



ETHICS COMMISSIONERS

Kerry E. Rosenthal, Chairman
Robert H. Newman, Vice Chairman
Gail Dotson
Dawn Addy
Elizabeth M. Iglesias

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

March 3, 2003

Stuart Oppenheim
Vice-President
Brown and Caldwell
8300 N.W. 33rd Street
Suite 100
Miami, Florida 33122

RE: REQUEST FOR ADVISORY OPINION 03-31

Dear Mr. Oppenheim:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 27, 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 Investigation and Replacement 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.

Brown and Caldwell has worked on three WASD contracts related to sanitary sewer systems. The firm's tasks on these contracts included work on the wastewater treatment plants, pump station inspections and rehabilitation and

drafting the design manual for the force main and pumping station.

The Commission found that Brown and Caldwell may serve as Program Manager for the Lateral Investigation and Replacement Program. Brown and Caldwell's prior work for WASD does not overlap with the scope of work on the Lateral program. Therefore, Brown and Caldwell may serve as Program Manager for the Lateral program. However, Brown and Caldwell may not oversee a contractor on the Lateral program with whom it serves as a subcontractor on another project or work with an affiliated firm on any phase of the Lateral 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) 350-0616.

Sincerely Yours,



ROBERT MEYERS
Executive Director