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October 29, 2010

Jose Vega
Vice-President
VM Construction, Inc.
8370 West Flagler Street
Suite 206
Miami, FL 33144

RE: REQUEST FOR ADVISORY OPINION-RQO 10-27

Dear Mr. Vega:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 28, 2010 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether Tom Christ may serve as a member of a design-build team for a WASD project. Christ was previously employed by URS which did design work on the project.

In your request, you advised the Ethics Commission that the Department of Water and Sewer is currently seeking proposals for a design-build project for on-site chlorination and emergency generation systems at John E. Preston and Alexander Orr Water Treatment Plants. The solicitation is pursuant to an unsolicited proposal to provide design-build services for the project.

The unsolicited proposal is for the design of a "turnkey" design to provide on-site chlorination systems at the two sites. Specifically, the proposal is to provide

accelerated professional services necessary for the design, constructability reviews, regulatory permitting, construction management, construction and demonstration of new on-site chlorine generation systems (OSG) systems and emergency generator facilities.

In 2007, URS and Camp, Dresser and McKee (CDM) were retained to design on-site chlorination systems for the two plants. Each design was specific to the particular water treatment plant. Only two firms provide the equipment necessary for onsite chlorination systems. The plans were designed to use either system. During the design phase, the two firms were tasked to meet with the manufacturers to determine whether the design met the technical needs for the equipment. The result of that consultation was the unsolicited proposal.

The proposal is for a single design which can be used at both facilities which uses the proprietary equipment of ETC, a member of the proposer's team. The original design of URS and CDM were provided as part of the solicitation package but will be changed for the turnkey approach.

In August 2010, URS was given the task of developing the design criteria and bid specs for the project. Specifically, the firm is to provide the commercial terms and conditions of the contract including a sample agreement with Miami-Dade County, the scope of services, performance guarantees and warranties, technical requirements and technical scoring criteria.

Tom Christ worked for URS while the company worked on the original design. In 2009, Christ served as Principal in Charge of the original design project. Earlier this year, Christ resigned his position with the company. Christ did not perform any work on the design criteria work order which was issued after he resigned.

The Ethics Commission found Tom Christ may serve as a member of the design-build team because he did not work on the design criteria for the project and does not have a competitive advantage over any other proposer for the project.

The solicitation provides that, pursuant to state law, "a design professional who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design criteria package." The statute defines "design criteria" as concise, performance-oriented drawings or specifications of the public construction project. The purpose is to furnish sufficient information for a firm to prepare a bid or proposal or to permit an agency to enter into a negotiated design-build contract.

The statutory language permits Christ to serve as a member of the team because he was not a member of the firm at the time that it was tasked with the responsibility of preparing the design criteria package. Therefore, the statute does not apply to the work performed by Christ while he was employed by URS.

Further, under the Ethics Commission's prior opinions, Christ is not prohibited from serving as a member of the team because he provided prior work on a different phase of this project. The previous work done by Christ was provided to the proposer prior to receipt of the unsolicited proposal. Therefore, Christ does not have any advantage. Moreover, the new project is a design-build project because it contemplates a different design and approach than was used by URS in its prior design. Finally, the Ethics Commission has consistently held that a person is not precluded from serving as a member of a team because the person provided related design work on an earlier phase of the project. See RQO 09-31 (finding that an

architect could provide design services for a Vizcaya renovation project although he had previously worked on detailed designs for the project). Accordingly, Christ may serve as a member of a design-build team although he provided related design work for his former employer.

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 black ink, appearing to read 'R. Meyers', with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director