



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 2023-143, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

DATE: October 23, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Franklin Gutierrez, SPD; Yinka Majekodunmi OCA; Jannesha Johnson, OCA; Alejandro Montalvo, Seaport; Ivette Newland, DTPW; Kyle Kincaid, Seaport; Sergio Mejia, Seaport

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 October 12, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Aviation Department Request to Advertise for General Civil Engineering Services – Project No. E23AV02. 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:

- Alejandro Montalvo, Miami-Dade Aviation Department, disclosed on his Neutrality Affidavit he is currently working on projects with the following respondents: Atkins North America, Inc., Botas Engineering Inc., CRJ & Associates Inc., Terracon Consultants, Inc., Nova Consulting, Inc., MCO Construction & Services, Inc., BND Engineers, Inc., Keith & Associates, Inc., Disamerica Consulting Group, Inc., NV5, and Premiere Design Solutions, Inc.
- Ivette Newland, Department of Transportation and Public Works, disclosed on her Neutrality Affidavit her employment with Professional Service Indust Inc. (PSI) from May 1989 through November 1991. Professional Service Indust Inc. (PSI) is a respondent to this solicitation.
- Kyle Kincaid, Seaport Department, disclosed on his Neutrality Affidavit that his former employer carried Keith & Associates, Inc., as sub-contractors before 2021. Keith & Associates Inc. are respondents to this solicitation.
- Sergio Mejia, Miami-Dade Aviation Department, disclosed on his Neutrality Affidavit his employment with TY Lin International from February 2008 through April 2018. TY Lin International is a respondent to this solicitation.

We conferred with Mr. Montalvo. He is an Engineer 4 for the Miami-Dade County Aviation Department (MDAD). He has worked for MDAD for approximately 30 years. He indicated that he has business relationships due to current projects for MDAD, as he is assigned as the MDAD project manager for construction contracts/projects listed below. Specifically, Atkins North America, Inc., Botas Engineering Inc., Terracon Consultants, Inc. and Keith & Associates, Inc., all respondents to this solicitation, are consultants providing professional services on the MIA Central Base Improvements project assigned to Mr. Montalvo and currently being implemented. MCO Construction & Services, a respondent to this solicitation, is providing administrative staff assisting with assigned projects. BND Engineers, Inc., Nova Consulting, Inc. and Disamerica Consulting Group, Inc., respondents to this solicitation, provide environmental oversight services on soil removal contracts currently assigned to Mr. Montalvo. NV5 and Premiere Design Solutions, Inc., respondents to this solicitation, worked on previous projects but are not involved with any of Mr. Montalvo's current projects. Mr. Montalvo advised that he had no close business or personal relationships with any of the respondents to this solicitation. He also has no personal or financial interest in any of the respondents. He stated that he could be fair and impartial when evaluating the various respondents to this project and does not believe that his work with any of the entities listed would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

We conferred with Ms. Newland. She is a Professional Engineer for the MOT Section of Miami-Dade County Department of Transportation and Public Works (DTPW). She has been employed by the County for 28 years. She was employed by Professional Services Industries (PSI), a

respondent to this solicitation, as an Inspector. She worked for PSI from May 1989 to November 1991. She indicated that the termination of her employment with PSI was amicable. Ms. Newland 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 PSI. Ms. Newland believes she can be fair and impartial when evaluating the respondents to this project.

We conferred with Mr. Kincaid. He is a Construction Manager 2 for the Miami-Dade County Seaport Department. He has been employed by Seaport since February 7, 2022. He advised that he had not worked for any of the respondents to this solicitation nor did he currently manage any projects involving any of the respondents to this solicitation. However, Mr. Kincaid did indicate that his former employer carried Keith & Associates, Inc., a respondent to this solicitation, as a subcontractor before 2021. He further indicated that his work with the subcontractor for his former employer involved attending a few construction progress meetings and site visits only. He further indicated that he could be fair and impartial when evaluating the various respondents to this project and does not believe that his work with Keith & Associates, Inc. would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

Lastly, we conferred with Mr. Mejia. He is an Engineer 4 for the Miami-Dade Aviation Department (MDAD). He has been employed by MDAD since June 17, 2019. He was employed by TY Lin International (TY Lin), a respondent to this solicitation, as an Aviation Group Leader. He worked for TY Lin from February 2008 to April 2018. He indicated that the termination of his employment with TY Lin was amicable. Mr. Mejia 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 TY Lin. Mr. Mejia believes he 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. Newland since she stopped working for PSI over 32 years ago nor to Mr. Mejia since he stopped working for TY Lin over 5 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. Newland and Mr. Mejia disclosed previous employment for respondents to this solicitation. As Ms. Newland's employment at PSI ended over 32 years ago and Mr. Mejia's employment at TY Lin over 5 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. Newland and Mr. Mejia's prior employment at PSI and TY Lin, 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.

Additionally, Mr. Montalvo confirmed that he currently works with several of the respondents to this solicitation and is involved in several aspects of existing projects. Mr. Kincaid also indicated that he previously worked with a respondent to this solicitation on a project with a previous employer. The Commission on Ethics has indicated in various informal opinions that, absent some other factor, the mere fact that a selection committee member has or had 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. Montalvo, Ms. Newland, Mr. Kincaid, or Mr. Mejia should not serve on this committee because none of the members 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 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.