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November 16, 2005

Faith Samuels
Senior A/E Consultant Selection Coordinator
Office of Capital Improvements
Suite 2130
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION RQO 05-112

Dear Ms. Samuels:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on November 15, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the financial disclosure requirements of 2-11.1(i)(4) apply to general contractors who perform services under a design-build contract.

In your request, you advised the Ethics Commission that the Office of Capital Improvements is currently in negotiations with a general contracting firm to perform services under a design-build contract. Under a design-build contract, a single contract covers both the design and construction phases of a project. The prime contractor in a design-build contract may be a general contractor, an architectural and engineering firm or a joint venture composed of a general contracting firm and an architectural and engineering firm.

The Ethics Commission found that The Conflict of Interest and Code of Ethics ordinance does

not require general contracting firms who provide services under a design-build contract to provide financial disclosure. Section 2-11.1(i)(4) provides that " all persons or firms providing professional services as defined by Section 2-10.4 (a) and (b) of the Code of Miami-Dade County or any municipalities, their agencies or instrumentalities, shall comply with the filing requirements of subsection (i)(1) above within ninety days of the effective date hereof. All persons or firms subsequent to the effective date of this section, which engage in competitive negotiation with Miami-Dade County or any of its municipalities, their agencies or instrumentalities under and pursuant to Section 2-10.4 of the Code of Miami-Dade County shall comply with the reporting requirements of subsection (i)(1) of this section within thirty days of execution of a contract arising out of said competitive negotiations and prior to any payments from said County municipalities or other agencies or instrumentalities."

Section 2-10.4 governs the acquisition of professional architectural and engineering services by the County. Section 2-10.4(1)(a) and (b) defines professional services as "those services within the practice of architecture, engineering, landscape architecture, land surveying and mapping as defined by the laws of the State of Florida; or those performed by an architect, professional engineer, landscape architect or registered surveyor and mapper in connection with his or her professional employment or practice. Section 2-10.4 defines a design-build contract as "a single contract for the design and construction of public construction project". Finally, Section 2-10.4 states that design-build contracts shall be governed as provided in the corresponding administrative order.

Administrative Order 3-39 governs the process for acquisition of professional services,

capital construction contracts and change orders. Administrative Order 3-39 defines a design build firm as a partnership, corporation or other legal entity that:

- a. is certified under Section 489.119 of Florida Statutes to engage in a contract through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent: or
- b. is certified under Section 471.023 of Florida Statutes to practice engineering; certified under Section 481.219 to practice architecture or certified under Section 481.319 to practice landscape architecture.

The definition of professional services under the ordinance and the corresponding administrative order is identical to the definition provided under §287.055, F.S. (2004).¹ 287.055 provides that the requirements therein do not apply "to the procurement of design-build contracts by any agency and the agency must award design-build contracts in accordance with the procurement laws, rules and ordinances applicable to the agency." Section 2-10.4 and Administrative Order 3-39 provides that its application in regard to design-build contracts shall be as in 287.055.

Since the financial disclosure requirements of 2-11.1(i)(4) are limited to firms who provide professional services and only AE firms provide professional services, the requirements do not extend to general contracting firms. However, the requirements of 2-11.1(i)(4) would apply to an architectural and engineering firm who served as prime consultant under a design-build

¹ §287.055 (2)(a), F.S. (2005) defines professional services as " those services within the scope of practice of architecture, professional engineering, landscape architecture or registered surveying and mapping as defined by the laws of this state or those performed by any architect, professional engineer, landscape architect or registered surveyor and mapper in connection with his or her professional employment or practice. "

contract or to a joint venture between a general contractor and an architectural and engineering firm for a design-build contract.

Therefore, Section 2-11.1(i)(4) does not require general contracting firms who serve as prime contractors on a design-build contract to provide financial disclosure. The financial disclosure requirements for firms who provide professional services only apply to architectural and engineering firms, who serve as prime consultant or to joint ventures, because only AE firms provide professional services as defined by the relevant county ordinance.

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 this opinion, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS
Executive Director