



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Penny Harris
Tax Record Specialist 2
Office of the Tax Collector

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2023-165, Section 2-11.1(c), Limitations on Contracting with the County

DATE: December 15, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest concerning your company’s participation in Miami-Dade County’s Small Business Enterprise (“SBE”) Certification Programs and potential future contracts with the County.

Facts

You are employed by the Office of the Tax Collector as a Tax Specialist 2 assigned to the Business License division. Your job duties are to review, research, and edit online business tax applications using the BTEXpress program. You also assist taxpayers with their questions and concerns and assist with the closure of business accounts via an inbound and outbound calling system. You also answer email complaints and assist with changes to business tax renewal notices. While you do not have person-to-person contact with the applicants, you may on occasion contact them to request additional information/documents. You approve the applications unless an application merits the review and approval of your supervisor. You state that you do not review any federal tax forms or tax information in your current position and your duties do not include any oversight or administration of the County’s SBE Certification Programs.

In addition to your duties with Miami-Dade County, you are also the President of Unity Tax Inc. (“Unity Tax”), a for-profit company incorporated in the State of Florida. You prepare personal and business federal tax returns, including amendments. You advise that your current private clients are not the applicants for business licenses that you have encountered in your County employment. You also assert that you do not and will not utilize any County resources to conduct your outside

employment. Lastly, you provide that you do not have any existing contracts or agreements with Miami-Dade County and you have no employees or family members who work for the County. Your request for outside employment has previously been approved by your immediate supervisor after this office found your outside employment presented no conflict of interest with your public duties, provided you abide by certain limitations. *See* INQ 19-101. Your supervisors have expressed that they are comfortable with you application for SBE certification and your outside employment because your work for the County does not involve federal tax laws and your outside employment involves preparing federal tax returns.

You would like to apply to Miami-Dade County for SBE certification. The SBE Certification programs were created for small businesses providing construction, architectural, engineering, goods, services, and aeronautical support services. The SBE Certification Program is administered by the County's Internal Services Department. The County's SBE – Goods and 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

You don't have a specific department in mind that you would like to contract with after you obtain the certification.

Issue

Whether there is a prohibited conflict of interest that would prevent Unity Tax, your privately owned business, from participating in the County's SBE Certification Programs and then contracting with the County.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

A. Contracting with the County

Sections 2-11.1(c) and (d) of the County Ethics Code restrict the ability of County employees to contract with the County. A County employee is permitted to transact business with the County only if the contract does not interfere with the full and faithful

¹ *See Goods and Services, SMALL BUSINESS CERTIFICATION PROGRAMS*, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited Dec. 9, 2023).

discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with enforcing or overseeing the contract. *See* County Ethics Code §§ 2-11.1(c), (d).² Additionally, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. *See* County Ethics Code § 2-11.1(c)(2). Consequently, Unity Tax may not enter contracts with the Tax Collector's Office.

Here, you have indicated that Unity Tax is interested generally in seeking to contract with the County, but it has not responded to any specific solicitations to bid or requests to quote. Accordingly, you should request further ethics guidance when Unity Tax decides to submit a bid on any pending County solicitation or request to quote, bearing in mind that neither you nor Unity Tax may contract with the Office of the Tax Collector. *See id.*

B. Lobbying

As a County employee, you are prohibited from lobbying the County. In this case, that means that you may not contact anyone within the County in an attempt to influence a decision about Unity Tax's application to participate in County's SBE Certification Programs. *See* County Ethics Code § 2-11.1(m)(1).

C. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See* County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to Unity Tax's application to, and ultimate participation in, the County's SBE Certification Programs, or to any other County certification programs to which you or Unity Tax are applying.

Opinion

Based on the facts presented here and discussed above, Unity Tax's participation in Miami-Dade County's Small Business Certification Programs does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above. Additionally, Unity Tax's potential future business with the County will require further evaluation once a specific County solicitation or contract is contemplated.

² *But see* Section 112.313(7)(a), Florida Statutes, providing that:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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/>.

Please submit this memorandum to the Small Business Development Division of the Internal Services Department (“ISD”). The Commission on Ethics does not submit it on your behalf.

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 this is an informal opinion, 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.