



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Saba Muselah, Selection Committee Coordinator
Strategic Procurement Department (SPD)

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

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

SUBJECT: INQ 2024-144, Voting Conflict of Interest, Section 2-11.1(v); Appearances of Impropriety

DATE: August 19, 2024

CC: All COE Legal Staff; Namita Uppal, SPD; SPD; Yinka Majekodunmi, OCA;

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 April 19, 2024, which was prepared in connection with the appointment of Selection Committee for Miami-Dade County Parks, Recreation and Open Spaces Department (“PROS”) Request for Proposals for Tropical Park Equestrian Center Complex – RFP No. EVN0001892. The memorandum was prepared in connection with Resolution No. R-449-14, directing the Office of the Commission Auditor to conduct background checks on members serving on evaluation/selection committees.

The memorandum noted that one member of the selection committee made disclosures on his Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Daniel Barcia, Parks, Recreation, and Open Spaces Department, disclosed that he oversees parks where some of the proposers have conducted business previously. The name of the proposer was not disclosed.

Daniel Barcia was contacted. He stated that as Chief of Operations for the Department of Parks, Recreation and Open Spaces, he oversees 235 parks. Both of the primary proposers have had contracts with PROS in the past. Barcia said he does not have a personal relationship with the companies or anyone who works for them. He also said he has never worked for any of the respondents in this solicitation and has no financial interest in either proposer or their subcontractors. He said he feels 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 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.

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.

Barcia does not have an enumerated relationship with any of the respondents to this solicitation. Thus, there is no reason for an automatic disqualification.

Furthermore, his disclosure of professional involvement with the respondents also does not raise concern about any appearance of impropriety. 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 24-83 (finding Mr. Barcia did not have a prohibited conflicting relationship with any proposer in a previous selection committee and his professional involvement with County contractors did not raise a concern about any appearance of impropriety). *See also* INQ 22-153, INQ 20-136, INQ 18-230, INQ 18-47, INQ 18-21. 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 2024-83; INQ 22-153, INQ 20-136, INQ 18-230, INQ 18-47, INQ 18-21.

Opinion:

Consequently, we see no reason why Mr. Barcia should not serve on this committee because he does not have any conflicts of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by him serving on this committee.

Mr. Barcia is reminded that the selection committee, on which he 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 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 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.