



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Makeba Gassant, Member, Small Business Enterprise Goods and Services Advisory Board

FROM: Susannah Nesmith, Staff Attorney
Miami Dade County Commission on Ethics & Public Trust

SUBJECT: INQ 2023-107 [Advisory Board Member Contracting with County, Sec 2-11.1 (c)(3)]

DATE: August 28, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding potential limitations in applying to initiate new contractual business with the County through your privately owned company, Gassant Enterprises LLC., while serving as a member of the Small Business Enterprise Goods and Services Advisory Board.

Facts

You are the President and Chief Executive Officer of Gassant Enterprises LLC., a for profit Florida corporation that provides procurement services specifically in the healthcare, foodservice, and commercial industries. You are also a registered lobbyist with Miami Dade County and serves as the principal for Gassant Enterprises LLC. In March 2021, then Mayor Carlos Gimenez appointed you to the Internal Services Department Small Business Enterprise Goods and Services Advisory Board (Board). As of the date of this opinion, you continue to serve on the Board.

You requested an opinion from the COE to address any potential conflicts of interest which may arise from Gassant Enterprises LLC.’s submission of a of a response to the Request to Qualify (RTQ) listed for Solicitation Number: EVN0000084 (Grocery and Shelf Stable Products Pre-Qualification Pool) to the Miami-Dade County Strategic Procurement Department, the County agency tasked with the issuance and processing of the solicitation. The purpose of the solicitation is to establish a Prequalified Pool of Vendors that will be invited to participate in future spot market competitions, as needed, to solicit for grocery and shelf stable items and related products for Miami-Dade County. Placement in the Pool is not a contract between the County and the Vendor, but an acknowledgement that the Vendor meets the qualifications as outlined throughout this RTQ. Vendor Submittals are accepted throughout the term of the RTQ for placement in the Pool.

Issue

Whether Gassant Enterprises LLC. is prohibited from submitting a bid for Solicitation Number: EVN0000084 due to your position on the Small Business Enterprise Goods and Services Advisory Board and your relationship with Gassant Enterprises LLC.

Discussion

The Internal Services Department Small Business Enterprise Goods and Services Advisory Board was created by Miami Dade County ordinance Sections 2-8.1.1.1(3)(g) and 2-8.1.1.1.2(3)(g). The Small Business Enterprise Advisory Board – Goods and Services was created for the purpose of supporting and promoting the Small Business Enterprise (SBE) Goods and Services (G&S) Programs. The Board does not work with any other facet or division of the Internal Services Department, and does not work with the Strategic Procurement Department, the department that is handling the execution of the subject solicitation contract.

The Advisory Board operates as a focal point for the public and with the assistance of the County Mayor's designee collects and disseminates information related to economic opportunities within Miami-Dade County government for SBE-G&S business owners. The Advisory Board was established for the purpose of supporting and promoting the Small Business Enterprise Programs and is not an authoritative entity over the Internal Services Department, meaning that the Board does not provide any regulation, oversight, management, or policy creation or modification.

Sections 2-11.1(c) and (d) of the County Ethics Code addresses limitations and prohibitions on board members doing business with the County. Specifically, Section 2-11.1(c)(3) provides that a board member may enter into a contract with Miami Dade County individually or through a firm, corporation, partnership or business entity in which the board member or his immediate family has a controlling financial interest, as long as the board member does not contract with a County department or agency which is subject to being regulated, overseen, managed, engaged in policy-setting or quasi-judicial authority of the member's board agency. *See* RQO 09-22, INQ 19-78, INQ 20-124, INQ 22-04.

As this solicitation is being handled by the Miami Dade County Strategic Procurement Department, and not the Internal Services Department, it appears to be unlikely that a prohibited conflict of interest arises out of your service as a member of the SBE-G&S Advisory Board, a function of the Internal Service Department. More specifically there is also no indication that the SBE-G&S Advisory Board would ever have occasion to consider Solicitation Number: EVN0000084 nor does the SBE-G&S Advisory Board advise on individual contracts. *See also* INQ23-90 (the above bidder was permitted to respond to a solicitation by the Strategic Procurement Department because, among other things, its products or goods were not being solicited by Internal Services). *See also* INQ 23-59; INQ 20-52; INQ 23-27; INQ 23-24; INQ 23-22; INQ 23-13; INQ 23-12; INQ 23-11; INQ 22-168; INQ 22-165; INQ 22-123; INQ 22-108; and INQ 22-30 (all involving solicitation that Ms. Gassant's company was responding to and that were permitted).

However, Section 2-8.1.1.1(3)(g)(9) states that Sections 2-11.1(c) and (d) of the Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County are waived for [Internal Services

Department Small Business Enterprise Goods and Services Advisory Board] members for transactions arising from the exercise of those powers given the Advisory Board by this section. As such, contracts executed through the Internal Services Department with advisory board members are not in violation of the prohibitions of Section 2-11.1(c)(3).

Conclusion:

Gassant Enterprises LLC. may submit a bid in response to and execute a contract for goods or services through the Strategic Procurement Department for Solicitation Number: EVN0000084, because, based on the facts presented here and discussed above, no conflict of interest arises from Gassant Enterprises LLC. application for Solicitation Number: EVN0000084 based on the service of your position on the SBE-G&S Advisory Board.

However, you must adhere to the limitations provided below to avoid potential conflicts of interest:

- Section 2-11.1(m)(2) **prohibits a board member from appearing before the board in which he or she serves, either directly or through an associate**, and make a presentation on behalf of a third party. *See* RQO 07-39; INQ 17-254. This means you must not lobby or try to influence your board for the benefit of your company. *See* INQ 13-224. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third party. *See* INQ 11-178; INQ 09-33. Additionally, this Ethics Code section prohibits a board member from receiving compensation, *directly or indirectly or in any form*, for any services rendered to the third party seeking a benefit from his or her Board. *See* RQO 07-12; INQ 19-12; INQ 15-229.
- Section 2-11.1(v) 3 prohibits a board member from voting on any matter where the member will be directly affected by the vote and has a prohibited relationship (i.e., officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) with any corporation, firm, entity or person appearing before the member's board or committee. *See* RQO 07-39; INQ 17-69.
- Section 2-11.1(n) prohibits a board member from participating in any official action, as a member of the Board, directly or indirectly, affecting a business in which you or a member of your immediate family has a financial interest. *See* INQ 19-78.
- Section 2-11.1(g) prohibits a board member from using his or her official position to secure special benefits, privileges or exemptions for herself or others. In other words, while a board member may share his or her knowledge and expertise in related matters, said board member may not use his or her service on the board to proffer or promote the use or sale of the board member's company or products. *See* INQ 21-121.

We appreciate your consulting with the Commission in order to avoid a possible prohibited conflict of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from state law, other conflicts may apply. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

Please submit this opinion to the Strategic Procurement Department for inclusion in your submission file. The Commission on Ethics does not submit this memorandum on your behalf.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Commission on Ethics or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.