



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Chris Rollins,
Miami-Dade County International Trade Consortium

FROM: Susannah Nesmith, Staff Attorney
Miami Dade County Commission on Ethics & Public Trust

SUBJECT: INQ 2024-154, Board Member Contracting with County, Section 2-11.1 (c)(3)
and (m)(2) and (v)

DATE: September 19, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“COE”) and requesting our guidance regarding potential limitations on you as a member of a County advisory board if your company works as a County vendor.

Facts

You are the sole owner of CR Development LLC, a private for-profit corporation that provides construction work. You have no family members or professional partners who work for Miami-Dade County or serve on any County boards.

You are also a member of the Miami-Dade County International Trade Consortium, a County advisory board that advises the County on issues affecting Miami-Dade County’s international trade agenda, assists staff in establishing yearly measurable objectives, establishes program priorities and recommends the agency budget for consideration by the Mayor and the Board of County Commissioners. The Board is an advisory board, as defined in Section 2-11.1(b)(3) of the Ethics Code. The Board was created by Article CII, Section 2-1501, Miami-Dade County Code, and hires its own executive director, who hires staff. The Board is not staffed by a specific County department but is advised by the County Attorney’s Office and provided with audit and financial assistance from the Mayor’s Office. *See* Article CII, Section 2-1503, Miami-Dade Code.

Issue

Whether your private company may serve as a County vendor while you serve on a County advisory board.

Discussion

Sections 2-11.1(c) and (d) of the County Ethics Code addresses limitations and prohibitions on board members doing business with the County. Specifically, Section 2-11.1(c)(3) provides that a board member may enter into a contract with Miami Dade County individually or through a firm, corporation, partnership or business entity in which the board member or his immediate family has a controlling financial interest, as long as the board member does not contract with a County department or agency which is subject to being regulated, overseen, managed, engaged in policy-setting or quasi-judicial authority of the member's board agency. *See* RQO 09-22, INQ 19-78, INQ 20-124, INQ 22-04.

Accordingly, CR Development LLC is generally permitted to contract with the County, as long as your business does not contract directly with the ITC. You are required to obtain an ethics opinion prior to submitting a bid on a Miami-Dade County solicitation. *See* Section 2-11.1(c)(4), County Ethics Code. Additionally, should the ITC recommend any particular policy which results in Miami-Dade County soliciting contractors, you are not permitted to bid on that contract specifically, regardless of the County department that will ultimately manage the contract. *See* Section 2-11.1(c)(3), County Ethics Code (which specifically mentions policy-setting authority). *See also* INQ 23-56 (finding that a member of the Jackson Health System General Obligation Bond Citizens' Advisory Committee was permitted to contract with the Miami-Dade Aviation Department because the advisory board on which she served did not oversee or set policy for the County department she sought to contract with); INQ 22-117 (finding that a member of the Miami-Dade County Community Action Agency Board was permitted to contract with the Miami-Dade Internal Services Department because the advisory board on which he sat did not oversee or set policy for the department he sought to contract with).

You are also cautioned that:

- 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 or of any other entity. *See* INQ 13-224. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third party. *See* INQ 11-178; INQ 09-33. Additionally, this Ethics Code section prohibits a board member from receiving compensation, *directly or indirectly or in any form*, for any services rendered to the third party seeking a benefit from his or her Board. *See* RQO 07-12; INQ 19-12; INQ 15-229.
- Section 2-11.1(v)(3) prohibits a board member from voting on any matter where the member will be directly affected by the vote and has a prohibited 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.

- Section 2-11.1(n) prohibits a board member from participating in any official action, as a member of the Board, directly or indirectly, affecting a business in which you or a member of your immediate family has a financial interest. *See* INQ 19-78.
- Section 2-11.1(g) prohibits a board member from using his or her official position to secure special benefits, privileges or exemptions for herself or others. In other words, while a board member may share his or her knowledge and expertise in related matters, said board member may not use his or her service on the board to proffer or promote the use or sale of the board member's company or products. *See* INQ 21-121.
- Section 2-11.1(h) of the Miami-Dade County Ethics Code prohibits a board member from engaging in any business activities which may require or induce him or her to disclose or use confidential information acquired by reason of your board position for your personal gain or benefit.

Conclusion:

CR Development LLC may register as a Miami-Dade County vendor and may bid on Miami-Dade County solicitations, but must request a specific ethics opinion for each solicitation prior to submitting a bid. *See* Section 2-11.1(c) and (d). You are also bound by the general restrictions on board members discussed above.

We appreciate your consulting with the Commission in order to avoid a possible prohibited conflict of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from state law, other conflicts may apply. 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 this is an informal opinion, 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.