



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Makeba Gassant
Advisory Board Member
Miami-Dade Small Business Enterprise Advisory Board - Goods and Services

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2024-07, Section 2-11.1(c), Limitations on Contracting with the County.

DATE: January 11, 2024

CC: All COE Legal Staff; Shantrell Page, Procurement Contracting Officer 1, Miami-Dade Strategic Procurement Department (“SPD”); Darnell Hill, Procurement Contracting Officer 1, SPD; Christopher Grant-Henriques, Procurement Contracting Manager, SPD.

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest arising from Gassant Enterprises, LLC’s response to Solicitation PM-EVN0003800 and your service on a County advisory board.

Facts

Gassant Enterprises, LLC, has submitted a response to Solicitation PM-EVN0003800 from the Miami-Dade Strategic Procurement Department (“SPD”). Solicitation PM-EVN0003800 is a Request to Qualify (“RTQ”) to establish a prequalified pool of vendors that will be used to solicit various types of work gloves for Miami-Dade County. Per the solicitation packet for Solicitation PM-EVN0003800, placement in the prequalification pool is not a contract between the County and an individual vendor; rather, it is an acknowledgment that the vendor meets the qualifications to engage in sales for work gloves with the County. Once in the prequalification pool, vendors will be invited to participate in spot market competition for the sale of work gloves, as needed.

Gassant Enterprises, LLC, is a Florida limited liability company, and you advised that it provides procurement services, particularly in the healthcare, foodservice, and commercial industries. Gassant Enterprises, LLC, serves governmental, healthcare, institutional, and commercial

industrial clients.¹ You are the President and Chief Executive Officer of Gassant Enterprises, LLC. Additionally, you are registered as a lobbyist with Miami-Dade County to lobby on behalf of Gassant Enterprises, LLC.

You are a member of the Miami-Dade Small Business Enterprise Advisory Board – Goods and Services (“SBE-G&S Advisory Board”). You advised that you were appointed to the SBE-G&S Advisory Board by former County Mayor Carlos Gimenez. The Miami-Dade SBE-G&S Advisory Board is a County advisory board that supports and promotes SBE Goods and Services programs. It further operates as a focal point for the public and collects, inputs, and disseminates information related to economic opportunities within Miami-Dade County government for small business owners.² The SBE-G&S Advisory Board is part of the Miami-Dade Internal Services Department (“ISD”). As of the writing of this opinion, you continue to serve on the SBE-G&S Advisory Board.

Issue

Whether there is any prohibited conflict of interest related to Gassant Enterprises, LLC’s bid in response to Solicitation PM-EVN0003800 from SPD arising from your County service as a member of the SBE-G&S Advisory Board.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”) Section 2-11.1(c)(1) provides that advisory personnel, including members of County advisory boards, shall not enter into any contract or otherwise transact any business with the County, “except as provided in subsections (c)(2) through (c)(6).” County Ethics Code Section 2-11.1(c)(3) prohibits a County board member from entering a contract with the County only if the board on which he or she serves oversees that contract.

Additionally, the subsection of the Miami-Dade County Code that created the Small Business Advisory Board provides that, “[s]ections 2-11.1(c) and (d) of the Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County are waived for Advisory Board members for transactions arising from the exercise of those powers given the Advisory Board by this section.” Miami-Dade County Code § 2-8.1.1.1.1(3)(g)9; *see also* Miami-Dade County Code § 2-8.1.1.1.2(3)(g); INQ 17-85.

In practice, a member of the SBE-G&S Advisory Board does not have a conflict of interest in contracting with the County when ISD does not oversee the contract. *See* INQ 23-155 (Gassant Enterprises, LLC, may submit a bid in response to a County solicitation for mattresses for use by the Miami-Dade Corrections and Rehabilitation Department without giving rise to a prohibited conflict of interest); INQ 23-18 (a company whose employee – who is also the owner’s nephew –

¹ *See Innovative Solutions*, GASSANT ENTERPRISES, <https://www.gassantenterprises.com/> (last visited Jan. 9, 2024).

² *See Small Business Enterprise Advisory Board – Goods and Services*, <https://www.miamidade.gov/global/business/smallbusiness/goods-services.page> (last visited Jan. 9, 2024).

serves on the SBE-G&S Advisory Board may submit a bid in response to a County solicitation for materials related to meter boxes for the Miami-Dade Water and Sewer Department without giving rise to a prohibited conflict of interest).

Based on the information provided to us at this time, it appears to be unlikely that a prohibited conflict of interest arises out of your service as a member of the SBE-G&S Advisory Board. First, there is no indication that the SBE-G&S Advisory Board would ever have occasion to consider Solicitation PM-EVN0003800 or any subsequent purchase from the vendor pool because the SBE-G&S Advisory Board does not advise on individual contracts. *See* Miami-Dade County Code § 2-8.1.1.1(3)(g); Miami-Dade County Code § 2-8.1.1.2(3)(g). Furthermore, the enacting ordinance of the SBE-G&S Advisory Board explicitly waives subsections 2-11.1(c) and (d) of the County Ethics Code, which would otherwise constrain the members of the SBE-G&S Advisory Board from contracting with the County. *See* Miami-Dade County Code § 2-8.1.1.1(3)(g); Miami-Dade County Code § 2-8.1.1.2(3)(g); INQ 23-115; INQ 23-18.

Opinion

Based on the facts presented here and discussed above, no prohibited conflict of interest arises from Gassant Enterprises, LLC, contracting with the County pursuant to Solicitation PM-EVN0003800, based on your service on the SBE-G&S Advisory Board. This is because said advisory board would have no occasion to review or consider Solicitation PM-EVN0003800.

However, you must adhere to the following limitations to avoid any potential conflict of interest:

- County Ethics Code Section 2-11.1(m)(2) prohibits a board member from appearing before the board on which he or she serves, either directly or through an associate, and making a presentation on behalf of a third party. *See* RQO 07-39; INQ 17-254. This means you must not lobby or try to influence your board for the benefit of your company. *See* INQ 13-224. The Ethics Commission has interpreted these prohibited appearances to include the signing of proposals or the submitting of documents or correspondence on behalf of the third party. *See* INQ 11-178; INQ 09-33. Additionally, as a board member you may not receive compensation, directly or indirectly, nor in any form, for any services rendered to a third party seeking a benefit from the SBE-G&S Advisory Board. *See* RQO 07-12; INQ 19-12; INQ 15-229.
- County Ethics Code Section 2-11.1(v) prohibits a board member from voting on any matter where the member will be directly affected by the vote and has an enumerated relationship (i.e., officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) with any corporation, firm, entity, or person appearing before the member's board or committee. *See* RQO 07-39; INQ 17-69. Accordingly, you may not vote on any matter that may directly affect you or any corporation with which you have an enumerated relationship. *See id.*
- County Ethics Code Section 2-11.1(n) prohibits advisory board members from participating in any official action by said advisory board that directly or indirectly affects a business in which he or she or a member of his or her immediate family has a financial

interest. *See* INQ 19-78. Accordingly, you may not participate in any official SBE-G&S Advisory Board action that will directly or indirectly affect you, Gassant Enterprises, LLC, or any other business in which you or a member of your immediate family has a financial interest.

- County Ethics Code Section 2-11.1(g) prohibits an advisory board member from using his or her official position to secure any special benefit, privilege, or exemption for himself or herself, or others. Accordingly, while you may share your knowledge and expertise in related matters while serving on the SBE-G&S Advisory Board, you may not use your service on the SBE-G&S Advisory Board to prefer or promote the use or sale of products by Gassant Enterprises, LLC, or any other person or company. *See* INQ 21-121.

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 SPD or the SBE-G&S Advisory Board or under state law. Questions regarding possible conflicts based on SPD or SBE-G&S Advisory Board directives should be directed to the respective named entities 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/>.

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.