

March 17, 2005

Thomas Robison
Science Applications International
Corporation
8301 Greensboro Drive
McLean, Virginia 22102

**RE: REQUEST FOR ADVISORY OPINION RQO 05-27
Thomas Robison Professional Services**

Dear Mr. Robison:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 16, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the Conflict of Interest ordinance prohibits an employee from providing a reference to a corporation while the employee serves on the competitive selection committee.

In your letter, you advised the Commission that the Office of Capital Improvements Coordination (CICC) requires all prime consultants and subconsultants who respond to solicitations to submit a project experience form. The form requires that proposers seek references from firms for whom they have performed similar services. The form must be submitted with the other bid documents. Prime Consultants frequently seek references from county staff who manage construction projects for their departments. The staff members may also serve as members of selection committees for the project for which the prime

consultant is seeking a reference. Miami-Dade County Administrative Order 3-34 requires that selection committees be comprised of at least one member from the user department. A.O. 3-34 further requires that the selection committee members have the technical background necessary for understanding the scope and requirements of the particular procurement. The employees responsible for supervising the particular project are often chosen as representatives of the user department for the selection committee.

The Commission found The Conflict of Interest and Code of Ethics ordinance permits an employee to provide the reference required by CICC and serve on the selection committee. However, if the form is completed during the time that the project is covered by the Cone of Silence, all requests and communications regarding references between firms and county personnel must be in writing with a copy to the Clerk of the Board. Further, during the period covered by the cone of silence, the proposer should not seek references from members of the competitive selection committee for the project under consideration. However, the proposer may use prior references obtained from a member of a selection committee.

A county employee may complete a project experience/ reference form. Section 2-11.1(p) provides that no person included in the terms defined in subsection (b)(1) through (b)(6) may recommend the services of any lawyer or law firm, architect or architectural firm, public relations firm or any other person or firm, professional or otherwise to assist in any transaction involving the County or any of its agencies, provides that such recommendation may properly be made when required to be made by the duties of the office and in advance at a public meeting attended by other County officials, officers or employees. Section 2-8.1(g) requires the county to consider a

contractor's past performance when making a contract award. Therefore, an employee may provide a project experience/reference without violating the Conflict of Interest ordinance because it is required by the duties of the office. Since the employee may lawfully provide the reference, the employee is not barred from serving on the selection committee.

However, if references are collected after the solicitation is advertised, any communication regarding the reference must be in writing to avoid any possible violations of the Cone of Silence. The Cone of Silence requires that all communications regarding a particular bid between advertisement of the solicitation and formal recommendation of award be in writing with a copy to the Clerk of the Board.

Section 2-11.1(t) further states that the "Cone of Silence is hereby defined to mean a prohibition on (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and the County's professional staff, including but not limited to, the County Manager and his or her staff; (ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including but not limited to the County Manager and his or her staff; (iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and any member of the selection committee therefore; (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefore; (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder,

lobbyist or consultant and the Mayor, County Commissioners and their respective staffs and (vi) any communication regarding a particular RFP, RFQ or bid between any member of the County's professional staff and any member of the selection committee therefore.

Section 2-11.1(t)(1)(c) also states that "(t)he provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meetings, public presentations made to the Board of County Commissioners during any duly noticed public meetings or communications in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents.

Since the reference will be provided for a project covered by the Cone of Silence, the prime consultant must make a written request for the reference during the time that the project is covered by the Cone of Silence. The county employee should also make sure that any communication between the employee and the firm be in writing during the period that the project is covered by the cone of silence.

Therefore, the Conflict of Interest and Code of Ethics ordinance permits an employee to provide a project experience/ reference form and serve on the selection committee. However, a proposer should not seek a reference from a member of the selection committee during the time the solicitation is covered by the cone of silence. The proposer may use prior references from the selection committee member. Finally, all requests and any communication regarding references must be in writing during the period that the project is covered by the Cone of Silence.

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
Faith Samuels, CICC
Terry Rolle, CICC