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August 29, 2008

Rodrigo Pigna  
Director of Engineering  
Lockwood, Andrews and Newnam, Inc.  
3390 Mary Street  
Suite 216  
Miami, FL 33133

**RE: REQUEST FOR ADVISORY OPINION RQO 08-42**

Dear Mr. Pigna:

The Commission on Ethics considered your request for an advisory opinion at its meeting on August 28, 2008 and rendered its opinion based on the facts in your letter.

You requested an opinion regarding whether Lockwood, Andrews and Newnam (LAN) may submit an unsolicited proposal related to work the firm is currently doing for the Department of Water and Sewer.

LAN is currently providing engineering and design services for WASD on a 72 inch raw water pipeline from the west side of the Florida Turnpike to N.W. 72<sup>nd</sup> Avenue. The proposed pipeline will transport water from the WASD northwest wellfield to the Hialeah/Preston Water Treatment Plant. The scope of services includes site investigation, geotechnical testing, coordination with utilities and municipalities, preparation of design and contract specifications. The scope of services also includes procurement, permitting and construction phase services.

Miami-Dade County recently adopted an ordinance regulating the submission of unsolicited proposals. The ordinance provides that any person or entity may submit a proposal related to the design, construction, operation, ownership, acquisition or leasing of public infrastructure projects. The County must evaluate the proposal within 90 days. If the Mayor or his designee determines that the proposal is viable, the county may publish the proposal and accept competing proposals for a 45 day period. After the forty-five day

period, the Mayor or his designee shall rank the various proposals. The proposals will initially be evaluated by OCI staff in conjunction with the department(s) who will be responsible for overseeing the project.

LAN would like to submit an unsolicited proposal to Miami-Dade County to convert the project to a design-build contract. The pipeline project is currently designed to be done in three sections with LAN having responsibility for one section. The unsolicited proposal would include design, permitting and construction phase services for the portions of the pipeline not included in the current LAN contract. LAN would also construct the pipeline with a team member.

The Ethics Commission found that LAN may submit an unsolicited proposal for a design-build project related to the 72 inch raw water pipeline as long as the scope of services for the firm under the unsolicited proposal does not overlap with the services under the current work order. Further, the firm may not be involved in any role involving evaluation of the proposal or oversight of the firm's current design and permitting work on the pipeline.

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 or responsibilities between various members of a team (i.e. members serves as prime contractor on one contract and as a subcontractor to another contractor on another contract. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in performance of their contractual obligations.

LAN does not have any of the conflicts stated in the Commission's prior opinions because LAN's proposal would not involve any work covered under the firm's current WASD agreement. Further, LAN would not be involved in procurement related services for their proposal or any competing proposal that must be submitted to County staff for evaluation, selection and negotiation. Finally, LAN will not have

responsibility for oversight of their current work for WASD.  
Therefore, LAN may submit an unsolicited proposal related to the  
firm's current work for WASD.

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 (306)579-2594 or Ardyth Walker, Staff General  
Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

**ROBERT MEYERS**  
Executive Director