



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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

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

**FROM:** Susannah Nesmith, Staff Attorney  
Commission on Ethics and Public Trust

**SUBJECT:** INQ 2023-145, Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety

**DATE:** October 27, 2023

**CC:** All COE Legal Staff; Namita Uppal, SPD; Gutierrez, Franklin, SPD; Yinka  
Majekodunmi, OCA; Jannesha Johnson, OCA; Manuel Freire, MDAD

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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 Aviation Department Request to Advertise MIA Perimeter Security Hardening – Project No. E22-MDAD-04. 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 one member of the selection committee made a disclosure on his Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Manuel Freire, Miami-Dade Aviation Department, disclosed on his Neutrality Affidavit that he is working with the following firms: Burns and McDonnell Engineering Co., Inc., Louis J. Aguirre & Associates PA, EXP US Services, Inc., and MCO Construction & Services, Inc., on different agreements at Miami International Airport (MIA). Burns and McDonnell Engineering Co., Inc., Louis J. Aguirre & Associates PA, EXP US Services, Inc., and MCO Construction & Services, Inc. are respondents to this solicitation.

Mr. Freire has advised that he is a Construction Manager at Miami International Airport. He has worked for MDAD for seven years. He indicated that he is currently involved with several of the respondents to this solicitation including Burns and McDonnell Engineering Co., Inc.; Louis J. Aguirre & Associates PA; EXP US Services, Inc.; and MCO Construction & Services. Mr. Freire advised that he has worked with all four firms on multiple county contracts at the airport. He said his role is to work with the firms to design a project and then supervise them as they complete the construction, making sure that they produce the deliverables in the contract.

He 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. Mr. Freire 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.

#### 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 Mr. Freire has a voting conflict of interest under Section (v) of the County Ethics Code because he will not be directly affected by the vote, and does not 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.

Mr. Freire confirmed that he has worked with four of the responding firms and has professional relationships with the firms and their staffers when those firms had construction contracts at the airport. 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 22-153, INQ 20-136, INQ 18-230, INQ 18-47, INQ 18-21, INQ 17-286, INQ 16-165, INQ 14-279. 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 22-153, INQ 20-136, INQ 18-230, INQ 18-47, INQ 18-21.

Opinion:

Consequently, we see no reason why Mr. Freire should not serve on this committee because he does not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by his service on this committee.

However, he is reminded that the selection committee, on which he 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, 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. 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.