



MIAMI-DADE COUNTY
COMMISSION ON ETHICS & PUBLIC TRUST

May 22, 2013

Ignacio L. Lizama, Associate
CDM Smith, Inc.
800 Brickell Ave., Suite 500
Miami, FL 33131

Re: RQO 13-05, Interpretation of Overlapping Assignments, as per RQO 07-43

Dear Mr. Lizama:

At a public meeting on April 11, 2013, the Miami-Dade Ethics Commission issued a nonbinding advisory opinion stating that CDM Smith, Inc., has no conflict to provide engineering plans to install a 48-inch water main as part of its contract at the Alex Orr Water Treatment Facility. The Ethics Commission reasoned that County staff at the Water and Sewer Department (WASD), not CDM Smith, was ultimately responsible for making this recommendation for the Alex Orr Facility under the master plan.

AS BACKGROUND, in 2007, the Ethics Commission advised CDM Smith, Inc., that it could bid on the Professional Services Agreement to develop a master plan for upgrading the County's water facilities as long as CDM Smith was not ultimately responsible for making recommendations about upgrading the Alex Orr Water Treatment Facility.¹ This limitation was to prevent CDM Smith from recommending projects under the master plan that CDM Smith would be in a unique position to later execute under its engineering services contract at the Alex Orr Facility.

CDM Smith agreed to the conditions of the ethics opinion, and, as a result, staff from WASD was ultimately responsible for all work related to recommendations, prioritization, and scheduling of upgrades for the Alex Orr Facility under the master plan. Additionally, WASD staff documented these activities in quarterly reports and sent them to the Ethics Commission for review.

¹ RQO 07-43 issued to Luisa Millan-Donovan, Chief, Professional Contracts Division, Office of Capital Improvements.

The Ethics Commission recently opined that it would not provide binding opinions regarding organizational conflicts of interest unless the contract germane to the issue clearly established the Ethics Commission as the authority to opine and identified the standards to be applied.² In the instant case, however, the Ethics Commission agreed to offer further direction to CDM Smith based on the aforementioned opinion in 2007 related to CDM Smith.

FOR GUIDANCE,³ the Ethics Commission looked to the Code of Federal Regulations, which explicitly states that a contractor cannot specify products and services for government work that only the contractor itself can provide.⁴ In the instant case, CDM Smith was prohibited under its Professional Services Agreement from making final recommendations regarding upgrades to the water main or to any other components at the Alex Orr Facility under the master plan. Consequently, CDM Smith has no conflict to proceed with the work to install a 48-inch water main at the Alex Orr Water Treatment Facility because CDM Smith did not ultimately recommend this work under the master plan.

This opinion construes the Miami-Dade County Ethics Code and is not applicable to other conflicts under County, State, or Federal laws and regulations. Inquiries regarding possible conflicts under State ethics laws should be directed to the State of Florida Commission on Ethics.

If you have any questions regarding this opinion, please call the undersigned or Senior Staff Attorney Victoria Frigo at 305-579-2594.

Sincerely yours,



JOSEPH M. CENTORINO
Executive Director and General Counsel

copies:Ralph Terrero, Assistant Director, WASD
Trujillo, Brian, Professional Engineer, WASD
Vivian Cortina, Executive Secretary to Deputy Director, WASD

² See RQO 13-03, issued to Benedict P. Kuehne, Esq., on behalf of Ovations Food Services LP.

³ The County Ethics Code at Sec. 2-11.1 does not address organizational conflicts of interest.

⁴ "To overcome the possibility of bias, contractors are prohibited from supplying a system or services acquired on the basis of work statements growing out of their services...." 48 CFR § 9.505-2(b)(2)(2013).