



FILE COPY

May 20, 2010

Alberto Argudin
Vice-President
ADA Engineering, Inc.
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Miami, FL 33122

ETHICS COMMISSIONERS

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ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

RE: REQUEST FOR ADVISORY OPINION-RQO 10-14

Dear Mr. Argudin:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on May 20, 2010 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the firm may simultaneously provide services as an independent consultant on the Munisport Landfill for the Department of Solid Waste and as a consultant on a stormwater master plan for the City of North Miami.

In your request, you advised the Commission that the Munisport Landfill is a former municipal landfill located in the City of North Miami. In the 1990's the City of North Miami and the Environmental Protection Agency entered into a consent decree for clean-up of the landfill. The clean-up consists of a cap on the waste deposits; constructing a stormwater management system; restoring certain wetlands; managing landfill gas and collection and treatment of the groundwater. In 2003, the City of North Miami transferred the property to private developers. The development agreement required the developer to assume responsibility for the clean-up. Subsequently, in 2004, Miami-Dade County established an escrow fund to pay the City's expenses for cleanup of the Munisport Landfill. The Department of Solid Waste Management (SWM) is responsible for

administering this fund. Pursuant to the agreement between Miami-Dade County and the City of North Miami, the County must approve all plans related to the cleanup of the landfill. The plans must be approved prior to payments from the escrow fund.

The stormwater management system is used to prevent further contamination of the groundwater from stormwater that falls into the contaminated area. A receiver recently assumed responsibility for the property. The City of North Miami, through the receiver, has submitted plans for a stormwater management system to the agencies that have jurisdiction including the Department of Solid Waste, DERM and the Florida Department of Environmental Protection. The final shape of the stormwater management system will be contingent on the final development plan for the Munisport area.

ADA Consulting has been retained by the Department of Solid Waste to oversee construction of the cleanup facility including the stormwater management system. The developer may also hire a consultant to design and review plans related to the stormwater management system based on the changing development plans for the area. The plans would be reviewed by ADA as the consultant for the Department of Solid Waste. ADA does not have oversight responsibilities related to other stormwater projects in the City of North Miami.

The Commission found ADA Engineering may not simultaneously serve as the independent consultant for the Munisport Landfill for the Department of Solid Waste and provide stormwater master plan services for the City Of North Miami. Under the Commission's prior opinions, ADA will have overlapping responsibilities under the two roles.

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 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.

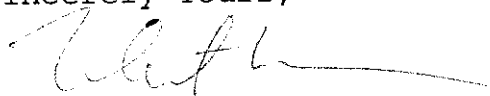
In the instant case, ADA will have overlapping responsibilities if the firm is reviewing North Miami's stormwater plans for the Munisport Landfill for the Department of Solid Waste at the same time as it serves as a stormwater consultant for the City of North Miami. The City of North Miami retains final responsibility for the cleanup under its agreement with the developer. As a consultant for the City of North Miami, ADA's independence of judgment in providing oversight on the landfill closure for the Department of Solid Waste may be compromised by any work for the City of North Miami on related matters. Therefore, ADA has an impermissible conflict of interest and may not simultaneously serve in both capacities.

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 'R. Meyers', with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director