



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Justin Espagnol, Selection Committee Coordinator
Strategic Procurement Department (SPD)

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

FROM: Loressa Felix, General Counsel
Commission on Ethics and Public Trust

SUBJECT: INQ 2023-62, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

DATE: May 26, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Pablo Valin, SPD; Yinka Majekodunmi, OCA; Yaritza Reina, OCA; Jannessa Johnson, OCA

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 April 17, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Department of Transportation and Public Works Request to Advertise for Project Development and Environment Studies for Rickenbacker Causeway Bridges – Project No. E22-DTPW-03 (Substitution Request). 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 members of the selection committee made a disclosure on their Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- German Arenes, Department of Transportation and Public Works (DTPW), disclosed on his Neutrality Affidavit a business relationship with an employee for WSP USA, Inc.; the

employee served as DTPW director from 2015-2021. WSP USA is a respondent to this request.

- Susannah Troner, Department of Regulatory and Economic Resources, disclosed in her Neutrality Affidavit that she is claiming the exemption pursuant to F.S. 119.71, Section (4)(d)2-u as applicable. OCA could not gather the information needed to conduct a thorough search.
- Jeremy Calleros Gauger, Village of Key Biscayne, disclosed a business relationship on his Neutrality Affidavit with BCC Engineering, LLC, WSP USA, Inc., and AECOM Technical Services, Inc. as contractors for the Village of Key Biscayne. The firms listed are respondents to this request.
- Ivette Newland, Department of Transportation and Public Works, disclosed in her Neutrality Affidavit that she was previously employed by Professional Service Industries, Inc. from 1989 to 1991. Professional Service Industries Inc. is a respondent to this request.

We conferred with Mr. Arenas. He is the Chief of Construction and Structural Inspection for DTPW. He has worked for DTPW for over ten years. He indicated that the previous Department Director for DTPW, Ms. Alice Bravo, currently works as a consultant for WSP USA, Inc., a respondent to this solicitation. His professional relationship with Ms. Bravo was limited to occasional business requests for information on departmental project progress and status while she worked as Department Director. Mr. Arenas does not believe that his past professional relationship with Ms. Bravo as the former Department Director of DTPW would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

We conferred with Ms. Troner. She is the Senior Resilience and Sustainability Coordinator for the Miami-Dade County Office of Resilience, Department of Regulatory and Economic Resources (RER). She has worked for the County in various positions for the past thirty-three years. Ms. Troner indicated in her Neutrality Affidavit that she was claiming an exemption pursuant to F.S. 119.71. Upon further inquiry, Ms. Troner indicated that she had not been previously employed by any of the respondents to this solicitation nor did she or any of her immediate family members have any relationship with any respondent to the solicitation. She also has no personal or financial interest in any of the respondents. Ms. Troner stated that she could be fair and impartial when evaluating the various respondents to this project.

We conferred with Mr. Gauger. He is the Director of Building, Zoning, and Planning for the Village of Key Biscayne. He has worked for the Village since 2021. He indicated that he is involved with reviewing, but not directly managing work done by AECOM Technical Services, Inc., a respondent to this solicitation, related to a drainage and streetscape project within the Village of Key Biscayne called the “K-8 Basin” Project. In his previous role with the City of Miami, he worked with BCC Engineering, LLC, WSP USA, Inc., a respondent to this solicitation, on the I-395/Overtown-Miami Greenway Project. He advised that he had no close business or personal relationships with any of the respondents to this solicitation. He also has no personal or financial interest in any of the respondents. Mr. Gauger stated that he could be fair and impartial

when evaluating the various respondents to this project and does not believe that his current review of work completed by AECOM Technical Services, Inc. would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

Lastly, we conferred with Ms. Newland. She is a Professional Engineer for DTPW. She has been employed with the County for twenty-eight years. She confirmed that she previously worked for Professional Service Industries, Inc (“Professional Service”). Ms. Newland stopped working for Professional Service in 1991. She indicated that the termination of her employment with Professional Service was amicable. Ms. Newland has no current ownership interest or other financial interest in the company. She also does not have any business, close social, or other relationship with any current employee at the company. Ms. Newland believes she can be fair and impartial when evaluating the respondents to this project.

Discussion:

This agency conducts reviews of these 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).

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.

It does not appear that any of the proposed selection committee members have a voting conflict of interest under Section (v) of the County Ethics Code because none of them will be directly affected by the vote, and none have any of the enumerated relationships with any entity affected by the vote.

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.

As noted above, with regard to **Ms. Troner**, she has indicated no relationship with any respondent to this solicitation. Therefore, given the fact that Ms. Troner has stated that she could be fair and impartial when evaluating the various respondents to this project, there are no facts to demonstrate a potential conflict or appearance of impropriety. *See* INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, INQ 18-230, and INQ 20-136.

With regard to **Mr. Gauger**, he has confirmed that he currently reviews and has in the past worked on projects that include respondents to the solicitation. Additionally, **Mr. Arenas** has confirmed that he previously worked with Ms. Bravo, a former Department Director to his current County department, who is now a consultant to a respondent to this solicitation. The Commission on Ethics has indicated in various informal opinions that, absent some other factor, the mere fact that a selection committee member has interactions with a respondent in connection with the member's public duties would not create an appearance of a conflict that could affect the public trust in the integrity of the procurement process. *See* INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, INQ 18-230, INQ 20-136, and INQ 22-153. The Commission's opinions note that, in fact, it may be valuable to have an individual on a selection committee who is personally familiar with the work of one or more of the responding firms, particularly where the member also has some special expertise in the services that are being sought by the County. *See* INQ 18-21, INQ 18-47, INQ 18-230, INQ 20-136, and INQ 22-153.

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 **Ms. Newland** since she stopped working for Professional Service over 32 years ago. *See* INQ 17-174, INQ 17-183, INQ 18-229, and INQ 20-136.

As noted above, Ms. Newland disclosed that she was previously employed by Professional Service, a respondent to this solicitation. As Ms. Newland's employment at Professional Service ended over 32 years ago, on an amicable basis, and she does not have any business, or close social relationship with current employees at the entity, it is our opinion that Ms. Newland's prior employment at Professional Service 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 20-73, INQ 18-202, INQ 17-69, INQ 20-136, and INQ 22-39.

Opinion:

Consequently, we see no reason why Mr. Arenas, Ms. Troner, Mr. Gauger, and Ms. Newland should not serve on this committee because they do not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by their service on this committee.

However, they are all reminded that the selection committee, for which they will serve as a voting member, operates under the County's Cone of Silence, Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by Commissioners, City staff, selection committee members, and prospective contractors, as well as their lobbyists and consultants, regarding any procurement matter during the time that the Cone is in effect. All selection committee members will therefore be prohibited under the Cone from communicating with any of the responding entities to this solicitation with which they may currently have interactions regarding ongoing projects.

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.

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 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.