



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jorge Vital, 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 2023-76, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: June 20, 2023

CC: All COE Legal Staff; Namita Uppal, SPD; Gutierrez, Franklin, SPD; Yinka
Majekodunmi, OCA; Jannesha 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 May 30, 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 Construction Engineering Inspection Services and Resident Compliance Services for Federally and State Funded Projects-Project No. E22-DTPW-01. 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:

- Abel Oporto, Jr., Miami-Dade Aviation Department (MIA), disclosed on his Neutrality Affidavit a business relationship as an employee for WSP USA, Inc., formerly Louis

Berger. Mr. Oporto was an employee of Louis Berger from 2012 to 2018. WSP USA is a sub-consultant to this request.

- Rene Idarraga, Department of Transportation and Public Works (DTPW), disclosed in his Neutrality Affidavit that Pinnacle Consulting Enterprises Inc. and SRS Engineering currently provide CEI services for the construction division under two projects. Pinnacle Consulting Enterprises, Inc. and SRS Engineering, Inc. are respondents to this request.

We conferred with Mr. Oporto. He is the Chief of Engineering and Commissioning for the Miami-Dade Aviation Department (MIA). He has worked for MIA for five years since 2018. He confirmed that he previously worked for Louis Berger, which was acquired by WSP USA (WSP) in 2018, as a Project Manager. Mr. Oporto stopped working for Louis Berger in 2018 and indicated that the termination of his employment with Louis Berger was amicable. Mr. Oporto has no current ownership interest or other financial interest in either Louis Berger or WSP. He advised that he had no close business or personal relationships with any of the respondents to this solicitation. Mr. Oporto believes he can be fair and impartial when evaluating the respondents to this project.

We conferred with Mr. Idarraga. He is the Chief of the Construction Division for the Miami-Dade Department of Transportation and Public Works (DTPW). He has worked for DTPW for six years. He indicated that he is currently involved with several of the respondents to this solicitation including Pinnacle Consulting Enterprises Inc. (Pinnacle), SRS Engineering, Inc. (SRS), Metric Engineering (Metric), The Corradino Group, Inc. (Corradino), HBC Engineering Company (HBC), and Tierra South Florida Inc. (Tierra). For Pinnacle, SRS, Metric, and Corradino, Mr. Idarraga approves task work orders, assignment of consultant inspectors provided by Pinnacle to oversee work by contractors under the supervision of in-house project managers and infrastructure managers, and approval of invoice payments. For HBC, Mr. Idarraga oversees construction projects implemented by design/build teams, of which HBC is part, and approval of invoice payments. For Tierra, Mr. Idarraga approves geotechnical work orders and invoice payments.

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. Idarraga stated that he could be fair and impartial when evaluating the various respondents to this project and does not believe that his work with any of the entities listed would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

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.

With regard to **Mr. Idarraga**, he has confirmed that he currently works with several respondents to this solicitation and is involved in the approval of several aspects of existing projects. 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 **Mr. Oporto** since he stopped working for Louis Berger, now WSP, over five years ago. *See* INQ 17-174, INQ 17-183, INQ 18-229, and INQ 20-136.

As noted above, Mr. Oporto disclosed that he was previously employed by Louis Berger now WSP, a respondent to this solicitation. As Mr. Oporto's employment at Louis Berger/WSP ended over five years ago, on an amicable basis, and he does not have any business, or close social relationship with current employees at the entity, it is our opinion that Mr. Oporto's prior employment at Louis Berger/WSP 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. Idarraga and Mr. Oporto 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 both 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, County 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. Consequently, while you may communicate with responding firms on *existing* County contracts/projects, there should be no communication about this competitive solicitation with any of the respondents or their teams (absent permissible communications as per the Cone), Commissioners, Mayor (and their staffs) or other members of the County's Professional Staff/Client Department who are involved in any way with this solicitation, while the Cone remains in effect.

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.