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June 24, 2009

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Eduardo Vega  
Assistant Director  
Department of Water and Sewer  
3071 S.W. 38<sup>th</sup> Avenue  
Miami, FL 33146

**RE: REQUEST FOR ADVISORY OPINION RQO 09-19**

Dear Mr. Vega:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 23, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether language should be added to an upcoming solicitation prohibiting participation of consultants who have provided previous design or engineering work on portions of a proposed pipeline project.

In your request, you advised the Commission that the Department of Water and Sewer is planning to issue a solicitation for firms to provide design build services for three pipelines that will transport water from the WASD Northwest Wellfield to the Hialeah Preston Water Treatment Plant. Specifically, the anticipated scope of services provides that the firms will provide design and installation services for three pipelines: 1) a 72 inch raw water main interconnecting to an existing 96 inch raw water main located at NW 74 Street and NW 127<sup>th</sup> Avenue in WASD Northwest Wellfield and connecting to the existing Hialeah Water treatment plant; 2) a 48 inch finished water main from NW 74<sup>th</sup> Street and NW 127<sup>th</sup> Avenue in the Northwest Wellfield to a point just south of NW 117<sup>th</sup> Avenue and NW 58<sup>th</sup> Street in Doral and 3) a 12

inch force main from NW 74<sup>th</sup> Street and 127<sup>th</sup> Avenue to a force main along 58<sup>th</sup> Street and NW 114<sup>th</sup> Avenue in the City of Doral.

WASD has previously used consultants for preliminary design work related to the pipeline project. In 2005, Kimley-Horn was awarded a contract to do engineering design for a raw water main that will run from North Poinciana Boulevard to NW 72<sup>nd</sup> Avenue and 58<sup>th</sup> Street. The work included public involvement, value engineering and environmental site assessment. The subcontractors were Robayna and Associates, GEOSOL, CES Consultants and Civil Works. In 2007, Lockwood, Andrews and Newnam was awarded a contract to do engineering design for a 72 inch raw water pipeline that run from the turnpike to NW 72<sup>nd</sup> Avenue near 58<sup>th</sup> Street. The contract is ongoing with the work anticipated to be completed in the fall of 2009. The firm's subconsultants are Media Relations Group, Nadic Engineering Services, TBE Group, P(3)SM, L.L.C., APCTE and BCC Engineering. The plans and studies will be distributed to proposers for the design-build project.

The Commission found Kimley-Horn and Associates, Lockwood, Andrews and Newnam and their subconsultants may submit proposals related to the design-build contract. The Ethics Commission has consistently held that a firm may respond to a solicitation where the firm has provided earlier planning or design work. Therefore, the firms may submit proposals related to the design -build contract.

In several prior opinions, the Ethics Commission has opined that continuation of prior work or work on a later phase of the same project does not constitute a conflict of interest. In RQO 02-166, the Ethics Commission opined that a seaport contractor could work on the construction phase of a project where the firm had previously done studies related to the same project. In RQO

05-60 the Ethics Commission opined that MC Harry could perform work on a courthouse renovation project although it had performed the original studies that led to the current agreement. In RQO 06-06 and 06-11, the Ethics Commission opined that an airport contractor could bid on work in the North Terminal where the firm had previously done design work.

Accordingly, Kimley-Horn, Lockwood, Andrews and Newnam and their subconsultants may respond to a solicitation for the pipeline design-build project as long as any related work is completed prior to the commencement of work under the new agreement.

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