



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Saba Musleh, Selection Committee Coordinator
Strategic Procurement Department

Philip Rincon, Sr., Research Analyst
Office of the Commission Auditor

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-34, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: March 24, 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 transaction.

Facts:

We have reviewed your memorandum dated March 10, 2023, which was prepared in connection with the Appointment of Selection Committee for Multiple County Departments Request for Proposals for Maintenance and Repair Services for Conveyance Equipment – RFP No. EVN0000037. The memorandum was prepared in connection with Resolution Number 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 members (one as a technical advisor) of the selection committee made disclosures on their Neutrality Affidavit/Disclosure Form that merited submission to the Commission on Ethics for an opinion. The memorandum noted that:

- A. Amaury Martell, Miami-Dade Aviation Department, disclosed prior employment within his Neutrality Affidavit. Mr. Martell stated that he was employed by Miami Elevator/Thyssenkrupp (TK Elevator Corporation) from April 8, 1981, to May 8, 2004. TK Elevator Corporation is a respondent to this solicitation.

We conferred with Mr. Martell. He is an Elevator Contract Coordinator for the Miami-Dade Aviation Department (“MDAD”). Mr. Martell’s primary job responsibilities include managing MDAD elevator contracts and approving invoices for elevator services by elevator contractors. He confirmed that he previously worked for Miami Elevator/Thyssenkrupp, which is now known as TK Elevator Corporation (“TKE”) in various positions, including as a helper, a mechanic, and a foreman. Mr. Martell stated that he left his employment with TKE in May 2004, and that the termination of his employment with TKE was amicable. Neither Mr. Martell nor his immediate family have any current ownership interest or other financial interest in TKE. He also does not have any business, close social, or other relationship with any current employee at TKE. Mr. Martell believes that he can be fair and impartial when evaluating the respondents to this solicitation.

B. Michael Perez, Miami-Dade Aviation Department, disclosed within his Neutrality Affidavit, to avoid any conflicts of interest he is recusing himself from this solicitation.

We conferred with Mr. Perez. He is an Airport Elevator Contract Specialist for MDAD. Mr. Perez’s primary job responsibilities include managing elevator contracts with MDAD, ensuring the conduction of conveyance inspections and proper performance of repairs, and conducting mechanical repairs for elevators, escalators, and moving walkways for which MDAD-owned buildings are responsible. Mr. Perez stated that, as part of his County responsibilities, he has experience working with one of the respondents to this solicitation. Specifically, Mr. Perez stated that he is aware of and involved in the issuance of a number of vendor non-performance citations issued to one of the respondents to this solicitation pursuant to a prior contract that said respondent had with MDAD. As a result, Mr. Perez stated that, because of his past professional interactions with one of the respondents, *he does not believe that he can be fair and impartial* when evaluating that respondent in relation to the other respondents to this solicitation. Mr. Perez stated that he does not have any personal financial interests in any of the respondents to this solicitation, nor does he do any personal business with any of the respondents. Mr. Perez further stated that he does not have any personal, close social, or other relationship with any current employee of any of the respondents to this solicitation.

Discussion:

The Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) conducts a review of issues arising under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), which governs conflicts by members of County advisory and quasi-judicial boards. The Ethics Commission also considers whether the circumstances create an appearance of impropriety and makes recommendations based on Resolution No. 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.

Further, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the Ethics Commission 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* Miami-Dade County Code § 2-1067; Ethics Commission Rule of Procedure § 2.1(b). “In all procurement matters, appearances of integrity and fairness are paramount, [as there is a] ‘need for the County to conduct its procurement operations in a manner that will not create appearances of impropriety, favoritism or undue influence . . . [which] may require a higher standard of ethics’” INQ 17-131 (quoting INQ 14-242).

Additionally, absent some other factor, the mere fact that a Selection Committee member has interactions with a respondent in connection with the member’s County duties would not create an appearance of impropriety that could affect the public trust in the integrity of the procurement process. *See* INQ 23-01; INQ 22-147; INQ 20-136; INQ 18-230. However, a lack of objectivity can create an appearance of impropriety. *See* INQ 16-165.

A. Mr. Martell’s Appointment to the Selection Committee.

It does not appear that Mr. Martell has a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because, as a Technical Advisor to the selection committee, he will not have a vote. It is nevertheless worth noting that, even if Mr. Martell were a voting member of the selection committee, 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.

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. Martell since he stopped working for TKE approximately nineteen years ago. *See* RQO 17-04; RQO 10-05; INQ 20-136.

Further, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the Ethics Commission 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* Miami-Dade County Code § 2-1067; Ethics Commission Rule of Procedure § 2.1(b).

As noted above, Mr. Martell disclosed that he was previously employed by TKE, a respondent to this solicitation. As Mr. Martell’s employment at TKE ended approximately nineteen 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. Martell’s prior employment at TKE 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 22-20; INQ 22-19; INQ 18-16.

B. Mr. Perez's Appointment to the Selection Committee.

Pursuant to Section 2-11.1(v) of the County Ethics Code, it does not appear that Mr. Perez will 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 23-01.

However, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the Ethics Commission 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* Miami-Dade County Code § 2-1067; Ethics Commission Rule of Procedure § 2.1(b). Also as discussed above, the Ethics Commission has previously noted on numerous occasions that, in all procurement matters, appearances of integrity and fairness are paramount. *See* INQ 17-131 (quoting INQ 14-242); *see also* INQ 23-01; INQ 22-147; INQ 20-136; INQ 18-230.

While the mere fact that a Selection Committee member has had interactions with a respondent in connection with the member's County duties does not, by itself, create an appearance of impropriety, when other factors are added to this circumstance an appearance of impropriety may arise. *See* INQ 23-01; INQ 22-147; INQ 16-165.

Here, as noted above, Mr. Perez has indicated that he has had past professional experience with one of the respondents to this solicitation and that said professional experience was negative and involved the issuance of vendor non-performance citations. As a result of these past professional interactions with said respondent, Mr. Perez believes that he *cannot* be fair and impartial when evaluating said respondent in relation to this solicitation. *Cf.* INQ 23-01; INQ 22-147; INQ 17-286 (an MDAD employee who oversaw a County contract with a respondent to a solicitation that was coming before the selection committee on which he served was not prohibited from serving on said selection committee where he was confident that he could be completely fair).

Opinion:

Accordingly, consistent with our holdings in prior ethics opinions, **Mr. Martell does not have a conflict of interest under the County Ethics Code** that would prevent him from serving on this selection committee as a Technical Advisor because he will not be directly affected by the vote, he does not have any enumerated relationship with an entity affected by the vote, and his service on the Selection Committee would not otherwise give rise to an appearance of impropriety. *See* INQ 22-20; INQ 22-19; INQ 18-16.

Mr. Perez also does not have a conflict of interest under the County Ethics Code that would prevent her from serving on this selection committee because he will not be directly affected by the vote, and he does not have any enumerated relationship with an entity affected by the vote.

However, while we emphasize that there has been no issue raised concerning Mr. Perez's personal integrity and that his candor and honesty in this matter are appreciated, we must consider Mr. Perez's professional experience interacting with one of the respondents to this solicitation and Mr. Perez's belief that said professional experience would impair his ability to be fair and impartial when evaluating all of the respondents to this project. Thus, in light of these facts, **we recommend that the Strategic Procurement Department excuse Mr. Perez from this selection committee** because of his expressed concerns that his ability to be fair and impartial when evaluating respondents would be *impaired* due to past professional experiences with one of the respondents to this solicitation, and because of the *appearance of impropriety* created by said impairment. See INQ 23-01; INQ 22-147; INQ 16-165.

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 an interpretation of the County Ethics Code only and is not intended to interpret state laws. 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 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.