



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jorge Vital, Selection Committee Coordinator
Strategic Procurement Department (SPD)

Phillip Rincon, Research Manager
Office of the Commission Auditor (OCA)

FROM: Loressa Felix, General Counsel
Commission on Ethics and Public Trust

SUBJECT: INQ 2023-109, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

DATE: August 29, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Franklin Gutierrez, SPD; Pearl Bethel, SPD; Ana DaSilva, SPD; Yinka Majekodunmi OCA; Yaritza Reina, OCA; Jannessa Johnson, OCA; Stefania Barigelli, CUA

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts:

We have reviewed your memorandum dated July 27, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Parks, Recreation and Open Spaces Department Request to Advertise for PROS Professional Services for the Preston B. Bird & Mary Heinlein Fruit and Spice Master Plan Improvements Project – Project No. A22-PROS-04 GOB. The memorandum was prepared in connection with Resolution No. R-449-14, directing the Office of the Commission Auditor (OCA) to conduct background checks on members serving on evaluation/selection committees.

The memorandum noted that a member of the selection committee made a disclosure on her Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Stefania Barigellia, Department of Cultural Affairs, disclosed in her Neutrality Affidavit that GSLA Design, Inc. is currently providing services with PROS on a Capital Project – Caleb Auditorium. GSLA Design, Inc. Also, Eastern Engineering Company (EEG) delivers professional services to Artists (Art in Public Places); Ms. Barigellia communicates regularly with the EEG team on various projects. GSLA Design Inc. and Eastern Engineering Company are respondents to this request.

We conferred with Ms. Barigellia. She is a Construction Projects Manager for the Miami-Dade County Department of Cultural Affairs (CUA). She has worked in that capacity for approximately five years. She is currently involved as a construction project manager for projects involving two respondents of this solicitation, Eastern Engineering Company (EEG) and GSLA Design, Inc. (GSLA). Both entities provide professional services to artists via Art in Public Places, a program administered by CUA. In her role as a construction project manager for EEG and GSLA, she regularly communicates with the company teams to facilitate various programs including a CUA Capital Project involving the Caleb Auditorium.

Ms. Barigellia advised that she had no close personal relationships with any of the respondents to this solicitation. She also has no personal or financial interest in any of the respondents. Ms. Barigellia stated that she could be fair and impartial when evaluating the various respondents to this project and does not believe that her work with any of the entities listed would impair her independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

Discussion:

This agency conducts reviews of these issues under the County Ethics Code, which governs conflicts by members of County advisory and quasi-judicial boards. We also consider whether there is an appearance of impropriety created and make recommendations based on R-449-14 and Ethics Commission Rule of Procedure 2.1(b).

Specifically, Section 2-11.1(v) of the County Ethics Code states that no quasi-judicial personnel or advisory personnel shall vote on any matter presented to an advisory board or quasi-judicial board on which the person sits if the board member will be directly affected by the action of the board on which the member serves and the board member has any of the following relationships with any of the persons or entities appearing before the board: (i) officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary' or (ii) stock holder, bondholder, debtor or creditor.

It does not appear that Ms. Barigellia has a voting conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote and does not have any of the enumerated relationships with any entity affected by the vote.

Further, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, this agency also opines concerning whether there may be an appearance of impropriety in a given situation that would justify the removal of a member of an appointed

selection committee. See Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

Ms. Barigellia has confirmed that she currently works with two respondents to this solicitation and is involved in several aspects of existing projects. The Commission on Ethics has indicated in various informal opinions that, absent some other factor, the mere fact that a selection committee member has interactions with a respondent in connection with the member's public duties would not create an appearance of a conflict that could affect the public trust in the integrity of the procurement process. See INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, INQ 18-230, INQ 20-136, INQ 22-153, and INQ 23-76. The Commission's opinions note that, in fact, it may be valuable to have an individual on a selection committee who is personally familiar with the work of one or more of the responding firms, particularly where the member also has some special expertise in the services that are being sought by the County. See INQ 18-21, INQ 18-47, INQ 18-230, INQ 20-136, INQ 22-153, and INQ 23-76.

Opinion:

Consequently, we see no reason why Ms. Barigellia should not serve on this committee because she does not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by her service on this committee.

However, she is reminded that the selection committee, for which she will serve as a voting member, operates under the County's Cone of Silence, Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by Commissioners, County staff, selection committee members, and prospective contractors, as well as their lobbyists and consultants, regarding any procurement matter during the time that the Cone is in effect. Consequently, while she may communicate with responding firms on *existing* County contracts/projects, there should be no communication about this competitive solicitation with any of the respondents or their teams (absent permissible communications as per the Cone), Commissioners, Mayor (and their staffs) or other members of the County's Professional Staff/Client Department who are involved in any way with this solicitation, while the Cone remains in effect.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

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

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 Ethics Commission 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.