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August 29, 2008

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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 08-38

Dear Ms. Samuels:

The Commission on Ethics and Public Trust considered your request for opinion at its opinion based on the facts stated in your opinion.

You requested an opinion regarding whether Black and Veatch may serve as bond engineer for the Department of Water and Sewer (WASD).

In your request, you informed the Commission that the Office of Capital Improvements is currently in the selection process for a firm to serve as bond engineer for WASD. The scope of services provides that "the consultant shall be responsible for preparing the Annual Report on the water and sewer utility system before September 1st of each year, setting forth recommendations as to any necessary revisions of rates and charges; determining the amount to be deposited in the renewal and replacement fund during the next fiscal year, conducting an annual inspection of approximately one-third of WASD's facilities and rendering a written report as to the state of the facilities and repair of the system.

The firm of Black and Veatch is currently under contract to perform rate and fee analysis of the county's wholesale and retail water and sewer systems. Black and Veatch was retained in 2006 after the County Commission requested the services of an independent firm to review the rates and fees paid by municipalities that are wholesale customers of the County's water and sewer systems. The firm is responsible for establishing the cost of supplying water and sewer services, the fiscal needs of WASD and validating the rates charged by WASD. Black and Veatch is required to make an annual evaluation over the three years of the contract. The contract includes four one-year option to renew periods.

The Ethics Commission found that Black and Veatch may serve as bond engineer for WASD. The scope of services under the current rates and fees contract does not overlap with the scope of services under the bond engineering agreement. The analysis under the rates and fees is different in scope and purpose than the renewal and replacement analysis undertaken by the bond engineer. The bond engineer does not oversee Black and Veatch in the performance of the rates and fees analysis or use its data and analysis in making the rate and fee analysis required by the bond engineer. Therefore, Black and Veatch may serve in both capacities but should utilize different personnel in performance of the two contracts to preserve the independent review required under the rates and fees agreement.

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

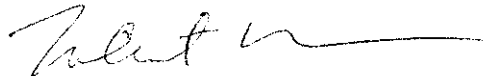
of the project; supervisor or prime on one phase of the project and subcontractor on another or related phase or project). Further, a conflict may exist if there are overlapping roles or responsibilities between two related contracts. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of its contractual obligations.

Black and Veatch does not have any of the conflicts enumerated by the Ethics Commission in prior opinions. The rate and fee analysis is conducted for the purpose of ensuring that WASD is correctly charging customers for use of water and sewer services. The rate analysis undertaken by the bond engineer is for the purpose of ensuring that WASD is receiving adequate revenue to meet its capital needs. Therefore, the scope and purpose of the two functions does not overlap and Black and Veatch may serve in both capacities.

This opinion construes the Conflict of Interest and Code of Ethics ordinance and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics for any questions regarding state law.

If you have questions regarding this opinion, please contact the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,



ROBERT MEYERS
Executive Director