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STAFF GENERAL COUNSEL

March 15, 2004

Bruno Elias-Ramos  
BEA International  
4217 Ponce De Leon Boulevard  
Coral Gables, FL 33146

**RE: REQUEST FOR ADVISORY OPINION 04-13**

Dear Mr. Ramos:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 10, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts between the firm's current work at the Seaport and serving on the team for Cruise Terminal Improvements.

In your request, you advised the Ethics Commission that the Seaport recently issued a Notice for Professional Consultants to provide architectural and engineering services related to Cruise Terminal Improvements at the Seaport. The Scope of Services provides that the required professional services for this project shall include but not be limited to the design and rehabilitation of existing cruise terminals 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12. The selected firm will also provide services related to terminals D and E. The County

reserves the right to add other projects to this PSA.

The Notice to Professional Consultants provides that "(p) rime Consultants must identify whether they or any of their subconsultants, or members have participated in any way in the development of previous Miami-Dade Seaport Department, Cruise Terminal Improvements projects. In identifying themselves or any such subconsultants, or members, the Prime Consultant must identify the specific work that they the sub-consultant or member performed or work to be performed on previous Cruise Terminal Improvements projects as well as the work to be performed as a part of this solicitation."

Bruno-Elias currently has a professional services agreement with the Seaport to provide miscellaneous architectural and engineering services. The contract was extended in December 2003 for an additional eighteen-month term. Under the previous work orders for this contract, BEA has created design and construction documents for the construction of Terminals D and E. Under the extension, according to Port officials, BEA will make necessary modifications to the construction documents to comply with Homeland Security requirements. The Seaport anticipates that the firm selected for the new agreement will primarily work on modernizing and retrofitting existing terminals and will not do work related to the design and construction of Terminals D and E.

The Ethics Commission found that BEA may provide architectural and engineering services under the Cruise Terminal Improvements Contract as long as the work is limited to work on existing terminals. However, BEA may not do any work related to Terminals D and E under the new contract. Further, the Seaport must make sure that there is no overlap in responsibilities on

the required Homeland Security improvements for Terminals 8 and 9.

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.

In the instant case, although the scope of services under the two contracts are similar, any potential conflicts can be alleviated if the firm and the Seaport restrict work orders on each agreement to specific terminals.

Therefore, BEA may provide architectural and engineering services under the Cruise Terminal Improvements agreement. However, if BEA is awarded the contract, the Seaport may not issue work orders related to Terminal D and E under the new 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,

A handwritten signature in cursive script, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS  
Executive Director

cc: Luisa Millan Donovan