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April 30, 2003

Pamela Paulk  
AE Specifications & Standards Manager  
Office of Capital Improvements Construction  
Coordination  
111 N.W. First Street  
13<sup>th</sup> Floor  
Miami, FL 33128

**RE: REQUEST FOR ADVISORY OPINION 03-51**

Dear Ms. Paulk:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 29, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding a potential conflict of interest for a firm on a Fire Rescue design-build project.

In your request, you advised the Commission that the Office of Capital Improvements Coordination is seeking a firm to provide design-build services for the Tamiami Fire Rescue Station. One of the proposers for the contract, Fonticella Construction Co, has a subcontractor that currently provides engineering services to the Fire Rescue Department. The subcontractor, CRA Clarke, currently serves as a subcontractor to J. Bonfill and Associates. J. Bonfill and Associates has a miscellaneous architectural and engineering contract with the Department of Fire Rescue. Bonfill and Associates

developed the design criteria for the Tamiami Fire Rescue Station project. CRA Clark did not participate in developing the design criteria but may be used for the construction phase portion of the project. Bonfill will be responsible for reviewing plans, permits and construction documents and conducting final acceptance inspections during the construction phase of the project. As the mechanical engineer on Bonfill's team, CRA Clarke will be responsible for reviewing plans, permits and construction documents related to their field of expertise.

The Conflict of Interest and Code of Ethics ordinance permits CRA Clarke to serve as a member of the design build team for the Tamiami Fire Rescue project. However, CRA Clarke may not perform any construction phase work for Bonfill and Associates on the Tamiami Fire Station if Fonticella Construction Corporation is awarded the contract. CRA Clarke is barred from serving in both roles because the firm would serve as designer and inspector on the same project.

In a series of opinions, the Ethics Commission has opined that certain contractual arrangements create an inherent conflict of interest and should be determined prior to award. For example, a conflict exists if a contractor has overlapping responsibilities on different phases of the same project (i.e. AE on one phase of the project and serving as value engineer, CIS or CM partner on another phase of the project; supervisor or prime on one phase of the project and subcontractor on another or related phase or project). Further a conflict may exist if there are overlapping roles or responsibilities between various members of a team (i.e. a member serves as prime contractor on one contract and as a subcontractor to another contractor on another contract). These arrangements create conflict because they lead to disclosure of confidential information and impair

independent judgment by the contractor in the performance of their contractual obligations.

In the present case, CRA Clarke would be responsible for reviewing its work and Fonticella Construction Company's work if the firm performed mechanical engineering services for Bonfill on the Tamiami Fire Rescue project. Under the Commission's prior line of opinions, this is an impermissible conflict. Therefore, CRA Clarke may not serve as mechanical engineer for Bonfill on the Tamiami Fire Rescue if Fonticella Construction Company is awarded the design-build project.

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

Cc: Rosemarie Wilson, CICC  
Lundy Clarke, CRA Clark  
Jackie Bonfill, J. Bonfill and Associates  
Armando Fonticella, Fonticella Construction