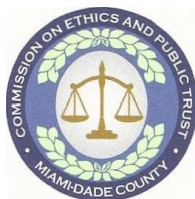


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 19, 2023

Sent via email

To: Wendy@cabtel.us

Wendy Cabral, President
Cabtel Engineering and Construction Inc.
18220 SW 149th Avenue
Miami, FL 33187

Re: INQ 2023-125, Limitations on Doing Business with the County

Dear Ms. Cabral,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding your ability to contract with the County’s Department of Transportation and Public Works (“DTPW”) and Small Business Enterprise Certification Program (“SBE”).

Facts

You would like to participate in two solicitations for contracts with DTPW (MCC7040 and MCC7360) through your company, Cabtel Engineering and Construction, Inc (“Cabtel”). Both solicitations are being managed by the Miami-Dade Special Procurement Department. Cabtel is an underground construction company offering conduit installation for telecommunications, electrical, general construction and site work.

Additionally, you would like to get certified through SBE. 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 are administered by the County Internal Services Department (ISD).

You are not employed by Miami-Dade County, but your husband, Sgt. Russell Barnes, works in the Northwest District for the Miami-Dade Police Department (“MDPD”). His job duties primarily include responding to calls and supervising road patrol officers on the midnight shift. His MDPD job duties do not include any oversight or administration of contracting or procurement for MDPD

or any other County department, and you do not have any other family members working for the County who administer or oversee the SBE program or DTPW solicitations.

Issue

Whether the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) would prevent you from contracting with DTPW or SBE.

Discussion and Opinion

Generally, sections 2-11.1 (c) and (d) of the County Ethics Code permit County employees to transact business with the County, so long as 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. However, the County Ethics Code prohibits a County employees **and their immediate family members** from transacting business with the County department for which the County employee works. Specifically,

[the limited exclusion from the general prohibition on County employees contracting with the County] shall not be construed to authorize an employee or his or her immediate family member to enter into a contract with Miami-Dade County or any person or agency acting for Miami-Dade County, if the employee works in the county department which will enforce, oversee or administer the subject contract.

County Ethics Code § 2-11.1(c)(2).¹

For example, the spouse of an employee of the Miami-Dade Water and Sewer Department (“WASD”) was advised that his company could contract with the County but could not contract with WASD. *See* INQ 10-24. When it was subsequently determined that the WASD employee’s spouse had violated the above provision of the Ethics Code by contracting with WASD, he was sanctioned with a fine and a letter of reprimand. *See* C21-22-08. By contrast, the father of an officer with MDPD was permitted to contract with the Department of Public Housing and Community Development because the employee had no oversight or administrative duties over the program and did not work for the department that administered it. *See* INQ 22-67.

Here, after reviewing the facts presented to us, we conclude that **you may contract with DTPW and SBE**. Your husband’s employment as sergeant with MDPD does not involve authority or oversight over contracting within his own department, nor any other Miami-Dade County Department. Accordingly, his employment with MDPD does not give rise to a conflict of interest because he will never have occasion to review, approve, or administer the contracts or certifications you are seeking. *See* County Ethics Code § 2-11.1(c)(2). Provided that your husband’s current or future job responsibilities with MDPD or any other county department do not

¹ The term “immediate family” includes spouses. *See* County Ethics Code § 2-11.1(b)(9).

require his involvement in any aspect of the contracts or certifications you are seeking, you may participate in the solicitations with DTPW and contract with SBE. *See also* INQ 2023-77 (the mother of an employee of the Miami-Dade Department of Parks, Recreation and Open Spaces was permitted to contract with the Department of Public Housing and Community Development).

Additionally, your husband may not lobby the County in support of your participation in any County solicitation, contract, or certification. This means that **he may not contact anyone within the County** in an attempt to influence a decision about any contract or certification that you are seeking with the County. *See* County Ethics Code § 2-11.1(m)(1).

Furthermore, the County Ethics Code prohibits County employees from exploiting their official position. This means that your husband may not use his County position to secure special privileges or exemptions with respect to your participation in any County contract or certification. *See* County Ethics Code § 2-11.1(g).

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 the department that employs you, or under state law, other conflicts may apply. If you have additional questions regarding possible conflicts based on MDPD directives, contact your husband's supervisor or the Mayor's office. 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/>.

Sincerely,

Susannah Nesmith

Susannah Nesmith
Staff Attorney

cc: Commission on Ethics Legal Staff
Sgt. Russell Barnes, MDPD
Omar Colbourne, ISD

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.