



Via First Class Mail
and email at mbierman@wsh-law.com

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December 10, 2012

Mitchell Bierman, Esq.
Weiss Serota Helfman
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134

Re: RQO 12-12

CH2MHill's right to bid on Seaport cargo gate improvements contract

See Seaport Solicitation No. E12-SEA-01, Sec. 1.15, Conflict of Interest
Related to Section 2-11.1 of the Code of Miami-Dade County

Dear Mr. Bierman:

IN A PUBLIC MEETING on November 27, 2012, the Miami-Dade Ethics Commission opined that CH2MHill may bid on the Seaport engineering design contract, referenced as Solicitation No. E12-SEA-01, as long as CH2MHill shares its draft study report with all other proposers. Additionally, if CH2MHill is successful in winning the engineering design contract, CH2MHill shall be removed from the validation phase of the project.

AS BACKGROUND, CH2MHill was the successful bidder on a contract to complete a planning study to expand cargo terminal gates at the Seaport.¹ Unlike some solicitation documents that specifically warn proposers that planning study contractors will be precluded from bidding on future work on the same project, the cargo gate solicitation did not advise bidders of any future bidding prohibitions.

CH2MHill bid on the next phase of the gate improvement project—the engineering design contract.² A member of the selection committee challenged the right of CH2MHill to bid on the engineering design contract because the successful bidder must validate the original planning study design.³ The objection was based on a perceived conflict of interest for

¹ The fee for this contract was approximately \$200,000.

² This contract is valued at approximately \$2,250,000.

³ Typical tasks related to the validation process include assessing the overall layout of the gate areas and road networks to satisfy security requirements and to meet future demands in cargo volume. Sec. 1.2, Scope of Services, E12-SEA-01.

CH2MHill if the company were to review its own work under the previous contract.

AUTHORITY TO OPINE in this matter is found in the solicitation documents, which are approved by the Board of County Commissioners.⁴ The Ethics Commission has opined in similar circumstances, finding generally that contractors who have completed earlier planning studies are not precluded from bidding on subsequent design work on the same project.⁵

The CH2MHill matter is somewhat distinguishable from previous opinions, however, because the solicitation documents in this case state that the engineering design contractor must *validate* the earlier planning study.⁶ Since the validation portion of the engineering design contract is very small compared to the entirety of the contract, the Ethics Commission concluded that if CH2MHill were successful in winning the engineering design contract, the conflict could be avoided by removing CH2MHill from validating its earlier planning study.

Additionally, to minimize any advantage that CH2MHill may have obtained by doing the earlier planning study, CH2MHill shall agree to distribute its draft study report to all other proposers.⁷

IN CONCLUSION, the Ethics Commission opined that CH2MHill may bid on the Seaport engineering design contract, referenced as Solicitation No. E12-SEA-01, as long as CH2MHill shares its draft study report with all other proposers. Additionally, if CH2MHill is successful in winning the engineering design contract, CH2MHill shall be removed from the validation phase of the project.

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.

⁴ "Questions regarding conflicts of interest shall be submitted to ... the Ethics Commission.... The Ethics Commission shall evaluate the request in order to determine if any possible conflicts of interest exist. Determinations by the Ethics Commission shall be rendered prior to the negotiation authorization recommendation being issued to the County Mayor or County Mayor's designee, and shall be deemed final." Sec. 1.15, Conflict of Interest Related to Section 2-11.1 of the Code of Miami-Dade County, FL, E12-SEA-01.

⁵ See RQO 02-166, which relates to a Seaport project; RQO 05-60, which relates to the Courthouse; RQO 07-41 and RQO 07-51, which relate to the Zoo; RQO 08-18, which relates to WASH sewer repairs; RQO 09-31, which relates to Vizcaya; as well as others.

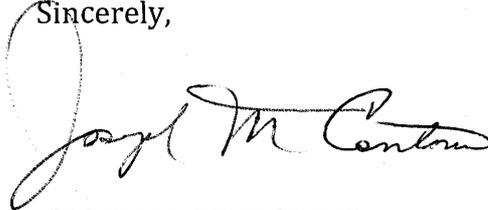
⁶ Sec. 1.2, Scope of Services, E12-SEA-01.

⁷ If an advantage was gained by CH2MHill, which enables it to submit a more favorable bid to the County, the County should not be denied the benefit of a more favorable bid simply because of a bidder's experience.

Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me or Victoria Frigo, Staff Attorney, if we can be of further assistance.

Sincerely,



JOSEPH M. CENTORINO
Executive Director

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Bierman, for
CH2MHill

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