



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Ana Da Silva
Selection Committee Coordinator
Miami-Dade County Strategic Procurement Department

Yaritza Reina
Executive Secretary
Office of the Commission Auditor

FROM: Etta Akoni, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-06 [Voting Conflict of Interest § 2-11.1(v); Resolution No. 449-14; Appearances of Impropriety]

DATE: January 11, 2024

CC: All COE Legal Staff; Namita Uppal, SPD; Adeyinka Majekodunmi, OCA; Jannesha Johnson, OCA; Pearl Khadar, WASD.

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed action.

FACTS:

We have reviewed the Office of the Commission Auditor memorandum dated December 28, 2023, which was prepared in connection with the Appointment of the Selection Committee for the Miami-Dade County Department of Transportation and Public Works Request to Advertise for Construction Engineering and Inspection (CEI) Services for Various Department of Transportation and Public Works (DTPW) Projects – Project No. E23TP04. 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, Pearle Khadar, made a disclosure on her Neutrality Affidavit that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that:

Pearle Khadar, Water and Sewer Department, disclosed in her Neutrality Affidavit that several of the respondents to this Selection Committee are working with WASD as consultants on several existing projects. However, Ms. Khadar did not disclose the names of those respondents.

We conferred with Ms. Khadar, and she advised that she is a Miami Dade County Water and Sewer Department (WASD) Pump Station Construction Supervisor. In this role she interacts with three (3) respondents to the Request to Advertise for Construction Engineering and Inspection (CEI) Services for Various Department of Transportation and Public Works (DTPW) Projects – Project No. E23TP04SRS (this solicitation): SRS Engineering, Inc., ADA Engineering, Inc., and Premiere Design Solutions. These three organizations are also consultants for current WASD projects. SRS Engineering, Inc. is a consultant for a WASD project to upgrade Pump Station #D2-A-2 (#1330) and Project T2674 Pipeline. ADA Engineering, Inc. is a consultant for Hialeah Transfer Area Phase 1 Joint Party Agreement for Road Improvements (this project is a joint project with the Miami Dade County Department of Transportation and Public Works for installation of water mains and gravity sewer lines) and Project S-964 Pipeline. Premiere Design Solutions is a consultant for a WASD project to upgrade to Pump Station #830.

Ms. Khadar stated that she does not have any personal financial interests in any of the respondent organizations to this solicitation, nor does she conduct any personal business with any of the respondents. Ms. Khadar further stated that she does not have any personal, close social, or other relationship with any current employee(s) of any of the respondents to this solicitation. Ms. Khadar stated that her prior interactions and work history with the three (3) respondents to this solicitation, who are engaged in WASD projects, would not impede her fair judgment when evaluating the various other respondents. Moreover, Ms. Khadar believes that she can be fair and impartial when evaluating all respondents to this solicitation.

DISCUSSION:

This agency conducts reviews of potential 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 by the circumstances and make recommendations based on R-449-14 and Ethics Commission Rule of Procedure 2.1(b).

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) stockholder, bondholder, debtor or creditor.

Further, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the Ethics Commission 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* Miami-Dade County Code § 2-1067; Ethics Commission Rule of Procedure § 2.1(b). “In all procurement matters, appearances of integrity and fairness are paramount, [as 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 . . .’ INQ 17-131 (quoting INQ 14-242).

Additionally, 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 County duties would not create an appearance of impropriety that could affect the public trust in the integrity of the procurement process. *See* INQ 23-01; INQ 22-147; INQ 20-136; INQ 18-230. 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 23-76; INQ 22-153; INQ 20-136; INQ 18-230. However, a lack of objectivity can create an appearance of impropriety. *See* INQ 16-165.

Based on the information provided and pursuant to Section 2-11.1(v) of the County Ethics Code, it does not appear that Ms. Khadar will be directly affected by the vote, and she does not currently have any of the enumerated relationships with any entity affected by the vote. *See* INQ 23-01. Ms. Khadar works with some of the respondents for this solicitation through her county position, however, the mere fact that a Selection Committee member has had interactions with a respondent or subconsultant in connection with the member’s County duties does not, by itself, create an appearance of impropriety. *See* INQ 23-01; INQ 22-147; INQ 16-165.

OPINION

Pearle Khadar does not have any conflicts of interest under the County Ethics Code that would prevent her from serving on this selection committee because she will not be directly affected by the vote, she do not have any enumerated relationship with an entity affected by the vote, and her service on the Selection Committee would not otherwise give rise to an appearance of impropriety. *See* INQ 22-20; INQ 22-19; INQ 18-16.

This opinion is limited to the facts as presented 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, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 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.