



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Guillermo Fernandez,
Maintenance Supervisor
Port of Miami

FROM: Susannah Nesmith, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-108, Section 2-11.1(c), Limitations on Contracting with the County, and
Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: August 28, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest concerning your company's participation in Miami-Dade County's Small Business Enterprise ("SBE") Certification Programs and potential future contracts with the County.

Facts

You are employed by the Port of Miami ("Port") as a maintenance supervisor. You advised that your job responsibilities primarily include the supervision of a team that includes an electrician, a plumber and an air conditioning mechanic and that your team works the night shift, fixing items inside the Port buildings. You further advised that your Port position does not include any oversight or administration of the County's SBE Certification Programs.

You advised that you and your wife own and operate a Florida for-profit corporation, Suma Electric Inc. ("Suma"). Your wife does not work for Miami-Dade County. You advised that Suma primarily does work as an electrical subcontractor for residential pool construction projects, but that you had recently heard on the radio about opportunities to contract with Miami-Dade County, including large contracts involving the library system and on Jackson Health System campuses. You advised that Suma would like to apply to participate in the County's SBE Certification Programs. You further advised that Suma would like to contract with the County in the future, but that there is no specific County solicitation to which Suma has submitted a bid at this time and you understand that you cannot bid on any solicitations from the Port.

Miami-Dade County’s SBE Certification Programs were created for any business entity providing construction, architectural, engineering, goods, services, and aeronautical support services. The SBE Certification Programs is administered by the County Internal Services Department. The County’s SBE - Services Certification Program is designed to provide contracting opportunities for independent firms that meet the following criteria: (a) must have a Miami-Dade County Local Business Tax (“LBT”) Receipt issued for at least one year; (b) the personal net worth for each owner cannot exceed \$1.5 million; (c) the last three years’ average gross receipts must not exceed \$8 million; (d) business license holder and qualifier (if applicable) must own at least ten percent of the applicant’s issued stocks or otherwise have at least a ten percent ownership interest; and, (e) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time. SBE Certification is valid for a three-year period.¹

Issue

Whether there is a prohibited conflict of interest that would Suma, your privately owned business, from participating in the County’s SBE Certification Programs and then contracting with the County.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

A. Contracting with the County

Suma may participate in the County’s SBE Certification Programs. However, it may do so only so long as the Port is not involved in any way in processing, administering, overseeing, or enforcing the SBE Certification Programs. *See* INQ 22-157 (Port of Miami employee’s company may participate in County’s SBE Certification Program because his employing County department does not enforce, oversee, or administer the SBE Certification Programs); *see also* INQ 23-05 (Miami-Dade Water and Sewer Department employee could participate in the County’s SBE program because it is not administered or otherwise affected by his employing department). This includes the condition that you may not participate in determining or awarding the SBE Certification. Additionally, none of your job responsibilities or job descriptions may require you to be involved in the SBE Certification Programs in any way, including enforcement, oversight, administration, amendment, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

Regarding contracting with the County generally, sections 2-11.1(c) and (d) of the County Ethics Code restrict the ability of County employees to contract with the County. A County employee is permitted to transact business with the County only if the contract does not

¹ *See Goods and Services, SMALL BUSINESS CERTIFICATION PROGRAMS*, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited Jan. 17, 2023).

interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with enforcing or overseeing the contract. *See* County Ethics Code §§ 2-11.1(c), (d).² Additionally, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. *See* County Ethics Code § 2-11.1(c)(2). Here, you have indicated that Suma is interested generally in seeking to contract with the County, but it has not responded to any specific solicitations to bid or requests to quote. Accordingly, you are encouraged to request further ethics guidance when Suam decides to submit a bid on a pending County solicitation or request to quote, bearing in mind that neither you nor Suma may contract with the Port. *See id.*

B. Outside Employment

Work conducted for Suma constitutes outside employment. The County Ethics Code prohibits County employees from engaging in conflicting outside employment. Conflicting employment is sometimes created when a County employee comes in contact with the same or similar people or entities in both her outside employment and in her County job or when she uses the same or similar resources in her outside employment as she uses in her County work. Also note that you may not use County time or resources in the performance of your outside employment. *See* County Ethics Code §§ 2-11.1 (g) and (j), Miami-Dade Code 2-11, and Administrative Order 7-1.2

*Please note that this memorandum does not grant you permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department Director. Given that you are a full-time employee, you **must also** file the related outside employment financial disclosure form, the Outside Employment Statement yearly. Additionally, this opinion does not address whether the proposed outside employment may constitute conflicting employment as defined in Section 2-11.1(j) of the County Ethics Code.*³

C. Lobbying

You may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about Suma's application to

² *But see* Section 112.313(7)(a), Florida Statutes, providing that:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee

³ You have been granted permission by your department to engage in outside employment this year and in years past, including for your company, Suma, and records show you have filed the required disclosure statements this year and in years past.

participate in County's SBE Certification Programs. See County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. See County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to Suma's application to, and ultimate participation in, the County's SBE Certification Programs, or to any other County certification programs to which you or Suma are applying.

Opinion

Based on the facts presented here and discussed above, Suma's participation in Miami-Dade County's Small Business Certification Programs does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above. Additionally, Suma's potential future business with the County will require further evaluation once a specific County solicitation or contract is contemplated.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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 memorandum to the Small Business Development Division of the Internal Services Department ("ISD"). The Commission on Ethics does not submit it 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.