Settlement Agreement.

**2. DEPARTMENTAL CATEGORY:**  
COMMISSION DISTRICT #

**A9A**

**3. MEETING DATE:**

**08-27-2002**

**4. AGENDA:**

CONSENT  
 ADMINISTRATIVE  
 APPEALS

PUBLIC  
 WALK ON

**TIME REQUIRED:**

**5. REQUIREMENT/PURPOSE:**  
(Specify)

STATUTE  
 ORDINANCE  
 ADMIN.  
 CODE  
 OTHER

**6. REQUESTOR OF INFORMATION:**

A. COMMISSIONER \_\_\_\_\_  
B. DEPARTMENT Transportation  
C. DIVISION \_\_\_\_\_

BY: Scott M. Gilbertson

**7. BACKGROUND:**

KCA has been charged by the State for alleged flawed billing in relation to a FDOT project. KCA originally pleaded Nolo Contendere to the charges but subsequently has changed their plea to Not Guilty. In addition, KCA has entered into a Settlement Agreement with the FDOT in order to continue to provide professional engineering services. (See: attached correspondence and the Settlement Agreement.)

Lee County DOT is requesting the Board to decide whether or not the County should continue to contract with KCA for Services in a manner similar to the 7/8/02 Settlement Agreement with the FDOT.

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL:**

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i> 8/8/02				<i>[Signature]</i> 8/9/02	OA 8/9/02	OM 8/12/02	Risk 8/8/02	GC 8/8/02	<i>[Signature]</i> 8-8-02

**10. COMMISSION ACTION:**

APPROVED  
 DENIED  
 DEFERRED  
 OTHER

REC'D.  
by CO. ATTY.  
8/9/02  
10:00  
CO. ATTY  
8/9/02  
FORWARDED TO:  
Budget  
2:25pm

RECEIVED BY  
COUNTY ADMIN. DD  
8-9-02  
3:40  
COUNTY ADMIN.  
FORWARDED TO:  
8/12 12:00

**MEMORANDUM  
FROM THE  
OFFICE OF COUNTY ATTORNEY**

**DATE:** July 26, 2002

**To:** Scott Gilbertson, P.E., Director

DOT

**FROM:** *David M. Owen*  
*Electronically signed to expedite*

David M. Owen  
Chief Assistant County Attorney

**RE: KCA / FDOT SETTLEMENT AGREEMENT**

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Scott;

I am responding to your July 17, 2002 memo and materials concerning the above.

Upon my review of the Settlement Agreement, I can advise from the legal perspective that it could treat KCA in the manner consistent with the July 8, 2002 Settlement Agreement reached between KCA and the State (FDOT).

However, that said, there are other considerations that go beyond just the legality of hiring KCA under the State's Settlement Agreement pending final resolution of the case of State v. Kissinger Campo and Associates Corp. which are in the realm of public policy and perception. These decisions should be made by the client (i.e., the Board of County Commissioners) at a regular meeting after discussion.

If you wish to proceed in this regard, I am recommending that you "bluesheet" copies of this memo, your July 17, 2002 memo to me and the July 15, 2002 letter to you from Steve Miller, P.E., of Kissinger Campo, with the attached July 8, 2002 Settlement Agreement.

In this fashion, the County can make an informed decision as to whether or not it should continue business with Kissinger Campo in the same manner as the State prior to a final resolution of the pending criminal case.

Please call if you would like to discuss further.

DMO/dm

Attachments

xc: James G. Yaeger, County Attorney  
Andrea R. Fraser, Assistant County Attorney  
James Lavender, Director, Public Works Administration  
Don DeBerry, P.E., Senior Project Manager, DOT

**RECEIVED**  
JUL 29 2002

02 JUL 18 PM 12:52  
OFFICE OF THE DIRECTOR

## Memo

To: David Owen, Assistant County Attorney

From: Scott M. Gilbertson, Director 

Date: July 17, 2002

Subject: **Kissinger Campo & Associates**

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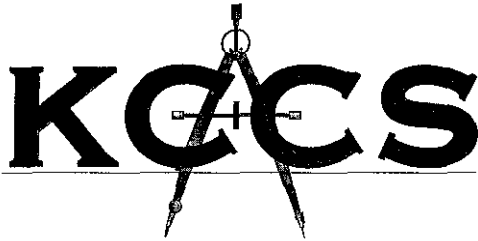
Attached is a letter from Stephen Miller of Kissinger Campo & Associates (KCA) and a copy of a settlement agreement between KCA and FDOT regarding the charges filed against KCA for a previous FDOT contract. Steve Miller is requesting that KCA be allowed to provide engineering services for Lee County in a manner similar to the provisions as set forth in the settlement agreement.

You had previously indicated that Lee County would follow FDOT's lead in retaining KCA for professional services. Please review the attached settlement agreement and advise if it's appropriate for us to proceed in a similar fashion. Specifically, KCA was originally proposed to be a major sub-consultant to Cella & Associates for professional services on the Bus. 41 widening project in North Fort Myers. In view of the settlement agreement, would it be appropriate to still consider KCA as a sub-consultant for this work? Additionally, would it be appropriate to use KCA for additional supplementary task assignments under our continuing General Consultant contract?

Your review and response to these inquiries is appreciated. If you need additional information, please feel free to contact me.

SMG/mlb

Cc: Andrea Fraser  
Don DeBerry  
Kris Cella  
Stephen Miller  
Bus. 41 (Proj. #4020) File



July 15, 2002

Mr. Scott Gilbertson, P.E.  
Director of Transportation  
Lee County Department of Transportation  
1500 Monroe Street  
Ft. Myers, FL 33901

RE: KCA/KCCS, Inc. Settlement Agreement

Dear Mr. Gilbertson:

A settlement agreement was entered into by and between the Florida Department of Transportation (FDOT), Kisinger Campo and Associates; and, Kisinger Campo Construction Services, Inc. on July 8, 2002.

A copy of the Agreement is enclosed and we respectfully request to be allowed to continue to perform engineering services for Lee County. While we understand that this Agreement is a matter of public record, Kisinger Campo and its' subsidiaries would very much appreciate Lee County not providing copies of said Agreement to any other Civil Engineering and Inspection organization.

Thank you for your continued support and we look forward to a future serving Lee County.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephen L. Miller', is written over a faint, larger version of the same signature.

Stephen L. Miller, P.E.  
Vice-President/Regional Engineer

SLM:mzw  
Enclosure

c: Joaquin M. Campo, CEO, Kisinger Campo & Associates  
Steve McGucken, Chief Operations Officer, Kisinger Campo & Associates  
Glenn Ivey, President, Kisinger Campo Construction Services  
Kris Cella, President, Cella and Associates  
File

## SETTLEMENT AGREEMENT

This agreement is entered into by and between the Florida Department of Transportation (FDOT) and Kisinger Campo and Associates Corporation and Kisinger Campo Construction Services, Inc. (KISINGER) this 8 day of July, 2002

WHEREAS KISINGER was the corporate entity performing Construction, Engineering and Inspection (CEI) services on State Project No.:01050-3523; and,

WHEREAS the total contract amount on said project was \$1,524,667 (one million five hundred twenty four thousand six hundred and sixty seven dollars); and,

WHEREAS, KISINGER, through alleged flawed billing and invoicing, billed incorrectly a total of \$43,064.69 (forty three thousand sixty four dollars and sixty nine cents) on the project; and,

WHEREAS by this agreement, KISINGER has agreed to remedial and punitive measures reflecting the frequency of the alleged occurrence, the potential for repetition, the overall severity of the alleged offense, and the degree of culpability of the alleged offense; and,

WHEREAS KISINGER has already paid to FDOT full restitution including the costs of investigation totaling \$104,831.47

WHEREAS this agreement is intended by the parties to be implemented immediately without regard to the case of State v. Kisinger Campo and Associates, Corp. Case No.: 01-859-A, currently pending in Charlotte County, Florida.

THEREFORE in consideration of the mutual benefits each to flow to the other the parties agree as follows:

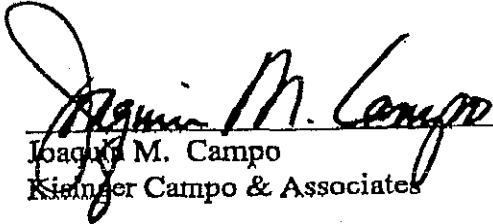
1. All payments made to FDOT by KISINGER, said amounts being referenced above, shall not be rescinded.
2. KISINGER shall forfeit its right to request a settlement for work accomplished on the project for which KISINGER has not been paid totaling approximately \$43,000 (forty three thousand and no/100 dollars).
3. KISINGER shall submit to FDOT a written plan, acceptable to FDOT, the purpose of which will be to prevent future occurrences of the alleged mis-billings on the subject project.
4. KISINGER will not contest, in any forum, the loss or result of not being selected

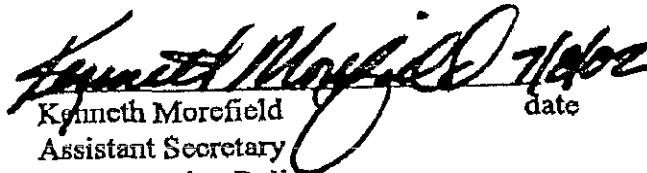
for any project for which KISINGER has been or might have been selected prior to November 1, 2002. This paragraph is not intended by the parties to preclude KISINGER from submitting proposals or from being selected for contracts prior to November 1, 2002, so long as the scheduled execution date is after November 1, 2002.

5. Each respective District may execute the following contracts ~~with~~, or pertaining to, KISINGER:
  - A.) District One - US 17 Design Build; subcontractor.
  - B.) District One - Renewal of the General Consultant Agreement for CEI work.
  - C.) District Seven - Upper Tampa Bay Trail Design Build Project; subcontractor.
6. FDOT Districts may enter into future Supplemental Agreements with KISINGER for existing projects and for projects referenced in paragraph numbered five above.
7. FDOT shall not attempt to decertify KISINGER for performance related issues stemming from the alleged mis-billing facts recited above which occurred on State Project No. 01050-3523. However, both parties understand and agree that FDOT is required to follow the State statutory scheme governing decertification and if it is determined that any applicable statute requires FDOT to pursue decertification as a result of the alleged mis-billing facts recited above, the statutory requirements supercede this agreement.
8. KISINGER agrees not to sign or execute any contract with FDOT, not otherwise specifically provided for by this agreement, prior to November 1<sup>st</sup>, 2002. The parties agree that this provision constitutes more than a six month period of mitigation by KISINGER.
9. FDOT and Kisinger agree that if Kisinger's Nolo Contendere Plea is ultimately not allowed to be withdrawn by a competent court of last resort, that Kisinger's voluntary performance of the terms of this agreement shall be used by FDOT as the basis for reinstatement of qualification under Section 337.165 (2) (d), Florida Statutes.
10. KISINGER shall voluntarily submit to the terms of this agreement upon execution of this agreement by both parties. KISINGER shall so submit irrespective of the outcome of Case No.: 01-859-A, referenced above. FDOT specifically reserves the right to revisit the provision of numbered paragraph 8 above if KISINGER is determined by plea or trial to be guilty of the charges referenced in Case No.: 01-

859-A referenced above

- 11. Levi Lloyd shall not work on any FDOT contract performed by KISINGER unless prior approval is given to KISINGER by FDOT.

  
 \_\_\_\_\_ date  
 Joaquin M. Campo  
 Kisinger Campo & Associates

  
 \_\_\_\_\_ date  
 Kenneth Morefield  
 Assistant Secretary  
 Transportation Policy  
 Florida Department of Transportation