



February 28, 2003

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STAFF GENERAL COUNSEL

Carlos M. Gil-Mera  
Principal  
A&P Consulting Transportation Engineers  
10305 N.W. 41st Street  
Suite 115  
Miami, FL 33178

**RE: REQUEST FOR ADVISORY OPINION 03-24**

Dear Mr. Gil-Mera:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 28, 2003 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding your firm's ability to bid on a Department of Water and Sewer (WASD) contract.

In your request, you advised the Commission that the Department of Water and Sewer is seeking a program manager for the Comprehensive Lateral Investigation and Replacement Program. The Program Manager's responsibilities will include: managing the program and the 10 million dollar budget for inspection and repair of laterals; writing specifications for lateral repair, project tracking and scheduling; planning and preparing written progress reports and maintaining a database for the peak flow model.

The Lateral and Investigation Program is one phase of a Water and Sewer Department project to comply with two federal consent decrees

between the Environmental Protection Agency and the Department of Water and Sewer. Other phases of the project included a pump station improvement program and Infiltration, Exfiltration and Inflow analysis.

The Notice to Professional Consultants for the Lateral Investigation and Replacement Program requires consultants to file notice of any potential conflicts and seek an advisory opinion. The addendum states that "Prime Consultants must identify whether they or any of their subconsultants, or members have participated in any Miami-Dade Water and Sewer Department's current and previous design and program management services for sanitary sewer systems. In identifying themselves or any such subconsultants, or members, the Prime Consultant must identify the specific work that they, the subconsultant, or member performed or work to be performed on any Miami-Dade Water and Sewer Department's current and previous design and program management services for sanitary sewer systems as well as the work to be performed as part of this solicitation, Program Manager for Comprehensive Lateral Investigation and Replacement Program. Additionally, a statement is required as to how this work is sufficiently different so as not to pose a conflict of interest. Determinations by the Ethics Commission shall be deemed final. Any Prime Consultant, subconsultants, or members found to have a conflict of interest will render the Prime Consultant's submittal non-responsive.

APCTE has not done any work for WASD. The firm's team will include three other firms: Black and Veatch Corporation, CIMA Engineering Corporation, HNTB and H.J. Ross Associates. Black and Veatch and CIMA Engineering has not done any work for WASD.

HNTB has not had a contract with WASD but a principal employee did work on the Infiltration, Exfiltration and Inflow project

and the Pump Station Improvement Program. Pedro Cabal served as a Contract Administrator in the Infiltration, Exfiltration and Inflow project and an inspector in the pump station improvement project.

H.J. Ross has not served as a prime consultant on a WASD contract. However, H.J. Ross did serve as a subconsultant to CIVIL-CADD on a WASD contract. The contract was not related to any of the consent decree projects.

The Commission found that APCTE and its consultants may serve as Program Manager for the Lateral Investigation and Replacement Program. Since APCTE has not previously worked on a WASD contract, the firm does not have a conflict. Further, HTNB and H.J. Ross' prior work does not constitute a conflict with this contract.

In the present case, the work done by the HTNB principal was a consent decree program but the scope of work does not overlap with the scope of work under the Lateral program. Further, the employee is no longer employed by a firm working on any WASD contract so there is no present conflict.

Additionally, H.J. Ross' previous work as a subcontractor is not a conflict because the projects are unrelated to the Lateral program.

Therefore, APCTE and the other team members may serve as Program Manager for the Lateral Investigation and Replacement program.

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 the opinion, please call the undersigned at (305) 579-2954 or Ardyth Walker, Staff General Counsel at (305) 579-2653.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS

Executive Director