



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: Julie Whiteside, Selection Committee Coordinator
Strategic Procurement Department (SPD)

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

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

SUBJECT: INQ 2023-157, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

DATE: November 28, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Daniel Cotes, SPD; Yinka Majekodunmi OCA; Jannessa Johnson, OCA; Juan Curiel, 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 October 23, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Water and Sewer Department Request to Advertise for Engineering Design Services for Proposed Upgrades to Miami-Dade County's Wastewater Treatment Plants and Appurtenant Facilities – Project No. E23WS05. 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 his Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Juan Curiel, Water and Sewer Department, disclosed on his Neutrality Affidavit his working relationship as a Project Manager with several respondents. Mr. Curiel revealed his interaction with several firms during the construction phase. The names of those respondents were not noted. Additionally, Mr. Curiel disclosed his prior employment with NOVA Consulting, Inc. from January 2018 to June 2019. NOVA Consulting, Inc. is a respondent to this request.

We conferred with Mr. Curiel. He is the Assistant Director of Utility Construction for the Miami-Dade County Water and Sewer Department (WASD). He has worked for the County for 18 years, and one year in his current capacity. He confirmed that he previously worked for NOVA Consulting, Inc. (NOVA) as an Engineer. Mr. Curiel worked for NOVA from June 2014 until January 2018. He indicated that the termination of his employment with NOVA 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 and has managed projects in his County role which involved several respondents of this solicitation including BND Engineers, BCC Engineering, Corradino Group, 300 Engineering Group, Milian, Swain and Associates, Inc., Robayna and Associates, Inc., Geosol Inc., Hadonne Corp., HBC Engineering Company, NOVA Consulting Inc., Conemco Engineering, Parson Transportation Group, FR Aleman and Associates Inc., ECR Engineering, LLC, ADA Engineering Inc, Bello and Bello Land Surveying Corp., CES Consultants Inc., and CHA Consulting Inc. He advised that in his role for the County 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.

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. Curiel 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. Curiel has confirmed that he currently works with or has worked in the past with several respondents to this solicitation involving several aspects of existing and completed 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.

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 Mr. Curiel since he stopped working for his former employers, NOVA, five years ago. *See* INQ 17-174, INQ 17-183, INQ 18-229, and INQ 20-136.

As noted above, Mr. Curiel noted that he was previously employed by NOVA, a respondent to this solicitation, which ended in 2018. As Mr. Curiel's employment with his company ended over 5 years ago, on an amicable basis, and he does not have any business, or close social relationship with current employees at the entity, it is our opinion that Mr. Curiel's prior employment at NOVA 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. Curiel 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, for which he may 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. Consequently, while he 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.