



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jorge Vital, Selection Committee Coordinator
Strategic Procurement Department (SPD)

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

FROM: Susannah Nesmith, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-131, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: July 29, 2024

CC: All COE Legal Staff; Namita Uppal, SPD; Yinka Majekodunmi, OCA; Pearl
Bethel, SPD; Natalya Vasileyeva, SPD; Tiondra Wright, OCA; Jannesha
Johnson, OCA; Pablo Valin (SPD)

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 July 17, 2024, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Aviation Department Request to Advertise for Design-Build Services for MIA South Terminal Expansion East (New Gates) Phase 1 – Project No. DB23AV01. 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:

- Isa Nunez, Jackson Health System, Neutrality Affidavit disclosed the following firms have provided service to Jackson during the time of her employment with Jackson Health System; Bliss & Nyitray, Inc., GSLA Design, Inc., Nova Consulting, Inc., Mobio Architecture, Inc., Civil Works, Inc., F.R Aleman & Associates, Inc., Kimley-Horn & Associates, Inc., MCO Construction & Services, Inc., Southeast Mechanical Contractors, LLC, Gamax Consulting, Inc., Louis J. Aguirre & Associates PA, and Terracon Consultants, Inc. Ms. Nunez stated in an email sent, July 17, 2024, from the department, her only employer has been Jackson Health Systems. The firms mentioned are respondents to this request.
- Helga Sommer, Seaport Department, Neutrality Affidavit, disclosed previous employment with AECOM Technical Services, Inc. from 2004-2016 and her spouse's employment with AECOM Technical Services, Inc. from 2001-2017. AECOM Technical Services, Inc. is a respondent to this request.

Ms. Nunez was contacted for further inquiry. She indicated that she has worked with twelve of the listed subcontractors because they have done work at Jackson Health Systems that she has supervised. She said that neither she nor any of her immediate family members have any financial interest in any of the respondents or listed subcontractors. She also stated that neither she nor any of her immediate family members are employed by any of the respondents or listed subcontractors, and she does not have any personal relationships with them. Additionally, she stated she knew of no reason why she could not be fair and impartial judging the bids this selection committee will review.

Ms. Sommer was also contacted for further inquiry. She indicated that neither she nor any of her family members have any financial interest in any of the listed respondents or subcontractors. Both she and her husband have worked for AECOM Technical Services, Inc. ("AECOM"), one of the respondents, but both left on amicable terms and neither has worked for AECOM within the past two years. Ms. Sommer separated from AECOM in 2016 and her husband left the company in 2017. She also stated that neither she nor her husband have any close personal friends at AECOM or any of the other respondents or listed subcontractors. Additionally, she said she knew of no reason why she could not be fair and impartial judging the bids this selection committee will review.

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 quasi-judicial personnel or advisory personnel shall not 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 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 neither of them will be directly affected by the vote, and neither 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. Sommer because she stopped working for AECOM eight years ago and her husband stopped working for AECOM seven 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.

Ms. Sommer disclosed previous employment for one of the respondents to this solicitation, AECOM, where both she and her husband worked. Ms. Sommer's employment with AECOM ended over eight years ago and her husband's employment at AECOM ended seven years ago, both on an amicable basis, and she has no close business or social relationship with current employees at either entity. Therefore, it is our opinion that neither Ms. Sommer's prior employment at AECOM nor her husband's prior employment at AECOM would 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.

Ms. Nunez also confirmed that she has managed projects involving twelve of the subconsultants of 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 Ms. Nunez and Ms. Sommer should not serve on this committee because they do not have any conflicts of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by them serving on this committee.

They are reminded that the selection committee, on 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. All selection committee members will therefore be prohibited under the Cone from communicating regarding the solicitation with any of the respondents.

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 this is an informal opinion, covered parties who 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.