

June 28, 2005

Petar Plemic
Mark Schmidt
Wiss, Janey, Elstner and Associates
330 Pfingsten Road
Structures 1
Northbrook, Illinois 60062

RE: REQUEST FOR ADVISORY OPINION RQO 05-68

Dear Mr. Plemic and Mr. Schmidt:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 23, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding any conflicts between your prior work on the façade of the Dade County Courthouse and a pending Notice to Professional Consultants to provide architectural and engineering services for a terra cotta reconstruction of the courthouse façade.

In your letter, you advised the Commission that in 2000, after performing a limited inspection of the courthouse façade, WJE informed the county that the deterioration of the terra cotta façade required extensive inspection and repair. WJE also informed the County that the structure posed an imminent hazard. Subsequently, WJE was assigned the task of conducting a complete inspection of the entire courthouse façade, identifying immediate threats to public safety, developing a repair plan and preparing a

preliminary cost estimate for the work. In December, 2002, WJE prepared a report on their findings entitled Façade Inspection and Conceptual Repair Recommendations.

The County recently issued a Notice to Professional Consultants to do architectural and engineering work on the terra cotta reconstruction of the Dade County Courthouse. The scope of services requires the firm to provide services in several phases: Phase 1: Field Testing, Laboratory Testing, Repair and Constructability Issues; Phase 1A- Schematic/Design Development and Structural Analysis; Phase 1B-Analyze and review findings, interacting/assisting GSA in assimilating the scope of work and laboratory findings to further translate into design solutions through working Construction Documents. Consultant must prepare a preliminary and final schedule for all phases included in the scope of work. Phase 1C- Assisting GSA through the building permit dry run process; Phase 2-Selection of Contractor and Phase 3- Architectural Engineering Construction Management/ Field Services

Section 1.14 of the Notice to Professional Consultants states that "Prime Consultants must identify whether they or any of their sub-consultants or members have participated in any way in the development of the Miami-Dade County Construction Façade Inspection and Conceptual Repair Recommendations Report prepared by M.C. Harry and Associates and prepared by Wiss, Janney, Elstner Associates, Inc. In identifying themselves or their subconsultants, or members, the Prime Consultant must identify the specific work that they, the sub-consultant or member performed on the Miami-Dade County Courthouse Façade Inspection and Conceptual Repair Recommendations Report as well as the work to be performed as a part of this solicitation."

The Commission found WJE may perform the work contained in the pending Notice to

Professional Consultants. Phase 1 of the work under the pending NTPC will require the firm to amend and update the prior report and make assessments of any additional deterioration and damage that has occurred since the prior work was completed. Phase 2 and 3 of the services required under the current solicitation are outside of the scope of the prior project.

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 on responsibilities between various members of a team (i.e. a member serves as prime contractor on one contract and as a subcontractor to another contractor on another contract) or if there are overlapping scopes of work between two agreements. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of their contractual obligations.

The scope of work contemplated under the three phases of the Courthouse Terra Cotta reconstruction project is substantially different than the work undertaken under WJE'S prior project and does not constitute a conflict of interest. Accordingly, WJE may perform the work required in the solicitation for a terra cotta reconstruction of the Dade County Courthouse.

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,

ROBERT MEYERS
Executive Director

cc: Faith Samuels, CICC
Christopher Mazzella, Inspector General