



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jelani Miller
Correctional Sergeant
Miami-Dade County Corrections and Rehabilitation Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-74, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j), Conflicting Employment Prohibited.

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 possible conflicts of interest concerning your company's participation in Miami-Dade County's Small Business Enterprise ("SBE") Certification Programs and potential future contracts with the County.

Facts

You are employed by the Miami-Dade County Corrections and Rehabilitation Department ("MDCR") as a Correctional Sergeant. You advised that your job responsibilities primarily include the care, custody, and control of persons incarcerated in the Turner Guilford Knight Correctional Center. You further advised that your MDCR position does not include any oversight or administration of the County's SBE Certification Programs.

You own and operate a Florida limited liability company named J.Mill's R&R Construction LLC ("J.Mill's"). You advised that J.Mill's provides construction-related services for the remodeling and renovation of single-family homes. You further advised that you are the sole owner of J.Mill's. With regard to your responsibilities related to J.Mill's, you advised that you are personally responsible for every aspect of the operation of the business. You further advised that your outside employment will only occur outside of the times/hours that you are expected to perform your duties as a Correctional Sergeant for MDCR. You also advised that, as part of your outside employment, you will not be required to encounter the same or similar people or entities as in your County position, nor does your position with MDCR involve the recruitment or management of County

vendors or contractors. You also advised that you will not use the same or similar resources for your outside employment as those that are used in your County work. You further advised that, as part of your County position, you do not have access to non-public information that is, or could be, relevant to your outside employment.

You advised that J.Mill's would like to apply to participate in the County's SBE Certification Programs. You further advised that J.Mill's would like to contract with the County in the future, but that there are no specific County solicitations to which J. has submitted a bid at this time.

Miami-Dade County's SBE Certification Programs were created for any business entity providing construction, architectural, engineering, goods, services, and aeronautical support services. The SBE Certification Programs are gender and race neutral. The County's SBE - Services Certification Program is designed to provide contracting opportunities for independent firms that meet the following criteria: (a) must have a Miami-Dade County Local Business Tax ("LBT") Receipt issued for at least one year; (b) the personal net worth for each owner cannot exceed \$1.5 million; (c) the last three years' average gross receipts must not exceed \$8 million; (d) business license holder and qualifier (if applicable) must own at least ten percent of the applicant's issued stocks or otherwise have at least a ten percent ownership interest; and, (e) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time.¹ The County's SBE – Construction Certification Program is designed to provide contracting opportunities for independent construction companies that meet the following criteria: (a) must have a Miami-Dade County Local Business Tax ("LBT") Receipt issued for at least one year; (b) the business must have an actual location in Miami-Dade County (no virtual office) and perform a commercially useful function; (c) the personal net worth for each owner cannot exceed \$1.5 million; (d) the last three years' average gross receipts must not exceed \$15 million for general building, \$12 million for heavy construction contractors, and \$8 million for specialty trade contractors; (e) the qualifier must own at least ten (10) percent of the applicant's issued stock or otherwise have at least a ten percent ownership interest; and, (f) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time.² SBE Certification is valid for a three-year period.

Issue

Whether there is a prohibited conflict of interest that would prevent J.Mill's R&R Construction LLC, your privately owned and operated business, from participating in the County's SBE Certification Programs and then contracting with the County.

¹ See *Goods and Services*, SMALL BUSINESS CERTIFICATION PROGRAMS, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited June 13, 2023).

² See *Construction*, SMALL BUSINESS CERTIFICATION PROGRAMS, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited June 13, 2023).

Analysis

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 J.Mill’s constitutes outside employment, as defined by the County Ethics Code. *See* RQO 17-03 (citing RQO 16-01). 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 J.Mill’s would impair your independence of judgment in the performance of your County duties as a Correctional Sergeant with MDCR. *See* RQO 17-03 (citing RQO 16-01). This is because there is no overlap between your public duties and your outside employment: your outside employment will be performed outside of your County hours; you will not come into contact with the same persons or entities involved in your County work; you will not use the same resources in your outside employment as used in your County work; and, you will not have access to non-public information as part of your County employment that is, or could be, relevant to your outside employment as the owner and operator of J.Mill’s. *See* RQO 17-01 (discussing multiple factors to consider when evaluating whether outside employment is conflicting); *see also* INQ 17-66 (an MDCR employee does not have a conflict of interest due to her work as an owner/President for her private company because her outside employment is unrelated to her County duties and would not impair her independence of judgment in the performance of her public duties). Furthermore, your County employment does not involve the recruitment or management of vendors, contactors, bidders, or members of the public who could also be involved in your proposed outside employment.

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 County**

employee, you must also file an outside employment financial disclosure form – Outside Employment Statement – on an annual basis.³

B. Contracting with the County

Regarding the participation of J.Mill's in the County's SBE Certification Programs, once you obtain permission to engage in outside employment with J.Mill's, then J.Mill's **may participate in the County's SBE Certification Programs**. However, it may do so only so long as MDCR is not involved in any way in processing, administering, overseeing, or enforcing the SBE 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 Certification. Additionally, none of your job responsibilities or job descriptions may require you to be involved in the SBE Certification Programs in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

Regarding contracting with the County generally, sections 2-11.1(c) and (d) of the County Ethics Code restrict the ability of County employees to contract with the County. A County employee is permitted to transact business with the County only if the contract does not interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties and job description will not require him or her to be involved with enforcing, overseeing, or administering the contract. *See* County Ethics Code §§ 2-11.1(c), (d).⁴ Additionally, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. *See* County Ethics Code § 2-11.1(c)(2). Here, you have indicated that J.Mill's is interested generally in seeking to contract with the County, but it has not responded to any specific solicitations to bid or requests to quote. Accordingly, you are encouraged to request further ethics guidance when J.Mill's decides to bid on a pending County solicitation or request to quote, bearing in mind that neither you nor J.Mill's may contract with MDCR. *See id.*

³ You can find the required form online at: <https://www.miamidadegov/elections/library/forms/outside-employment-statement.pdf>.

⁴ *But see* Section 112.313(7)(a), Florida Statutes, providing that:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee

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 J.Mill's and its application to participate in the County's SBE 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 the application by J.Mill's to participate, and the ultimate participation of J.Mill's, in the County's SBE Certification Programs, or to any other County certification programs to which you or J.Mill's are applying.

Opinion

Based on the facts presented here and discussed above, your outside employment as the owner and operator of J.Mill's does not appear to give rise to a prohibited conflict of interest. Additionally, the participation of J.Mill's in Miami-Dade County's Small Business Certification Programs does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above. However, J.Mill's potential future business with the County will require further evaluation once a specific County solicitation or contract is contemplated.

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 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.