

Memo

TO: Pamela Paulk
A/E and Specifications and Standards Manager
Department of Procurement Management

FROM: Ardyth Walker
Staff General Counsel

DATE: January 30, 2002

RE: RQO 02-07 Seaport Contract CM01-SEA-01

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I received your request for an advisory opinion regarding potential conflicts of interest between firms serving on the Construction Manager at Risk Team for P&O Ports Cruise and Cargo Development and serving as Construction Manager at Risk for the Deepwater Port Cruise Terminal Development. The Executive Director and I reviewed this matter and I am issuing this opinion based on the documents provided with your request.

The P&O Ports Cruise and Cargo Development and the Deepwater Port Cruise Terminal project are the centerpiece of a capital improvement program at the Dante Fascell Port of Miami and provide for construction and renovation of several port terminals. Each development project is separate and involves construction and renovation of different terminals. However, the P and O project includes construction of a walkway and an intermodal center that will be used by the terminals in the Deepwater Port Cruise Development program.

The Construction Manager at Risk (CM) for the P&O Ports Cruise and Cargo Redevelopment Project is responsible for managing all construction work and services provided by all contractors, subcontractors, vendors, suppliers, etc. and monitoring quality, safety and environmental standards. The CM is also responsible for entering into agreements providing for General Contractor or Design/Build Services for the various project phases. The CM is also responsible for project element phasing and developing a major project schedule with the Development Team's scheduling consultant and maintaining and managing the independent

schedules of all contractors, subcontractors, vendors, material suppliers for all elements of the project for the entire duration of the project. The CM is also required to participate in Value Engineering and Audit services as required by the Port.

The CM for the Deepwater Port Cruise Terminal Project is responsible for Fast Track Construction of Terminals 10 and/or 11, demolition of existing structures and relocation of existing utilities, foundations, site improvements and security components. The CM will also participate in value engineering and audit services.

The Conflict of Interest and Code of Ethics ordinance does not prohibit a firm from serving as both a member of the Construction Manager team for the P&O Ports Cruise and Cargo Redevelopment Project and the Deepwater Port Cruise Terminal Development. However, conflicts may arise if the same firm performs similar responsibilities on both CM teams. For example, a team that performs scheduling or construction management services on both contracts may find that the work overlaps if the scope of the work between the two projects changes and portions of the work overlap. In that case, the firm may perform identical services on both projects. The performance of identical services under two contracts would create a conflict of interest. Therefore, a firm should not serve identical roles on both projects to avoid potential conflicts.

Further, a firm that has performed earlier design work related to this project should ensure that the firm's responsibilities on the CM team do not overlap with any prior work done by the firm. Any overlap between the firm's responsibilities may require disclosure of confidential information and may impair the firm's independent judgment in the performance of their public duties. To the extent that the prior or ongoing work may be utilized in the Deepwater Port Development Project, the proposer may have access to confidential information that is not available to other participants in the process. Any confidential information may not be disclosed to other team members. Further, the duties may conflict if prior design work has to be evaluated and modified by the CM team. Therefore, the team should ensure that any the firm's work on the CM team does not involve any earlier work and that confidential information is not disclosed.

Accordingly, a firm may serve as a member of the Construction Manager at Risk team for the Deepwater Port Cruise Development Program and the P &O Ports Cruise and Cargo Redevelopment Project. However to avoid potential conflicts, a firm, should not serve in identical capacities on both projects. Further, a CM team member who has performed prior design work on this project may not work on any matter related to the prior work or disclose confidential information.

If you have further questions related to this matter, please contact me at 350-0616.