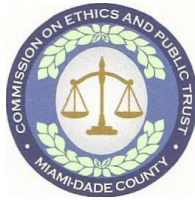


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 26, 2024

Yamilka Bravo
Simbio USA, Inc.
Sent via e-mail to: simbiousa@aol.com

Re: INQ 2024-158, Section 2-11.1(c), Prohibition on transacting business within the County;
Section 2-11.1(d), Further prohibition on transacting business with the County.

Dear Ms. Bravo:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest arising from your company's anticipated application to participate in the Disadvantaged Business Enterprise (“DBE”) Certification Program and your company's anticipated business as a County contractor.

Facts

You are the President and sole owner of Simbio USA, Inc. (“Simbio”), a Florida for-profit corporation that sells medical supplies and emergency management equipment wholesale. You advised that Simbio will seek to do business with the County.

You are not an employee of Miami-Dade County. However, you advised that your sister, Ms. Yanira Bravo, is employed by the County. Specifically, Ms. Yanira Bravo is employed as an SBD Section Manager with the Small Business Development Division (“SBD”) of the Office of the Miami-Dade County Mayor. Ms. Yanira Bravo advised that her County job responsibilities primarily involve supervising County employees who monitor County contracts and contractors to ensure compliance with the County's responsible wage¹ and living wage² requirements. She

¹ The Miami-Dade Board of County Commissioners created a responsible wages and benefits requirement for the minimum payment of specified wages to employees working on County construction contracts and construction on County-owned land. *See Responsible Wages & Benefits*, <https://www.miamidade.gov/global/business/smallbusiness/responsible-wages-benefits.page> (last visited Sept. 24, 2024).

² Miami-Dade County enacted a Living Wage Ordinance for County service contracts and employees that requires the payment of a minimum living wage. *See* Miami-Dade County Code § 2-8.9; *see also* *Miami-Dade County's Living Wage*, <https://www.miamidade.gov/global/business/smallbusiness/living-wage.page> (Sept. 24, 2024).

advised that she also sometimes supervises County employees who monitor contracts with the Miami-Dade Aviation Department and the Miami-Dade Water and Sewer Department to ensure compliance with the County's Small Business Enterprise certification programs. However, Ms. Yanira Bravo stated that she is not responsible for monitoring County contracts for compliance with the DBE program, that this is handled by a different group. Additionally, she advised that she has no role in processing applications for the DBE certification program.

You advised that Simbio seeks to participate in the DBE Certification Program administered by the County. The DBE Certification Program is a federal program that seeks to ensure equal opportunity in transportation contracting markets and promotes increased participation in federally funded contracts by small socially and economically disadvantaged businesses.³

Issue

Whether there is any prohibited conflict of interest related to Simbio's application to, and participation in, the DBE Certification Program in light of your sister's County position.

Analysis

A. Contracting with the County

Generally, sections 2-11.1(c) and (d) of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") permit County employees to transact business with the County so long as the transaction/contract does not interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the transaction/contract, the County employee's job duties will not require him or her to be involved with enforcing or overseeing the transaction/contract, and the County employee's employing County department does not administer or oversee the transaction/contract. *See* RQO 23-01 (holding that an employee of the Miami-Dade Community Action and Human Services Department could not apply for or participate in a financial assistance program administered by her employing department).

In practice, a moving company owned and operated by the father of a bus mechanic employed by the then-extant Miami-Dade Transit Department could apply for certification as a DBE and contract with the County, so long as the company did not contract with the County Transit Department. *See* RQO 02-05. Similarly, a construction and construction management company owned and operated by a Major with the Miami-Dade Police Department ("MDPD") could apply for certification as a DBE and contract with the County, so long as MDPD was "not involved in any way with the processing, administering, overseeing, or enforcing" of the DBE program. *See* INQ 23-67.

Here, your sister, Ms. Yanira Bravo, is as an SBD Section Manager with the SBD, a part of the Office of the Miami-Dade County Mayor, which is the same office that accepts and processes applications to participate in the DBE program. As a result, because your sister's employing

³ *See Disadvantaged Business Enterprise*, https://www.miamidade.gov/global/service.page?Mduid_service=ser1556637063832648 (last visited Sept. 24, 2024).

County department administers the DBE program, you, as a member of her immediate family, may not contract or otherwise do business with SBD, including applying to participate in the DBE program through SBD. *See* RQO 23-01; RQO 02-05; INQ 23-67.

However, two Miami-Dade County SBD Section Chiefs advised that, because the DBE is a federal program and Miami-Dade County is merely a Florida Unified Certification Program member, then any member of the public can apply for DBE certification with another Florida Unified Certification Program member. They further explained that DBE certification is portable, meaning that, once obtained through a certifying entity, it is good state-wide. The Florida Department of Transportation (“FDOT”) accepts applications for DBE certification through its Equal Opportunity Office.⁴ Finally, the two SBD Section Chiefs advised that SBD is involved with supervision of DBE set-asides and solicitations for the Miami-Dade Aviation Department (“MDAD”) only, and that every other County department is responsible for its own DBE compliance.

Thus, insofar as you requested guidance regarding Simbio’s ability to contract with Miami-Dade County, Simbio may not enter into contracts with SBD, nor may it enter into contracts with MDAD where it is doing so as a DBE certified company because SBD – your sister’s employing County department – has oversight and/or enforcement authority over MDAD’s solicitations and/or contracts that have DBE set-asides. *See* RQO 23-01; INQ 23-69 (a privately owned and operated company may not contract with the Miami-Dade Water and Sewer Department (“WASD”) because the company owner’s spouse was employed by WASD); *see also* RQO 02-05; INQ 23-67. Additionally, Simbio may not submit a response to any County solicitation or contract over which your sister, Ms. Yanira Bravo, is responsible for monitoring. *See* RQO 23-01; INQ 23-69.

B. Lobbying

Your sister, Ms. Yanira Bravo, may not lobby the County because she is a County employee. Here, this means that she may not contact anyone within the County in an attempt to influence a decision about Simbio’s future attempts to contract or otherwise do business with the County. *See* County Ethics Code § 2-11.1(m)(1); INQ 23-69.

C. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploiting their official position. *See* County Ethics Code § 2-11.1(g). Here, this means that your sister, Ms. Yanira Bravo, may not use her County position to secure any special privilege or exemption with respect to Simbio’s future endeavors to contract or otherwise do business with the County. *See* INQ 23-69.

Opinion

Based on the facts presented here and discussed above, neither you nor Simbio may apply to participate in the DBE through SBD, a part of the Office of the Miami-Dade County Mayor, because SBD is your sister’s employing County department. *See* RQO 23-01; RQO 02-05; INQ 23-67. However, you may seek DBE certification through FDOT.

⁴ *See DBE Certification*, FDOT, <https://www.fdot.gov/equalopportunity/dbecertification.shtm> (last visited Sept. 24, 2024).

Furthermore, Simbio may contract with Miami-Dade County provided that it, and you, abide by the restrictions discussed above. Additionally, Simbio may not contract directly with SBD, nor may Simbio contract directly with MDAD insofar as it is doing so as a DBE certified company because SBD has oversight and/or enforcement authority over MDAD solicitations that include DBE set-asides. *See id.* Additionally, Simbio may not submit a response to any County solicitation or contract for which your sister is responsible for monitoring. *See* RQO 23-01; INQ 23-69.

Finally, Simbio's potential future business with the County will require further evaluation once a specific County solicitation or contract is contemplated and you must obtain an ethics opinion about said future contract. *See* County Ethics Code § 2-11.1(c)(4) (requiring that an ethics opinion be obtained before a County employee or their immediate family member contracts with the County pursuant to a specific solicitation).

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 under state law. 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,



Nolen Andrew "Drew" Bunker, Esq.
Staff Attorney

CC: All COE Legal Staff; Yanira Bravo, SBD Section Manager, Office of the Miami-Dade County Mayor

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.