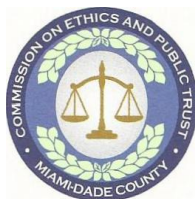


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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June 16, 2023

Edmundo Rodriguez, PE
Green Dade, Inc.
7220 SW 12th Street
Miami, FL 33144

Delivered via email to: edmundo.rodriquez@greendade.com

RE: INQ 2023-75, Section 2-11.1(c), Limitations on Contracting with the County; Section 2-11.1(n), Action prohibited when financial interests involved.

Dear Mr. Rodriguez:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking guidance regarding possible conflicts of interest arising from you, the spouse of a County employee, seeking to be engaged as a subcontractor in response to County solicitations/projects E23WS02 and E23WS03, solicitations/projects that will be overseen and/or administered by the Miami-Dade County Water and Sewer Department, your spouse's employing department.¹

Facts

You advised that you are an electrical engineer by trade. Records maintained by the Florida Department of Business and Professional Regulation reflect that you are a licensed Professional Engineer with special qualifications in 1) Electrical and Computer Engineering, and 2) the Florida Building Code, Seventh Edition. You own and operate a Florida for-profit corporation named Green Dade, Inc. ("GDI"). You advised that GDI provides architectural and electrical engineering services. Specifically, you advised that your primary specialties include designing electrical infrastructure for public utilities, such as water treatment plants, pump stations, airports, ports, and commercial buildings, as well as designing transportation-related systems for street corridor and highway systems. You further advised that you are the sole owner of GDI, and your responsibilities with regard to GDI involve every aspect of the business, from looking for business to contract

¹ You previously sought and obtained an ethics opinion concerning the ability of your privately owned company to participate in the Miami-Dade County Small Business Enterprise Certification Programs; that opinion also provided general guidance to you regarding your ability to do business with the County. *See* INQ 23-69. You are now seeking specific guidance regarding the County solicitations/projects E23WS02 and E23WS03.

negotiation, electrical design, and inspection. You also advised that your spouse, Ms. Suarez Toledo, has no ownership interest in GDI, nor does she have any involvement in its operation.

You have advised that you and/or GDI are seeking to be engaged as a subcontractor as part of a team that will submit a response to the Notice to Professional Consultants for Engineering Design and Related Services for Water and Wastewater Infrastructure (Water Mains, Force Mains, Gravity Sewers, and Water and Sewer Pump Stations) - SPD Project No. E23WS02 Set-Aside, by which the Miami-Dade Water and Sewer Department (“WASD”) is seeking the services of multiple consultants for the design, permitting, procurement, public engagement, and related services for water and wastewater infrastructure. The consultants will be expected to provide basis of design reports, engineering evaluations, engineering design, permitting services, engineering specifications, public outreach, procurement services and engineering services during construction. WASD intends to retain four (4) consultant firms or consultant firm teams, with each entering into a Non-Exclusive Professional Services Agreement (“PSA”) for a five (5) -year term with a two (2) -year option to renew.

You have advised that you and/or GDI are also seeking to be engaged as a subcontractor as part of a team that will submit responses to the Notice to Professional Consultants for Engineering Planning, Design and Related Services for the Water and Wastewater Infrastructure Projects (Water Mains, Force Mains, Gravity Sewers, Water and Sewer Pump Stations and Facilities) SPD Project No. E23WS03, by which WASD is seeking the services of multiple consultants to assist with the implementation of the Capital Improvement Program and its timely execution, with projects including all collection, distribution, and transmission system assets within WASD’s water and wastewater systems and service areas. The consultants will be expected to provide, among other things: preliminary site investigations; environmental and geotechnical services; surveying; hydraulic modeling and analysis; preparing basis of design reports; evaluation of existing equipment condition; capacity analysis, evaluation of useful life expectancy; design services for improvement/upgrade/renovations; preparation of design drawings and engineering reports; mechanical engineering; electrical engineering; instrumentation and control engineering; engineering evaluations; planning services; and, engineering services during construction. WASD intends to retain ten (10) consultant firms or consultant firm teams, with each entering into a Non-Exclusive Professional Services Agreement for a five (5) -year term with a two (2) -year option to renew.

For both Project Nos. E23WS02 and E23WS03, the Miami-Dade Strategic Procurement Department (“SPD”) is administering the solicitation of the bids, but the contracts and the services rendered thereunder will be administered and overseen by WASD.

You are not employed by Miami-Dade County. However, you advised that your spouse, Ms. Lisel Suarez Toledo, is employed by WASD as a Professional Engineer in the Engineering Division. She advised that she is a civil engineer by trade and that she works as a project manager for WASD, managing engineering projects that include water pumps at pump stations as well as other projects. Specifically, as a project manager she oversees the firms and/or individuals hired to perform tasks pursuant to contracts with WASD, ensuring that they comply with the terms of the task authorizations (work orders) that are assigned to her by her supervisor. She advised that her position does not involve the solicitation or contract negotiation processes. She further advised

that her supervisor would not assign her to a project in which her spouse or GDI worked as a subcontractor and/or subconsultant.

Mr. Reinaldo Rivera, a Senior Program Manager for WASD's Engineering Division, was also consulted about this matter. He is Ms. Suarez Toledo's direct supervisor. He advised that he did not think it likely that Ms. Suarez Toledo will be assigned as a Project Manager over a task authorization in which you and/or GDI will serve as a subcontractor. Regardless, he further advised that if you and/or GDI are a subcontractor on a project that comes to his division from Project Nos. E23WS02 and E23WS03, that he will not assign your spouse, Ms. Suarez Toledo, to supervise, oversee, or otherwise monitor or evaluate that task assignment.

Issue

Whether there is any prohibited conflict of interest related to you and/or GDI serving as a subconsultant on a bid in response to Project Nos. E23WS02 and E23WS03 arising from the employment of your spouse by the Miami-Dade Water and Sewer Department.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") Section 2-11.1(c)(1) provides that County employees and their immediate family members² shall not enter into any contract or otherwise transact any business with the County, "except as provided in subsections (c)(2) through (c)(6)." The County Ethics Code further provides that County employees and their immediate family members may contract with the County so long as (1) entering into the contract would not interfere with the employee's full and faithful discharge of his or her County duties; (2) the employee does not participate in determining the subject contract requirements or awarding the contract; and, (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including its enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code § 2-11.1(c)(2). Additionally, this limited exclusion from the broad prohibition against contracting with the County does not authorize a County employee or his or her immediate family member to contract with the County Department that employees said County employee. *See id.* Accordingly, the County Ethics Code prohibits you and/or GDI from entering into any contract *directly* with WASD. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 17-05; INQ 23-69; INQ 23-54.

However, the County Ethics Code does not prohibit a business owned by an immediate family member of a County employee from contracting with a County vendor as a *subcontractor* on a County contract because the company owned by the immediate family member of a County employee does not enter into privity of contract with the County. *See* RQO 18-02; RQO 10-32. Nevertheless, such subcontracting relationship with a County vendor is only permissible provided that the County employee does not administer or oversee the contract with the County vendor with whom the business owned by his or her immediate family member is subcontracting. *See id.* This is because the County Ethics Code provides that no County employee may participate in any

² The term "immediate family" includes spouses and domestic partners. *See* County Ethics Code § 2-11.1(b)(9).

official action directly or indirectly affecting a business in which he or she or any member of his or her immediate family has a financial interest. *See* County Ethics Code § 2-11.1(n).

For example, a private company owned and operated by the spouse of a Quality and Assurance Officer for the Miami-Dade Public Housing and Community Development Department (“PHCD”) could subcontract with the prime subcontractor (general contractor) under the Master Development Agreement with PHCD to redevelop the Liberty Square Rising project – a public housing site – because the company owned by the Quality and Assurance Officer’s spouse was not contracting directly with PHCD and the Quality and Assurance Officer did not have any supervision or oversight of the Liberty Square Rising project contract. *See* RQO 18-02; RQO 10-32.³

Similarly, a private company owned and operated by the parent of a Park Planner 2 in the Planning, Design and Construction Division of the Miami-Dade Parks, Recreation and Open Spaces Department (“PROS”) could subcontract with the prime contractor under a County project to develop, maintain, and operate the Rickenbacker and Venetian Causeways and associated recreation elements because the company owned by the parent of the Park Planner 2 was not contracting directly with the County and the Park Planner 2 did not have any involvement in the oversight, administration, monitoring, or enforcement of any matter involving the project. *See* INQ 21-125; *see also* INQ 17-131;⁴ INQ 10-163.⁵

Accordingly, based on the information provided at this time, **the County Ethics Code does not prohibit you and/or GDI from serving as a subcontractor to a prime contractor under Project Nos. E23WS02 and E23WS03** because neither you nor GDI will be contracting directly with WASD; rather, you and/or GDI will be in privity of contract with the prime contractor. *See* RQO 18-02; INQ 21-125. With regard to the contract negotiations and award, those matters appear to be handled primarily by SPD and there is no indication that your spouse will have any involvement in those matters. Furthermore, based on the representations of your spouse, Ms. Suarez Toledo, it does not appear that her job responsibilities or job description would require that she supervise or oversee the administration of the contract with the prime contractor on behalf

³ In RQO 10-32, the Commission on Ethics opined that the spouse of an employee of the Miami-Dade Department of Small Business Development (“SBD”) may work for a company subcontracted to provide plumbing and mechanical work at the Florida Marlins Stadium even though the SBD oversaw the prime contract and all subcontracts because the SBD employee was not directly responsible for monitoring any part of those agreements.

⁴ In INQ 17-131, the legal staff of the Commission on Ethics opined that a Construction Manager 3 for the Miami-Dade Aviation Department (“MDAD”) could be involved the oversight of a project in which a subcontracting firm employed his son, but only so long as his son did not have any controlling financial interest in the firm and was not involved in any way with fulfilling the firm’s responsibilities to MDAD under the project. However, it was suggested the Construction Manager 3 should still consider delegating his supervisory authority over the project to another MDAD employee in order to avoid any appearance of impropriety.

⁵ In INQ 10-163, the legal staff of the Commission on Ethics opined that the company of the spouse of the City of Miami’s Director of the Capital Improvements Program (“CIP”) could contract with a City vendor on a current City contract because the spouse’s company was contracting with the vendor, not the City, provided that Director of the CIP distanced herself from administering the City contract with the vendor.

of WASD. *See* RQO 18-02; INQ 21-125. Thus, it does not appear that a prohibited conflict of interest would arise merely from you and/or GDI serving as a subcontractor to a prime contractor for Project Nos. E23WS02 and E23WS03.

However, in the event that a prime contractor is retained by the County and said prime contractor in turn retains your and/or GDI's services as a subcontractor, the following limitations in the County Ethics Code would be applicable to your spouse, Ms. Suarez Toledo:

- Section 2-11.1(n), Actions prohibited when financial interest involved: Ms. Suarez Toledo is prohibited from overseeing, administering, monitoring, or enforcing any matters involving Project Nos. E23WS02 and E23WS03 where you and/or GDI would be providing any services to the prime contractor. While Ms. Suarez Toledo has represented that she her job duties generally include the supervision of contractors and subcontractors working on WASD projects. However, she advised – and her supervisor confirmed – that she would never be assigned to oversee, administer, monitor, or enforce any WASD contracts and/or task authorizations in which you and/or GDI are employed as a subcontractor. Accordingly, in order to avoid any prohibited conflict of interest, **Ms. Suarez Toledo may not be assigned as the project manager whose job duties will include the oversight, administration, monitoring, and/or enforcement of any task authorizations resulting from Project Nos. E23WS02 and E23WS03 in which you and/or GDI is serving as a subconsultant.** *See* RQO 18-02; INQ 21-125; INQ 10-163.
- Section 2-11.1(m), Certain appearances and payment prohibited: Ms. Suarez Toledo is prohibited from appearing before any County board or agency on behalf of you and/or GDI or its prime contractor to make a presentation with respect to any “license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit.” *See* INQ 21-125.
- Section 2-11.1(g), Exploitation of official position prohibited: Ms. Suarez Toledo is prohibited from using her position to secure any special privileges or benefits for you and/or GDI or for its prime contractor in relation to Project Nos. E23WS02 and E23WS03, or any other contract with the County. *See* INQ 21-125.
- Section 2-11.1(h), Prohibition on use of confidential information: Ms. Suarez Toledo is prohibited from disclosing any confidential information to you and/or GDI or its prime contractor that she may have obtained by virtue of her employment with WASD. *See* INQ 21-125.

Opinion

Based on the facts presented here and discussed above, no conflict of interest arises from you and/or GDI contracting as a subcontractor to a prime contractor with the County pursuant to Project Nos. E23WS02 and E23WS03, nor any subsequent task authorizations or work orders made from the Non-Exclusive Professional Services Agreements resulting from those solicitations, provided that your spouse, Ms. Suarez Toledo, does not have any oversight, administration, monitoring, and/or enforcement authority over the Professional Services Agreements or the resulting task authorizations. *See* RQO 18-02; INQ 21-125.

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.

Other conflicts may apply based on directives from WASD or under state law. Questions regarding possible conflicts based on WASD directives should be directed to the WASD Director's Office or to the Mayor's Office. 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/>.

Sincerely,



Nolen Andrew Bunker
Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

CC: All COE Legal Staff; Lisel Suarez Toledo, Professional Engineer, Miami-Dade Water and Sewer Department; Reinaldo Rivera, Senior Program Manager, Miami-Dade Water and Sewer Department; Justin Espagnol, A/E Consultant Selection Coordinator, Miami-Dade Strategic Procurement Department

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.