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February 9, 2011

Larry E. Elliott  
Carollo Engineers  
5201 Blue Lagoon Drive  
Suite 905  
Miami, FL 33126

**RE: REQUEST FOR ADVISORY OPINION-RQO 10-30**

Dear Mr. Elliott:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 8, 2011 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the firm may serve as prime or a subconsultant on a design-build project to upgrade the Hialeah-Preston Water Treatment Plant.

In your request, you advised the Commission that Carollo Engineers was retained by the Water and Sewer Department (WASD) to provide design services for upgrades to the Hialeah-Preston Water Treatment Plant. Specifically, Carollo was retained to design necessary improvements for new federal regulations. The project will include construction phase services of the necessary plant improvements. Under the agreement, Carollo is responsible for 50% design packages to support either a regular design-bid-build or a design-build approach.

The Ethics Commission found Carollo may provide services under a design-build contract, either as an unsolicited proposal

or a WASD solicitation, only if the firm does not develop the design criteria or perform any other construction phases services related to evaluation or selection of proposals for the final project.

In a series of opinions, the Ethics Commission has opined that certain contractual arrangements create an inherent conflict of interest. For example, a conflict exists if a contractor has overlapping responsibilities on different phases of the same project (i.e. AE on one phase of the project and serving as value engineer, CIS or CM partner on another phase of the project; supervisor or prime on one phase of the project and subcontractor on another or related phase or project). Further a conflict may exist if there are overlapping roles or responsibilities between two related contracts.

In the instant case, Carollo is not prohibited from doing work on the design-build phase if they have done preliminary design work on the project. See RQO 09-31 (finding that an architect could provide design services for a Vizcaya renovation project although he had previously worked on detailed designs for the project). However, the firm may not prepare design criteria<sup>1</sup> or do any construction phase services related to preparing the bid package or evaluation of bids because the firm would have conflicting responsibilities. Therefore, Carollo may serve as a subconsultant on a design-build team as long as the firm does not develop the design criteria; prepare bid documents or provide any services related to evaluation of bids.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics

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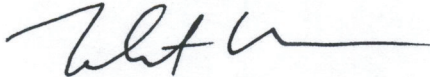
<sup>1</sup> State law provides that "a design professional who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design criteria package." §287.055, F.S.(2010)



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,

A handwritten signature in dark ink, appearing to read 'Robert Meyers', with a long horizontal flourish extending to the right.

ROBERT MEYERS  
Executive Director