



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Franklin Gutierrez
Selection Committee Coordinator
Miami-Dade County Strategic Procurement Department

Phillip Rincon, Senior Research Analyst
Office of the Commission Auditor (OCA)

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

SUBJECT: INQ 2023-29 [Voting Conflict of Interest § 2-11.1(v); Reverse Two-year Rule § 2-11.1(x); Resolution No. 449-14]

DATE: March 15, 2023

CC: All COE Legal Staff

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 Office of the Commission Auditor memorandum dated February 21, 2023, which was prepared in connection with the Appointment of the Selection Committee for the Miami-Dade County Water and Sewer Department Request to Advertise for Professional Services for the South Dade Maintenance Facility – Project No: A21-WASD-01. 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 Affidavit that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that:

Marcelino Torres, Water and Sewer Department, indicated on his resume that he was previously employed by BCC Engineering, LLC, from April 2021 through February 2022. BCC Engineering, LLC is identified as a subconsultant for ACAI Associates, Inc., a respondent to this solicitation. Other than the abovementioned finding, the background research yielded no apparent potential conflict of interest for the members of the Selection Committee.

We conferred with Mr. Torres. He is a Senior Program Manager for the Miami-Dade County Water and Sewer Department. (Hereinafter referred to as “W&S”). He confirmed that he previously worked for BCC Engineering, LLC. as a CEI Project Administrator starting in 2017 when BCC Engineering, LLC. acquired the New Millennium Engineering, the company Mr. Torres was working for at the time. Mr. Torres separated amicably from BCC Engineering, LLC. on February 25, 2022. Mr. Torres confirmed that he has no current ownership interest or other financial interest in BCC Engineering, LLC. Mr. Torres confirmed that he does not have any business, close social, or other relationship with any current employee at BCC Engineering, LLC. Mr. Torres 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.

Mr. Torres disclosed that he was previously employed by BCC Engineering, LLC., a subconsultant for ACAI Associates, Inc. who is a respondent to the solicitation. Mr. Torres indicates that he does not have any business connections with BCC Engineering, LLC. nor any close social relationship with current employees at BCC Engineering, LLC. Therefore, pursuant to Section 2-11.1(v) of the County Ethics Code, Mr. Torres’ prior employment at BCC Engineering, LLC. would not create a conflict of interest because he will not be directly affected by the vote as he does not have any of the enumerated relationships with an entity affected by the vote. *See* INQ 20-73, INQ 18-202, and INQ 17- 69.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the “Reverse Two-Year Rule,” 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 prior employment. The Ethics Code specifically states that “contract related duties” include “service as a member of a county certification, evaluation, selection, technical review, or similar committee; ...” In this case, Section 2-11.1(x) prohibitions apply to Mr. Torres as his separation from BCC Engineering, LLC. was on February 25, 2022, which is less than two (2) years from the date of this opinion. Additionally, BCC Engineering, LLC. is a subconsultant for ACAI Associates, Inc., a respondent to the solicitation. *See* RQO 17-04; RQO 11-14; INQ 19-66; INQ 15-35.

OPINION

Consequently, we recommend that Mr. Torres be removed from this selection committee because the Reverse Two-Year Rule, Section (x) of the Ethics Code, 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, as Mr. Torres ended his employment with BCC Engineering, LLC., a subconsultant for a respondent to this solicitation, less than two years ago. *See* RQO 17-04; RQO 11-14; INQ 19-66; INQ 15-35.

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.