

REQUEST FOR OPINION CHECKLIST

Request for Opinion

Dated: 1-10-2006

Investigative File

Draft Opinion

Notification to requestor of hearing before commission:

Scheduled for _____ at _____ .m; or No _____

Commission Action: _____

Final Disposition: _____

M E M O R A N D U M

TO: COMMISSION ON ETHICS AND PUBLIC TRUST
FROM: ARDYTH WALKER, STAFF GENERAL COUNSEL
RE: RQO 06-02
DATE: JANUARY 25, 2006

BACKGROUND

Nigel Grace of Malcolm Pirnie, Inc. is seeking an advisory opinion regarding the firm's ability to prepare the water and wastewater master plans as a consultant for the Department of Water and Sewer (WASD). The company is already serving as bond consultant for WASD.

FACTS

In 2004, Malcolm Pirnie was awarded a contract to serve as bond consultant for WASD. In that capacity, Pirnie is responsible for preparing an Annual Report on the water and sewer utility system, setting forth recommendation as to any necessary revisions of rates and charges; determining the amount to be deposited in the renewal and replacement fund during the next fiscal year and conducting an annual inspection of approximately one-third of WASD facilities, rendering a written report as to the state of condition and repair of the system; generating recommendations, approvals and or certifications in connection with the various sections of the bond ordinance.

In February of this year, WASD anticipates that it will issue two Notices to Professional Consultants (NTPC) to provide services related to the water and wastewater treatment plan. The draft scope of services for the Water Facilities Master Plan Update provides that the plan shall include forecasting of average maximum day and a maximum hour flows for the entire system for a 20 year planning horizon including volume water customers; an analysis of raw water supply including groundwater modeling, water treatment and finished water transmission. The Plan will be used to obtain State of Florida Environmental Regulation Revolving Loan funding and must meet all state requirements including a Capital Financing Plan.

The draft scope of services for the Wastewater Facilities Master Plan Update provides that the consultant will provide a facilities plan that includes a peak flow management plan and a long-term collection plan using WASD's existing dynamic and steady state computer modeling system.

Malcom Pirnie's contract for the bond consulting contract permits the consultant to provide other engineering services for WASD. Paragraph 2E of the Notice to Professional Consultants for the Bond Consulting Contract provided that "the engineer may also provide other engineering services for the Department which do not present conflicts of interest relative to its bond consultant services, including but not limited to planning, feasibility and process studies. The engineer will be prohibited from performing any engineering design services under this agreement except demonstration assessment designs. The contract also provides that "the retained firm may at the sole discretion of WASD also provide engineering services such as planning, feasibility, vulnerability and risk assessment and process studies which do not present conflicts of interest relative to the firm's bond consulting duties."

SCOPE OF REVIEW

Pursuant to Section 2-11.1(w), the Ethics Commission has jurisdiction over contractors and vendors. Section 2-11.1(j) restricts persons covered by the Conflict of Interest and Code of Ethics ordinance from doing work that conflicts with their independence of judgment in performing their County responsibilities.

ARGUMENT

Malcolm Pirnie may serve as bond consultant and provide engineering services regarding the Water and Wastewater Treatment Master Plan Update. However, there are potential conflicts between the scope of services for the various agreements.

In a series of opinions, the Ethics Commission has opined that certain contractual arrangements create an inherent conflict of interest and should be determined prior to

award. 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. These arrangements create conflict because they lead to disclosure of confidential information and impair independent judgment by the contractor in the performance of its contractual obligations.

As bond engineer, Malcolm Pirnie is responsible for conducting an independent assessment of capital projects and proposed funding mechanisms. The Wastewater and Water Treatment Master Plan require the engineer to provide a comprehensive review of the capital plans for those projects and provide recommendations regarding funding for necessary improvements. As bond engineer, Malcolm Pirnie may be required to assess the adequacy of the funding recommendations made by the engineering firm who conducts the water and wastewater treatment master plan update. The overlapping responsibilities may restrict Pirnie's independence of judgment in performance of one of the two roles. Therefore, the possibility of a conflict does exist in this case.

However, the firm is not precluded from submitting a proposal for the project because the WASD contract permits the firm to do engineering work outside of the bond consulting contract. Pursuant to the contract, WASD retains the discretion to make a final conflict determination.

CONCLUSION

Malcolm Pirnie may respond to the solicitation for a consultant to provide a Water and Wastewater Treatment Plant Master Plan Update. However, there is the potential for conflicts of interest because there are overlapping responsibilities between the role of bond engineer and the scope of services for the water and wastewater treatment plan consultant.

December 6, 2005

Mr. Robert A. Meyers
Executive Director
Commission on Ethics and Public Trust
19 West Flagler Street, Suite 209
Miami, FL 33130

Re: Request for Advisory Opinion – E05-WASD-10, E05-WASD-11

Dear Mr. Meyers:

The Miami-Dade Water and Sewer Department intends to procure the services of a consultant to prepare update the water and wastewater master plans. We are considering our options for pursuing these two projects. Therefore, we would like to clarify whether this work would conflict with our existing bond consultant contract or future bond consultant contracts with the Water and Sewer Department.


In advisory opinion 04-161, which was provided to us in a letter dated August 24, 2004, the following was stated:

“Paragraph 2E of the Notice to Professional Consultants for the Bond Consulting Contract also stated that ““the engineer may also provide other engineering services for the Department which do not present conflicts of interest relative to its bond consultant services, including but not limited to planning, feasibility, and process studies. The engineer will be prohibited from performing any engineering design services under this agreement except demonstration assessment designs.””

Based on the previously issued advisory opinion, we do not believe that there will be a conflict between our duties as the bond consultant and updating a water or wastewater master plan. However, we are soliciting a second advisory opinion to ensure that there won't be a conflict should we decide to pursue these opportunities. Should you have any questions, please don't hesitate to contact me at (954) 761-3460.

Very truly yours,

MALCOLM PIRNIE, INC.


for Nigel O. Grace, PE, DEE
Senior Associate

JR

**MALCOLM
PIRNIE**

R00 06-02

FACSIMILE TRANSMITTAL

Malcolm Pirnie, Inc.
1425 South Andrews Avenue, Suite 200
Fort Lauderdale, FL 33316
Tel: (954) 761-3460
Fax: (954) 761-7939

TO: Robert Meyers

LOCATION:

FAX NO.: 305-579-0273

RE: Request for Advisory Opinion - EOS-WASD-10 -
EOS-WASD-11

FROM: Nigel Grace

DATE: 1/10/06

TIME:

PROJECT NUMBER:

NUMBER OF PAGES: (including this sheet) 2

RETURN ORIGINALS TO SENDER:

MESSAGE:

IF YOU HAVE ANY QUESTIONS PLEASE
CALL Nigel Grace @ 954-761-3460 OR
Joanne Roederer @ 305-716-4156

If you do not receive all pages or if portions are illegible,
please call (954) 761-3460 for retransmission.

**MALCOLM
PIRNIE****MALCOLM PIRNIE, INC.**
INDEPENDENT ENVIRONMENTAL ENGINEERS, SCIENTISTS & CONSULTANTS

December 6, 2005

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