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STAFF GENERAL COUNSEL

September 19, 2003

Pamela Paulk  
Manager  
Capital Improvements Construction  
Coordination  
111 N.W. First Street  
13<sup>th</sup> Floor  
Miami, FL 33130

**RE: REQUEST FOR ADVISORY OPINION 03-148, 03-150, 03-151 and 03-152**

Dear Ms. Paulk:

The Commission on Ethics and Public Trust considered your requests for advisory opinions at its meeting on September 18, 2003 and rendered its opinion based on the facts in your memoranda.

You requested an opinion regarding four pending solicitations at the Seaport. The four solicitations are: E03-SEA-03 Owner's Representative (RQO 03-148); A03-SEA-01-Cruise Terminal Improvements (RQO 03-150); E03-SEA-01 Cargo Yard Improvements (RQO 03-151) and E03-SEA-02 Capital Development Services (RQO 03-152).

In regard to RQO 03-148, you advised the Commission that CICC is preparing to issue a solicitation for a firm to serve as an Owner's Representative at the Seaport. As the Owner's Representative, the firm will monitor on-going capital improvement projects and provide project administration and project management services including the processing

of payments to contractors and consultants. The County currently has a moderate pool of technically certified firms qualified to perform in this capacity.

A potential conflict of interest may exist if a firm, either in a prime or subconsultant capacity, with another Seaport contract is awarded this contract. The firm may be in the position of evaluating its own work and processing payments for itself. CICC would like to include conflict language in the solicitation which restricts the ability of firms currently providing work at the port from submitting responses for this contract.

The Commission found that CICC should include conflict restrictions in the solicitation for the Owner's Representative at the Seaport.

In regard to RQO 03-150, you advised the Ethics Commission that CICC is currently preparing a Notice for Professional Consultants to provide Cruise Terminal Improvements at the Seaport. The Seaport has an existing contract for Cruise Terminal Improvements. Two firms, Bermello, Ajamil and Partners and BEA International, Inc. are performing work under the existing contract. The contract will expire in February, 2005.

CICC believes a potential conflict of interest exists if any of these firms, primes or subconsultants is awarded work under the new agreement. CICC is concerned about overlapping responsibilities because the scope of work is identical under the two agreements.

The Commission found that CICC should include conflict language in the solicitation for the Cruise Terminal Improvement Project.

In regard to 03-151, you advised the Commission that CICC is currently preparing a Notice for Professional Consultants to provide Cargo Yard Improvements for the

Seaport. The Seaport has an existing contract covering a similar scope of services. Gee & Jensen and Parsons, Brinckerhoff, Quade and Douglas are performing services under the existing agreement. CICC believes a potential conflict of interest exists if any of these firms, primes or subconsultants is awarded work under the new agreement. CICC is concerned about overlapping responsibilities because the scope of work under the two agreements is identical.

The Commission found that CICC should include conflict language in the solicitation for the Cargo Yard Improvement Project.

In regard to 03-152, you advised the Commission that the Seaport currently has a Capital Development Services Contract with Edwards and Kelsey (formerly Kunde, Sprecher & Associates). The contract is for a maximum amount of 4.4 million dollars. The Seaport has already issued work orders in the amount of 4.1 million dollars and anticipates that the remaining amount will be exhausted prior to the commencement of work under the new contract.

A Notice to Professional Consultants is being issued to provide capital development services. The scope of services, as in the present contract, provides for traditional and or non-traditional port development both off and on port property; extensive coordination with other government/ port entities; project development and planning analysis and advisory services; preliminary assessment; evaluation and planning of potential development projects; strategic and capital improvement planning; project implementation planning including costing and phasing; public policy involvement and public management coordination; negotiation services; permitting coordination and grants solicitation on complex construction projects.

The Commission found that conflict language is not required on the capital development services contract on the basis of Edwards & Kelsey's current contract.

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,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS  
Executive Director