



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Princess Brown, Selection Committee Coordinator
Strategic Procurement Department (SPD)

Yaritza Reina, Executive Secretary
Office of the Commission Auditor (OCA)

FROM: Loressa Felix, General Counsel
Commission on Ethics and Public Trust

SUBJECT: INQ 2024-28, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

DATE: February 7, 2024

CC: All COE Legal Staff; Namita Uppal, SPD; Pearl Bethel, SPD; Yinka Majekodunmi OCA; Jannessa Johnson, OCA; Victor Martinez, HR; Jerrod Carter, HR; Paul Adams, WASD

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

Facts:

We have reviewed your memorandum dated January 25, 2024, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Human Resources Department Request for Proposals for Third-Party Administrator for Flexible Spending Accounts – RFP No. EVN000894. The memorandum was prepared in connection with Resolution No. 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 members of the selection committee made disclosures on their Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Victor Martinez, Human Resources Department, disclosed on his Neutrality Affidavit that AXISPlus Benefits Corporation is the administrator of Miami-Dade County's current plan. Benefits Outsourcing, Inc. is currently under consideration for Benefits Retiree Billing

Services under the additional services included in the FSA contract. AXISPlus Benefits Corporation and Benefits Outsourcing Inc. are respondents to this solicitation.

- Jerrod Carter, Human Resources Department, disclosed on his Neutrality Affidavit disclosed Benefit Outsource, Inc., is Miami-Dade County's current COBRA vision administrator, and AXISPlus Benefits Corporation is Miami-Dade County's current FSA administrator. AXISPlus Benefits Corporation and Benefits Outsourcing Inc. are respondents to this solicitation.
- Paul Adams, Water and Sewer Department, disclosed on his Neutrality Affidavit, "While not a business relationship, I had an FSA account with AXISPlus Benefits in the past. There were no issues with that." AXISPlus Benefits Corporation is a respondent to this solicitation.

We conferred with Mr. Martinez. He is the Human Resources Department (HR) Section Manager for Benefits Administration. He has worked in that capacity for about five (5) years. He indicated as part of his current duties for the County, he is involved with both AXISPlus Benefits Corporation and Benefits Outsourcing, Inc. (BOI), which are respondents to this solicitation. He advised that AXISPlus manages the current FSA plan for the County. Benefits Outsourcing, Inc. (BOI) has been contracted by AXISPlus to manage Retiree Billing; however, this process has not been implemented and may not be implemented due to timelines and competing priorities. Mr. Martinez also confirmed that he has no current ownership interest or other financial interest in any entities responding to this solicitation. He does not have any close social or other relationship with any current employee working for any entities responding to this solicitation. He believes he can be fair and impartial when evaluating the respondents to this project.

We conferred with Mr. Carter. He is the Benefits Supervisor for the Benefits Administration Unit in HR. He has worked in that capacity for seven (7) years. As a result of his duties for the County, Mr. Carter indicated an ongoing business relationship with Benefit Outsource, Inc. and AXISPlus Benefits Corporation, both respondents to this solicitation. He advised that BOI is the County's current COBRA vision administrator, and AXISPlus Benefits Corporation is the County's current FSA administrator. Mr. Carter also confirmed that he has no current ownership interest or other financial interest in any entities responding to this solicitation. He does not have any close social or other relationship with any current employee working for any entities responding to this solicitation. He believes he can be fair and impartial when evaluating the respondents to this project.

We also conferred with Mr. Adams. He is the Chief of the Construction Contracts Division of the Miami-Dade County Water and Sewer Department (WASD). He has worked for WASD for six (6) years and as Chief since June of 2022. Mr. Adams indicated that he had not been previously employed by any of the respondents to this solicitation nor did he or any of his immediate family members have any relationship with any respondent to the solicitation. However, he mentioned that he had FSA account with AXISPlus Benefits, a respondent to this solicitation, which ended at end of the year in 2021. He also has no personal or financial interest in any of the respondents. Mr. Adams stated that he could be fair and impartial when evaluating the various respondents to this project.

Discussion:

This agency conducts reviews of these issues under the County Ethics Code, which governs conflicts by members of County advisory and quasi-judicial boards. We also consider whether there is an appearance of impropriety created and make recommendations based on 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.

It does not appear that any of the proposed selection committee members have a voting conflict of interest under Section (v) of the County Ethics Code because none of them will be directly affected by the vote nor do they have any of the enumerated relationships with any entity affected by the vote.

Further, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, this agency also opines concerning 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* Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

Mr. Martinez and Mr. Carter have both confirmed some level of current involvement with respondents to this solicitation due to their County positions. The Commission on Ethics has indicated in various informal opinions that, absent some other factor, the mere fact that a selection committee member has interactions with a respondent in connection with the member's public duties would not create an appearance of a conflict that could affect the public trust in the integrity of the procurement process. *See* INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, INQ 18-230, INQ 20-136, and INQ 22-153. The Commission's opinions note that, in fact, it may be valuable to have an individual on a selection committee who is personally familiar with the work of one or more of the responding firms, particularly where the member also has some special expertise in the services that are being sought by the County. *See* INQ 18-21, INQ 18-47, INQ 18-230, INQ 20-136, and INQ 22-153. Notably, each of the proposed selection committee members have indicated that despite those interactions, they could remain impartial when evaluating the respondents to this solicitation.

Mr. Adams held a previous FSA account through an entity, which is currently a respondent to this solicitation. In INQ 2021-61, Ethics Commission staff opined that members of the selection committee for an Affordable Housing Trust Fund Board Request for Proposals, could serve on the selection committee even though they had accounts with the sole respondent to the solicitation, because they will receive no financial benefit through this solicitation and no special benefit will

come to them as a result of their service on this committee. In INQ 17-193, the disclosures made by the three selection committee members regarding having accounts with DCFCU, a respondent to the solicitation, did not create a conflict under the Ethics Code. The three selection committee members had no ownership interest in DCFCU; they are not currently seeking any type of loan, forbearance, or financial benefit from DCFCU; and they do not have any business, or close social relationship with current employees at the entity. Lastly, in INQ 23-169, a selection committee member could serve on the selection committee because even though he arguably had a financial relationship with two of the respondents by holding accounts with the companies, the member would not be directly affected by the vote on this solicitation. Here, Mr. Adams no longer has an account with AXISPlus and will receive no financial or special benefit as a result of his service.

Opinion:

Consequently, Mr. Martinez, Mr. Carter, and Mr. Adams do not have a conflict of interest under the Ethics Code that would prevent them from serving in their appointed roles relating to this solicitation nor would their service would create an appearance of impropriety or detract from the County's conducting a fair and objective evaluation for this project. *See* INQ 22-153 and INQ 23-169.

However, each member is reminded that the selection committee operates under the County's Cone of Silence, Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by Commissioners, County staff, selection committee members, and prospective contractors, as well as their lobbyists and consultants, regarding any procurement matter during the time that the Cone is in effect. Consequently, while he may communicate with responding firms on *existing* County contracts/projects, there should be no communication about this competitive solicitation with any of the respondents or their teams (absent permissible communications as per the Cone), Commissioners, Mayor (and their staffs) or other members of the County's Professional Staff/Client Department who are involved in any way with this solicitation, while the Cone remains in effect.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

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

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 Ethics Commission 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.