



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Hugo Llamas, Professional Engineer
Miami-Dade Department of Transportation and Public Works

FROM: Nolen Andrew Bunker, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-134, Section 2-11.1(c), Limitations on Contracting with the County;
Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: August 1, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest concerning your company's participation in Miami-Dade County's Small Business Enterprise ("SBE") Certification Programs and your company's anticipated business with the County.

Facts

You are employed by the Miami-Dade Department of Transportation and Public Works ("DTPW") as a Professional Engineer within the Traffic Engineering Department. You advised that your job responsibilities primarily include reviewing signage and pavement markings plans for roadway improvements and providing comments to ensure compliance with safety standards. Your work involves utilizing DTPW's PWS System, the Electronic Review Comments ("ERC") application with Florida Department of Transportation projects, and the VRT for County projects. Additionally, you advised that your DTPW position does not include any oversight or administration of the County's SBE Certification Programs.

You own and operate Llamas Engineering, LLC ("LE"), a Florida limited liability company specializing in construction and engineering services. You advised that you are the sole owner and employee of the company, and your responsibilities include: 1) providing shop drawings and installation calculations for impact resistant windows and doors; 2) offering mechanical, electrical, plumbing, and structural plans for both residential and commercial properties, covering new construction and remodeling projects; 3) conducting specialty inspections for impact-resistant window and door

installations; and 4) providing comprehensive construction and engineering project management services. You advised that, through your company – LE, you would like to apply to participate in the County’s SBE Certification Programs, specifically the Architecture and Engineering and the Goods and Services programs. You further advised that LE like to contract with the County in the future.¹

Miami-Dade County’s SBE Certification Programs were created for any business entity providing construction, architectural, engineering, goods, services, and aeronautical support services. The SBE Certification Programs are gender and race neutral. The County’s SBE – Architectural and Engineering Program is designed to provide contracting opportunities for independent firms that meet the following criteria: (a) must have a Miami-Dade County Local Business Tax (“LBT”) Receipt issued for at least one year; (b) must have an actual location and perform a commercially useful function in Miami-Dade County; (c) the personal net worth for each owner cannot exceed \$3.5 million; (d) the last three years’ average gross receipts must not exceed \$6.5 million for architectural services and \$8 million for engineering, surveying and mapping services, and landscape architecture services; (e) the business license holder and qualifier (if applicable) must own at least twenty-five percent of the applicant’s issued stocks or have at least a twenty-five percent ownership interest; and (f) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time.² Similarly, the County’s SBE – Goods and Services Certification Programs are designed to provide contracting opportunities for independent firms that meet the following criteria: (a) must have a Miami-Dade County LBT Receipt issued for at least one year; (b) must have an actual location and perform a commercially useful function in Miami-Dade County; (c) the personal net worth for each owner cannot exceed \$3.5 million; (d) the last three years’ average gross receipts must not exceed \$8 million; (e) the business license holder and qualifier (if applicable) must own at least ten percent of the applicant’s issued stocks or otherwise have at least a ten percent ownership interest; and, (f) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time.³

Issue

Whether there is any prohibited conflict of interest that would prevent you, through LE, from participating in the County’s SBE Certification Programs and contracting with the County.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

¹ In March 2023, this agency issued to you an informal ethics opinion addressing potential conflicts of interest that could arise from your plans to create your own business and contract with the County. *See* INQ 23-25.

² *See Architecture & Engineering (A/E)*, SMALL BUSINESS ENTERPRISE CERTIFICATION PROGRAMS, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited July 31, 2024).

³ *See Goods & Services*, SMALL BUSINESS ENTERPRISE CERTIFICATION PROGRAMS, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited July 31, 2024).

A. Outside Employment

Work conducted by you for LE, a company you own and operate, constitutes outside employment, as defined by the County Ethics Code. *See* RQO 17-03 (citing RQO 16-01). The County Ethics Code prohibits County employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” County Ethics Code § 2-11.1(j). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder no circumstances shall a County employee accept outside employment . . . where a real or apparent conflict of interest with one’s official or public duties is possible.” Conflicting employment can occur when a county employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* INQ 21-27; INQ 20-21.

Based on the information provided to us at this time, it seems unlikely that the type of outside employment you intend to engage in through your anticipated private company would impair your independence of judgment in the performance of your County duties as a Professional Engineer with DTPW. because your DTPW duties do not allow you to oversee or administer the County’s SBE Certification Programs; rather your responsibilities at DTPW focus on reviewing and providing feedback on signing and pavement markings plans for roadway improvements. *See* RQO 17-03 (citing RQO 16-01). Additionally, your outside employment will take place outside of your regular County work hours, nor will you be dealing with the same or similar people/entities in LE as your County position and lastly, you will not use the same or similar resources for LE as you do in your County work. *See* INQ 23-25.

However, you are reminded that County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee’s department. *See* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. **Accordingly, this memorandum does not grant permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department director.**⁴

Furthermore, given that you are a full-time County employee, you must also file an outside employment financial disclosure form – Outside Employment Statement – on an annual basis, regardless of whether your business makes a profit.⁵

B. Contracting with the County

Regarding LE’s participation in the County’s SBE Certification Programs, once you obtain permission to engage in outside employment with your company, then it **may participate in**

⁴ A review of INFORMS shows that you have already requested permission to engage in your outside employment for calendar year 2024, and the request is pending for approval with your supervisor.

⁵ You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

the County's SBE Certification Programs. However, it may do so only so long as DTPW is not involved in any way in processing, administering, overseeing, or enforcing the SBE Certification Programs. *See* INQ 22-157 (County employee's company may participate in County's SBE Certification Program so long as his employing County department does not enforce, oversee, or administer the SBE Certification Programs). This includes the condition that you may not participate in determining or awarding the SBE Certification. Additionally, none of your job responsibilities or job descriptions may require you to be involved in the SBE Certification Programs in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

Regarding contracting with the County generally, sections 2-11.1(c) and (d) of the County Ethics Code restrict the ability of County employees to contract with the County. These restrictions have already been discussed in the prior informal ethics opinion issued to you in 2023 and remain applicable to you and LE. *See* INQ 23-25. Nevertheless, you are reminded that you may not contract with DTPW because it is your employing County department. *See* County Ethics Code § 2-11.1(c)(2), (d); INQ 23-25.

C. Lobbying

You may not lobby the County. In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about your and/or LE's application to participate in the County's SBE Certification Programs. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See* County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to LE's application to, and ultimate participation in, the County's SBE Certification Programs, or to any other County certification programs to which you or your company are applying.

Opinion

Based on the facts presented here and discussed above, your and/or LE's participation in Miami-Dade County's Small Business Enterprise Certification Programs does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above. Additionally, your company's potential future business with the County will require further evaluation once a specific County solicitation or contract is contemplated.

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.

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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/>.

Please submit this memorandum to the Small Business Development Division of the Mayor's Office. The Ethics Commission does not submit it on your behalf.

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.