September 23, 2004

Frank Varona
Principal
Ross & Baruzzini
7200 N.W. 19th Street
Suite 316
Miami, FL 33126

RE: REQUEST FOR ADVISORY OPINION 04-158

Dear Mr. Varona:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 22, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the Ross and Baruzzini team's ability to provide security and communications services under a pending contract at the Seaport. The other team members are Seguira and Gavarette, Black and Veatch, H.J. Ross and Associates, Consultech Transportation and Edwards & Kelcey.

In your letter, you informed the Commission that the Office of Capital Improvements Construction Coordination (CICC) recently issued a Notice to Professional Consultants to provide Security and Communications Services at the Seaport. The consultant will assist the Seaport in "the supervision of the installation and implementation of the security equipment." The scope of services consists of "design and development of technical specifications, production of Auto

CADD 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." Consultants must also have extensive knowledge of the standards and regulations of the Department of Homeland Security, FDLE, FBI, US Customs, US Coast Guard and other state and federal agencies. Finally, firms are required to know the operational and security details of cargo yards and cruise terminals.

Addendum #2 to the NTPC provides 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."

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 work commenced prior to September 11, 2001 and does not include the current requirements of the Department of Homeland Security.

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 Commission found 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.

The Ethics Commission has previously held that a firm may work on a project 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.

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.

Finally, 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.

Therefore, in accordance with the Ethics Commission’s prior opinions, the Ross & Baruzzini team may provide security and communications services at the Seaport.

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