



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Franklin Gutierrez, Selection Committee Coordinator  
Strategic Procurement Department (SPD)

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

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

**SUBJECT:** INQ 2024-93, Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety

**DATE:** May 20, 2024

**CC:** All COE Legal Staff; Namita Uppal, SPD; Pablo Valin, SPD; Pearl Bethel, SPD;  
Yinka Majekodunmi OCA; Jannesha Johnson, OCA; Pedro Roman, MDAD;  
Silvia Perez, MDAD; Stefania Barigelli, CUA

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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 April 23, 2024, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Aviation Department Request to Advertise for MIA Maintenance Engineering, Construction, and Inspections Supporting Staff – Project No. E23AV04. 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 Forms that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Pedro Roman, Miami-Dade Aviation Department, disclosed in his Neutrality Affidavit his involvement with several firms currently working on projects with Miami-Dade County. However, the member did not disclose which firms he works with on these projects.

- Silvia Perez, Miami-Dade Aviation Department, disclosed on her Neutrality Affidavit that she oversees several projects with one of the firms listed. However, the member did not disclose the name of the firm.
- Stefania Barigelli, Department of Cultural Affairs, disclosed in her Neutrality Affidavit her business relationship with the following firms, EAC Consulting, Inc., currently working on a Capital Project (DMCAC Caffè), DDA Engineers PA, presently working on a Capital Project (Caleb Auditorium BOH), NOVA Consulting, Inc. currently working on a Capital Project (MDCA) and Kimley-Horn & Associates, Inc. has worked with the Department of Cultural Affairs on Art in Public Places (APP) projects. EAC Consulting, Inc., DDA Engineering PA, NOVA Consulting, Inc., and Kimley-Horn & Associates, Inc. are listed as sub-consultants to this request.

We conferred with Mr. Roman. He is a Construction Manager 3 for the Miami-Dade Aviation Department (MDAD). He has been employed with MDAD for over a year and with the County for 21 years. Mr. Roman advised that he is currently managing projects involving Botas Engineering and Jador International Corporation, respondents to this solicitation. In his County role, Mr. Roman currently acts as the engineer of record for a declared emergency project for Botas Engineering and oversees multiple MDAD projects involving Jador International Corporation. Additionally, he stated that he felt it was possible that his current supervision of these two respondents may affect how he evaluates the various respondents to the solicitation and did not feel that he could be fair and impartial.

We conferred with Ms. Perez. She is an Engineer 4 with MDAD and has been employed as such for 6 years. She advised that in her County position, she was previously overseeing a project involving Jador International Corporation, a respondent to this solicitation. However, she is no longer overseeing said project. Ms. Perez has no current ownership or other financial interest in any of the respondents to this solicitation. She also does not have any business, close social, or other relationship with any current employee of any respondent entity. Ms. Perez indicated that her professional interactions with this company will not affect how she evaluates the various respondents to this project, and she believes she can be fair and impartial when evaluating the respondents to this project.

Lastly, we conferred with Ms. Barigelli. She is a Construction Projects Manager for the Miami-Dade County Department of Cultural Affairs (CUA) for over five years. She advised that EAC Consulting, Inc., DDA Engineers PA, and NOVA Consulting, Inc., respondents to this solicitation, are currently working on capital projects for CUA where she acts as the project manager. Also, she indicated that Kimley-Horn & Associates, Inc., a respondent to this solicitation, has worked with the CUA on Art in Public Places (APP) projects in the past. Ms. Barigelli has no current ownership or other financial interest in any of the respondents to this solicitation. She also does not have any business, close social, or other relationship with any current employee of any respondent entity. Ms. Barigelli indicated that her professional interactions with these companies will not affect how she evaluates the various respondents to this project, and she believes she can be fair and impartial when evaluating the 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. Roman, Ms. Perez, and Ms. Barigelli have each confirmed some level of current or past involvement with one or more of the respondents to this solicitation due to their County positions.

The Ethics Commission 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.

Here, Ms. Barigelli and Ms. Perez's current and past involvement with listed respondents would not create an appearance of impropriety because their interactions are limited to those required through the duties of their County positions. *See* INQ 24-04 and INQ 22-153. Additionally, since both Ms. Barigelli and Ms. Perez have no close personal relationships with any of the owners or employees of the respondent entities and no ownership or other financial interest in the respondents, their interactions would not give rise to any appearance of impropriety related to their service on this Selection Committee. *See* INQ 23-146; INQ 22-147; *cf.* INQ 21-126. Notably, both

of the proposed selection committee members have indicated that despite their interactions, they could remain impartial when evaluating the respondents to this solicitation.

However, while Mr. Roman also confirmed that he currently works with two respondents to this solicitation in his County position, he felt that his interactions with the respondents may impair his ability to remain impartial during his service as a selection committee member. Therefore, it is recommended that Mr. Roman be excused from service as a selection committee member. *See* INQ 22-87 (Selection committee member had no voting conflict but expressed apprehension and concern regarding his impartiality concerning a respondent to the solicitation and the Ethics Commission recommended that the member be excused from service); *see also* INQ 24-42 and INQ 19-03.

Opinion:

Consequently, consistent with the COE's holding in prior ethics opinions, we see no reason why Ms. Barigelli and Ms. Perez should not serve on this committee because neither has a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by their service on this committee. However, it is recommended that Mr. Roman be excused from service as a selection committee member due to his concern regarding his impartiality.

However, the members are reminded that the selection committee, for which they will serve, 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. All selection committee members will therefore be prohibited under the Cone from communicating with any of the responding entities to this solicitation with which they may currently have interactions regarding ongoing projects.

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.