



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Saba Musleh, 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 2024-03, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

**DATE:** January 8, 2024

**CC:** All COE Legal Staff; Namita Uppal, SPD; Pearl Bethel, SPD; Vanessa Stroman, SPD; Yinka Majekodunmi OCA; Jannesha Johnson, OCA; Gregory Perello, ISD; Marcos Bermudez, DTPW

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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 December 8, 2023, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Departments Request for Proposals for Maintenance and Repair Services for Conveyance Equipment – RFP No. EVN0003576. 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 disclosures on their Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Gregory Perello, Internal Services Department, disclosed on his Neutrality Affidavit prior employment with Thyssen Krupp Elevator Corporation from November 2015 to August 2018 and Schindler Elevator Corporation from August 1988 – July 2008. Thyssen Krupp

Elevator Corporation is a respondent to this solicitation. Schindler Elevator Corporation is not a respondent to this solicitation.

- Marcos Bermudez, Department of Transportation and Public Works, disclosed on his Neutrality Affidavit prior employment with OTIS Elevator Company in 1993 as an apprentice and served as a service manager with Thyssen Krupp Elevator Corporation from 2002-2004. Mr. Bermudez also stated that both companies were good employers and that he could be impartial to both.

We conferred with Mr. Perello. He is a Contract Specialist for the Internal Services Department (ISD), Office of Elevator Safety. In that role, Mr. Perello oversees all vertical transportation for Miami-Dade County properties. He has been employed by ISD for five years. Mr. Perello advised that he was previously employed by Thyssen Krupp Elevator Corporation (TKE), a respondent to this solicitation, from November 2015 to August 2018 as a Project Manager for Construction. He also indicated that he worked for Schindler Elevator Corporation from August 1988 to July 2008; however, as they are not a respondent to this solicitation, they are not included in the analysis. Mr. Perello indicated that the termination of his employment with TKE was amicable. He has no current ownership interest or other financial interest in the company. He also does not have any business, close social, or other relationship with any current employee at TKE. Mr. Perello believes he can be fair and impartial when evaluating the respondents to this project.

We also conferred with Mr. Bermudez. He is the Elevator Contract Supervisor for the Department of Transportation and Public Works (DTPW). He has been employed by DTPW for sixteen years. He advised that he was employed by Otis Elevator Company (Otis), a respondent to this solicitation, in 1984 to 1985 as a Mechanic's Assistant and TKE, also a respondent to this solicitation, as a Service Manager from 2002 to 2004. He indicated that the termination of his employment with both Otis and TKE was amicable. Mr. Bermudez has no current ownership interest or other financial interest in either company. He also does not have any business, close social, or other relationship with any current employee at either entity. Mr. Bermudez also noted that he is currently managing projects in his County role involving both Otis and TKE. He advised that as a DTPW Elevator Contract Supervisor, one of his responsibilities is to manage the elevator/escalator maintenance contracts between Miami-Dade County and its vendors. He indicated that his current supervision over these projects will not affect how he evaluates the various respondents to this project, and Mr. Bermudez believes he 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 Mr. Perello since he stopped working for TKE over 6 years ago nor to Mr. Bermudez since he stopped working for TKE over 20 years ago and Otis over 39 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, Mr. Perello disclosed previous employment for a respondent to this solicitation. Since Mr. Perello's employment at TKE ended over 6 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. Perello's prior employment at TKE 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.

Additionally, Mr. Bermudez also disclosed previous employment for two respondents to this solicitation. Mr. Bermudez's employment at TKE ended over 20 years ago and Otis over 39 years ago, both on an amicable basis, and he has no close business or social relationship with current employees at either entity. Therefore, it is our opinion that Mr. Bermudez's prior employment at TKE nor Otis 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.

Lastly, Mr. Bermudez also confirmed that he currently manages projects involving two 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, we see no reason why Mr. Perello and Mr. Bermudez should not serve on this committee because neither has 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, each is reminded that the selection committee, for which they will serve as voting members, 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. All selection committee members will therefore be prohibited under the Cone from communicating with any of the responding entities to this solicitation with which they may currently have interactions regarding ongoing projects.

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.