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April 13, 2004

**FILE COPY**

Ernst Flinn  
Tetra Tech, F.W.  
1901 South Congress Avenue  
Suite 110  
Boynton Beach, FL 33426

**RE: REQUEST FOR ADVISORY OPINION 04-70**

Dear Mr. Flinn:

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 firm's ability to provide architectural and engineering services for Cargo Yard Improvements at the Port of Miami.

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.

Tetra-Tech currently serves as contractor to P&O Ports on the Seaport Redevelopment project. In that capacity, Tetra-Tech has performed a number of duties related to cruise and cargo redevelopment. In regard to cargo yards specifically, Tetra-Tech has completed design work on Wharfs 6&7 and 30 & 31. Tetra-Tech also performed design work on the port security system, sewer systems and cargo gate. The current contract between P&O Ports and Tetra-Tech is scheduled to expire in May, 2004. However, the contract may be extended to allow for completion of on-going projects.

The Ethics Commission found that Tetra-Tech may provide architectural services related to cargo yard improvements to the Seaport. Tetra-Tech does not have conflict between the scope of work on the existing contract with P&O Ports and the scope of work contemplated under the Cargo Yards Improvement contract. However, if the contract is extended, P&O

Ports and the Seaport must coordinate any work assignments to ensure that the scope of work involves different facilities and assignments. Moreover, Tetra-Tech may not provide any construction managers that will have oversight responsibilities on the firms providing work under the Cargo Yard Improvement 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,



ROBERT MEYERS  
Executive Director

cc: Luisa Millan Donovan, CICC