



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Ana DaSilva, A/E Consultant Selection Coordinator
Miami-Dade Strategic Procurement Department

Yaritza Reina, Executive Secretary
Office of the Commission Auditor

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2024-173, Voting Conflict of Interest § 2-11.1(v); County Resolution R-449-14, Appearances of Impropriety

DATE: December 23, 2024

CC: All COE Legal Staff; Maria Elisa “Lisa” Colmenares, Assistant Director, Planning, Miami-Dade Department of Transportation and Public Works; Daniel Diez, Senior Program Manager, Turner & Townsend Heery, LLC.; Eduardo Pagan, Project Manager, Bekka Group, Inc.

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding the following proposed transaction.

Facts:

We have reviewed your memorandum dated November 26, 2024, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Aviation Department Request to Advertise for MIA Central Terminal Redevelopment – Phase 2 – Project No. A24AV02. The memorandum was prepared pursuant to Resolution Number R-449-14, directing the Office of the Commission Auditor (“OCA”) to conduct background checks on members serving on Evaluation/Selection Committees.

The memorandum noted that one alternate member and two technical advisors of the Selection Committee made disclosures on their Neutrality Affidavits/Disclosure Forms that merited submission to the Ethics Commission for an opinion. The memorandum noted that:

- A. Lisa Colmenares, Department of Transportation and Public Works, disclosed in her Neutrality Affidavit that her nephew is employed as an hourly contractor with a respondent to this solicitation. The name of the respondent was not disclosed.

We conferred with Ms. Colmenares. She is the Assistant Director of Planning for the Miami-Dade Department of Transportation and Public Works. She stated that her nephew, Mr. Miguel Rozenberg, works for EXP US Services, Inc. (“EXP”), a respondent to this solicitation. She explained that he is an hourly contractor for EXP doing policy and legislative research, with some work in land use. She advised that she believes that his work with EXP would not involve this project. She affirmed that, regardless, Mr. Rozenberg’s work with EXP would not affect her ability to be fair and impartial when evaluating the respondents to this solicitation. Finally, she stated that she does not have any other business, close social, or other personal relationships with any current employee of EXP or any of the other respondents.

- B. Daniel Diez, Turner & Townsend Heery, Inc., disclosed in his Neutrality Affidavit that his current employer, Turner & Townsend Heery, Inc., is the prime on a project that is a part of the MIA CIP and has a sub-consultant agreement with JSM & Associates, LLC for the project. Additionally, Turner & Townsend Heery, Inc., is the prime on a project for an airline at MIA and has a sub-consultant agreement with Louis J. Aguirre & Associates, PA, for the project. JSM & Associates, LLC, and Louis J. Aguirre & Associates, PA, are respondents to this solicitation.

We conferred with Mr. Diez. He is a Senior Program Manager with Turner & Townsend Heery, LLC, a non-Florida limited liability company. Turner & Townsend Heery, LLC, specializes in project and program management for the public sector.¹ Mr. Diez advised that he is the project manager for the projects that his employer, Turner & Townsend Heery, LLC, has with both JSM & Associates, LLC, and Louis J. Aguirre & Associates, PA. He further advised that, as a result, his work requires that he have regular interactions with both companies. However, he affirmed that his work would not affect his ability to be fair and impartial in his role as technical advisor to the Selection Committee.

- C. Eduardo Pagan, Bekka Group, Inc., disclosed in his Neutrality Affidavit prior employment with Zyscovich Architects, LLC from 2015-2019 and RS&H, Inc. from 2008-2009. Additionally, Mr. Pagan disclosed his current employer, Bekka Group, Inc., is a sub-consultant to Carty Architecture, LLC for an On-Call architecture contract with the Miami-Dade Aviation Department. Zyscovich Architects, LLC, RS&H, Inc., and Carty Architecture, LLC are respondents to this solicitation.

We conferred with Mr. Pagan. He is a Project Manager with Bekka Group, Inc. (“BGI”), a Florida for-profit corporation. BGI describes itself as “is a certified small business specializing in Project

¹ See *We are Turner & Townsend Heery*, HOME, <https://northamerica.turnerandtowsend.com/heery/> (last visited Dec. 19, 2024).

Management Services and Owner’s Representation.”² Mr. Pagan advised that he is not the project manager and has no involvement with the projects that his employer, BGI, has with Carty Architecture, LLC. He further affirmed that BGI’s work with Carty Architecture, LLC, would not affect his ability to be fair and impartial in his role as a technical advisor to the Selection Committee.

Additionally, Mr. Pagan confirmed that he previously worked for Zyscovich Architects, LLC, and RS&H, Inc. He stated that he does not have any ownership or other financial interest in either company. He further stated that he does not have any business, close social, or other personal relationship with any current employee of RS&H, Inc, but he noted that he has personal friendships with two current employees of Zyscovich Architects, LLC. However, he advised that these friendships are casual and that neither friend will work on this solicitation – Project No. A24AV02.

Discussion:

The Ethics Commission conducts a review of issues arising under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), which governs conflicts by members of County advisory and quasi-judicial boards. The Ethics Commission also considers whether the circumstances presented create an appearance of impropriety and makes recommendations based on Resolution No. 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 no quasi-judicial personnel or advisory personnel:

shall 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 on which the member serves, 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, the Ethics Commission also opines 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* Miami-Dade County Code § 2-1067; Ethics Commission Rules of Procedure § 2.1(b). “In all procurement matters, appearances of integrity and fairness are paramount, [as there is a] ‘need for the County to conduct its procurement operations in a manner that will not create appearances of impropriety, favoritism or undue influence . . . [which] may require a higher standard of ethics’” INQ 17-131 (quoting INQ 14-242).

² *See Bekka group Inc.*, <https://bekkagroup.com/> (last visited Dec. 19, 2024).

A. Ms. Colmenares's Appointment to the Selection Committee as an Alternate.

In this case, it appears that Ms. Colmenares, if called upon to serve on the Selection Committee in her capacity as an Alternate, does not have a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because she will not be directly affected by the vote, nor does she have any of the enumerated relationships with any entity affected by the vote. *See* INQ 22-37.

Further, as noted above, due to the sensitivity of the procurement process, the Ethics Commission opines concerning whether there may be an appearance of impropriety. *See* Miami-Dade County Code § 2-1067; Ethics Commission Rules of Procedure § 2.1(b). Generally, if an immediate family member³ of a selection committee member works for a subcontractor to a respondent to a County solicitation, said individual should not serve on the selection committee in order to avoid any appearance of impropriety, regardless of whether the immediate family member will work on the project or has any ownership interest in the subconsultant. *See* INQ 17-131.⁴ Additionally, in order to avoid an appearance of impropriety, an individual should refrain from serving on a selection committee if he or she has a more distant relative who has an ownership interest in a respondent firm, has a high-level position in the respondent firm, or will play a significant role on the project for the firm. *See* INQ 22-13.⁵ However, where a non-immediate family member works for a respondent, or a subcontractor to a respondent, to a County project, and the family member does not have any ownership interest in the company and has a lower-level position that will not require them to be involved in the County project, then this employment relationship does not give rise to any appearance of impropriety. *See* INQ 18-262.⁶

Here, as noted above, Ms. Colmenares's nephew, Mr. Rozenberg, is an hourly contract employee with EXP doing policy, legislative, and land use research work; he is not an officer or other executive at EXP. Furthermore, Mr. Rozenberg does not have any ownership interest in EXP, and he will not be involved in the County project on EXP's behalf.

³ The term "immediate family" includes a County employee's spouse, domestic partner, parents, stepparents, siblings, half-siblings, stepsiblings, children, and stepchildren. *See* County Ethics Code § 2- 11.1(b)(10).

⁴ In INQ 17-131, it was recommended that a Construction Manager employed by the Miami-Dade Aviation Department ("MDAD") should not, as the project manager for an MDAD project, play any role in the approval of subcontractor selection where his son was employed by a subcontractor to the respondent to the solicitation.

⁵ In INQ 22-13, it was recommended that an MDAD employee not serve on a selection committee because his second cousin, with whom he had a close personal relationship, held a high-level position with a respondent and would likely be involved in the project on the respondent's behalf.

⁶ In INQ 18-262, it was recommended that a County employee could serve on a County selection committee as a technical advisor without giving rise to an appearance of impropriety even though her nephew worked for a subcontractor to a respondent to the solicitation because her nephew's position with the company was as a low-level engineer and he did not have any ownership interest in the company.

Accordingly, there does not appear to be any voting conflict or appearance of impropriety that would in any way detract from Ms. Colmenares's ability to conduct a fair and objective evaluation of this solicitation, if she is called upon to serve on the Selection Committee.

B. Mr. Diez's Appointment to the Selection Committee as a Technical Advisor.

A person who is not a County employee who serves on a County selection committee is considered a County official subject to the County Ethics Code. *See* RQO 13-11; INQ 24-71; INQ 23-146.

In this case, there is no voting conflict for Mr. Diez because, as a technical advisor, he will not vote as part of his Selection Committee service. *See* INQ 23-146; INQ 18-262.

However, as discussed above, due to the sensitivity of the procurement process, the Ethics Commission also opines concerning whether there may be an appearance of impropriety. *See* Miami-Dade County Code § 2-1067; Ethics Commission Rules of Procedure § 2.1(b). In practice, a member of a County selection committee should be excused from selection committee service due to an appearance of impropriety where the private company he owned and operated had a current business relationship with one of the respondents to the solicitation that was before the selection committee. *See* INQ 24-71. Similarly, a technical advisor to a County selection committee should be excused from selection committee service to avoid an appearance of impropriety because his wife's company did business with a subconsultant to one of the respondents and sought to do business with another subconsultant. *See* INQ 23-146; *see also* INQ 21-29 (finding appearance of impropriety where the selection committee member's non-profit employer received a financial donation from a respondent to the solicitation). In contrast, a technical advisor to a County selection committee whose company did not have any current contractual or other business relationship with any of the respondents to the solicitation that was before the selection committee did not have any appearance of impropriety that prohibited his selection committee service. *See* INQ 23-146.

Here, Mr. Diez's employer – Turner & Townsend Heery, LLC – currently does business with both JSM & Associates, LLC, and Louis J. Aguirre & Associates, PA, both of which are respondents to this solicitation. Additionally, Mr. Diez manages the projects that his employer has with both JSM & Associates, LLC, and Louis J. Aguirre & Associates, PA. In light of the current business contacts between Mr. Diez's employer and his involvement in those projects, it is advisable to excuse Mr. Diez from service as a technical advisor on this Selection Committee in order to avoid any appearance of impropriety. *See* INQ 24-71; INQ 23-146; INQ 21-29.

C. Mr. Pagan's Appointment to the Selection Committee as a Technical Advisor.

As discussed above, a person who is not a County employee who serves on a County selection committee is considered a County official subject to the County Ethics Code. *See* RQO 13-11; INQ 24-71; INQ 23-146.

In this case, there is no voting conflict for Mr. Pagan because, as a technical advisor, he will not vote as part of his Selection Committee service. *See* INQ 23-146; INQ 18-262.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the Reverse Two-Year Rule, bars County departmental personnel and employees from participating in contract-related duties on behalf of the County with a former employer for a period of two years following termination of the employment relationship. However, the Reverse Two-Year Rule would not apply to Mr. Pagan because he is neither County departmental personnel nor a County employee, and, even if he were, he stopped working for Zyscovich Architects, LLC, approximately five years ago, and he stopped working for RS&H, Inc., approximately fifteen years ago. *See* RQO 17-04; RQO 10-05; INQ 20-136.

However, as discussed above, due to the sensitivity of the procurement process, the Ethics Commission also opines concerning whether there may be an appearance of impropriety. *See* Miami-Dade County Code § 2-1067; Ethics Commission Rules of Procedure § 2.1(b). An appearance of impropriety can arise “when there is a close personal relationship between the County employee and an individual that has either a) an ownership interest in one of the responding firms, or b) a managerial position in one of the responding firms and involvement in the project.” INQ 22-52 (recommending excusing a selection committee member from serving on the selection committee because he maintained a close personal friendship with the owner of a subconsultant firm); *see also* INQ 23-146 (recommending excusing a technical advisor from serving on a selection committee because his close personal friend was employed by a respondent and would likely be working on the project).

Insofar as Mr. Pagan has maintained personal friendships with two employees of one of the respondents to this solicitation – Zyscovich Architects, LLC – he advised that those individuals will not work on this solicitation on behalf of Zyscovich Architects, LLC. As such, it does not appear that these friendships would give rise to an appearance of impropriety. *See* INQ 23-146; INQ 22-52.

Nevertheless, Mr. Pagan’s employer – BGI – currently does business with Carty Architecture, LLC, a respondent to this solicitation. While Mr. Pagan is not the project manager of the project that BGI has with Carty Architecture, LLC, the current contractual relationship between his employer and one of the respondents to the solicitation means that Mr. Pagan should be excused from service on this Selection Committee in order to avoid an appearance of impropriety. *See* INQ 24-71; INQ 23-146; INQ 21-29.

Opinion:

Accordingly, consistent with our recommendations in prior ethics opinions, **Ms. Colmenares does not have a conflict of interest under the County Ethics Code** that would prevent her from serving on this Selection Committee because she will not be directly affected by the vote, she does not have any enumerated relationship with an entity affected by the vote, and her service on the Selection Committee would not otherwise give rise to an appearance of impropriety for the reasons discussed above. *See* INQ 22-37; INQ 18-262.

Additionally, Mr. Diez and Mr. Pagan do not have a voting conflict of interest under the County Ethics Code because, as technical advisors to this Selection Committee, they will not cast a vote. *See* RQO 13-11; INQ 24-71; INQ 23-146. However, while we emphasize that there has been no

issue raised concerning Mr. Diez's or Mr. Pagan's personal integrity, and that their candor and honesty in this matter are appreciated, we must consider their respective employers' current business transactions with respondents to this solicitation and any appearance of impropriety that may arise therefrom were they to serve as technical advisors on this Selection Committee. Thus, consistent with our recommendations in prior ethics opinions, **we recommend that the Miami-Dade Strategic Procurement Department excuse Mr. Diez and Mr. Pagan from this Selection Committee** in order to avoid any appearance of impropriety that arises from the above-referenced circumstances. See INQ 24-71; INQ 23-146; INQ 21-29.

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 an interpretation of the County Ethics Code only and is not intended to interpret state laws. 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 opinions provided by the legal staff after review and approval by the Executive Director and/or General Counsel. INQs deal with opinions previously addressed in public session by the Miami-Dade Commission on Ethics and Public Trust or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Ethics Commission 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 this opinion may be subject to investigation and a formal Complaint filed with the Ethics Commission.