

work but the possibility of overlap between the responsibilities that may require disclosure of confidential information and may impair the firm's independent judgment in the performance of their public duties. To the extent that the prior or ongoing work may be utilized in the Seaport Development project, the proposer may have access to confidential information that is not available to other participants in the process. Any confidential information may be disclosed to other team members. Further, the duties may conflict if design work under current PSA's has to be evaluated and modified by the firm or members of the design consultant team of which the firm is a member. Therefore, a firm should not serve on the Design Consultant Team if it has outstanding work orders or PSA's related to the Seaport Development Program.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,



ROBERT MEYERS

Executive Director

by the Conflict of Interest and Code of Ethics ordinance, there are several potential conflicts raised by the scenarios posed by P&O Ports.

In the first instance, a firm should not serve as a member of the CM Team and the Design Consultant Team because of the overlapping responsibilities and the roles played by the CM Team and the Design Consultant Team. The CM provides oversight to the entire project and is responsible for managing all the other contractors on the project. If a Design Team member works as a part of the CM team, there is no independent check. Ideally, a CM Team Member will not serve in any other capacity on the project. Further, the duties between the two functions overlap so that a firm may do the same job in both capacities. Therefore, a firm should not serve in both capacities because the overlapping and conflicting roles raise several possible conflicts.

As to the possibility of a firm serving in different capacities, a firm may serve in different capacities on the design-build team and the design consultant team. Therefore, a company may, for example, serve as a waterfront engineer on the Design Team and a mechanical engineer on a design build contract. However, the CM should take steps to ensure that the contractor or subcontractors duties on the two projects do not overlap and that the duties do not require any sort of oversight on the two projects because of the possibility that it will impair the firm's independent judgment as it completes its duties on the project.

Finally, a firm should not serve as the Design consultant on the project if they are currently working on any outstanding work orders or professional service agreements (PSA) that are related in any way to the current Seaport Redevelopment Program. The main issue is not the amount of outstanding

responsible for managing all construction work and services provided by all contractors, subcontractors, vendors, suppliers, etc. and monitoring quality, safety and environmental standards. The CM is also responsible for entering into agreements providing for General Contractor or Design/Build Services for the various project phases. The CM is also responsible for project element phasing and developing a major project schedule with the Development Team's scheduling consultant and maintaining and managing the independent schedules of all contractors, subcontractors, vendors, material suppliers for all elements of the project for the entire duration of the project. The CM is also required to participate in Value Engineering and Audit services as required by the Port.

The Design Consultant has the responsibility of providing program architect or engineering services which shall include the development of design documents and deliverables packages. The Design Consultant will also participate in the preparation of project phasing, schedules, implementation and maintenance of traffic plans. The Design Consultant will also develop contract documents in cooperation with the CM to support fast track construction, phased construction and the project schedule.

P & O Ports would like to know whether a firm might serve on a CM Team and an AE Team simultaneously. P & O would also like to know if a firm might serve on either the CM Team or the Design Team and later work in a different capacity for a Design/Build Team. Finally, P&O would like to know if firms are disqualified if they have outstanding work orders with the port.

The Commission found that a single firm should not serve as a member of the Construction Manager at Risk Team and the Design Consultant Team. Although not barred



October 15, 2001

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**RE: REQUEST FOR ADVISORY OPINION 01-112**

Dear Mr. Grimston:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 11, 2001 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any potential conflicts in awarding work on two requests for proposals at the Dante Fascell Port of Miami.

In your letter, you advised the Commission that P&O Ports has entered into an agreement with Miami-Dade County to oversee renovation of several terminals at the port. As developer, P & O is charged with the responsibility of contracting with one or more qualified Architects and Engineers to do the design work for the various phases of the project. The agreement also provides that P&O may hire a Construction Manager at Risk with design-build and general contracting authority.

On August 29, 2001, P&O Ports issued a Request for Qualifications for firms to serve as Construction-Manager at Risk for the Port Renovation and Professional Design Consultants for the Port Renovation. The Construction Manager at Risk (CM) is