



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Earl Coffie, Heavy Equipment Operator
Miami-Dade Water and Sewer Department

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

SUBJECT: INQ 2024-160, Section 2-11.1(c), Prohibition on transacting business with the County; Section 2-11.1(j), Conflicting employment prohibited.

DATE: October 15, 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") and Disadvantaged Business Enterprise ("DBE") Certification Programs and your company's anticipated business with the County.

Facts

You are employed by the Miami-Dade Water and Sewer Department ("WASD") as a Heavy Equipment Operator. You advised that you typically work at the South District Wastewater Treatment Plant and that your job duties include installing new piping, repairing old piping, cleaning out wastewater cleaning tanks, and otherwise operating machinery in furtherance of WASD's mission. Additionally, you advised that your WASD position does not include any oversight or administration of the County's SBE and DBE Certification Programs.

You own and operate Coffie Ferguson Property Management Company LLC ("CFPMC"), a Florida limited liability company that provides landscaping, painting, welding, and debris removal services. You advised that you are the sole owner of CFPMC, although your spouse, Mrs. Anna Ferguson, is an officer of the company.

You advised that, through your company – CFPMC, you would like to apply to participate in the County's SBE Certification Program, specifically the Goods and Services program, as well as the

County's DBE Certification Program. You further advised that CFPMC would like to contract with the County in the future.

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 – Services Certification 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 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.¹

Miami-Dade County's 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.²

Issue

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

Analysis

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

A. Outside Employment

Work conducted by you for CFPMC, 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.

¹ *See Goods & Services, SMALL BUSINESS ENTERPRISE CERTIFICATION PROGRAMS*, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited Oct. 8, 2024).

² *See Disadvantaged Business Enterprise*, <https://www.miamidade.gov/global/service.page?Mduid=ser1556637063832648> (last visited Oct. 8, 2024).

In practice, a Contracts Compliance Specialist 1 for WASD who co-owned and operated a private security company did not have a prohibited conflict of interest in his outside employment because his WASD duties were limited to overseeing contracts related to lawncare and beautification and his private company did not contract with WASD. *See* INQ 23-05. Similarly, a Construction Manager 1 for WASD who owned and operated a private construction company did not have a prohibited conflict of interest in his outside employment because his WASD job duties involved sewer pipe installation, not home construction, and his private company would not contract with WASD. *See* INQ 18-79.

Thus, based on the information provided to us at this time, the outside employment in which you intend to engage with CFPMC would not impair your independence of judgment in the performance of your County duties as a Heavy Equipment Operator with WASD. This is because your outside employment will take place outside of your regular County work hours, does not involve the same or similar resources as your County work, will not require you to interact with the same or similar people/entities as your County work, and CFPMC will not contract with WASD. *See* RQO 17-03; INQ 23-05; INQ 18-79.

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.**³

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.⁴

B. Contracting with the County

The County Ethics Code Sections 2-11.1(c)(1) and (d) generally prohibit County employees from contracting or transacting business with the County, individually or through a business in which they have a controlling financial interest. "Transacting business" with the County is defined as the purchase or sale of goods or services for consideration. *See* County Ethics Code § 2-11.1(b)(10). However, a limited exclusion exists from the broad prohibition against contracting with the County if:

³ While you advised that you had requested permission to engage in outside employment, a review of INFORMS does not show any past or pending request by you for permission to engage in your outside employment for calendar year 2024.

⁴ You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

(1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, (2) the employee has not participated 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, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance.

County Ethics Code § 2-11.1(c)(2). Nevertheless, a Miami-Dade County employee and his or her immediate family members may not contract with the County department for which the County employee works. *See id.*

In practice, this has meant that a company owned and operated by the stepparent of a Miami-Dade Police Department ("MDPD") employee could not contract to provide polygraph services to MDPD because the stepparent was an immediate family member of an employee of the contracting County department. *See* RQO 11-29; INQ 11-167. By contrast, a company owned and operated by a Traffic Engineer 3 for the Miami-Dade Department of Transportation and Public Works ("DTPW") that provided residential construction plans and forty-year certifications could contract with the County provided that the company did not contract or otherwise do business with DTPW. *See* INQ 23-25.

Here, **CFPMC may not contract or otherwise do business with WASD** because that is the County department that employs you. *See* County Ethics Code § 2-11.1(c)(1), (2); RQO 11-29. **However, CFPMC may contract with other County departments that do not employ you, provided that your County duties do not have any relation to the enforcement, administration, oversight, amendment, extension, or termination of any contract CFPMC may secure with the County.**⁵ *See* INQ 23-25. However, "prior to submittal of a bid, response, or application of any type to contract with the County," you must seek a conflict of interest opinion from the Ethics Commission regarding that particular County contract. County Ethics Code § 2-11.1(c)(4); *see e.g.*, INQ 23-18; INQ 22-107; INQ 22-43; INQ 21-154 (series of opinions addressing whether there was a conflict of interest from separate bids in response to different County solicitations from a company that employs two County advisory personnel).

Regarding CFPMC's participation in the County's SBE and DBE Certification Programs, once you obtain permission to engage in outside employment with your company, then **CFPMC may participate in the County's SBE and DBE Certification Programs.** However, CFPMC may do so only so long as WASD is not involved in any way in processing,

⁵ However, you should be aware that Florida law provides that:

Nor shall a public officer or employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the officer's or employee's own agency, if he or she is a state officer or employee, or to any political subdivision or any agency thereof, if he or she is serving as an officer or employee of that political subdivision.

administering, overseeing, or enforcing the SBE and DBE Certification Programs. *See* INQ 23-05 (WASD employee's company may participate in County's SBE Certification Program because WASD does not enforce, oversee, or administer the Program); *cf.* INQ 24-158 (a business owned and operated by the sister of a Section Manager for the Small Business Development Division ("SBD") of the Office of the Miami-Dade County Mayor could not submit its application to participate in the DBE to SBD because SBD was her sister's employing County department). Furthermore, you may not participate in determining or awarding the SBE and/or DBE Certifications. Additionally, none of your job responsibilities or job descriptions may require you to be involved in the SBE and/or DBE Certification Programs in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

C. Certain Appearances and Payment Prohibited

You may not lobby the County. Specifically, no County employee "shall appear before any County Board or agency and make a presentation on behalf of a third person with respect to any license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person." County Ethics Code § 2-11.1(m)(1). In this case, it means that you may not contact anyone within the County in an attempt to influence a decision about CFPMC's application to participate in the County's SBE and DBE Certification Programs. *See* County Ethics Code § 2-11.1(m)(1). We further caution you that, in the future, you may not contact anyone within the County, or WASD in particular, in an attempt to influence a decision about any County action related to CFPMC and/or its clients. *See* County Ethics Code § 2-11.1(m)(1); INQ 23-25.

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 CFPMC's application to, and ultimate participation in, the County's SBE and DBE Certification Programs, or to any other County certification programs or other contracts to which you or CFPMC apply.

Opinion

Based on the facts presented here and discussed above, CFPMC's participation in Miami-Dade County's Small Business Enterprise and Disadvantaged 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.