



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Prisca Tomasi
Selection Committee Coordinator
Miami-Dade County Strategic Procurement Department (SPD)

Yaritza Reina, Executive Secretary
Miami-Dade County Office of the Commission Auditor (OCA)

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

SUBJECT: INQ 2023-169 [Voting Conflict of Interest § 2-11.1(v); Resolution No. 449-14; Appearances of Impropriety]

DATE: December 26, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Adeyinka Majekodunmi, OCA; Jannesha Johnson, OCA; James Ferguson, WASD; James Scott, OMB

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed action.

FACTS:

We have reviewed The Miami-Dade County Office of the Commission Auditor memorandum dated December 7, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Finance Department Request for Qualifications for Municipal Bond Underwriting Pool – RFQ No. EVN0000606. This RFQ is being conducted on behalf of the Miami-Dade County Office of Management and Budget (hereinafter referred to as “OMB”), who is soliciting proposals from underwriting firms to submit their qualifications for inclusion in the Municipal Bond Underwriting Pool, for the purpose of serving as Senior Manager, Co-Senior Manager, and Co-Managers for the County’s negotiated bond transactions on a non-exclusive and as-needed basis. Bonds include, but are not limited to, general obligation bonds, special obligation bonds, and revenue bonds for the County’s enterprise operations, including the airport, seaport, transit, water and sewer, and solid waste departments. 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 two (2) members of the selection committee made disclosures on their Neutrality Affidavits that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that:

James Ferguson, Water and Sewer Department, disclosed on his Neutrality Affidavit that he has both a checking and savings account with Bank of America Securities, Inc. Bank of America Securities, Inc. is a respondent to this solicitation. Mr. Ferguson also disclosed that he has an investment account with RBC Capital Markets, LLC. RBC Capital Markets, LLC is a respondent to this solicitation.

James Scott, Office of Management and Budget, disclosed on his Neutrality Affidavit his daughter's employment with Goldman Sachs & Co., LLC as a summer analyst from June-August 2016 and then again from July 2017-August 2018 as an analyst. Goldman Sachs & Co., LLC is a respondent to this solicitation.

We conferred with Mr. Ferguson. He is an Assistant Director of the Planning & Regulatory Compliance Division of the Miami-Dade County Water and Sewer Department. (hereinafter referred to as "WASD"). He confirmed that although he has consumer banking products through Bank of America Securities, Inc. and RBC Capital Markets, LLC., he is currently not seeking any type of loan, forbearance, or financial benefit from either organization. Mr. Ferguson confirmed that he has no current ownership interest, other financial interest, or corporate leadership roles in Bank of America Securities, Inc. or RBC Capital Markets, LLC. Mr. Ferguson confirmed that he does not have any business, close social, or other relationship with any current employee at Bank of America Securities, Inc. and RBC Capital Markets, LLC. Mr. Ferguson indicates that he will not receive a direct financial benefit from this RFQ and that he believes he can be fair and impartial when evaluating the respondents to this project.

We also conferred with Mr. Scott. He is an OMB Senior Bond Analyst. His daughter, Dana Scott, previously worked for Goldman Sachs & Co. June-August 2016 as a Summer Analyst and then again from July 2017-August 2018 as an Analyst. Dana Scott's eventual separation from Goldman Sachs & Co. was amicable. In these roles, Mr. Scott believes that Dana Scott worked on a trading desk, mostly building models and perhaps pitch books, etc., although Mr. Scott does not recall which desk specifically his daughter worked on. However, Mr. Scott is sure it was not on a desk involving the area of municipal finance. Mr. Scott confirmed that Dana Scott has no current ownership interest, other personal or financial interest, nor maintains any leadership roles in Goldman Sachs & Co. Mr. Scott indicated that he is not aware of any close personal friendships his daughter maintains with (an) employee (s) Goldman Sachs & Co. As he has not heard her mention anyone from Goldman Sachs & Co. in the more than 5 years since she left the company. Mr. Scott

indicates that he will not receive a direct financial benefit from this RFQ. Moreover, Mr. Scott indicated that his daughter's prior work history at Goldman Sachs & Co. would not impair his independence of judgment when evaluating the various respondents on this project. As such, he believes he can be fair and impartial when evaluating the respondents to this project.

DISCUSSION:

This agency conducts reviews of potential 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).

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 neither Mr. Ferguson nor Mr. Scott have a voting conflict of interest under Section (v) of the County Ethics Code. Mr. Ferguson, who will serve as an alternate to this selection committee, does not have a voting conflict under Section (v) of the County Ethics Code because he will not be directly affected by the vote, and he does not currently have any of the enumerated relationships with any entity affected by the vote. *See* INQ 2021- 61. Even if Mr. Ferguson was a voting member of the committee, he would still not have a voting conflict under Section 2-11.1(v) of the Ethics Code because even though he arguably has a financial relationship with Bank of America Securities, Inc. and RBC Capital Markets, LLC., Mr. Ferguson would not be directly affected by the vote on this solicitation. As to Mr. Scott, he does not have a voting conflict under Section 2-11.1(v) since as technical advisor, he will not vote, nor does he have any of the enumerated relationships with any entity affected by the vote. *See* INQ 2021- 61, INQ 18-229, and INQ 17- 174.

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.

In INQ 2021-61, Ethics Commission staff opined that members of the selection committee for an Affordable Housing Trust Fund Board Request for Proposals, could serve on the selection committee even though they had bank accounts with the sole respondent to the solicitation, because they will receive no financial benefit through this solicitation and no

special benefit will come to them as a result of their service on this committee. Also, in INQ 17-193, the Ethics Commission staff opined that the Assistant Director for the Homeless Trust could serve as the non-voting chairperson of a selection committee, where his prior employer was the sole respondent to that solicitation. In INQ 17-193, the disclosures made by the three selection committee members regarding having bank accounts with DCFCU, a respondent to the solicitation, did not create a conflict under the Ethics Code. The three selection committee members had no ownership interest in DCFCU; they are not currently seeking any type of loan, forbearance, or financial benefit from DCFCU; and they do not have any business, or close social relationship with current employees at the entity.

OPINION

Consequently, Mr. Ferguson and Mr. Scott do not have a conflict of interest under the Ethics Code that would prevent them from serving in their appointed roles relating to this solicitation, and their service would not create an appearance of impropriety or detract from the County's conducting a fair and objective evaluation for this project. *See* INQ 2021- 61 and 2017-193.

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, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 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 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.