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January 30, 2009

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Keith Jennings
Sim-G Technologies
6365 Taft Street
Suite 2001
Hollywood, FL 33024

RE: RQO 09-02

Dear Mr. Jennings:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on January 29, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether your firm may serve as a member of a team to provide MIA Mover Fixed Facilities Construction Services.

In your request, you informed the Commission that Miami International Airport is currently in the process of constructing an automated people mover that will link passengers between the Miami Intermodal Center and the airport terminals. The Miami Intermodal Center will include various forms of transportation including a rental car center and a Metrorail station. Last summer, the Aviation Department awarded a contract to design, construct, operate and maintain the automated people mover system. Construction of the people mover system will be conducted over several phases with initial construction slated to begin at the end of February. The system is expected to be in operation in early 2012.

The Office of Capital Improvement is currently looking for a team of consultants to provide construction inspection services for the fixed facilities. The fixed facilities include the various people mover stations and supporting structures. Specifically, the consultant team will be responsible for overseeing the day to day to operation of the construction including construction coordination, managing schedules, budgets, payments and interfacing with the other development partners in the project including the Florida Department of Transportation, Parsons-Odebrecht Joint Venture (the construction contractor) and Lea and Elliott who is serving as the owner's representative on the project. The Construction Services team will also perform quality assurance and inspections of the fixed facilities.

The Notice to Professional Consultants provides that "(f)irms and or individuals that are prime consultants in the Lea and Elliott agreement or prime consultants or subconsultants in the Parsons Odebrecht Joint Venture agreement may not participate in the solicitation."

Sim G. Technologies would like to serve as member of the team and provide quality inspections for the construction inspection services (CIS) team. SIM-G is currently under a miscellaneous contract with the Department of Public Works and has been tasked with the responsibility of doing materials testing on the automated people-mover project for the Aviation Department. The staff that will work on the Aviation Department side of the project will be different and report to different supervisors than the team that will work on the CIS team.

The Ethics Commission found that Sim-G Technologies may not simultaneously serve as members of the CIS team and provide material testing services to MDAD under the Public

Works contract. Under the Commission's prior opinions, the scope of services overlaps and creates an impermissible conflict of interest.

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.

If Sim-G Technologies serves as a member of the CIS team, the firm will be performing identical services on both sides of the contract. The overlapping responsibilities has the potential to compromise the firm's independence of judgment in conducting materials testing for the county. Therefore, Sim-G may not simultaneously perform services on the Automated People Mover project for the Department of Public Works and serve as a member of the MIA Mover Fixed Facilities Construction Services 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 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, Office of Capital
Improvements
Franklin Stirrup, Miami-Dade Aviation
Department