



FILE COPY

July 26, 2007

Benjamin S. Essien, P.E.
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Staff General Counsel

RE: REQUEST FOR ADVISORY OPINION RQO 07-29

Dear Mr. Essien:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on July 25, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether EBS Engineering may serve as a subconsultant on the Construction Management Services agreement for the South Miami Heights Water Treatment Plant.

In your letter, you advised the Commission that the Office of Capital Improvements recently issued a Notice to Professional Consultants for the South Miami Heights Water Treatment Plant. The scope of services provides that the selected firm will provide complete construction management services including preparation of daily log review and approval of construction schedules, process and authorization of progress payments including change orders, work with the engineer of record, perform and oversee plant start up services and certifications of the water plant, pipelines and wellfield projects.

Camp Dresser and McKee is the engineer of record for the project. Under CDM's agreement with the department, CDM is responsible for preparation of construction design documents,

assistance during the bidding process and construction phase services including handling requests for information and inspections.

EBS provided environmental assessment services and design of heating and air conditioning systems (HVAC) to CDM during the design phase.

EBS may provide services under the Construction Management Phases agreement only if the firm has not participated in any bidding phase work for CDM and does not provide any services during the bidding or construction phase of the project for CDM. Further, EBS may not provide any construction management services related to the HVAC system design.

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.

Under the Ethics Commission's prior opinions, EBS may only provide construction management

services if the firm does not provide any services related to its prior work on the project and does not provide any services to CDM during the bidding or construction phase of the project. WASD and CDM must carefully monitor all work orders to ensure that there is no overlap between assignments under the two agreements.

The Ethics Commission further found that if EBS Engineering is on the selected team for the contract, EBS must provide the Ethics Commission with a copy of all work orders to EBS so that the Commission can monitor the firm's compliance with the restrictions contained in this opinion.

Therefore, EBS may provide construction management services on the South Miami Heights Water Treatment Plant as long as the firm does not provide any construction management services related to its prior work on the project and does not provide any services to CDM during the bidding or construction phase of the project.

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: Luisa Millan Donovan, Office of Capital Improvements