



April 13, 2004

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Carlos A. Penin
President
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RE: REQUEST FOR ADVISORY OPINION 04-57

Dear Mr. Penin:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 7, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the team's ability to provide architectural and engineering services for Cargo Yard Improvements at the Port of Miami. The team members are CSA Group, Gottlieb, Barnett and Bridges, Shaw Environmental and Infrastructure, Tasdim Uddin and Associates and Indigo Service Corporation.

In your request, you advised the Ethics Commission that the Seaport recently issued a Notice to Professional Consultants to provide architectural and engineering services for Cargo Yard Improvements at the Port of Miami. The scope of services will include but not be limited to the design and rehabilitation of cargo yard facilities, support infrastructure and ancillary services. The selected firm will also provide program monitoring services. Other projects may also be added to the scope of services.

The NTPC requires proposers to identify whether they or any of their sub-consultants, or members have participated in any way in the development of previous Cargo Yard Improvements for the Seaport Department, including but not limited to, the scope of services identified for this 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 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.

CSA has served as a subconsultant to Tetra-Tech (formerly FosterWheeler) on the Seaport Redevelopment Program for P & O Ports. As a subconsultant, CSA has performed numerous duties related to the cargo and cruise terminals including utility work, water and sewer systems and security upgrades. Most recently, CSA completed design of comfort stations and sanitary sewer improvements within the cargo yard.

Gottlieb, Barnett and Bridges currently serves as a Gantry Crane consultant to the Seaport. In that capacity, GBB is responsible for assisting the port in acquiring new gantry cranes, managing design and installation of the new cranes and providing an on-site engineer for troubleshooting.

Shaw Environmental has staff who worked for P & O Ports on the Seaport Redevelopment Program. Two staff members worked in project management capacities. In that capacity, Shaw personnel supervised the design of cargo yard improvements for Chiquita.

Tasmin Uddin and Associates worked as a team member with Bruno-Elias Associates. Tasmin provided structural engineering services for the proposed provisional building and intermodal canopies that are part of the cruise terminal D and E. Tasmin Uddin is currently providing geotechnical testing services to the Seaport.

Indigo Service Corporation has served as a subconsultant to P&O Ports on the Seaport Redevelopment Project. In that capacity, Indigo has performed numerous duties including design of the INS and Customs remodeling and addition to Terminal 12 and cost estimating and design work for Cargo Shed D.

The Ethics Commission found that CSA's work for Tetra-Tech on the P&O Ports contract should not conflict with the scope of work on the Cargo Yard Improvement contract. The Foster Wheeler contract is scheduled to expire in May, 2004. If the contract is extended and the two agreements overlap, the Seaport and P&O Ports must coordinate work assignments so that work orders on each contract are related to different cargo facilities and there is no overlap between responsibilities and assignments on the two contracts.

Gottlieb, Barnes and Barnett's current work on the gantry cranes should not overlap with the scope of work under the Cargo Yard contract. Therefore, GBB does not have a conflict of interest in regard to the Cargo Yard Improvements contract.

Shaw Environmental does not have a conflict of interest in regard to the Cargo Yard Redevelopment contract.

The scope of Tasmin Uddin's current work for the Seaport does not overlap with the scope of work for the Cargo Yard Improvements contract. Therefore, Tasmin Uddin does not have a conflict of interest in regard to the Cargo Yard Improvements contract.

The scope of Indigo's work for P&O Ports should not conflict with the scope of work for the Cargo Yard Improvements contract. However, in the event that Indigo works as a subconsultant to Tetra-Tech on an extension of the P&O Ports contract, the work under the two contracts must involve different cargo facilities.

Therefore, subject to the limitations contained herein, the CSA team may provide architectural and engineering services related to Cargo Yard Improvements at the Seaport.

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,



ROBERT MEYERS
Executive Director

cc: Luisa Millan Donovan, CICC