



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Major Farrel J. Owens, Jr.
Court Services Bureau
Miami Dade Police Department

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

SUBJECT: INQ 2023-67, Doing Business with the County, Section 2-11.1(c), County Ethics Code

DATE: June 7, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your participation in the Miami-Dade County's Small Business Enterprise (SBE) and Disadvantage Business Enterprise (DBE) certification programs, while you are simultaneously a County employee.

Facts:

You are employed by the Miami-Dade Police Department (MDPD) as a police Major. You advised that your job responsibilities primarily include overseeing the MDPD Court Services Bureau. The Court Services Bureau is responsible for court security, as well as service of enforceable and non-enforceable civil writs. You further advised that your MDPD position does not include any oversight or administration of the County's SBE Certification Program, nor does it include any procurement or purchasing responsibilities.

You are also the President¹ and primary qualifying contractor² for Pyramid Construction LLC (Pyramid), a privately-owned Florida Limited Liability Company. Pyramid focuses on construction and construction management projects. As of the date of this letter, Pyramid is not a register vendor with Miami Dade County. Your 2023 Outside Employment request to work in and for Pyramid Construction, LLC. was approved on April 27, 2023.

Pyramid is seeking to apply for the SBE certification programs with the Small Business Development (SBD), a division of the Internal Services Department (ISD) for the County, in its efforts to become a County vendor and contract with the County. The SBE certifications you are interested in are the Goods, Services (General Services and Support Services), and Construction programs. The SBE certification programs are designed to provide contracting opportunities for independent firms that meet specific certification criteria of each section. The SBE Certification Programs are gender and race neutral. SBE Certification is valid for a three-year period.

Additionally, Pyramid is seeking to apply for the Disadvantaged Business Enterprise (DBE) certification program under the SBD of the ISD³. The DBE program is a federal program that ensures equal opportunity in transportation contracting markets, addresses the effects of discrimination in transportation contracting, and promotes increased participation in federally funded contracts by small, socially, and economically disadvantaged businesses, including minority and women owned enterprises.

Issue:

Whether there is a prohibited conflict of interest that would prevent Pyramid, your privately owned company, from participating in the County's SBE and DBE Certification Programs.

Discussion

¹ See 2023 Florida Limited Liability Company Annual Report for Pyramid Construction LLC, Document# L21000118117, Filed April 11, 2023, File confirmation # 7534077159CC.

² See Florida Department of Business and Professional Regulation License # CGC1530594 and related license information.

³ You previously requested an ethics opinion regarding your participation in the DBE program; however, your position with MDPD has since changed. In INQ 2021 – 128, COE opined there was no conflict of interest that would prevent, then Lieutenant Owens from participating in the DBE program through Pyramid, his privately owned company, while also employed with Miami Dade County.

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (County Ethics Code), each of which is analyzed in turn below:

A. Outside Employment

Work conducted by you for Pyramid constitutes outside employment, as defined by the County Ethics Code. *See* RQO 17-03 (citing RQO 16-01) and INQ 14-213 (providing personal services to one's own privately owned business constitutes outside employment). The 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). 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."

Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* INQ 21-27; INQ 20-21. Based on the information provided to us at this time, it appears to be unlikely that the type of outside employment that you engage in through Pyramid would impair your independence of judgment in the performance of your County duties as a Major with MDPD. This is because there is no overlap between his public duties and his outside employment; his outside employment will be performed outside of his County hours; he will not come into contact with the same persons or entities involved in his County work; he will not use the same resources in his outside employment as used in his County work; and, he will not have access to non-public information as part of his County employment that is, or could be, relevant to his outside employment as the owner and operator of Pyramid. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); INQ 23-17 (Section Chief of the Miami-Dade County Internal Services Department's Small Business Development Division who owned and operated a private catering company did not have a prohibited conflict of interest in his outside employment while seeking to participate in the Micro Loan Program).

However, County 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* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. **Accordingly, this memorandum does not grant permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department director. Given that you are a full-time employee, you must also file an outside employment financial disclosure form – Outside Employment Statement – on an annual basis.**

B. Contracting with the County and/or a County Contractor

Once you have been granted permission to engage in outside employment by your department director, you may enter into a County contract through your privately-owned business, Pyramid, provided that the contract does not interfere with the full and faithful discharge of your duties to the County. *See* Sections 2-11.1(c)(2) and (d), Miami-Dade County Ethics Code.

Pyramid **may participate in the County's SBE and DBE Certification Programs**. However, it may do so only so long as MDPD is not involved in any way with the processing, administering, overseeing, or enforcing the SBE and DBE Certification Programs. *See* INQ 22-157 (County employee's company may participate in County's SBE Certification Program so long as his employing County department does not enforce, oversee, or administer the SBE Certification Programs). This includes the condition that you may not participate in determining or awarding the SBE and DBE Certification. Additionally, none of your job responsibilities or job descriptions may require you to be involved in the SBE and DBE Certification Programs in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n). Consequently, Pyramid **may not** enter contracts with Miami-Dade Police Department.

C. Lobbying

You may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about Pyramid's application to participate in County's SBE/DBE Certification Programs. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See* County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to Pyramid's application to, and ultimate participation in, the County's SBE/DBE Certification Programs, or to any other County certification programs to which you or Pyramid are applying.

Opinion.

Based on the facts presented here and discussed above, Pyramid's participation in Miami-Dade County's Small Business Enterprise and Disadvantaged Business Enterprise Certification Programs does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above.

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 the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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/>.

Please submit this memorandum to the Small Business Development Division of the Internal Services Department (“ISD”). The Commission on Ethics does not submit it on your behalf.

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.