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November 30, 2011

Taquan Williams-Aranha
Accountant I
Housing Finance Authority
7800 N.W. 19th Street
Suite 501
Miami, FL 33126

RE: REQUEST FOR ADVISORY OPINION-RQO 11-25

Dear Mrs. Williams-Aranha:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on November 29, 2011 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether you may serve as a member of a selection committee for the development of Public Housing sites.

In your letter, you advised the Commission that the Miami-Dade Housing Agency (MDHA) recently issued a Request for Proposals (RFP) for firms who are interested in developing county-owned public housing sites. Specifically, the Housing Agency is seeking private developers who are interested in pursuing mixed-use and mixed financing options for public housing sites. Under federal law, housing agencies may enter into development agreements with private developers to create mixed use facilities where all or some of the property is reserved for the use of public housing tenants. Under the terms of the RFP, the firms may assume ownership and/or management of the

properties. The selected firms will be eligible to receive federal subsidies for management and capital improvement of the facilities. Some of the properties are also slated to receive general obligation bond (GOB) funding from the Building Better Communities program and other capital funding from the Housing Agency.

The RFP contemplates that the private developer will obtain public and private financing for development of the public housing sites. The developers are eligible for low income housing tax credits from the Florida Housing Finance Corporation (HFC). The housing credit program provides dollar for dollar reduction in federal tax liability for developers that provide housing for low and very low income residents. Under the state rules, the tax credits can be applied to rehabilitation and construction of public housing units. The tax credits can be sold to venture capital firms in exchange for financing.

The developers may also seek bond financing from the Miami-Dade County Housing Finance Authority (HFA) for the projects. The Housing Finance Authority issues bonds and the bonds are sold by local financial institutions. The bond proceeds are used to provide construction loans for the developers. The Housing Finance Authority may provide technical assistance and information to proposers but proposers may not apply for or receive any bond financing until contract award when the developer actually assumes control of the property.

The initial selection process will match developers with public housing sites. After that process is completed, the developers will negotiate agreements with MDHA for the ownership and/or management of the public housing sites. Each agreement will include financing, relocation plans for current tenants (during construction or renovation)

and financial arrangements for county participation in revenue received from the developments. US Department of Housing and Urban Development (HUD) and the Board of County Commissioners must approve all final development agreements for each public housing site. The selection committee has made recommendations for thirty-two sites which are seeking HFC funding. The other developers and sites (that are not applying for state financing) remain to be awarded.

The Commission found you may serve as a member of the selection committee for the Public Housing Development RFP. The Housing Finance Authority will not review applications or award any financing until the end of the award process. A person is only barred from serving on a selection committee under Section 2-11.1 (x) (reverse two year rule) or Section 2-11.1(n) (actions prohibited when financial interests involved).

Section 2-11.1(n) provides that "No person shall participate in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest." The Ethics Commission has previously opined that a county employee does not have a financial interest in a contract or agreement that may be awarded to a county agency. (See RQO 05-43) In the instant case, you have even less financial interest because the entity that will benefit from the agreement is the developer rather than the Housing Finance Authority. You cannot and will not benefit directly or indirectly from the award to any developer in the selection process. Moreover, since the developer may not apply for assistance from the Housing Finance Authority until after selection is completed; you will not have participated in any official action related to award of HFA funds prior to serving on the selection committee.

Section 2-11.1(x) prohibits county employees from doing any contract-related duties, including service on selection committees, for any past employer for two years after they leave the employment. Since you have not worked for any developer for the past two years, you may serve as a member of the selection committee.

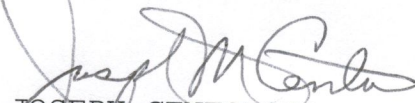
Accordingly, you may serve as a member of the selection committee for development of the Public Housing Sites because you will not financially benefit, directly or indirectly, from the selection committee's decision and you have not worked for any proposer during the past two years.

Please be advised that the Cone of Silence prohibits selection committee members from discussing matters related to the RFP with any actual or potential provider between advertisement of the award and a written recommendation from the Mayor to the Board of County Commissioners. The Cone remains in effect for this matter even though there has been a partial award recommendation. Since there are outstanding issues related to this procurement, the Cone of Silence prohibits you from discussing financing options with any firms until the selection process is completed. The Housing Finance Authority must assign another staff member to handle any discussions with proposers until the entire selection process is completed.

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,



JOSEPH CENTORINO
Executive Director

cc: Fred Simmons, Sr. Procurement Contracting
Officer

Procurement Management Division
Internal Services Department