



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

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

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

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

SUBJECT: INQ 2023-137, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

DATE: October 13, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Franklin Gutierrez, SPD; Pablo Valin, SPD; Ana DaSilva, SPD; Yinka Majekodunmi OCA; Jannesha Johnson, OCA; Francisco J. Martinez, WASD; Cynthia Doyon, WASD

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 22, 2023, which was prepared in connection with the Appointment of Selection Committee for the Miami-Dade County Water and Sewer Department (WASD) Request to Advertise for Owner's Representative for the Implementation of Advanced Metering Infrastructure – Project No. E23WS01. 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:

- Francisco J. Martinez, Water and Sewer Department, disclosed on his Neutrality Affidavit, "no immediate family members have any existing or previous relations with any of these companies" and did not list any family members. Also, the member disclosed some of the companies have provided consulting services for the Water and Sewer Department (WASD) and Puerto Rico's Aqueduct & Sewer Authority. The names of those firms were not listed on the member's Neutrality Affidavit. Lastly, the member disclosed his prior employment with Black & Veatch Corporation, 2008-2009, on his resume. Black & Veatch Corporation is a respondent to this request.
- Cynthia Doyon, Water and Sewer Department, disclosed on her Neutrality Affidavit that she was previously employed by 300 Engineering Group, LLC, from August 2015 – September 2020. 300 Engineering Group, LLC is a respondent to this request.

We conferred with Mr. Martinez. He is the Assistant Director of Water Operations for WASD. He has worked for WASD since February 5, 2017. Mr. Martinez advised that he was previously employed in 2008 by Black and Vetch Corporation, a respondent to this solicitation. He worked as a Construction Coordinator for the company for six months until the project was shut down in 2009. He indicated that the termination of his employment with Black and Vetch Corporation was amicable. Mr. Martinez has no current ownership interest or other financial interest in the company. He also does not have any close business or social relationship with any current employee at Black and Vetch Corporation. Mr. Martinez also indicated that Hazen and Sawyer PC, Black and Veatch Corporation, and 300 Engineering Group LLC, respondents to this solicitation, all offer engineering consulting services to WASD. These companies have current contracts with WASD for improvements in the water systems including managing capital investment projects. The companies currently handle several projects with WASD requiring frequent interactions. He is currently tasked with preparing the scope of work, approving the work, and ensuring the satisfaction of contractual obligations. Mr. Martinez indicated that his current supervision over these projects will not affect how he evaluates the various respondents to this project, and he believes he can be fair and impartial when evaluating the respondents to this project.

We conferred with Ms. Doyon. She is an Engineer 3 in the Permitting and Regulatory Compliance Section of WASD. She has been employed by WASD for two years. She advised that she was employed by 300 Engineering Group, LLC, a respondent for this solicitation, from August 2016 until September 2020 as a Project Manager. She indicated that the termination of her employment with 300 Engineering Group, LLC was amicable. Ms. Doyon 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 300 Engineering Group, LLC. Ms. Doyon 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.

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. Doyon since she stopped working for 300 Engineering Group, LLC over 3 years ago nor to Mr. Martinez since he stopped working for Black and Vetch Corporation over 14 years ago. *See* INQ 17-174, INQ 17-183, INQ 18-229, and INQ 20-136; INQ 22-39.

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.

As noted above, Ms. Doyon and Mr. Martinez disclosed previous employment for respondents to this solicitation. As Ms. Doyon's employment at 300 Engineering Group, LLC ended over three years ago and Mr. Martinez's employment at Black and Vetch Corporation over 14 years ago, both on an amicable basis, and neither have any close business or close social relationship with current employees at the entity, it is our opinion that Ms. Doyon and Mr. Martinez's prior employment at 300 Engineering Group, LLC and Black and Vetch Corporation, 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, INQ 22-39, and INQ 23-76.

Mr. Martinez also confirmed that he currently works with several of the 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 Mr. Martinez or Ms. Doyon should not serve on this committee because neither has 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 reminded that the selection committee, for which they will serve, 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 they 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.