



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Franklin Gutierrez, Selection Committee Coordinator
Strategic Procurement Department (SPD)

Yaritza Reina, Sr. Executive Secretary
Office of the Commission Auditor (OCA)

FROM: Loressa Felix, General Counsel
Commission on Ethics and Public Trust

SUBJECT: INQ 2024-01, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

DATE: January 2, 2024

CC: All COE Legal Staff; Namita Uppal, SPD; Jorge Vital, SPD; Yinka Majekodunmi
OCA; Jannesha Johnson, OCA; Francisco J. Martinez, WASD; Cynthia Doyon,
WASD

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 November 29, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Water and Sewer Department Request to Advertise for Engineering Planning, Design, Construction Management, and Related Services for Water Treatment Plants Improvements – Project No. E23WS06. 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 a member of the selection committee made a disclosure on her Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Fransico Martinez, Water and Sewer Department, disclosed on his Neutrality Affidavit his involvement in informal conversations with two listed respondents about possible

employment opportunities. These were informal conversations that did not result in submitting applications or interviews. Mr. Martinez explained to both respondents that he was not looking for or contemplating leaving his current employer. The names of the respondents were not stated.

- Cynthia Doyon, Water and Sewer Department, disclosed on her Neutrality Affidavit that she was previously employed by 300 Engineering Group, LLC, from August 2015 – September 2020. 300 Engineering Group, LLC is a respondent to this request.

We conferred with Mr. Martinez. He is the Assistant Director of Water Operations for WASD. He has worked for WASD since February 5, 2017. Mr. Martinez advised that he was previously employed in 2008 by Black and Veatch Corporation, a respondent to this solicitation. He worked as a Construction Services Manager for the company from 2008 to 2009 on the Desaladora Project Antofagasta in Chile. He indicated that the termination of his employment with Black and Veatch Corporation was amicable. Mr. Martinez has no current ownership interest or other financial interest in the company. He also does not have any close business or social relationship with any current employee at Black and Veatch Corporation.

Mr. Martinez also advised that he was previously employed in 2009 by CH2M HILL Engineers Inc., later acquired by Jacobs Engineering Group Inc., a respondent to this solicitation. He worked as a Construction Manager for the company from 2009 to 2010. He indicated that the termination of his employment with CH2M HILL Engineers Inc. was amicable. Mr. Martinez has no current ownership interest or other financial interest in the company.

Mr. Martinez indicated that he was recruited by two respondents of this solicitation, Carollo Engineers and Jacobs Engineering Group Inc. He noted that these were informal conversations about possible employment opportunities that did not result in submitting applications or interviews. Mr. Martinez explained to both respondents that he was not looking for or contemplating leaving his current employer. Additionally, Mr. Martinez also maintains a friendship with coworkers employed by both entities. Mr. Martinez indicated that he believes he can be fair and impartial when evaluating the respondents to this project. However, in consultation with the Selection Committee Coordinator for this project, we confirmed that Mr. Martinez's former coworkers are listed as part of the team for the company proposals for Carollo Engineers and Jacobs Engineering Group Inc.

Lastly, Mr. Martinez also indicated that Hazen and Sawyer PC, Black and Veatch Corporation, and HDR, Inc., respondents to this solicitation, all offer engineering consulting services to WASD. These companies have current contracts with WASD for improvements to the water systems including managing capital investment projects, which require frequent interactions. However, his division, Operations, does not directly manage these contracts but does request services from the companies through the Engineering Division. Mr. Martinez indicated that his interactions with these companies will not affect how he evaluates the various respondents to this project, and he believes he can be fair and impartial when evaluating the respondents to this project.

We conferred with Ms. Doyon. She is an Engineer 3 in the Permitting and Regulatory Compliance Section of WASD. She has been employed by WASD for two years. She advised that she was

employed by 300 Engineering Group, LLC, a respondent for this solicitation, from August 2016 until September 2020 as a Project Manager. She indicated that the termination of her employment with 300 Engineering Group, LLC was amicable. Ms. Doyon has no current ownership interest or other financial interest in the company. She also does not have any business, close social, or other relationship with any current employee at 300 Engineering Group, LLC. Ms. Doyon believes she can be fair and impartial when evaluating the respondents to this project.

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 either of the proposed selection committee members have a voting conflict of interest under Section (v) of the County Ethics Code because neither of them will be directly affected by the vote, nor do they 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. Doyon since she stopped working for 300 Engineering Group, LLC over 3 years ago nor to Mr. Martinez since he stopped working for Black and Vetch Corporation over 14 years ago and CH2M HILL Engineers Inc., later acquired by Jacobs Engineering Group Inc., over 13 years ago. *See* INQ 17-174, INQ 17-183, INQ 18-229, and INQ 20-136; INQ 22-39.

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.

As noted above, Ms. Doyon disclosed previous employment for a respondent to this solicitation. Since Ms. Doyon's employment at 300 Engineering Group, LLC ended over three years ago, on an amicable basis, and she has no close business or social relationship with current employees at the entity, it is our opinion that Ms. Doyon's prior employment at 300 Engineering Group, LLC

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, INQ 22-39, and INQ 23-76.

Mr. Martinez also disclosed previous employment for two respondents to this solicitation. Mr. Martinez's employment at Black and Vetch Corporation ended over 14 years ago on an amicable basis, and he has no close business or social relationship with current employees at the entity, it is our opinion that Mr. Martinez's prior employment at Black and Vetch Corporation 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, INQ 22-39, and INQ 23-76.

However, although Mr. Martinez's employment at CH2M HILL Engineers Inc. (Jacobs Engineering Group, Inc.) ended over 13 years ago, he still maintains a close social relationship with a current employee and named member of the team presenting the proposal on behalf of the entity to this solicitation. Additionally, Mr. Martinez has a close social relationship with a current employee of Carollo Engineers, who is also a named member of the team presenting the proposal on behalf of the entity for this solicitation.

In prior informal opinions, the COE has recommended that a County employee should not serve on a selection committee, even though not specifically prohibited by the County Ethics Code, when there is a close personal relationship between the County employee and an individual that has either a) an ownership interest in one of the responding firms, or b) a managerial position in one of the responding firms and involvement in the project. *See* INQ 22-52.

For example, in order to avoid an appearance of impropriety, it was recommended that the County reconsider appointing to a selection committee an FIU Professor of Architecture who had close professional relationships with some of the respondents to a project. *See* INQ 14-246. Similarly, it was recommended that a Senior Professional Engineer for the Miami-Dade Water and Sewer Department ("WASD") should be excused from service on a selection committee because she and her husband maintained a long-standing close friendship with the owner of a respondent to the project. *See* INQ 22-37.

Additionally, regarding the project at issue here, it was recommended that the Chief of Terminal Development for the Port of Miami should be excused from service on this selection committee because he maintained close friendships with five individuals who worked for a respondent to the project, and three of those individuals were identified as serving defined roles should that contract be awarded to the respondent. *See* INQ 21-108. By contrast, in INQ 18-78, the COE considered whether a prospective member of a selection committee may serve on the committee, where the prospective selection committee member maintained a close personal friendship with an employee of one of the respondents to the project. In that case, the COE again noted that the prospective member of the selection committee did not have a prohibited conflict of interest under the County Ethics Code because the County employee would not personally benefit from the vote and he did not have a prohibited relationship with any of the parties involved in the solicitation. However, this office did not find that there was any appearance of impropriety in this scenario because the individual that the prospective selection committee member maintained a personal friendship with

at the respondent company was not listed in the proposal submitted, he had nothing to do with the company's response to that particular solicitation, the individual had for the most part retired from the company, and the individual was not going to be making any type of presentation before the selection committee regarding that project.

In this case, Mr. Martinez maintains friendships with current employees of Carollo Engineers and Jacobs Engineering Group Inc., both of which are part of the team for the company proposals for their respective entities in this solicitation.

Lastly, Mr. Martinez also confirmed that he currently works, albeit tangentially, with several of the respondents to this solicitation. 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, INQ 22-153, and INQ 23-76. 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, INQ 22-153, and INQ 23-76.

Opinion:

Consequently, consistent with the COE's holding in prior ethics opinions, Ms. Doyon and Mr. Martinez do not have a conflict of interest under the Ethics Code that would prevent them from serving on this selection committee because neither will be directly affected by the vote, nor do they currently have any of the enumerated relationships with any entity affected by the vote. *See* INQ 14-246, INQ 16-242, INQ 19-99, INQ 20-40, and INQ 21-81.

However, in order to avoid an appearance of impropriety, as Mr. Martinez maintains close social relationships with individuals that not only work for entities listed in the proposals submitted, but are also listed in the proposals submitted as part of the respondent team for their respective employers. Therefore, we recommend that SPD should consider excusing Mr. Martinez from this selection committee because "in all procurement matters, where appearances of integrity and fairness are paramount, 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..." *See* INQ 21-108; INQ 16-242, citing to INQ 14-242; INQ 14-246, INQ 15-206.

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.