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July 20, 2006

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Linda Bell
President
Civil Works, Inc.
10 N.W. 42nd Avenue
Suite 200
Miami, FL 33126

RE: REQUEST FOR ADVISORY OPINION RQO 06-45

Dear Ms. Bell:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 13, 2006 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether Civil Works may provide architectural and engineering services to the Aviation Department related to the design and construction of a runway extension at Kendall Tamiami Executive Airport. Civil Works is currently providing related preliminary work as a subcontractor under another Aviation agreement.

In your request, you advised the Commission that the Office of Capital Improvements recently issued a Notice to Professional Consultants to provide AE services related to runway extensions at Kendall Tamiami Executive Airport. The scope of services, which may be amended to provide for a design-build concept, provided that the services may include subsurface investigation, land surveying and civil and electrical engineering for the runway extensions. Kimley-Horn Associates submitted a response with Civil Works as one of the team members.

Civil Works is currently a subconsultant to ESA on an environmental consulting contract for the Aviation Department. Subsequent to the submission of the Kimley-Horn proposal, Civil Works was issued a work order to provide services related to Tamiami Airport. Specifically, Civil Works will review the stormwater management plan prepared by another MIA consultant and make recommendations regarding any necessary mitigation for water quality, stormwater management, floodplains and hazardous material. The report will be submitted to the FAA and other regulatory agencies for final approval of the project.

The Ethics Commission found that Civil Works may provide the requested services to ESA and serve as a subconsultant to Kimley-Horn on the AE contract for the Tamiami Airport. The scope of services being provided to ESA should not conflict with the scope of services being provided to Kimley-Horn and MIA under either the current solicitation or a design-build concept.

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.

Civil Works' responsibilities under the current work order for stormwater, floodplain and hazardous material analysis should not overlap with the scope of work under either the current solicitation or a design-build concept. In the first instance, another Aviation subconsultant, unrelated to ESA or Civil Works, has the primary responsibility for the stormwater analysis. Moreover, FAA and the Florida Department of Environmental Protection will approve the final mitigation plans related to the current work order prior to the commencement of any work under the current solicitation. Since the work will have been completed, Civil Works will not perform any oversight responsibilities related to the current work order as a subconsultant to Kimley-Horn. Further, the firm's responsibilities under the two agreements do not overlap. Therefore, under the Ethics Commission's prior analysis, Civil Works does not have a conflict of interest and may perform in both roles.

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: Faith Samuels, Office of Capital Improvements