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Executive Director

MICHAEL P. MURAWSKI
Advocate

ARDYTH WALKER
Staff General Counsel

April 23, 2007

Mark Schmidt
Wiss, Janey, Elstner and Associates
330 Pfingsten Road
Structures 1
Northbrook, Illinois 60062

RE: REQUEST FOR ADVISORY OPINION RQO 07-09

Dear Mr. Schmidt:

The Commission on Ethics and Public Trust issued the attached opinion regarding this matter on April 19, 2007. The attached formal opinion supersedes the draft staff opinion that was previously provided.

If you have any questions, please call the undersigned at (305) 350-0616.

Sincerely Yours,

ARDYTH WALKER
Staff General Counsel



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ARDYTH WALKER
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April 24, 2007

Mark Schmidt
Wiss, Janey, Elstner and Associates
330 Pfingsten Road
Structures 1
Northbrook, Illinois 60062

RE: REQUEST FOR ADVISORY OPINION RQO 07-09

Dear Mr. Schmidt:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 19, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts between work on the inspections and testing phase of a project and bidding on the construction phase of a project.

In your letter, you advised the Commission that Wiss, Jannney, Elstner (WJE) was recently awarded a contract for restoration of the terra cotta façade at Dade County Courthouse. The contract provides that the work will take place in several phases: the initial phase includes laboratory work and inspections, the second phase includes preparation of construction documents and the bid package and the final phase is the construction work.

WJE would like to subcontract a portion of the work in Phase 1. However, the firm is concerned that the subcontractor may be barred from participating in the construction phase of the project.

Pursuant to the Ethics Commission's prior opinions, a firm may provide services under Phase 1 of the project and provide services during the construction phase. Section 2-11.1(j) of the Code of Miami-Dade County restricts persons covered by the Conflict of Interest and Code of Ethics ordinance from doing work that conflicts with their independence of judgment in performing their County responsibilities.

In several prior opinions, the Ethics Commission has opined that continuation of prior work or work on a later phase of the same project does not constitute a conflict of interest. In RQO 02-166, the Ethics Commission opined that a seaport contractor could work on the construction phase of a project where the firm had previously done studies related to the same project. In RQO 06-06 and 06-11, the Ethics Commission opined that an airport contractor could bid on work in the North Terminal where the firm had previously done design work.

In a prior opinion (RQO 05-60) related to this same project, the Ethics Commission opined that MC Harry could perform work on this project although it had performed the original studies that led to the current agreement.

Similarly, in the instant case, a subcontractor could perform the Phase 1 work related to laboratory work and inspections and provide services during the construction phase of the project.

Therefore, WJE may employ a subcontractor to perform work during Phase 1 of the project and use the same subcontractor during the construction phase.

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 line extending to the right.

ROBERT MEYERS
Executive Director