



Memo

To: Pam Paulk
AE Specifications and Standards Manager
Office of Capital Improvements Construction Coordination

From: Ardyth Walker
Staff General Counsel

Date: January 28, 2005

Re: Security and Communications Contract-E04-SEA-01

Per your memorandum, on January 26, 2005, the Ethics Commission reviewed its prior opinions regarding the above-captioned contract. The Ethics Commission considered the additional information provided by the Selection Committee regarding the firms of Parsons Brinckerhoff, Black and Veatch, Consul-Tech, Perez & Perez and Sea Secure. The Commission found that each firm could serve as Security and Communications consultant subject to additional restrictions. Please find attached a copy of the memorandum that was approved by the Ethics Commission. If you have any questions regarding this matter, please contact me at (305) 350-0616.

cc: Juan Kuryla, Seaport
Gyselle Fernandez, Seaport
Robert Meyers, Executive Director, Commission on Ethics and Public Trust

M E M O R A N D U M

TO: COMMISSION ON ETHICS AND PUBLIC TRUST
FROM: ARDYTH WALKER, STAFF GENERAL COUNSEL
RE: SEAPORT SECURITY AND COMMUNICATIONS CONTRACTS
DATE: JANUARY 20, 2005
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I. BACKGROUND

Last August, the Commission considered requests from four firms regarding a proposed Security and Communications contract at the Dante Fascell Port of Miami. The scope of services consists of "design and development of technical specifications, production of Auto CAD drawings and details for the installation of security fences and gates, lighting, access controls (including biometrics), I.D. card readers, public address and security warning systems, intelligent transportation systems, cargo security gates, command and control centers, communications networks and other security communications related technologies including required underlying physical infrastructure."

Addendum #2 to the NTPC provided that "Prime Consultants must identify whether they or any of their subconsultants or members have participated in any way on any Port of Miami projects for the Miami-Dade Seaport Department related to security and communications including but not limited to the services described in the Scope of Services. 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 security and communications projects as well as the work to be performed as part of this solicitation."

The Commission received requests for advisory opinions from Kimley-Horn and Associates, Parsons Brinckerhoff, SAIC and Ross and Baruzinni. The Commission found that all of the firms could serve as Security and Communications consultant despite the fact that most of the requestors had performed or were performing work at the Seaport related to the

security improvements required by the Department of Homeland Security.¹

Subsequently, the Selection Committee reviewed the responses to the Notice to Professional Consultants provided by the requestors. The Committee raised concerns regarding the prior work of the requestors and the potential for conflicts of interest. Specifically, the Selection Committee was concerned that the firms had not provided the Ethics Commission with a complete summary of their current and prior work at the Seaport. The Selection Committee has requested that the Ethics Commission review its determinations in light of the additional information.

II. STANDARD OF REVIEW

Pursuant to Section 2-11.1(w), the Ethics Commission has jurisdiction over contractors and vendors. Section 2-11.1(j) restricts persons covered by the Conflict of Interest and Code of Ethics ordinance from doing work that conflicts with their independence of judgment in performing their County responsibilities. Pursuant to that section of the Conflict of Interest and Code of Ethics ordinance, the Ethics Commission has delineated certain areas including overlapping responsibilities that would impair a contractor's independent judgment in the performance of its duties for the County.

However, a conflict is not created where the firm worked on a prior phase of the project as long as the work does not involve oversight or review of the prior work. In RQO 02-166, the Ethics Commission opined that a contractor could serve as a gantry crane consultant where the firm had previously provided related services on an earlier phase of the same project. In RQO 03-36, the Ethics Commission opined that a conflict is not created by continuation of prior work as long as the scope of work does not overlap. Therefore, prior work on a related project does not create an inherent conflict.

¹ In the period following 9/11, the Seaport was required to revise plans regarding all on-going construction and redevelopment plans at the port to meet Homeland Security requirements. Additionally, the Seaport reviewed all existing systems and created plans to make necessary modifications to meet homeland security guidelines. The requestors and members of their teams were involved in the review and design of security systems for the Port. The studies and plans will form the basis for the work of the Security and Communications consultant.

III. OPINIONS

A. PARSONS BRINCKERHOFF RQO 04-156

Parsons Brinckerhoff is currently serving as design and engineering subconsultant to the Haskell Company at the Seaport.² In that capacity, Parsons' duties includes improvements to the main entrance roadway, access roadways to the terminals and surface parking lots.

Parsons Brinckerhoff is also currently serving as a Prime Consultant to the Seaport on the Cargo Yard Improvements contract. In that capacity, Parsons Brinckerhoff is performing engineering services required to prepare a 100% complete set of contract plans to include paving, grading, drainage, construction phasing and utility adjustments for the designated cargo yard improvements. Parsons Brinckerhoff is also performing necessary homeland security upgrades on the plans for the cargo yards.

The Selection Committee noted that Parsons Brinckerhoff was providing a Senior Project Manager for the Haskell Company at the Seaport. The Project Manager is supervising several security related projects at the Seaport including the building of an Interim Control Room and the installation of Closed Circuit TV Systems, Access Control and Emergency Call Systems and Fiber Optic Cabling throughout the administration building, cruise and cargo terminals and parking garages.

ANALYSIS

Parsons Brinckerhoff may serve as a member of the team to provide security and communications services at the Seaport. However, in order to avoid any conflict between duties, Parsons Brinckerhoff may not provide any services related to the firm's work on cargo yard homeland security improvements. Another member of the team must perform any design or oversight work related to these projects. Moreover, the Senior Project Manager must relinquish any responsibilities related to security improvements if

² The Haskell Company is providing construction services to P & O Ports. P&O Ports is the Project Manager for the Seaport on the Cruise and Cargo Improvement Project.

Parsons Brinckerhoff is awarded the Security and Communications contract.

CONCLUSION

Parson Brinckerhoff may serve as Security and Communications consultant subject to the restrictions contained herein. If Parsons Brinckerhoff is awarded the contract, Parsons Brinckerhoff must provide the Ethics Commission with a report regarding its compliance with the restrictions in this opinion within 60 days of the Notice to Proceed and within 60 days of the issuance of each work order.

B. ROSS AND BARUZZINI RQO 04-158

The Ross and Baruzzini team consists of Ross and Baruzzini, Sequira and Gavarette, H..J. Ross, Consultech and Black and Veatch. Ross and Baruzzini have not previously provided any work at the Port of Miami. Sequiera and Gavarette and Black and Veatch have also not done any work for the Seaport.

H.J.Ross previously provided value engineering services for Cruise Terminals D and E and the Crane Electrification project. H.J. Ross also completed a hydrographic study for the Seaport.

Consul-Tech has not done any security related work for the Seaport. However, one of the qualifying members, Sari Lee Berlin did work on the Seaport Redevelopment Program. Berlin's tasks under the agreement included development of the Port Main Entry Cargo Gate and the Communication Project. Berlin served as Project Manager for the Design Team for both projects. The contract was issued prior to 9/11.

Edwards and Kelsey (formerly Kunde Sprecher) previously provided capital development services at the Seaport. A subcontractor to Kunde Sprecher, SEA SECURE, developed the Security Master Plan for the Port as part of the 2020 Implementation Project.

The Selection Committee noted that Sari Berlin's work for Tetra-Tech included serving as Project Manager for the Security Improvement project. The Security Improvement

included the planning for an interim control room and the installation of closed circuit televisions systems. Although Berlin is no longer affiliated with the company, the Security Improvements project is on-going.

Moreover, the Selection Committee noted that Black and Veatch performed a security review and assessment of the Port of Miami on behalf of the U.S. Coast Guard. The work was part of a national project for the U.S. Coast Guard.

ANALYSIS

Ross and Baruzzini and the other team members may provide security and communication services related to the development of technical specifications and installation of security equipment. The proposed agreement is a continuation of the prior work that was done by team members.

In the instant case, Ross and Baruzzini has not done any prior conflicting work. The work done by Edwards and Kelsey was performed by a subcontractor and involved an earlier phase of the work than the current contract. Further, Berlin's prior work as an employee for Tetra Tech, F.W. does not constitute a conflict because the work involved an earlier phase of the work and differs in scope from the work under the proposed agreement. Finally, Black and Veatch's prior work for the Coast Guard does not create a prohibited conflict of interest.

CONCLUSION

The Ross & Baruzzini team may provide security and communications services at the Seaport.

C. KIMLEY-HORN RQO 04-160

The Kimley Horn team includes Perez and Perez Architects Planners, William A. Berry, Inc., Sea Secure, L.L.C. and IMS Worldwide, Inc.

Kimley Horn is currently providing consultant services to the Seaport. In that capacity, Kimley-Horn is serving as Interim Security and Communication Consultant for the Seaport. The work required Kimley-Horn to review existing

communications and security plans and make recommendations regarding the most efficient and cost-effective plan.

Perez and Perez worked on the Port of Miami 2020 Implementation plan that established security zones and parameters. The work was incorporated into the Security Master Plan.

Sea Secure (as a subconsultant to Kunde Sprecher) assisted the Seaport in the development of the Seaport Security Master Plan, did risk and vulnerability assessments and coordinated security planning with state and federal agencies.

The Selection Committee noted that SeaSecure also provided 30% Design Bid Documents for the projects in the Security Master Plan.

The Selection Committee also noted that Perez and Perez worked on two other non-security related projects at the Seaport. The two projects were the Terminal 6 and Planning Study and the Port Crane Management Building Design-Build Guidelines.

ANALYSIS

Kimley Horn and the other team members may provide security and communication services related to the development of technical specifications and installation of security equipment. Kimley-Horn and the other team members may work on technical specifications and installation of security equipment where the team members have previously worked on a prior phase of the development of the security master plan. However, Kimley-Horn and the other team members may not perform any work related to review or oversight of the security master plan under any other agreement while performing work under the security and communications contract.

CONCLUSION

Kimley-Horn may serve as Security and Communications consultant at the Seaport subject to the restrictions contained herein. If Kimley-Horn is awarded the contract, Kimley-Horn must provide the Ethics Commission with a report regarding its compliance with the restrictions in