



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Justin Espagnol
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 2023-73 **AMENDED** [Voting Conflict of Interest § 2-11.1(v); Reverse Two-year Rule § 2-11.1(x); Resolution No. 449-14]

DATE: June 13, 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 May 16, 2023, which was prepared in connection with the Appointment of the Selection Committee for the Miami-Dade County Parks, Recreation and Open Spaces Department Request to Advertise for Professional Design Services for Crandon Park Improvements – Project No. A22-PROS-05. 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 four (4) members of the selection committee made a disclosures on their Neutrality Affidavits that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that:

1. **Alexandra Davis**, Parks, Recreation and Open Spaces Department (“PROS”), indicated on her neutrality affidavit of her prior working internship with Curtis & Rogers Design Studio in the summer of 2012. Ms. Davis also revealed that a few of the respondents and proposed subcontractors/sub-consultants under consideration by the Committee are currently contracted on projects with PROS.
2. **Pearle Khadar**, Water and Sewer Department (“WASD”), indicated on her neutrality affidavit that WASD has two consultants on the list of respondents and subconsultants to this solicitation, namely BND Engineers and WSP USA, Inc. BND Engineers is a sub-consultant for Haskell Company and WSP USA, Inc. is a sub-consultant for Mobio Architecture, Inc. Haskell Company and Mobio Architecture, Inc. are respondents to this solicitation.
3. **Lokhman Kamaruddin**, Miami-Dade Aviation Department (“Aviation”) , indicated on his neutrality affidavit that several of the proposers and sub-consultants are currently engaged in projects directly or indirectly managed by him.
4. **Sandy Suarez** (Technical Advisor), Parks, Recreation, and Open Spaces, indicated on his neutrality affidavit that his father-in-law is a principal at CSA Central, and Mr. Suarez stated that his was employed with CSA Central from July 2019 through December 2021. CSA Central has been identified as a respondent to this solicitation. Additionally, the department added Sandy Suarez, Parks, Recreation, and Open Spaces Department, as Technical Advisor.

We conferred with all four people serving on the selection committee listed above. They provided the following information:

- A. Ms. Alexandra Davis confirmed that she worked as a Design Student Intern at Curtis & Rogers Design, a subconsultant to a respondent to Project No. A22-PROS-05, from June to July in 2011. As a Design Student Intern Ms. Davis was responsible for documentation of street trees, creating illustrative plans and sections, and producing design development and construction drawings in AutoCAD. Her separation from Curtis & Rogers Design was amicable as the internship was only scheduled for her break from college, almost twelve (12) years ago. Once her summer break ended, she returned to school out of state. Neither Ms. Davis nor any of her immediate family members hold any current ownership interest or other financial interest in Curtis & Rogers Design. She also does not have any business, close social, or other relationship with any current employee at Curtis & Rogers Design. Ms. Davis believes that she can be fair and impartial when evaluating all respondents to this solicitation.
- B. Ms. Pearle Khadar is a Miami Dade County Water and Sewer Department Pump Station Construction Supervisor. In this role she interacts with WSP USA, Inc. and BND Engineers, Inc., both subconsultants to respondents to Project No. A22-PROS-05 (this solicitation), as they are also consultants for WASD. WSP are consulting engineers and provide inspection services for WASD project S-944. BND provides assistance in change order reviews for various projects. Specifically, Ms. Khadar

stated that she is aware of poor work etiquette by both of the subconsultants to this solicitation pursuant to a prior contract that said subconsultants have with WASD. As a result, Ms. Khadar believes that based on her past professional interactions with both previously mentioned of the subconsultants, *she does not believe that she can be fair and impartial* when evaluating these subconsultants in relation to the other respondents to this solicitation. Ms. Khadar stated that she does not have any personal financial interests in any of the respondents to this solicitation, nor does she do any personal business with any of the respondents. Ms. Khadar further stated that she does not have any personal, close social, or other relationship with any current employee(s) of any of the respondents to this solicitation.

- C. Mr. Lokhman Kamaruddin is a Construction Manager 3 for the Aviation Department. In this role he interacts with several respondents and subconsultants for this solicitation. Mr. Kamaruddin affirmed that he does not maintain any personal, close social, or other relationship with any current employee(s) of any of the respondents and subconsultants to this solicitation. Mr. Kamaruddin stated that he believed his judgement based on previous work history with some of the proposers and subcontractors engaged in projects managed by him would not impede his fair judgment when evaluating the various other respondents, as each project is unique in its own right. Moreover, Mr. Kamaruddin believes that he can be fair and impartial when evaluating all respondents to this solicitation.
- D. Lastly, we conferred with Mr. Sandy Suarez. He is a Construction Manager 2 for the Miami-Dade County Parks, Recreation and Open Spaces Department. (Hereinafter referred to as “PROS”). He confirmed that he previously worked for CSA Central, Inc. as a Senior Architectural Designer from July 1, 2019, to December 10, 2021. As a Senior Architectural Designer for CSA Central, Inc., Mr. Suarez was part of the architecture design team that developed the design side of the awarded projects; coordinated all architectural construction documentation and drawings for each phase of fast-track projects; documented every design phase; consulted with clients to determine functional and spatial requirements for new structure, while keeping budgets and timelines on track; devised overall strategy for documentation and identified design sets planned for each stage of work, including as-built designs and final building information models (BIM); worked closely with multi-disciplinary team to design governmental and commercial projects in Miami, the Florida Keys, New York, and Puerto Rico; kept project on schedule and within budget while serving as project leader; created graphic renderings and models using Autocad, Revit and Sketchup Pro; researched building codes and requirements and applied to design planning; managed newly hired employees and interns while observing progress and delegating tasks; met with municipal building department and other governing agency officials to coordinate approvals; and worked closely with security engineers and private sector firms under contract with agency.

Mr. Suarez separated amicably from CSA Central, Inc. on December 10, 2021. Mr. Suarez confirmed that he has no current ownership interest or other financial interest in CSA Central, Inc. Mr. Suarez confirmed that his father-in-law, Mr. Juan Melgarejo,

is a principal for CSA Central, Inc. Mr. Suarez has been married for nine (9) years. Mr. Suarez does not have any other business, close social, or other relationship with any current employee at CSA Central, Inc. Mr. Suarez indicates that he will not receive any financial benefit from this solicitation. Although he is the Technical Advisor for this solicitation, and not a voting member of the committee, Mr. Suarez indicates that his prior work history at CSA Central and the fact that his father-in-law is a principal for the company would not impair his independence of judgment when evaluating the various respondents on this project Mr. Suarez believes he can be fair and impartial when evaluating the respondents to this project.

On April 10, 2023, Justin Espagnol, Selection Coordinator, emailed Stephanie Kassoy, the Vice President of Operations for CSA Central, Inc. to inform her that CSA Central, Inc. was non-compliant with the requirements of the Notice to Professional Consultants and was thereby eliminated from further consideration for this solicitation. Also on April 10, 2023, Justin Espagnol, Selection Coordinator, emailed Pablo Quinones of the Haskell Company, Inc. to inform him that Haskell Company, Inc. was non-compliant with the requirements of the Notice to Professional Consultants and was thereby eliminated from further consideration for this solicitation.

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 by the circumstances 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) stockholder, bondholder, debtor or creditor.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the "Reverse Two-Year Rule," states:

No person included in subsections (b)(5)(departmental personnel) and (b)(6) (employees), who was previously employed by or held a controlling financial interest in a for-profit firm, partnership or other business entity (hereinafter "business entity") shall, *for a period of two years following termination of his or her prior relationship with the*

business entity, perform any county contract-related duties regarding the business entity, or successor in interest, where the business entity is a county bidder, proposer, service provider, contractor or vendor. As used in this subsection (x), "contract-related duties" include, but are not limited to: service as a member of a county certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of contract; contract enforcement, oversight or administration; amendment, extension or termination of contract; or forbearance regarding any contract. Notwithstanding the foregoing, the provisions of this subsection (x) shall not apply to the County Manager or the Director of Procurement Management.

Emphasis Added.

Further, 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.

Alexandra Davis

Based on the information provided, Ms. Davis does not appear to have a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because she will not be directly affected by the vote, and she 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 Ms. Davis as her employment Curtis & Rogers Design Studio ended in July 2011, almost twelve (12) years ago. *See* RQO 17-04; RQO 10-05; INQ 20-136.

As Ms. Davis’s employment at Curtis & Rogers Design Studio ended almost twelve (12) 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. Davis’s prior employment at Curtis & Rogers Design Studio 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.

Pearle Khadar

Pursuant to Section 2-11.1(v) of the County Ethics Code, it does not appear that Ms. Khadar will be directly affected by the vote, and she does not currently have any of the enumerated relationships with any entity affected by the vote. *See* INQ 23-01.

As noted above, Ms. Khadar has indicated that she has had past professional experience with one of the subconsultants to this solicitation and that said professional experience was negative. As a result of these past professional interactions with said subconsultant, Ms. Khadar believes that she *cannot* be fair and impartial when evaluating said sub consultant 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).

Lokhman Kamaruddin

Based on the information provided, Mr. Kamaruddin does not appear to have a voting conflict of interest under Section 2-11.1(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.

Mr. Kamaruddin works with some of the respondents and subconsultants for this solicitation through his county position, however, the mere fact that a Selection Committee member has had interactions with a respondent or subconsultant in connection with the member's County duties does not, by itself, create an appearance of impropriety. *See* INQ 23-01; INQ 22-147; INQ 16-165.

Sandy Suarez

It does not appear that Sandy Suarez 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, Sandy Suarez will not have a vote. However, Mr. Suarez disclosed that he was previously employed by CSA Central, Inc., a respondent to the solicitation. Section 2-11.1(x) of the County Ethics Code prohibitions apply to Mr. Suarez as his separation from CSA Central, Inc. was on December 10, 2021, which is less than two (2) years from the date of this opinion. *See* RQO 17-04; RQO 11-14; INQ 19-66; INQ 15-35. Although Mr. Suarez is Technical Advisor, as opposed to a voting member of the selection committee, said position is considered "contract related duties" pursuant to Section 2-11.1(x) of the County Ethics Code.

Moreover, Sandy Suarez' close personal relationship with a principal of CSA Central, Inc., Mr. Juan Melgarejo (his father-in-law), may create an appearance of impropriety. *See* INQ 17-214 (Ethics Commission staff recommended that an individual not serve on a selection committee where his brother-in-law was the owner and principal of one of the sub-consultants for a responding prime contractor due to the possible perception of a conflict

of interest, given his familial relationship with the owner of a sub-consultant for one of the competing prime contractors.) *See also* INQ 18-258, INQ 17-131, citing INQ 14-232, INQ 12-180, and INQ 12-63.

OPINION

Alexandra Davis and Lokhman Kamaruddin do not have any conflicts of interests under the County Ethics Code that would prevent them from serving on this selection committee because they will not be directly affected by the vote, they do not have any enumerated relationship with an entity affected by the vote, and their 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.

Pearle Khadar does not have any conflicts of interest under the County Ethics Code that would prevent her from serving on this selection committee because she will not be directly affected by the vote, and she do not have any enumerated relationship with an entity affected by the vote. However, while we emphasize that there has been no issue raised concerning Pearle Khadar's personal integrity and that her candor and honesty in this matter are appreciated, we must consider Pearle Khadar's professional experience interacting with one of the subconsultants to this solicitation and Pearle Khadar's belief that said professional experience would impair her 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 Pearle Khadar from this selection committee** because of her expressed concerns that her ability to be fair and impartial when evaluating respondents would be *impaired* due to past professional experiences with two of the subconsultants to this solicitation, and because of the *appearance of impropriety* created by said impairment. *See* INQ 23-01; INQ 22-147; INQ 16-165.

Sandy Suarez does not have any conflicts of interest under the County Ethics Code. 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. Suarez ended his employment with CSA Central, Inc., a respondent to this solicitation, less than two years ago. *See* RQO 17-04; RQO 11-14; INQ 19-66; INQ 15-35. Moreover, Sandy Suarez' close personal relationship to the principal of a respondent to this solicitation could create an appearance of impropriety. *See* INQ 17-214. However, as of April 10, 2023, CSA Central, Inc. was eliminated from further consideration for this solicitation.

Therefore, in the absence of CSA Central, Inc.'s involvement for this solicitation, there are no conflicts of interest under the County Ethics Code that would preclude Sandy Suarez from serving on this selection committee 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.

This opinion is limited to the facts as presented 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.