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VIA FACSIMILE (305) 461-3383
AND REGULAR MAIL

April 25, 2008

Leah Miller
Art, Design and Construction, Inc.
4111 LeJeune Road
Coral Gables, FL 33146

RE: REQUEST FOR ADVISORY OPINION-RQO 08-19

Dear Ms. Miller:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 24, 2008 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether Art, Design and Construction (ADC) may bid on a construction contract where a related company performed design work.

In your request, you advised the Commission that the Seaport Department recently issued a solicitation for a construction contract for a parking garage at Cruise Terminal D. The project is a four-story parking garage and includes sidewalks, roadways, signage, utility connections, landscaping and irrigation.

Bruno-Elias Ramos is the principal of Art, Design and Construction (ADC) and Bruno-Elias Associates (BEA). BEA currently has a contract with the Seaport to provide Capital Development Services. Pursuant to that agreement, BEA was tasked with the

responsibility of providing design services for two parking garages including the parking garage for Cruise Terminal D. The scope of work under that work order includes bidding and negotiating services for the construction contract. As Engineer of Record for the project, BEA will also provide some construction phase services for the project.

The Commission found ADC may not serve as construction company on a project where a related firm is serving as Engineer of Record on the project and will provide bidding, negotiating and construction phase services on the project. The Ethics Commission has previously opined that a firm may not provide services where an affiliate, parent or subsidiary firm will provide oversight, management or selection services related to the contract.

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.
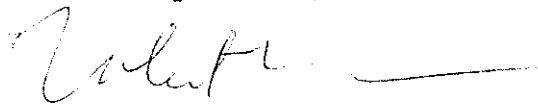
BEA and ADC share a common management. In effect, ADC serves as the construction arm of BEA. As such, a significant potential conflict of interest exists where one company is tasked with the responsibility of

evaluating construction bids and
participating in negotiations on a contract
where the other firm is bidding on the
contract. Further, any potential conflict
will continue after award since BEA has
construction phase responsibilities under its
capital development contract. Accordingly,
ADC may not serve as construction company for
the Cruise Terminal D Parking Garage
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: Maria Cerna, Seaport