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April 13, 2017

Miriam Singer
Assistant Director, ISD Procurement Division
111 NW 1st Street
Suite 2130
Miami, FL 33128

Re: **RQO 17-02** Miriam Singer/ ISD Project No. A16-MDAD-02
Organizational Conflicts of Interest

Dear Ms. Singer:

At a public meeting on April 12, 2017, the Miami-Dade Commission on Ethics & Public Trust (COE) opined that the Letter of Instruction issued by the COE on April 11, 2013 titled, "Organizational Conflicts of Interest" be amended to reflect the procedures outlined in Addendum #8 of ISD Project No. A16-MDAD-02 attached herein, for the handling of organizational conflicts of interest in the County's procurement process. Specifically, the COE's role in these matters is limited to the Executive Director's approval of the County's analysis and manner of addressing organizational conflicts of interest. Furthermore, it is recommended that the procedure outlined in Addendum #8 be amended to include that disapproval by the Executive Director or his/her designee may be appealed to the COE board by the MDAD Director.

Additionally, any consideration by the COE of the organizational conflicts of interest identified in the proposals submitted by the consultant firms on the aforementioned contract (Heery International, AECOM and Burns & Mc Donnell Engineering) will be handled in the manner prescribed in Addendum #8.

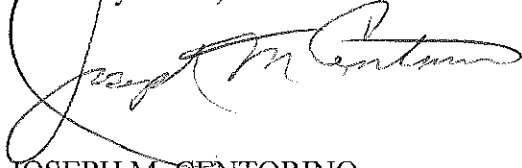
The rationale underlying the adoption of the methodology as provided in Addendum #8 is that this approach to organizational conflicts of interest in procurement emphasizes accountability, transparency and efficiency in the procurement process by giving all bidders or proposers the opportunity to compete on a level playing field, even with pre-existing organizational conflicts of interest, as long as these conflicts are disclosed, identified and addressed in a manner consistent with the County's procedures.

In the spirit of RQO 17-02, the COE Letter of Instruction, titled "Organizational Conflicts of Interest" dated April 2013, is amended to reflect that the procedures regarding the role of the COE

in all organizational conflicts of interest in a local government entity's procurement shall be in accordance with the methodology of Addendum #8 with the addition that disapproval by the COE Executive Director or his/her designee may be appealed by the local government entity to the COE board.

If you have any questions regarding this opinion, please contact the undersigned or Staff Attorney Martha D. Perez at (305) 579-2594.

Sincerely Yours,

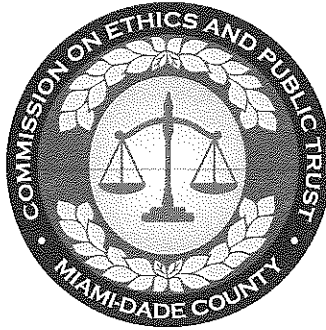
A handwritten signature in black ink, appearing to read "Joseph M. Centorino". The signature is fluid and cursive, with a large initial "J" and "C".

JOSEPH M. CENTORINO
Executive Director and General Counsel

Attachments/
Amended Letter of Instruction
Addendum #8 of ISD Project No. A16-MDAD-02

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AMENDED LETTER OF INSTRUCTION ORGANIZATIONAL CONFLICTS OF INTEREST

At a public meeting of the Miami-Dade County Commission on Ethics & Public Trust ("Ethics Commission"), the Commission stated that its role in the handling of organizational conflicts of interest in connection with a contract with a local government entity will be limited to the following circumstances¹:

- 1) The terms of the local government contract or proposal must state the standards by which the organizational conflicts of interest will be determined.
- 2) Disclosures of organizational conflicts of interest shall be reported by the local government entity to the Ethics Commission.
- 3) The local government entity will analyze and address organizational conflicts of interest on a case by case basis.
- 4) The local government entity's decision of how to address an organizational conflict of interest shall be subject to the approval of the Executive Director of the Ethics Commission or his/her designee, who will render his/her determination promptly. Disapproval by the Executive Director or designee may be appealed by the local government entity to the Ethics Commission board.
- 5) Copies of decisions regarding the resolution of a reported conflict of interest shall be forwarded to the Ethics Commission.

¹The terms outlined herein derive from the language included in Miami-Dade County ISD Project No. A16-MDAD-02, Addendum#8, "Clarification", Paragraphs 1-8, which sets the standards associated with the handling of organizational conflicts of interest in procurement matters. The standards are comparable to those established under 48 C.F.R. § 9.5, Federal Acquisition Regulation (FAR).

ADDENDUM NO. EIGHT

DATE: September 13, 2016
DEPARTMENT: Miami-Dade Aviation Department
ISD PROJECT NAME: Terminal Optimization Program – Project Support Services
ISD CONTRACT NUMBER: A16-MDAD-02
SUBMITTAL DATE: September 23, 2016 (NEW)
CONSULTANT COORDINATOR: Pablo Valin

This Addendum is issued to clarify and/or modify the previously issued Notice to Professional Consultants (NTPC), and is hereby made part of the NTPC. All requirements of the NTPC not modified herein shall remain in full force and effect as originally set forth. Please be sure to acknowledge receipt of this Addendum on the Letter of Qualifications (LOQ) - Section (I) – Project Information.

MODIFICATIONS:

1. Delete the following language in Section 1.8, SCHEDULE:

Deadline for Receipt of Proposals: September 16, 2016 at 3:30 P.M. (Local Time)
Location: Miami-Dade County, Clerk of the Board
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 17-202
Miami, Florida, 33128

And replace with the following text:

Deadline for Receipt of Proposals: September 23, 2016 at 3:30 P.M. (Local Time)
Location: Miami-Dade County, Clerk of the Board
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 17-202
Miami, Florida, 33128

CLARIFICATION:

1. In addition to Section 1.16, Conflict of Interest Related to Section 2-11.1 of the Code of Miami-Dade County, FL, all participating consultants must comply with the following:

Organizational Conflict of Interest

1. Policy

Miami-Dade County (the "County"), through its Miami-Dade Aviation Department (MDAD) adopts the provisions of this section to govern potential conflicts of interest in its procurement of consultants to implement the Terminal Optimization Program (the "Program"). It is the policy of the County, implemented through this section, to identify, analyze and address organizational conflicts of interest that might otherwise exist in order to maintain the public's trust in the integrity and fairness of the County's contracting for the Program and to protect the business interests of the County thereby safeguarding public dollars. This policy shall be supplemental to and not in derogation of the requirements of law relating to conflicts of interest including, but not limited to, the County's Code of Ethics.

2. **Definitions**

Organizational conflict of interest situation in which a consultant: (a) under the contract, or any part thereof, including a particular work order or defined task, is required to exercise judgment to assist the County in a matter such as in drafting specifications or assessing another consultant's or contractor's proposal or performance and the consultant has a direct or indirect financial or other interest at stake in the matter, so that a reasonable person might have concern that when performing work under the contract, the contractor may be improperly influenced by its own interests rather than the best interest of the County, or (b) would have an unfair competitive advantage in a County competitive solicitation as a result of having performed work on a County contract that put the consultant in a position to influence the result of the solicitation.

Affiliates: business concerns are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Sub-consultants: firms under contract with the prime consultant.

3. **Certification of no organizational conflict of interest**

The consultant's: (a) execution of the contract or any agreement to perform any work under a work order or (b) making a claim for payment under the contract, constitutes the consultant's certification to the County that the consultant or its subconsultants do not have knowledge of any organizational conflicts of interest to exist in performing the work under the contract. False certifications may be considered a material breach of the contract and the consultant may be liable to the County for a false claim under the County's false claim ordinance. At any time in anticipation of awarding the contract, or during the performance of the contract, the County may require the consultant to execute an express written certification that after diligent inquiry the consultant does not have knowledge of any organizational conflict of interest. The County may also require the consultant to set forth in writing the scope of the inquiry conducted to make the express certification. Failure to make diligent inquiry, to disclose a known conflict or potential conflict, or to execute the documents required to be produced may be considered, if pre-award, a reason for disqualification of the proposal, and following award, a material breach of the contract.

4. **Identification of organizational conflict of interest**

The consultant and subconsultants shall be obligated to disclose to the County any organizational conflict of interest, or the potential for the same to occur, immediately upon its discovery. The disclosure shall be in writing, addressed to the Contract Manager identified in the contract specifications. The disclosure shall identify the organizational conflict of interest with sufficient detail for the County's analysis and shall propose a method to address the same. Such disclosure shall also be reported to the Office of the Inspector General (OIG) and the Commission on Ethics and Public Trust (COE). The consultant's/subconsultants' failure to identify an organizational conflict of interest, or to disclose the same to the County in the manner set forth in this Section, may be considered a material breach of the contract. Each solicitation shall also require respondents to address the methodology proposed to identify and address any potential organizational conflict of interest, particularly in those instances where the proposer offers to use the same sub-consultants which may be primes or sub-consultants in other Program contracts where such use is not specifically prohibited by the advance restrictions set forth in this policy. The potential for organizational conflicts of interest, and the methodology offered to prevent organizational conflicts of interest, may be evaluated by the County as a criterion for selection as set forth in the applicable competitive solicitation documents.

5. **Addressing organizational conflicts of interest**

The County will analyze and address organizational conflicts of interest on a case-by-case basis, because such conflicts arise in various, and often unique, factual settings. The Director of MDAD, subject to the approval of the Executive Director of the Commission on Ethics or his designee, shall make the decision of how to address an organizational conflict of interest. The Executive Director of the Commission on Ethics or his designee shall render its determination promptly to avoid impacting the Program. The County shall consider the specific facts and circumstances of the contracting situation and the nature and potential extent of the risks associated with an organizational conflict of interest when determining what method or methods of addressing the conflict will be appropriate. When an organizational conflict of interest is such that it risks impairing the integrity of the Program, then the County must take action to substantially reduce or eliminate those risks. If the only risk created by an organizational conflict of interest is a performance risk relating to the County's business interests, then the County shall have broader discretion in accepting some or all of the performance risk, but only when the potential harm to the County's interest is outweighed by the expected benefit from having the conflicted consultant perform the contract. The County shall balance risks created by any organization conflict of interest against potential impacts to the Community Business Enterprise community in analyzing the appropriate method of addressing any organizational conflict of interest.

6. **Measures to address organizational conflicts of interest**

The measure, or combination of measures, which may be appropriate to address an organizational conflict of interest, if any, shall be decided by the Director of MDAD and include, but are not limited to: (a) avoidance of risk through reduction of subjectivity in the analysis or by defining work tasks and deliverables with specificity, (b) requiring the prime and/or its subs to implement structural barriers (firewalls) and internal corporate controls, (c) limiting sub-consultants or personnel to be involved in a work assignment, (d) employing specific hourly limits on defined tasks, (e) limiting or prohibiting certain pass through fees and markups, (f) executing a mitigation plan which will define specific consultant and sub-consultant duties to mitigate organizational conflicts of interest, (g) requiring sub-consultants who are conflict free to perform identified areas of work, (h) requiring the consultant or its sub-consultants to adopt, disseminate and instruct staff on conflict of interest identification and remediation procedures and (i) relying on more than one source or on objective or verifiable data or information.

7. **Documentation and evaluation**

The Director of MDAD will set forth in the contract file a written explanation of the methodology used to address an identified organizational conflict of interest. The County shall periodically evaluate the effectiveness of the methodology in the protection of the Program. Upon the rendering of a decision regarding the resolution of a reported conflict of interest, a copy of such finding shall be forwarded to the OIG and the COE.

8. **Organizational conflicts of interest which are not remedied**

If in the sole discretion of the County there is no measure or combination of measures which protect the County against the organizational conflict of interest, then the consultant may not perform the subject work. The County may in its discretion, if pre-award, decide not to award the contract to the affected consultant, and following award, terminate the contract, or portion of the contract, which the consultant has materially breached because of such inability to perform.

2. The text noted above effectuates the changes outlined in Clarification No. 1 of Addendum No. 5.

ALL OTHER PROVISIONS OF THE ORIGINAL "NOTICE TO PROFESSIONAL CONSULTANTS" REMAIN UNCHANGED.

ec: Amelia M. Cordova-Jimenez, MDAD
Clerk of the Board