



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Mitch Alusma, Carpenter  
Port of Miami

**FROM:** Susannah Nesmith, Staff Attorney  
Miami-Dade Commission on Ethics and Public Trust

**SUBJECT:** INQ 2023-119, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j), Conflicting Employment Prohibited.

**DATE:** September 8, 2023

**CC:** All COE Legal Staff

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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 and potential future contracts with the County.

#### Facts

You are employed by the Port of Miami (“Port”) as a carpenter. You advised that your job responsibilities primarily include light carpentry, making repairs and maintaining facilities inside Port buildings. You further advised that your Port position does not include any oversight, authority, supervision or administration of contractors at the Port or the process of awarding those contracts.

Additionally, you advised that you have applied for and are interviewing for a promotion to a position supervising housekeeping crews at the Port. This job would involve supervising County employees who perform basic janitorial services at certain Port facilities but would not include any oversight, authority, supervision or administration of contractors, or the process of awarding Port contracts.

You advised that you are the owner Alooseme Enterprises, Inc. (“Alooseme”), which provides installation of doors, floors and windows along with certain kinds of training required by the Occupational Safety and Health Administration for specialty contractors, including construction safety and disaster site worker training. You would like to bid on solicitations by Miami-Dade County from departments other than the one in which you work. You have registered as a County

vendor and have asked for this opinion from the Ethics Commission as part of your due diligence before you submit any bid.

You are the sole owner of Alooseme. You do not have any family members working for Miami-Dade County and you have asked for permission from your supervisor to work for your company, as well as for two other companies which you own, but which are not intending to contract with the County and are not considered in this opinion<sup>1</sup>.

### Issue

Whether there is a prohibited conflict of interest that would prevent Alooseme, your privately owned business, from participating in county solicitations for goods or services.

### 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

Alooseme may participate in certain County solicitations for goods and services. However, it may do so only so long as the Port is not involved in any way in awarding, processing, administering, overseeing, or enforcing the resulting contract. *See* INQ 23-108 (Port 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 14-276 (a custodian employed at the Port could contract with the County through her private business, as long as she did not contract with the Port). *See* County Ethics Code §§ 2-11.1(c), (d), (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 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).<sup>2</sup> Additionally, the

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<sup>1</sup> Your company, MA Development and Training, LLC, conducts training for students seeking certification as OSHA Disaster Site Responder and certification from the National Center for Construction, Education and Research; your other company, AMMA Management Group, manages commercial and residential properties.

<sup>2</sup> *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

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 Alooseme 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 Alooseme decides to submit a bid on a pending County solicitation or request to quote, bearing in mind that neither you nor Alooseme may contract with the Port. This is true even if the initial solicitation is managed by the Special Procurement Department if the product or service is going to be used by the Port. *See id.*

#### B. Outside Employment

Miami-Dade County employees are required to obtain approval from their department directors prior to engaging in outside employment. *See* County’s Administrative Order 7-1. “County employees are considered to be engaging in outside employment when they are running a business whether incorporated or not and regardless of whether it is generating any income . . . .” RQO 16-01. Thus, work conducted for Aloosme, your privately-owned business, constitutes outside employment.

Section 2-11.1(j) of the Miami-Dade County Ethics Code prohibits County employees from engaging in outside employment which would impair the employee’s independence of judgment in the performance of his or her official duties, thereby creating a conflict between the employee’s public duties and private interests. “Under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one’s official or public duties is possible.” A.O 7-1. Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* AO 5-5; INQ 23-87; INQ 20-43; INQ 19-123; INQ 11-162.

For example, the Ethics Commission has previously found that an accountant at the Port was permitted to engage in outside employment as a tax preparer for a private company because the work would not impair his independence of judgment in performing his duties for the County. INQ 22-99. *See also* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting). Similarly, an airport lighting technician at the Miami-Dade Aviation Department did not have a prohibited conflict of interest working for his private company, which contracted with the County, because the work he did for his company did not impair his independence of judgment in performing his County duties. INQ 21-49.

It appears unlikely your outside employment with your private company will impair your independence of judgment in the performance of your County duties as a carpenter at the

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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 . . . .

Port, based on the information that you have provided to us at this time, including that a) your work with your company will only occur outside of working hours; b) you will not be required to encounter the same or similar people or entities as in your County position; c) you will not use the same or similar resources that you use in your County work; d) your County position does not provide you with access to non-public information that is or could be relevant to your anticipated outside employment; and e) your Port position does not involve the recruitment or management of vendors, contactors, bidders, or members of the public who could also be involved in your anticipated outside employment.

Nevertheless, you must continue to abide by certain limitations outlined below to avoid a conflict:

- You shall not engage in activities that relate in any way to your outside employment during regular business hours, including phone calls, or any other communication and/or use of County resources (including but not limited to phones, copiers, computers, fax machines, County vehicles, in connection with your outside employment, even after work). *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240,
- You are prohibited from disclosing and/or using any confidential and/or proprietary information acquired as a result of your County employment to derive a personal benefit, for the benefit of your private company or its clients. *See* County Ethics Code Section 2- 11.1(h).
- You shall obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director and shall file an Outside Employment Statement with the County’s Elections Department by July 1st of each year. *See* County Ethics Code Section 2-11.1(k)(2).<sup>3</sup>

However, County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee’s department. *See* AO 7-1; RQO 16-02; RQO 00-10. Accordingly, **this memorandum does not grant you permission to engage in outside employment.** You must obtain permission to engage in outside employment every year from your department director.

### C. Lobbying

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<sup>3</sup> The form is available online at <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

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 Alooseme's bid on any County solicitation. *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 Alooseme's ultimate bid on any County solicitation.

Opinion

Based on the facts presented here, Alooseme may contract with the County, subject to the limitations discussed above. **Once a specific County solicitation or contract is contemplated, you must request a new opinion for that specific solicitation or contract.**

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/>.

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.