



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Alberto Mesa, Senior Software Developer  
Information Technology Department

Loira Urena, IT Manager  
Information Technology Department

**FROM:** Etta Akoni, Staff Attorney  
Miami-Dade County Commission on Ethics and Public Trust

**SUBJECT:** INQ 2023-168, Section 2-11.1(j), Outside employment.

**DATE:** December 29, 2023

**CC:** All COE Legal Staff

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Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding possible conflicts of interest in your proposed outside employment.

#### Facts

You are currently employed by the Miami-Dade County Information Technology Department (“ITD”) as a Senior Software Developer. Your job duties primarily include supporting the Water and Sewer Department of Miami-Dade County (“WASD”) through eBuilder implementation and related processes. The eBuilder program is a cloud solution that is used to manage and monitor construction projects through their entire life cycle. This includes initiation, planning, design, procurement, construction, and close out.

The eBuilder implementation supports all projects that are part of the Capital Improvement Program (“CIP”), as well as the processes related to utility construction projects that connect to ITD’s infrastructure and are donated to WASD. The eBuilder program enables WASD to leverage best practices for project controls, facilitate communication, and improve collaboration with project teams. Your support of the eBuilder implementation and related processes entails varied aspects such as user-requirement gathering, developing technical specifications, integration development, modifying eBuilder configuration, deploying code across multiple environments, testing, providing demos, developing dashboards, reports, and queries, collaborating with users, vendors, analysts, data center staff and other stakeholders.

You advised that you would like to engage in outside employment as a Project Controls Analyst V for AECOM Technical Services, Inc. LLC (“AECOM”), a foreign, for-profit corporation and a subsidiary of AECOM, a large international company engaged in design, building, financing, and operation of significant infrastructure projects. AECOM reports that it does business in over 150 countries around the world, and you provide that AECOM is the world’s largest infrastructure consulting firm that delivers professional services throughout a project’s lifecycle – from planning, design, and engineering to program and construction management.

You provide that the scope of your work is limited to areas “far away” from Miami-Dade County. Currently, you are working on projects located in the areas of Jacksonville, Florida; Orange, Florida; and Arlington, Virginia. AECOM is currently engaged with Miami-Dade County as a vendor or proposer on more than one project. There is some overlap between your County job and your proposed outside employment as both jobs utilize the eBuilder program, but you provide that you have not used eBuilder thus far in your work with AECOM.

On December 13, 2023, COE staff discussed your proposed outside employment with Loira Urena, your immediate supervisor. Ms. Urena advised that eBuilder is a program frequently used in the information and technology field, moreover, she advised that she didn’t have reason to believe that working with eBuilder in two (2) different employment circumstances would impair your independence of judgment. Additionally, Ms. Urena advised that she thought there would not be a conflict of interest with your proposed outside employment and emphasized that it was her understanding that your projects with AECOM would have nothing to do with your work for the County.

#### Issue

Whether any prohibited conflict of interest may exist between your County employment and your proposed outside employment as a Project Controls Analyst V for AECOM.

#### Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics (“County Ethics Code”) prohibits County employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” Section 2-11.1(j); *see also* section 2-11.1(k). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder no circumstances shall a County employee accept outside employment . . . where a real or apparent conflict of interest with one’s official or public duties is possible.”

County employees are required to obtain approval from their department director prior to engaging in outside employment. *See* AO 7-1. Departmental directors and their subordinate supervisors may request an opinion from the Miami-Dade Commission on Ethics and Public Trust regarding any potential conflict of interest concerning the proposed outside employment. *See* INQ 21-111; INQ 19-101. Department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside

employment would be contrary, detrimental, or adverse to the interests of the County or the employee's department. *See* RQO 16-02; RQO 00-10; INQ 13-28.

Multiple factors are considered when evaluating whether outside employment is conflicting, including similarity of duties with the employee's County duties, contact with the same or similar entities (e.g., similar personnel, clients, suppliers, or subcontractors) in both the employee's County position and proposed outside employment, overlapping work hours, use of County resources in the outside employment, and the management of County vendors who are also involved in the proposed outside employment. *See* RQO 17-01. However, a similarity between an employee's County duties and his or her outside employment duties does not indicate, by itself, the existence of a conflict of interest. *See* INQ 18-54 (citing RQO 12-07; RQO 04-168; RQO 00-10) (noting that a County employee can engage in outside employment with similar duties and functions so long as he or she abides by certain limitations). Furthermore, the use of an acquired knowledge base in outside employment for a privately owned company also does not, in and of itself, create a conflict of interest. *See* INQ 20-43 (a firefighter/emergency medical technician working for the Miami-Dade Fire Rescue Department could engage in outside employment as the Chief of the Tavernier Volunteer Fire Department).

In practice, in RQO 00-10, the Ethics Commission did not find a conflict of interest for a County employee working for WASD as a water treatment plant officer to engage in outside employment performing *similar* functions for a company which operates water treatment plants for entities not served by the County. Similarly, in RQO 04-168, the Ethics Commission opined that, *with limitations*, a County land surveyor may engage in outside employment as land surveyor for private clients, including other municipalities. Also, in RQO 12-07, the Ethics Commission concluded that, *with limitations*, a County liability claims adjuster at ISD-Risk Management could work as a private risk management consultant (performing similar duties). The fact that your duties with WASD and your privately owned company are similar does not preclude you from engaging in outside employment with AECOM, albeit with limitations.

There are instances where, in addition to the similarity between the outside employment and the County position, the outside employer is a County vendor. Generally, the Miami-Dade County Ethics Code does not prevent an employee from being employed by a County vendor, *as long as the employee does not have any involvement with the vendor's contract*. *See* INQ 11-67. In this instance, you have no contact with or authority over the selection, oversight, or administration over the County's contract with AECOM nor do your County duties provide you with any authority over your outside employer. *See* INQ 21-42 (a WASD Network Manager did not have a conflict of interest regarding his employment at the County and his outside employment as the owner of an information technology consulting company, which was a County vendor, because his outside employment would not impair his independence of judgment in the performance of his public duties as the company did not contract with WASD; and the employee had no contact or authority over the selection, oversight, of administration of the County's contract with the company, in his County employment); *see also* INQ 15-115 (a surgical technician at JHS may engage in outside employment for a County contractor manufacturing surgical equipment because the employee is not involved with the contract/product acquisition).

However, in RQO 15-03, The COE found a conflict of interest in an ITD Senior Systems Analyst and Programmer's outside employment with a private company, whose principals were also the principals of a company that was a county vendor. In both his County position and his outside employment role, the ITD Senior Systems Analyst and Programmer worked on the same transit tracking system. The private company worked with the transit tracking system for municipalities in Miami Dade County. An important difference in RQO 15-03 is that the County decided that in order to provide users with a more uniform transit tracking system, the County foresaw interfacing the County transit tracking system with municipal transit tracking systems sometime in the future, and the supervisor believed a conflict of interest would develop through the integration process. As a result, the COE concluded that divided loyalties between ITD Senior Systems Analyst and Programmer public and outside employment were likely to occur during the integration of the systems as conflict. Furthermore, in RQO 15-03, the COE concluded that the knowledge and resources the ITD Senior Systems Analyst and Programmer acquired in his County employment could be used for his and the outside employers private gain as he could give his private employer the advantage over other companies for the transit tracking system integration project. Ultimately the work the ITD Senior Systems Analyst and Programmer would perform at his outside employment would be so closely related to and would actually intersect with the work he performed for the County. For comparison, in the instant matter, while you are using eBuilder for your county employment, AECOM has not engaged you in any eBuilder work, and your work for AECOM is for municipalities that are remote from and unrelated to Miami Dade County.

Consequently, while your outside employment may appear conflicting, pursuant to COE opinions, the facts provided herein, and your supervisor's willingness to approve your outside employment, it appears to be unlikely that your outside employment would impair your independence of judgment in the performance of your County duties as a Senior Software Developer for ITD **so long as you do not accept any work in your outside employment related in any way to ITD, WASD, or Miami-Dade County.**

### Opinion

Based on the facts presented here and discussed above, You, Mr. Mesa would not have a conflict of interest in your proposed outside employment as a Project Controls Analyst V with AECOM so long as you abide by the restrictions and guidance referenced herein.

Furthermore, the Commission on Ethics strongly recommends that the following limitations be imposed on any approval for you to engage in your proposed outside employment with AECOM:

- You may not engage in activities that relate in any way to your outside employment during your scheduled County work hours (including phone calls, text messages, e-mails, or other communications) and you may not use County resources (including, but not limited to, phones, copiers, computers, fax machines, the County's licensed version of eBuilder, and County vehicles) in connection with your outside employment, even after work. *See* County Ethics Code Section 2-11.1(g); AO 5-5, AO 7-1; INQ 20-43; INQ 19-123; INQ 15-240.

- You may not perform work on any contract that AECOM has been awarded by Miami Dade County, including, but not limited to, any County contract work for or related to eBuilder. *See* RQO 15-03
- You may not exploit your County position to secure special privileges or exemptions for yourself and/or for AECOM or its clients. *See* County Ethics Code 2-11.1(g). **Specifically, you may not offer your or AECOM’s services to anyone during County working hours, including co-workers, subordinates, and other County employees.** *See* INQ 19-101.
- You may not disclose and/or use any confidential and/or proprietary information acquired because of your County employment to derive a personal benefit, or for the benefit of AECOM or its clients. *See* County Ethics Code Section 2-11.1(h); INQ 21-60. This includes any specialized knowledge and/or skills related to Miami Dade County’s use of the eBuilder program you acquired through your work for Miami Dade County. *See* RQO 15-03.
- You may not represent AECOM before any County board or agency. *See* County Ethics Code Section 2-11.1(m)(1); RQO 04-173. While it does not appear that lobbying activities are a part of your potential activities as a Project Controls Analyst V for AECOM, it is important to note that you would be prohibited from doing any such activities on behalf of AECOM or its clients.
- You must obtain permission to engage in outside employment on an annual basis by filing a Request for Outside Employment with your department director, and **you must file an Outside Employment Statement<sup>1</sup> with the County’s Elections Department by noon on July 1st of each year regardless of whether you made a profit or not in your outside employment.** *See* County Ethics Code Section 2-11.1(k)(2).

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

Other conflicts may apply based on directives from WASD, ITD, or under state law. Questions regarding possible conflicts based on WASD or ITD directives should be directed to WASD, ITD 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/>.

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 this 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.

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<sup>1</sup> Mr. Mesa can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.