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September 24, 2007

Luisa Millan-Donovan
Chief, Professional Contracts Division
Office of Capital Improvements
111 N.W. First Street
Suite 2130
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION RQO 07-43

Dear Mrs. Millan-Donovan:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on September 20, 2007 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding four contracts to provide upgrades to Water and Wastewater Treatment Plants.

In your letter, you advised the Commission that in 2006, the Department of Water and Sewer retained two firms to provide services related to the Wastewater and Water Treatment Facilities Master Plan. The firm of Hazen and Sawyer was retained to provide services under the Wastewater Facilities Plan Update. Specifically, the firm is responsible for review of the wastewater system's ability to handle peak flows at each existing and future pump station. The firm is also required to review operations at all County wastewater facilities and provide a plan for necessary capital improvements and upgrades to meet the projected needs of the next 20 years. The final Wastewater Facilities Plan, per consent

decree, must be submitted to the Environmental Protection Agency for review and approval in 2008. The contract expires in 2009. Portions of the plan will be submitted to the State of Florida Department of Environmental Regulation for funding through the State Revolving Loan Program. The firms of CH2M Hill and Milian, Swain and Associates serve as subconsultants.

The Water Facilities Master Plan Consultant provides similar services for transmission of water during average, maximum day and hour flows over a twenty-year horizon. The Water Facilities Master Plan similarly requires the consultant to provide required upgrades including an analysis of maintenance of service during any major system failure or damage to pump stations. The consultant must work with other departmental consultants including the Wastewater Facilities Master Plan team. The contract expires in 2010. The firm of Hazen and Sawyer is serving as Prime Consultant. The firms of Brown and Caldwell, CES Consultants, Ecology and Environment and Cardozo Engineering serve as subconsultants.

SCOPE OF REVIEW

The Prime Consultant or subconsultants on the Water and Wastewater Treatment Facilities Plan Update contracts have been recommended for award on the following contracts. Pursuant to Section 2-11.1(v), the Ethics Commission has jurisdiction over contractors and vendors. Section 2-11.1(j) restricts persons covered by the Conflict of Interest and Code of Ethics ordinance from doing work that conflicts with their independence of judgment in performing their County responsibilities. Pursuant to that section of the Conflict of Interest and Code of Ethics ordinance, the Ethics Commission has delineated certain areas including overlapping responsibilities that would

impair a contractor's independent judgment in the performance of its duties for the County.

TREATMENT PLANT CONTRACTS

1. Central District Wastewater Treatment Plant

A. Facts

The Department of Water and Sewer recently issued a Notice to Professional Consultants to provide architectural and engineering services for upgrades to the Central District Wastewater Treatment Plant. The scope of services requires the consultant to review the existing Central District Wastewater facility and analyze the condition of the current facilities and machinery. The consultant, with the assistance of department staff, will create a prioritized rehabilitation or replacement schedule for the plant facilities. The consultant may also be required to perform engineering services including preliminary site analysis, surveying and contract specifications for structural, electrical and mechanical projects. The consultant will also provide construction management services during construction of the necessary upgrades.

The firm of MWH Americas has been recommended for contract award. Two firms, Cardozo Engineering and Milian, Swain and Associates (MSA) who are providing services as subconsultants under the Wastewater and Water Facilities Master Plan Update contracts will also serve as subconsultants for the MWH Americas team. Under the proposal submitted by MWH Americas, Milian, Swain and Associates (MSA) will primarily be responsible for financial analysis. The firm of Cardozo Engineering will be responsible for permitting and compliance issues.

B. Analysis

The MWH Americas team, including MSA and Cardozo, may perform services related to upgrades to the Central District Wastewater Treatment Facility. However, Cardozo is prohibited from performing any permitting and compliance tasks as a subconsultant under the Wastewater Treatment Facilities Plan Update that concern replacement and rehabilitation of the Central District Wastewater Treatment Plant.

Under the Ethics Commission's prior opinions, Cardozo would have overlapping responsibilities if the firm performed permitting and compliance work regarding the Central District Wastewater Facility in their work as a subconsultant on the Wastewater Facilities Master Plan Update. Therefore, Cardozo may not perform any permitting and compliance tasks related to the Central District Wastewater Treatment Center if the team is awarded the contract.

Since MSA is serving as a subconsultant on the Water Facilities Master Plan Update, there is a smaller possibility of overlapping roles. However, MSA and CDM and MWH Americas must monitor all assignments to ensure that there is no overlap in responsibilities under the two agreements.

2. North District Wastewater Treatment Plant

A. Facts

The Department of Water and Sewer recently issued a Notice to Professional Consultants to provide architectural and engineering services for upgrades to the North District Wastewater Treatment Plant. The scope of services requires the consultant to review the existing North District Wastewater facility and analyze the condition of the current facilities and machinery. The consultant, with the assistance of department

staff, will create a prioritized rehabilitation or replacement schedule for the plant facilities. The consultant may also be required to perform engineering services including preliminary site analysis, surveying and contract specifications for structural, electrical and mechanical projects. The consultant will also provide construction management services during construction of the necessary upgrades.

The firm of Brown and Caldwell has been recommended for award as the prime consultant. Brown and Caldwell is serving as a subconsultant on the Water Facilities Master Plan Updates. CES Consultants, another subconsultant on the Water Facilities Master Plan Updates, is also serving as a subconsultant on the Brown and Caldwell Team. CES will provide regulatory, permitting and construction phase services on the Brown and Caldwell Team.

B. Analysis

Brown and Caldwell may serve as the Prime Consultant on the North District Wastewater Treatment Plant contract. However, Brown and Caldwell may not perform any services related to the North District Wastewater Treatment Plant in its capacity as a subconsultant on the Wastewater Facilities Master Plan Update if the firm is awarded the contract. CES is also prohibited from performing any regulatory and permitting work related to the North District Wastewater Treatment Plant in its capacity as a subconsultant on the Wastewater Facilities Master Plan Update.

Under the Ethics Commission's prior opinions, Brown and Caldwell would have a prohibited conflict of interest if the firm provided services related to the North District Wastewater Treatment Plan in both capacities. Similarly, CES would have a prohibited conflict of interest if the firm provided

regulatory and permitting services on the North District Wastewater Treatment Plant in both capacities. Therefore, the firms are prohibited from performing overlapping roles under the two contracts.

3. South District Wastewater Treatment Plant

A. Facts

The Department of Water and Sewer recently issued a Notice to Professional Consultants to provide architectural and engineering services for upgrades to the South District Wastewater Treatment Plant. The scope of services requires the consultant to review the existing South District Wastewater facility and analyze the condition of the current facilities and machinery. The consultant, with the assistance of department staff, will create a prioritized rehabilitation or replacement schedule for the plant facilities. The consultant may also be required to perform engineering services including preliminary site analysis, surveying and contract specifications for structural, electrical and mechanical projects. The consultant will also provide construction management services during construction of the necessary upgrades.

The firm of CH2Mhill has been recommended for award as Prime Consultant. CH2Mhill is serving as a subconsultant on the Water Facilities Master Plan Updates contract. The firm of Cardozo Engineering, who is serving as a subconsultant on the Water Facilities Master Plan Update, is serving as a subconsultant on the CH2Mhill team. Cardozo will provide Master Planning as well as mechanical and structural engineering services.

B. Analysis

CH2mHill may serve as Prime Consultant on the South District Wastewater Treatment Plant

Upgrades. Cardozo may also serve as a subconsultant on the South District Wastewater Facilities Plan Update. However, Cardozo is prohibited from performing any duties related to the South District Wastewater Facility in its capacity as a subconsultant on the Wastewater Facilities Plan Update.

Under the Ethics Commission's prior opinions, Cardozo would have overlapping responsibilities if the firm performed mechanical and structural engineering work regarding the South District Wastewater Facility in their work as a subconsultant on the Wastewater Facilities Master Plan Update. Therefore, Cardozo may not perform any mechanical and structural engineering tasks related to the Central District Wastewater Treatment Center if the team is awarded the contract.

Since CH2MHill is serving as a subconsultant on the Water Facilities Master Plan Update, there is a smaller possibility of overlapping roles. However, CDM and WASD must monitor all assignments to ensure that there is no overlap in responsibilities under the two agreements.

4. Alexander Orr Water Treatment Plant

A. Facts

The Department of Water and Sewer recently issued a Notice to Professional Consultants to provide architectural and engineering services for upgrades to the Alexander Orr Water Treatment Plant and the South Miami-Dade Water Supply System. The scope of services requires the consultant to review the existing Alexander Orr Wastewater facility and analyze the condition of the current facilities and machinery. The consultant, with the assistance of department staff, will create a prioritized rehabilitation or replacement schedule for the plant facilities. The consultant may also

be required to perform engineering services including preliminary site analysis, surveying and contract specifications for structural, electrical and mechanical projects. The consultant will also provide construction management services during construction of the necessary upgrades

The firm of Camp, Dresser and McKee has been recommended for award. CDM is the Prime Consultant on the Water Facilities Master Plan Upgrade Contract.

B. Analysis

CDM may serve as Prime Consultant for the Alexander Orr Water Treatment Plant if WASD Staff performs any work related to prioritization, scheduling or recommendations regarding upgrades to the Alexander Orr Treatment Plant that will be incorporated into the Water Facilities Master Plan. Further, WASD must monitor all assignments under the Alexander Orr Water Treatment upgrades to ensure that there are no overlapping assignments. Under the Ethics Commission's prior opinions, CDM may not perform overlapping roles under the two contracts. Therefore, WASD staff must perform any work related to recommendations, scheduling and prioritization that will be incorporated into the Water Treatment Facilities Plan Updates.

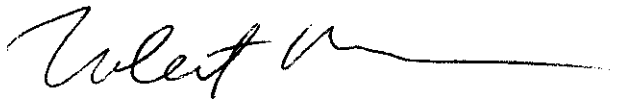
CONCLUSION

The recommended firms may serve subject to the restrictions contained herein. Further, all affected firms must provide the Ethics Commission with a quarterly report (following the Notice To Proceed) of all work orders issued under its respective contract so that the Ethics Commission may monitor compliance with the restrictions in this opinion.

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,

A handwritten signature in cursive script, appearing to read 'Robert Meyers', followed by a long horizontal line extending to the right.

ROBERT MEYERS
Executive Director

cc: Sara Leu, WASD