

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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October 23, 2023

Sent via email to: slabiste@carlabinc.com

Sergio Labiste, President
Carlab, Inc.
8730 SW 25th Street
Miami, FL 33165

Carlos Labiste,
Structural Plans Processor
Miami Dade County Department of
Regulatory and Economic Resources

Re: INQ 2023-141, Section 2-11.1 (c) Limitations on Doing Business with Miami Dade County

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance concerning possible conflicts of interest that may occur as a result of your company’s participation in the Miami-Dade County Small Business Enterprise (“SBE”) certification program with the Small Business Development Division of the Internal Services Department.

Facts

You advise that while you are not a Miami-Dade County (“County”) employee however, your father, Carlos Labiste, works for the County as a Structural Plans Processor in the Structural Section Compliance Division of the Department of Regulatory and Economic Resources (“RER”). In this role, Carlos Labiste reviews structural engineering and building plans and calculations. You are the owner and operator of Carlab, Inc. (“Carlab”), a Florida For Profit Corporation and a registered vendor for Miami-Dade County that currently has no active contracts with the County. You provide that Carlab specializes in civil engineering relating to land development, environmental resources, and water resources. Additionally, you provide that Carlab does not work on structural projects, and that you are certified only to coordinate civil engineering projects. On

the rare occasion that a civil engineering project of yours incidentally involves a structural component, you explain that Carlos Labiste knows of this potential conflict of interest and knows to contact his supervisor and recuse himself from reviewing any plans involving Carlab. You would like to apply for a Small Business Enterprise (SBE) certification with the Small Business Development (SBD) Division of the Internal Services Department (ISD).

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 gender and race neutral. The County's SBE – Services Certification Program is designed to provide contracting opportunities for independent firms that meet the following criteria: (a) must have a Miami-Dade County Local Business Tax ("LBT") Receipt issued for at least one year; (b) the personal net worth for each owner cannot exceed \$1.5 million; (c) the last three years' average gross receipts must not exceed \$8 million; (d) business license holder and qualifier (if applicable) must own at least ten percent of the applicant's issued stocks or otherwise have at least a ten percent ownership interest; and, (e) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time. SBE Certification is valid for a three-year period.¹

As previously stated, Carlos Labiste's job with the Department of Regulatory and Economic Resources as a Structural Plans Processor involves reviewing building plans and calculations. However, Carlos Labiste advises that his position does not include any oversight or administration of the County's SBE Certification Programs. You further advise that despite Carlos Labiste being listed as a founding member of Carlab on the company's website², he does not currently work for Carlab, hold any financial interest in Carlab, nor receive any income from Carlab. You provide that Carlos Labiste was completely removed from all company documents in 2006. Carlos Labiste is also not otherwise involved in the administration, management, or ownership of Carlab.

Issue

Whether any prohibited conflicts of interest would occur from your private company, Carlab, Inc.'s participation in the Miami-Dade County Small Business Enterprise certification program with the Small Business Development Division of the Internal Services Department due to your father's County employment.

¹ 3 See Goods and Services, SMALL BUSINESS CERTIFICATION PROGRAMS, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited October 2, 2023).

² <https://carlabinc.com/>

Analysis

The County Ethics Code at Sections 2-11.1 (c)(2) and (d) allow you to enter into a contract, individually or through a firm, with Miami-Dade County, as long as the contract does not interfere with the full and faithful discharge of Carlos Labiste's duties to the County. In practice, the Ethics Commission has opined that an owner of a private company could contract with the County as a vendor, but that he **could not** contract with the department where an immediate family member was employed. *See* RQO 11-03. In another published opinion, the Ethics Commission held that the rule precluding immediate family members of County employees from contracting with the County extended to stepparents of the County employee. *See* RQO 11-29.

The Ethics Commission has also previously provided you with an opinion, INQ 10-13, that held that you may register Carlab to contract with the County as long as any contract does not interfere with the full and faithful discharge of Carlos Labiste's duties to the County. The opinion is further held that your father, Carlos Labiste, shall not participate in determining the contract requirements or in awarding the contract. *Id.* Additionally, none of Carlos Labiste's responsibilities should require him to be involved in the contract in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. *Id.* Finally, Carlos Labiste may not be employed by any County department or agency that will enforce, oversee, or administer the contract. This means that, as long as your father, Carlos Labiste, is employed by the County's Building Department ³, your company may not contract with the Miami-Dade County Building Department. *Id.*

Carlab may participate in the County's SBE Certification Programs, however, it may do so only so long as the RER Department is not involved in any way in processing, administering, overseeing, or enforcing the SBE Certification Programs. *See* INQ 22-157 (County employee's company may participate in County's SBE Certification Program so long as his employing County department does not enforce, oversee, or administer the SBE Certification Programs). *See also* INQ 23-67. This includes the condition that Carlos Labiste may not participate in determining or awarding the SBE Certification. Additionally, none of Carlos Labiste job responsibilities or job descriptions may require him to be involved in the SBE Certification Programs in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

This also means that your father, Carlos Labiste, shall not participate in determining any contract requirements or in awarding any contract you or Carlab pursues in the future. Additionally, no contract pursued by you or Carlab may be intertwined with Mr. Labiste's County responsibilities and job descriptions in any way including, but not limited to, the contract's enforcement, oversight, administration, amendment, extension, termination, or forbearance. In your case, this means that

³ The Building Department has since merged with other departments into what is now called the Department of Regulatory and Economic Resources, the department Mr. Carlos Labiste currently works for.

neither you nor Carlab shall enter into contracts with or provide services of any type to the RER Department. *See* County Ethics Code §§ 2-11.1 (c) and (n). *Also see* RQO 11-03; RQO 11-29; INQ 20-15; INQ 21-52; INQ 21-53; INQ 21-157; INQ 23-37.

Furthermore, Carlos Labiste may not lobby the County on behalf of Carlab. This means that Carlos Labiste may not appear before any County board or agency to represent Carlab, nor contact anyone within the County in an attempt to influence a decision about any contract that Carlab is seeking. *See* the County Ethics Code §§ 2-11.1 (m)(1).

Finally, the County Ethics Code prohibits County employees from exploitation of their official position. In this instance, it means that Carlos Labiste may not use his County position to secure special privileges or exemptions with respect to any County contract to which Carlab is applying. *See* County Ethics Code § 2-11.1(g).

Opinion

Based on the facts presented here and discussed above, **conflicts of interest will likely not arise** regarding your participation in the SBE Certification Programs provided you abide by the following limitations that are strongly recommended by the Ethics Commission:

- Carlos Labiste may not have any oversight or regulatory authority over any contracts made with you or Carlab. Additionally, he may not have any oversight regarding any structural plans that Carlab has furnished to the County. *See* County Ethics Code 2-11.1(c).
- He may not exploit his County position to secure special privileges or exemptions for yourself and/or for Carlab and its clients. *See* County Ethics Code 2-11.1(g).
- He may not disclose and/or use any confidential and/or proprietary information acquired because of his County employment to you for the benefit of Carlab or its clients. *See* County Ethics Code Section 2-11.1(h).
- He may not represent Carlab or its clients before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173.

You are required to request further ethics guidance when Carlab decides to submit a bid on a pending County solicitation or request to quote, bearing in mind that you nor Carlab may contract with the RER Department.

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

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 individual County departments and state law, other conflicts may apply. Questions regarding possible conflicts based on individual County department directives should be directed to the departments 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,

Etta Akoni

Etta Akoni
Staff Attorney

cc: Commission on Ethics Legal Staff

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.