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March 27, 2008

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**ARDYTH WALKER**  
STAFF GENERAL COUNSEL

Jay Beratan  
DMJM Aviation  
1700 Market Street  
Suite 1700  
Philadelphia, Pennsylvania 19103

**RE: REQUEST FOR ADVISORY OPINION RQO 08-13**

Dear Mr. Beratan:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 26, 2008 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether DMJM Aviation may serve as a subconsultant on a contract to provide civil engineering services at Miami International Airport. DMJM Aviation is one of the partners in Dade Aviation Consultants (DAC).

In your request, you advised the Commission that in 1992, Miami-Dade County entered into an agreement with Dade Aviation Consultants (DAC) to provide management services related to the Capital Improvement Program (CIP). Essentially, DAC was hired to provide day-to-day project management for various projects contained in the CIP. The DAC consortium consisted of eight firms: Bechtel, Spillis Candela, DMJM Aviation, the Bugdal Group, Poinciana Development Corp, Sharpton Brunson, Maurice Gray and Associates and TBI Airport Management. In 2007, the contract was extended for a period of one year with services in 2008 limited to close-out services for the South Terminal program.

The 2007 amendment provides that "effective December 16, 2007, the General Consultant and any other firm on the General Consultant's team will be allowed to provide professional services to the County with respect to any matter, subject to the County's procurement policies."

The Aviation Department is currently seeking an AE firm to provide civil engineering services related to the rehabilitation of Runway 8R/26L which shall include civil, electrical and structural engineering and construction management for the adjustment and replacement of the current airfield lighting and paving. The engineer is also responsible for ensuring that aircraft traffic is not disrupted during the project. The runway services the airlines that will become tenants of the North Terminal development.

Miriam Gerov is currently serving as DAC Closeout Manager for the South Terminal Program. DMJM Aviation is seeking to serve as a subconsultant to HJ Ross on this project. Gerov will be responsible for, among other things, budget and scheduling on the runway project.

The Commission found that Gerov may serve as a member of the team for the runway project as long as she has completed any work for Dade Aviation Consultants. Pursuant to the contract, DMJM Aviation may bid on other county contracts. Further, DAC will not have any oversight responsibilities regarding the runway project. Therefore, DMJM Aviation may serve as a subconsultant on the project and Gerov may provide services to the team.

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 various members of a team (i.e. a member serves as prime contractor on one contract and as a subcontractor to another contractor on another contract) or if there are overlapping scopes of work between two agreements. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of their contractual obligations.

Since DAC is not involved in oversight of the runway project, there are no overlapping services or responsibilities between serving on the runway project and the DAC contract. Further, the DAC contract should expire prior to the commencement of any work on the runway project. Accordingly, DMJM Aviation may serve as a subcontractor on the runway project and Gerov may perform services on the team.

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 the opinion, please call the undersigned at (305) 579-2954 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,



ROBERT MEYERS  
Executive Director