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July 26, 2007

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

RE: REQUEST FOR ADVISORY OPINION RQO 07-30

Dear Ms. Samuels:

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 the following firms who have existing work orders with the Department of Solid Waste may provide bond engineering services: Planning and Economics Group, HDR Engineering, ADA Engineering, Brown and Caldwell and BND Engineering. Since the Commission has issued separate opinions to HDR (RQO 07-23), Planning and Economics Group (RQO 07-17) and Brown and Caldwell (RQO 07-33), the opinion will only address the remaining firms.

The Miami-Dade Solid Waste Department provides solid-waste collection, transfer, disposal and recycling services for the residents of Miami-Dade County. Miami-Dade County owns or has long-term leases for three solid-waste transfer stations: Northeast Transfer Station, Central Transfer Station and West Transfer Station. Miami-Dade County owns four active disposal sites: the South Dade Landfill, the North Dade Landfill, the Ash Landfill and the Resource Recovery

Facility. Waste Managements owns a fifth facility that has a long-term agreement with Miami-Dade County.

Miami-Dade County currently has long-term interlocal agreements with 27 municipalities for solid waste disposal. Miami-Dade County must approve construction or modification of any private solid waste facility that would compete with Miami-Dade County for the delivery of solid waste disposal services.

The Office of Capital Improvements recently issued a Notice to Professional Consultants (NTPC) for a Bond Engineer for the Department of Solid Waste. The scope of services provides that the Bond Engineer "will conduct an annual evaluation of the County solid waste system, including the Resources Recovery facility and prepare an annual report on the condition of the system and financial records pursuant to Section 607 of the Bond Ordinance. Further, pursuant to the Operating and Management agreement between Montenay and Miami-Dade County, the Bond Engineer shall evaluate the physical condition and operating efficiency of the Resource Recovery facility and make recommendations regarding rates, charges and necessary capital improvements.

The Bond Engineer is also responsible for making recommendations and approvals regarding the County's landfills including closure plans in effect with the City of North Miami for the Munisport Landfill, the City of Miami for the Virginia Key Landfill and the City of Homestead for the Homestead Landfill. Specifically, the Bond Engineer is responsible for conducting inspections and approving grant payments pursuant to existing interlocal agreements between the County and the respective municipality.

Finally, the Bond Engineer may be tasked with other miscellaneous responsibilities that do not conflict with other tasks required under

the Solid Waste bond ordinances and other agreements.

Scope of Review

Pursuant to Section 2-11.1(w), the Ethics Commission has jurisdiction over contractors and vendors. 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.

Further, pursuant to the NTPC, the prime consultant and its subconsultants will be prohibited from performing any engineering design services under this agreement. However, the prime consultant and its subconsultants will be permitted to perform engineering services which do not pose a conflict of interest such as planning, feasibility and process studies.

I. ADA Engineering

ADA Engineering is currently providing engineering services to the Department of

Solid Waste under two outstanding work orders. ADA is providing engineering services for the Northeast Compactors project which consists of the installation of three new compactor assemblies along with new control consoles and interconnecting piping and wiring. The scope of services that ADA Engineering provide include preliminary design, final design and permitting and construction phase services.

ADA Engineering is also providing limited construction management services for several projects including the Norwood and South Miami Trash and Recycling Project, the North Dade Guardhouse and a truckwash facility. The scope of services for each project includes design and preparation of construction contract documents, permitting and close-out of the project.

Finally, ADA Engineering has a Equitable Distribution Program work order to monitor debris pickup in various locations throughout the county.

Under the conflict standard stated in the NTPC, ADA Engineering may serve as subconsultant only if the firm has completed engineering design services on any other project prior to commencement of the bond engineering agreement. Otherwise, ADA Engineering will have conflicting responsibilities as a member of the bond engineering team. Therefore, ADA may serve as a subconsultant to the bond engineering team if the firm has completed any design engineering services prior to the beginning of the bond engineering contract.

II. BND Engineers, Inc.

BND Engineers, Inc.(BND) is currently serving as a subconsultant to the current bond engineer. BND is primarily providing oversight on the landfill closure projects including the Munisport Landfill in North

Miami and the Homestead Landfill. BND will also provide oversight on the Virginia Key Landfill.

BND may serve as a subconsultant to the next Bond Engineer for the Department of Solid Waste because the work would be a continuation of the firm's prior work as a subconsultant under the current bond engineering agreement. Accordingly, BND may serve as a subconsultant for next bond engineer subject to the restrictions contained in the NTPC.

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, Office of Capital
Improvement