

FILE COPY



ETHICS COMMISSIONERS

Kerry E. Rosenthal, Chairman
Robert H. Newman, Vice Chairman
Gail Dotson
Dawn Addy
Elizabeth M. Iglesias

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

March 15, 2004

Anthony Clemente
Vice-President
PBSJ
2001 N.W. 107th Avenue
Miami, FL 33172

RE: REQUEST FOR ADVISORY OPINION 04-32

Dear Mr. Clemente:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 10, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts of interest related to the firm providing architectural and engineering services for the Deep Draft Port Cruise and Cargo Marine Infrastructure project.

In your request, you advised the Ethics Commission that Miami-Dade County recently issued a Notice to Professional Consultants to provide architectural and engineering services for the Deep Draft Port Cruise and Cargo Marine Infrastructure project. The scope of services include planning and design for emergency dock damage, navigation, dredge and fill, marine structures and permitting. Additionally the scope of work includes surveys on existing conditions, geotech

analysis, cruise passenger wharves and cargo wharves.

PBSJ previously designed Container Cargo Wharves 1-4 at the Port of Miami. From 1997 to 2000, PBSJ also did structural engineering work for Wharf 5 as a subconsultant to BEA on a Bond Engineering Contract at the Seaport. In 2003, PBSJ performed a structural/evaluation study of Container Cargo Wharves 1 through 5.

During the late 90's and the current decade, staff members of Shaw Environmental and Infrastructure, Inc. were involved in various dredging projects for the Seaport. Additionally, several Shaw Environmental and Infrastructure staff members were responsible for the planning and implementation of improvement and redevelopment projects for P&O Ports. The work was completed in 2003.

Ardman and Associates has performed geotechnical engineering services to the Miami-Dade Seaport over the last ten years. Ardaman was recently involved with the geotechnical aspects of the foundation design for Container Cargo Wharf 6. Ardaman is currently performing a geotechnical evaluation of Container Cargo Wharves 1 through 5 for the Seaport.

Morgan and Eklund are not currently doing any related work at the Seaport and have not done any related work in the past.

The Ethics Commission found that the PBSJ team may provide architectural and engineering services for the Deep Draft Port Cruise and Cargo Marine Infrastructure project. However, Ardaman may not perform any geotechnical work under the Deep Draft contract if the firm is still performing geotechnical work on the Container Cargo wharves under another agreement.

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 two related contracts. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of its contractual obligations.

PBSJ and the other team members do not have any of the conflicts delineated in the Ethics Commission's prior opinions. PBSJ's prior work on related projects has been completed and should not interfere with any work under the Deep Draft contract. However, Ardaman must complete any work related to Container Cargo wharves prior to commencement of the Deep Draft contract. Therefore, PBSJ and the other team members may perform services on the Deep Draft Port Cruise and Cargo Marine Infrastructure project as long as Ardaman completes any work related to Container Cargo wharves prior to commencement of the contract.

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 the undersigned at (305)

579-2594 or Ardyth Walker, Staff General
Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director

Cc: Luisa Millan Donovan, CICC