



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Cristina Amores, Selection Committee Coordinator
Strategic Procurement Department (SPD)

Yaritza Reina, Senior Executive Secretary
Office of the Commission Auditor (OCA)

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

SUBJECT: INQ 2023-126, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: September 19, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Yinka Majekodunmi, OCA; Jannesha
Johnson, OCA; Daryl Hildoer, DTPW; Juan Curiel, WASD, Isabel Padron, DTPW,
Summer Johnson, DTPW

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 September 8, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Department of Transportation and Public Works Request to Advertise for Construction, Engineering, and Inspection Services for The South Dade Electric Bus Facility – Project No. E23TP01. 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 members of the selection committee made a disclosure on their Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Daryl Hildoer, Department of Transportation and Public Works (DTPW), disclosed on his Neutrality Affidavit that Professional Service Industry, Inc. (PSI) and Atkins North America, Inc. are currently under contract for projects with DTPW managed by him.
- Juan Curiel, Department of Transportation and Public Works (DTPW)¹, resume disclosed prior employment by CAP Engineering, Inc. from March 1998 to August 2000. CAP Engineering, Inc. is a respondent to this request.
- Isabel Padron, Department of Transportation and Public Works (DTPW), disclosed on her Neutrality Affidavit prior employment with Post Buckley Such & Jernigan from March 1991 to January 1995. Post Buckley Such & Jernigan was acquired by Atkins North America, Inc. Atkins North America Inc. is a respondent to this request.
- Summer Johnson, Miami-Dade Aviation Department (MDAD), disclosed on her Neutrality Affidavit that currently, HNTB Corporation is a consultant for Miami-Dade Aviation Department. HNTB Corporation is a respondent to this request.

We conferred with Mr. Hildoer. He is a Senior Professional Engineer for DTPW. He has worked for DTPW for over 22 years. He indicated that he is currently working on projects involving Professional Service Industry, Inc. (PSI) and Atkins North America, Inc. (Atkins), both respondents to this solicitation. In his County role, he is working on a project that consists of evaluating a residential drainage pipe collapse and Atkins is providing specific structural analysis services regarding the home foundations adjacent to the pipe, the ground surrounding the area, and the source of the collapse. Atkins brought on PSI, as its subconsultant, to provide testing and further engineering expertise. This project is substantially complete, but Mr. Hildoer oversees this project. Mr. Hildoer advised that he also has no personal or financial interest in any of the respondents. Mr. Hildoer stated that he could be fair and impartial when evaluating the various respondents to this project and does not believe that his current review of work completed by either Atkins or PSI would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

We conferred with Mr. Curiel. He is the Assistant Director of Utility Construction for Miami-Dade Water and Sewer Department (WASD). He has been employed with the County for over 19 years. He confirmed that he previously worked for as an Associate Engineer for CAP Engineering Inc. (CAP). Mr. Curiel stopped working for CAP in 2000. He indicated that the termination of his employment with CAP was amicable. Mr. Curiel has no current ownership interest or other financial interest in the company. He also does not have any business, close social, or other relationship with any current employee at the company. Mr. Curiel also noted that he is currently managing projects in his County role involving several respondents of this solicitation, EAC

¹ The memorandum indicated that Mr. Curiel is employed with DTPW however, we confirmed that he is employed by Miami-Dade County Water and Sewer (WASD) not DTPW.

Engineering, CES Consultants Inc., and Chen Moore and Associates, Inc. He advised that he manages construction managers that are handling the day-to-day management of construction projects that require an Engineer of Record (EOR) or a sub-consultant to the EOR. He indicated that his current supervision over these projects will not affect how he evaluates the various respondents to this project, and Mr. Curiel believes he can be fair and impartial when evaluating the respondents to this project.

We conferred with Ms. Padron. She is the Chief of Design & Engineering for DTPW. She has been employed by the County since 1995. Before January 1995, she was employed by Post Buckley Schuh & Jernigan (PBS&J), which is now known as Atkins North America Inc. (Atkins). She worked for PBS&J as a Project Manager from December 1987 to April 1989 and from March 1997 to January 1995. She indicated that the termination of her employment with PBS&J was amicable. Ms. Padron has no current ownership interest or other financial interest in the company. She also does not have any business, close social, or other relationship with any current employee at Atkins. Ms. Padron also noted that her division currently has on-going work orders with the following entities: HNTB Corporation, BCC Engineering, TY LIN International, Gannett Fleming Inc., and EAC Consulting Inc, all respondents to this solicitation. The work orders are being managed on a day-to-day basis by the Division Project Manager, but as Chief of the Division, she is involved in the supervision of the work. She indicated that her current supervision over these projects will not affect how she evaluates the various respondents to this project, and Ms. Padron believes she can be fair and impartial when evaluating the respondents to this project.

Lastly, we conferred with Ms. Johnson. She is a Facilities Superintendent for the Miami-Dade Aviation Department (MDAD), Miami International Airport. She has worked for MDAD for 13 years. She indicated that she has a business relationship with HNTB Corporation (HNTB), a respondent to this solicitation. HNTB is currently acting as a consultant for MDAD. Specifically, MDAD has multiple projects regarding passenger loading bridges involving appropriate refurbishment, replacement, and maintenance of said bridges. HNTB also acts as consultants on constructions projects for MDAD and provides technical guidance. Ms. Johnson also approves HNTB invoices for current consultation work on these projects. Ms. Johnson indicated that her current involvement with and/or approval over these projects will not affect how she evaluates the various respondents to this project, and she believes she can be fair and impartial when evaluating the respondents to this project.

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 any of the proposed selection committee members have a voting conflict of interest under Section (v) of the County Ethics Code because none of them will be directly affected by the vote, and none 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.

All four proposed selection committee members have confirmed some level of current management, involvement, or supervision with or over one or more of the respondents to this solicitation due to their County positions. 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, and INQ 22-153. 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, and INQ 22-153. Notably, each of the proposed selection committee members have indicated that despite those interactions, they could remain impartial when evaluating the respondents to this solicitation.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the Reverse Two-Year Rule, which bars County employees from participating in contract-related duties on behalf of the County with a former employer for a period of two years following termination of the employment relations, would not apply to **Ms. Padron or Mr. Curiel** since both stopped working for their respective employers, PBS&J (Atkins) and CAP, over 20 years ago. *See* INQ 17-174, INQ 17-183, INQ 18-229, and INQ 20-136.

As noted above, Ms. Padron noted that she was previously employed by PBS&J now Atkins, a respondent to this solicitation, ending in 1995. Additionally, Mr. Curiel disclosed that he was previously employed by CAP, a respondent to this solicitation, ending in 2000. As both Ms. Padron and Mr. Curiel's employment at their respective companies ended over 20 years ago, on an amicable basis, and neither have any business, or close social relationship with current employees at the entity, it is our opinion that Ms. Padron and Mr. Curiel's prior employment at PBS&J and CAP, respectively, would not create an appearance of impropriety or in any way detract from the County's conducting a fair and objective evaluation for this project. *See* INQ 20-73, INQ 18-202, INQ 17- 69, INQ 20-136, and INQ 22-39.

Opinion:

Consequently, we see no reason why Mr. Hildoer, Mr. Curiel, Ms. Padron, or Ms. Johnson should not serve on this committee because they do not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by their service on this committee.

However, they are all reminded that the selection committee, for which they 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, City 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. All selection committee members will therefore be prohibited under the Cone from communicating with any of the responding entities to this solicitation with which they may currently have interactions regarding ongoing projects.

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.