

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 9, 2024

Mariana Evora
Delta Consultants, LLC
4841 NW 1 Avenue
Miami, FL 33127
Delivered via email to: mariana.evora@gmail.com

RE: INQ 2024-152, Section 2-11.1(c), Limitations on Contracting with the County; Section 2-11.1(n), Action prohibited when financial interests involved.

Dear Ms. Evora:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking guidance regarding possible conflicts of interest arising for you, the spouse of a County employee, seeking to be engaged as a subcontractor in response to County Project E24WS03, a project that will be overseen and/or administered by the Miami-Dade County Water and Sewer Department, your spouse's employing department.¹

Facts

You have advised that you own and manage a Florida limited liability company named Delta Consultants, LLC. (“Delta”). Additionally, records maintained by the Florida Department of State Division of Corporations show that you are the Registered Agent and only Manager for Delta, which was established in 2021. You advise that Delta is a consulting company that provides project management, construction management, and design services.² Delta primarily focuses on municipal infrastructure work, including among other things: water mains, drainage, utility master planning, gravity sewers, force mains, wastewater pump stations, and stormwater pump stations. *See id.* You have advised that Delta provides engineering consultations regarding the above-listed topics. Records maintained by the Florida Department of Business and Professional Regulation show that you are a licensed Professional Engineer with a special qualification in civil engineering.

¹ You have been previously provided with guidance regarding your interest in subcontracting for County Projects E23WS02 and E23WS03, in addition to two (2) ethics opinions that provided general guidance to you regarding your ability to do business with the County. *See* INQ 23-54, INQ 23-03, and INQ 23-72.

² *See* <https://deltaconsultants.net/> (last visited August 20, 2024).

You have advised that you are seeking to be engaged as a subcontractor as part of a yet unidentified team that will submit a response to the Notice to Professional Consultants for Capacity Management, Operation, and Maintenance Services (CMOM) Related to the Consent Decree Projects - Project No. E24WS03, by which the Miami-Dade Water and Sewer Department (“WASD”) is seeking the services of a team of consultants to assist WASD with the modification and development of the CMOM programs identifying and providing solutions to deficiencies in the existing practices. The Miami-Dade Strategic Procurement Department (“SPD”) is administering the solicitation of the bids for Project No. E24WS03, but the contracts and the services rendered thereunder will be administered and overseen by WASD.

Your consulting team will work closely with WASD to review, modify, and develop the following plans and programs as required by the Consent Decree: Information Management System Program; Update the Geographic Information System (GIS); Sewer System Asset Management Program; Gravity Sewer System Operation and Maintenance program; Pump Station Operations and Preventative Maintenance Program, Force Main Operations; Force Main Operations, Preventative Maintenance, and Assessment/Rehabilitation Program; Wastewater Treatment Plant Assessment Program; Force Main Rehabilitation and Replacement Program; Wastewater Treatment Plant Operations and Maintenance Program; wastewater Facilities industry Specifications and Assessments. WASD intends to retain one (1) consultant or consultant team that will enter into a Non-Exclusive Professional Services Agreement (“PSA”) for a five (5) - year term with a five (5) year option to renew.

You are not employed by Miami-Dade County. However, you advised that your spouse, Mr. Nelson Perez Jacome, is employed by WASD as the Assistant Director of Utility Engineering. He advised that he is responsible for the supervision of four divisions: Water and Sewer Treatment Design, Water and Sewer Pipelines Design, Survey, and an administrative division. Within his supervision are division chiefs, who in turn supervise team leaders, who oversee project managers. Mr. Perez Jacome advised that he does not personally handle any procurement matters, including the awarding of contracts. Rather, he handles the administration of engineering matters and is not involved in the management of projects or oversight over WASD contractors or subcontractors. However, he previously acknowledged that the project managers over whom he has ultimate supervision execute WASD projects and oversee work completed by contractors and subcontractors pursuant to WASD task authorizations (also known as work orders). *See* INQ 23-54, INQ 23-03, and INQ 23-72. With regard to the specific solicitations/projects to which your company is seeking to be engaged as a subcontractor, Mr. Perez Jacome previously advised that it is his understanding that all divisions of WASD will have access to submit task authorizations to the PSAs that will result from these solicitations/projects and that he expected that at least one of the project managers under his supervision will likely be assigned to manage one of those task authorizations. Nevertheless, Mr. Perez Jacome advised that, if that does occur, he will “recuse” himself from the supervision of that project manager and shift supervision to another WASD Assistant Director. To date, Mr. Perez Jacome has yet to recuse himself from a matter for which you are a contractor or subcontractor as the need has not arisen. This is partly because WASD has elected to prohibit you from pursuing work where Mr. Perez Jacome is the primary user of a contract. Therefore, a recusal should not be necessary at any point during the life of the CMOM.

Ms. Patricia Palomo, Chief of Intergovernmental Affairs for WASD, was also consulted about the matter and advised that WASD will be able to avoid any overlap between the project managers under Mr. Perez Jacome's supervision and ensure that he does not supervise any project managers who will administer or oversee any task authorizations that result from Project No. E24WS03.

Issue

Whether there is any prohibited conflict of interest related to Delta serving as a subconsultant on a bid in response to Project No. E24WS03 arising from the employment of Delta's owner's spouse by the Miami-Dade Water and Sewer Department.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") Section 2-11.1(c)(1) provides that County employees and their immediate family members³ shall not enter into any contract or otherwise transact any business with the County, "except as provided in subsections (c)(2) through (c)(6)." The County Ethics Code further provides that County employees and their immediate family members may contract with the County so long as (1) entering into the contract would not interfere with the employee's full and faithful discharge of his or her County duties; (2) the employee does not participate in determining the subject contract requirements or awarding the contract; and, (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including its enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code § 2-11.1(c)(2). Additionally, this limited exclusion from the broad prohibition against contracting with the County does not authorize a County employee or his or her immediate family member to contract with the County Department that employs said County employee. *See id.* Accordingly, the County Ethics Code prohibits Delta from entering into any contract *directly* with WASD. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 17-05; INQ 23-54.

However, the County Ethics Code does not prohibit a business owned by an immediate family member of a County employee from contracting with a County vendor as a *subcontractor* on a County contract because the company owned by the immediate family member of a County employee does not enter into privity of contract with the County. *See* RQO 18-02; RQO 10-32. Nevertheless, such a subcontracting relationship with a County vendor is only permissible provided that the County employee does not administer or oversee the contract with the County vendor with whom the business owned by his or her immediate family member is subcontracting. *See id.* This is because the County Ethics Code provides that no County employee may participate in any official action directly or indirectly affecting a business in which he or she or any member of his or her immediate family has a financial interest. *See* County Ethics Code § 2-11.1(n).

For example, a private company owned and operated by the spouse of a Quality and Assurance Officer for the Miami-Dade Public Housing and Community Development Department ("PHCD") could subcontract with the prime subcontractor (general contractor) under the Master Development Agreement with PHCD to redevelop the Liberty Square Rising project – a public housing site –

³ The term "immediate family" includes spouses and domestic partners. *See* County Ethics Code § 2-11.1(b)(9).

because the company owned by the Quality and Assurance Officer's spouse was not contracting directly with PHCD and the Quality and Assurance Officer did not have any supervision or oversight of the Liberty Square Rising project contract. *See* RQO 18-02; RQO 10-32.⁴

Similarly, a private company owned and operated by the parent of a Park Planner 2 in the Planning, Design and Construction Division of the Miami-Dade Parks, Recreation and Open Spaces Department ("PROS") could subcontract with the prime contractor under a County project to develop, maintain, and operate the Rickenbacker and Venetian Causeways and associated recreation elements because the company owned by the parent of the Park Planner 2 was not contracting directly with the County and the Park Planner 2 did not have any involvement in the oversight, administration, monitoring, or enforcement of any matter involving the project. *See* INQ 21-125; *see also* INQ 10-163.⁵

Accordingly, based on the information provided at this time, **the County Ethics Code does not prohibit Delta from serving as a subcontractor to a prime contractor under Project No. E24WS03** because Delta will not be contracting directly with WASD; rather, Delta will be in privity of contract with the prime contractor. *See* RQO 18-02; INQ 21-125. With regard to the contract negotiations and award, those matters appear to be handled primarily by SPD and there is no indication that your spouse will have any involvement in those matters. Furthermore, based on the representations of your spouse, Mr. Perez Jacome, it does not appear that his job responsibilities or job description would require that he supervise or oversee the administration of the contract with the prime contractor on behalf of WASD. *See* RQO 18-02; INQ 21-125. Thus, it does not appear that a prohibited conflict of interest would arise merely from Delta serving as a subcontractor to a prime contractor for Project No. E24WS03.

However, in the event that the prime contractor is retained by the County and the prime contractor in turn retains Delta's services as a subcontractor, the following limitations in the County Ethics Code would be applicable to your spouse, Mr. Perez Jacome:

- Section 2-11.1(n), Actions prohibited when financial interest involved: Mr. Perez Jacome is prohibited from overseeing, administering, monitoring, or enforcing any matters involving Project No. E24WS03 where Delta would be providing any services to the prime contractor. While he has represented that he does not have any direct involvement in the supervision of procurement matters, he did acknowledge that he is in the chain of command for project managers whose job duties would include the overseeing, administering, monitoring, or enforcement of WASD contracts, which would likely include task authorizations arising from the PSAs that will result from Project No. E24WS03.

⁴ In RQO 10-32, the Commission on Ethics opined that the spouse of an employee of the Miami-Dade Department of Small Business Development ("SBD") may work for a company subcontracted to provide plumbing and mechanical work at the Florida Marlins Stadium even though the SBD oversaw the prime contract and all subcontracts because the SBD employee was not directly responsible for monitoring any part of those agreements.

⁵ In INQ 10-163, the legal staff of the Commission on Ethics opined that the company of the spouse of the City of Miami's Director of the Capital Improvements Program ("CIP") could contract with a City vendor on a current City contract because the spouse's company was contracting with the vendor, not the City, provided that Director of the CIP distanced herself from administering the City contract with the vendor.

Accordingly, in order to avoid any prohibited conflict of interest, **Mr. Perez Jacome must remove himself from the supervisory chain of any project manager whose job duties will include the oversight, administration, monitoring, and/or enforcement of any task authorizations resulting from Project No. E24WS03 in which Delta is serving as a subconsultant.** *See* RQO 18-02; INQ 21-125; INQ 10-163.

- Section 2-11.1(m), Certain appearances and payment prohibited: Mr. Perez Jacome is prohibited from appearing before any County board or agency on behalf of Delta or its prime contractor to make a presentation with respect to any “license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit.” *See* INQ 21-125.
- Section 2-11.1(g), Exploitation of official position prohibited: Mr. Perez Jacome is prohibited from using his position to secure any special privileges or benefits for Delta or for its prime contractor in relation to Project No. E24WS03, or any other contract with the County. *See* INQ 21-125.
- Section 2-11.1(h), Prohibition on use of confidential information: Mr. Perez Jacome is prohibited from disclosing any confidential information to Delta or its prime contractor that he may have obtained by virtue of his employment with WASD. *See* INQ 21-125.

Opinion

Based on the facts presented here and discussed above, no conflict of interest arises from you and/or Delta contracting as a subcontractor to a prime contractor with the County pursuant to Project No. E24WS03, nor any subsequent task authorizations or work orders made from the Non-Exclusive Professional Services Agreements resulting from those solicitations, provided that your spouse, Mr. Perez Jacome, does not have any oversight, administration, monitoring, and/or enforcement authority over the Professional Services Agreements or the resulting task authorizations and that he removes himself from the supervisory chain of any WASD employee who does have such authority. *See* RQO 18-02; INQ 21-125.

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 WASD or under state law. Questions regarding possible conflicts based on WASD directives should be directed to the WASD Director’s Office 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/>.

Sincerely,

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

CC: All COE Legal Staff and Nelson Perez Jacome, Assistant Director of Utility Engineering, Miami-Dade Water and Sewer Department.

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.