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June 24, 2005

Paul Voight  
Chief  
Airports & Contracts Section  
DERM  
33 S.W. 2<sup>nd</sup> Avenue  
Suite 88  
Miami, FL 33130

**RE: REQUEST FOR ADVISORY OPINION 05-61**

Dear Mr. Voight:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 23, 2005 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether Dames and Moore may perform services under a DERM work order analyzing various approaches to computer models for the wastewater system and respond to a WASD RFP to develop a computer model for the wastewater system.

In your request, you advised the Ethics Commission that Dames & Moore currently has an environmental engineering contract with DERM. DERM is currently seeking to assign the firm the project of performing a Dynamic/Steady State Computer Modeling Comparison for WASD. The firm will be responsible for comparing the two approaches and determining which is the best computer model for the wastewater transmission system. The firm will make a recommendation regarding which system should be used for the Peak Flow Management Plan.

Miami-Dade County recently issued a Notice to Professional Consultants to assist WASD in the development and maintenance of the steady-state and dynamic wastewater system and steady state water system hydraulic computer models. The work will be used in developing the Peak Flow Management Plan. The work may include updating of the water and wastewater system computer models with new pumping and piping facilities, performing or assisting in model calibration including the review of calibration procedures, conducting various analyses with the computer models including local system capacity evaluations, operational studies and assisting in the provision of links between the computer models.

The Ethics Commission found Dames and Moore may not simultaneously perform work under the DERM work order and the WASD contract. The scope of services under the two contracts overlap and the work under the DERM work order will affect the breadth of the work under the WASD contract. Section 2-11.1(j) restricts persons covered by the Conflict of Interest and Code of Ethics ordinance from performing work that restricts a covered entity's independence of judgment in performing their county responsibilities. Pursuant to that section of the Conflict of Interest and Code of Ethics ordinance, the Ethics commission has delineated certain areas including overlapping responsibilities that would impair a contractor's independent judgment in the performance of its duties for the county.

Dames and Moore's independence of judgment will be affected by simultaneous work under the two agreements. However, Dames and Moore may provide services under the WASD contract if the scope of services under the DERM contract is amended to provide that the firm will not conduct a cost comparison of the two approaches, will not make a recommendation

regarding the best approach and all work under the DERM agreement is completed prior to any Notice to Proceed under the WASD contract. The Ethics Commission has consistently opined that a firm may work on two succeeding contracts where the latter is a continuation of the work performed under the prior contract as long as there is no overlap in the task assignments under the two work orders.

Accordingly, Dames and Moore may not simultaneously perform work under the two agreements because the recommendations under the DERM work order will affect the breadth of the WASD work order. However, Dames and Moore may serve in both capacities if the scope of services under the DERM work order is amended to provide that the firm will not make a cost comparison of the two approaches, will not make a recommendation and the time frame of the two agreements does not overlap.

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

Sincerely Yours,



ROBERT MEYERS  
Executive Director

cc: Fernando Ponassi, CICC  
Christopher Mazzella, Inspector General