

August 24, 2005

Amado Gonzalez
Office of Capital Improvements
111 N.W. First Street
Suite 2130
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION RQO 05-65 (Draft)

Dear Mr. Gonzalez:

I received your request for an opinion regarding any conflicts between Kimley-Horn's current contract for the installation and implementation of a new advanced traffic management system (ATMS) and serving as a subcontractor on a current request for proposal to provide construction services for a Traffic Control Management Services Building. The Executive Director and I have reviewed this matter and I am issuing this draft opinion based on the facts in your request.

In July, 2005, Kimley-Horn was awarded a contract to provide Advanced Traffic Management System Services (ATMS) for Miami-Dade County. The ATMS will control all existing traffic signals in Miami-Dade County as well as any new signals installed in the foreseeable future. The contract will occur in two phases: Phase 1 will cover the acquisition of baseline ATMS software package developed by Kimley-Horn and the services necessary to conduct an Alpha Test near the

existing traffic control center. Phase 2 will cover deployment of the system on a county-wide basis; assisting the Public Works department in the design of a modern Traffic Management Center to house the new system and the related operation and development of necessary enhancements for Miami-Dade County.

The Office of Capital Improvements recently issued a Notice to Professional Consultants regarding the construction of a Traffic Control Management Center Building. The scope of services includes architectural, engineering design and preparation of construction drawings, construction administration as well as environmental site assessment for a Traffic Management Center Building and Ancillary Facilities for the Traffic Signals and Signs Division of the Public Works Department. The building will house the ATMS designed by Kimley-Horn.

You requested an opinion regarding whether a conflict exists because the scope of work states that " the selected consultant will have to work closely with the consultant currently under contract with Miami-Dade County developing the ATMS".

Kimley-Horn may serve as a subconsultant to the firm awarded the contract for the Traffic Control Management Center Building if design and construction coordination work contemplated under Phase 2 of the existing contract are switched to the new contract for the Traffic Control Management Building. Otherwise, Kimley-Horn may be required to perform identical services under the two contracts.

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.

Since Kimley-Horn would be performing related services under two contracts simultaneously, a conflict of interest might exist. Therefore, in order to alleviate any potential conflicts of interest, all work orders related to the construction of the Traffic Management Control building must be issued under the proposed contract.

Therefore, Kimley-Horn may serve as a subconsultant under the proposed contract for the Traffic Management Control building as long as any work orders related to design and construction coordination of the Traffic Management Control building are issued under the new contract.

Further, if Kimley-Horn does not serve as a subconsultant on any team, Kimley-Horn may provide technical support to the selection committee under the current 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)
350-0616.

Sincerely Yours,

ARDYTH WALKER
Staff General Counsel