



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Brian Webster, 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 2024-99, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: May 28, 2024

CC: All COE Legal Staff, Namita Uppal, SPD; Yinka Majekodunmi OCA; Jannessa
Johnson, OCA; D. Michael Rotunno, Vice President of Arcadis; Helga Sommer,
Seaport; Juan Pelay, WASD

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 April 16, 2024, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Water and Sewer Department Request for Proposals for Turnkey Advanced Metering Infrastructure (AMI) Solution – RFP No. EVN0000380 (Substitution/Addition of Technical Advisors). The memorandum was prepared in connection with 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 three members of the selection committee made disclosures on their Neutrality Affidavit/Disclosure Form that merited submission to the Commission on Ethics for an opinion. The memorandum noted that:

- D. Michael Rotunno disclosed that he is the vice president of Arcadis. Arcadis is not a respondent to this solicitation.
- Helga Sommer disclosed a prior work relationship with AECOM (2004-2016). Additionally, Mr. Sommer revealed her spouse's employment with AECOM (2003-2017). AECOM is a respondent to this solicitation.
- Juan Pelay disclosed on his Neutrality Affidavit WASD purchases meters and other products from Badger, Master Meter, Sensus, Xylem, Core and Main, Old Castle, and Nicor. Badger, Master Meter, Sensus, Xylem, Core and Main, Old Castle, and Nicor are respondents to this solicitation.

We conferred with Mr. Rotunno. He is the Vice President of Arcadis. Arcadis describes itself as being a “leading company delivering intelligence-driven sustainable design, engineering, and consultancy solutions for natural and built assets.”¹ Mr. Rotunno has previously advised that Arcadis works directly with utilities and governmental entities, and that its business model is as a neutral advisor regarding engineering matters. He advised that Arcadis does not do business with any of the respondents or subconsultants to this solicitation. Mr. Rotunno further advised that neither he nor any of his immediate family members have any current ownership, financial interest, or other business interactions with any of the respondents or subconsultants to this solicitation. Mr. Rotunno believes that he can be fair and impartial when evaluating the respondents to this solicitation.

We conferred with Ms. Sommer. She is the Chief Seaport Engineer for the Miami-Dade Seaport Department (“PortMiami”). Ms. Sommer’s primary job responsibilities include managing PortMiami’s Engineering and Project Controls Sections, overseeing a team of engineers, managers, and project controls specialists. She confirmed that she used to work for AECOM as a project manager, leaving her employment with AECOM in 2016. Her separation from AECOM was amicable. Ms. Sommer also confirmed that her spouse, Mr. Guillermo Regalado, used to work for AECOM as a senior engineering manager, leaving his employment with AECOM in 2017. His separation from AECOM was also amicable. Neither Ms. Sommer, her spouse, nor her immediate family have any current ownership or financial interest in AECOM. However, Ms. Sommer advised that her spouse’s current employer is Hazen and Sawyer (“Hazen”), where he works as an Associate Vice President and where his primary responsibilities include being project director and senior engineering manager for a variety of water and water resources related projects. Mr. Regalado also has a minor ownership interest in Hazen of less than one percent. Ms. Sommer further advised that Hazen and AECOM occasionally do subcontracting business with one another. Finally, Ms. Sommer stated that she and her spouse have friendships with numerous AECOM employees, though she described these friendships as limited to social media and encounters at industry functions. Regardless, Ms. Sommer stated that she believes that she can be fair and impartial when evaluating the respondents to this solicitation.

¹ *Our Mission*, ABOUT US, <https://www.arcadis.com/en/about-us/company-profile> (last visited Oct. 17, 2023).

We conferred with Mr. Pelay. He is Chief of the Meter Installation Division of the Miami-Dade Water and Sewer Department (“WASD”). Mr. Pelay’s primary job responsibilities include overseeing all County water meter operations. As part of his County responsibilities, Mr. Pelay has experience working with many of the respondents to the solicitation and their respective products because WASD is the end-user of those products. Regardless of these past professional interactions, Mr. Pelay stated that he believes that he can be fair and impartial when evaluating the respondents to this solicitation. He also stated that he does not have any personal financial interests in any of the respondents to this solicitation, nor does he do any personal business with any of the respondents. Finally, Mr. Pelay stated that he does not have any personal, close social, or other relationship with any current employee of any of the respondents to this solicitation.

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 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 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* Miami-Dade County Code § 2-1067; Ethics Commission Rule 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).

Additionally, absent some other factor, the mere fact that a selection committee member has interactions with a respondent in connection with the member’s County duties would not create an appearance of impropriety that could affect the public trust in the integrity of the procurement process. *See* INQ 23-01; INQ 22-147; INQ 20-136; INQ 18-230. In fact, it may be valuable to have an individual on the 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 22-147; INQ 18-230; INQ 18-21.

A. Mr. Rotunno's Appointment to the Selection Committee.

A person who is not a County employee may serve on a County selection committee and he or she is considered a County official subject to the County Ethics Code. *See* RQO 13-11 (a member of a County selection committee is subject to the County Ethics Code, regardless of whether that person is a County employee or not); INQ 21-126.

Applying the County Ethics Code here, it does not appear that Mr. Rotunno has a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because, as he would not be directly affected by the vote, and he does not currently have any enumerated relationships with any entity affected by the vote. *See* INQ 23-01.

As a member of a County selection committee, Mr. Rotunno is also subject to Section 2-11.1(j) of the County Ethics Code, entitled "Conflicting employment prohibited," which prohibits selection committee members from engaging in any employment activities that would impair their independence of judgment in the performance of their public duties. *See* INQ 21-126; INQ 17-88; INQ 16-205. Here, Mr. Rotunno does not maintain any current employment, financial, or other business relationships with any of the respondents or their subconsultants, nor does he have any personal interest in this procurement, so his service on this Selection Committee does not give rise to a prohibited conflict of interest under Section 2-11.1(j) of the County Ethics Code. *See id.*

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 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* Miami-Dade County Code § 2-1067; Ethics Commission Rule of Procedure § 2.1(b). Here, because Mr. Rotunno has no close personal relationships with any of the owners or employees of the respondents and their subconsultants there would be no appearance of impropriety related to his service on this Selection Committee. *See* INQ 22-147; *cf.* INQ 21-126.

B. Ms. Sommer's Appointment to the Selection Committee.

Pursuant to Section 2-11.1(v) of the County Ethics Code, it does not appear that Ms. Sommer, if called upon to serve on the Selection Committee, will 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, and she does not currently have any enumerated relationships with any entity affected by the vote. *See* INQ 23-01; INQ 18-21.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the Reverse Two-Year Rule, which bars County 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 relations, would not apply to Ms. Sommer since she stopped working for AECOM approximately seven years ago. *See* RQO 17-04; RQO 10-05; INQ 20-136.

However, as noted above, the Ethics Commission 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 due to the sensitivity of the procurement process and the need to sustain public confidence in it. *See* Miami-Dade County Code § 2-1067; Ethics Commission Rule of Procedure § 2.1(b). Also as discussed above, appearances of integrity and fairness are paramount in all procurement matters. *See* INQ 17-131 (quoting INQ 14-242); *see also* INQ 23-01; INQ 22-147; INQ 20-136; INQ 18-230.

Here, Ms. Sommer's spouse, Mr. Regalado, works as an Associate Vice President for a company that does business AECOM, a subconsultant to a respondent to this solicitation. These financial transactions give rise to an appearance of impropriety because an outside observer could perceive a connection between Ms. Sommer's participation in this selection committee simultaneous to, or close in time, to her spouse's employer pursuing business with a subconsultant to a respondent to this solicitation. *See* INQ 21-29; INQ 17-131.

D. Mr. Pelay's Appointment to the Selection Committee.

In this case, it does not appear that Mr. Pelay has a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because he will not be directly affected by the vote, nor does he have any of the enumerated relationships with any entity affected by the vote. *See* INQ 18-21.

Furthermore, 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; COE Rules of Procedure § 2.1(b). Here, Mr. Pelay's professional interactions with several of the respondents as part of his County duties would not give rise to an appearance of impropriety; rather, his personal familiarity with their work may be valuable to the Selection Committee. *See* INQ 22-147; INQ 18-230; INQ 18-21. This is particularly true in light of his affirmation that his past experience will not prevent him from being fair and impartial to all respondents to this solicitation.

However, Mr. Pelay is reminded that the Selection Committee on which he serves operates under the County's Cone of Silence, codified in Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by and to County Commissioners, County staff, Selection Committee Members, and prospective contractors, as well as lobbyists and consultants, regarding any procurement matter during the time that the Cone of Silence is in effect. **Thus, Mr. Pelay is prohibited from communicating about this solicitation/project with any of the respondents to this solicitation/project, including those with whom he interacts with as part of his County duties.** *See* INQ 22-147.

Thus, there does not appear to be any voting conflict or appearance of impropriety that would in any way detract from Mr. Pelay's ability to conduct a fair and objective evaluation of this solicitation.

Opinion:

Accordingly, consistent with our holdings in prior ethics opinions, **Mr. Rotunno and Mr. Pelay do not have a conflict of interest under the County Ethics Code** that would prevent them from serving on this selection committee. They will not be directly affected by the vote, they do not have any enumerated relationships with any entity affected by the vote, and their service on this selection committee will not otherwise give rise to an appearance of impropriety. *See* INQ 23-146; INQ 23-01; INQ 18-21.

Ms. Sommer also 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, and she does not have any enumerated relationship with any entity affected by the vote. However, while we emphasize that there has been no issue raised concerning Ms. Sommer's personal integrity, and that her candor and honesty in this matter are appreciated, we must consider her spouse's employment with a firm that does business with AECOM, a subconsultant to a respondent to this solicitation, and any appearance of impropriety that may arise therefrom were Ms. Sommer to serve on this selection committee. Thus, in light of these facts, **we recommend that the Miami-Dade Strategic Procurement Department excuse Ms. Sommer from this selection committee** in order to avoid any appearance of impropriety that arises from the above-referenced circumstances. *See* INQ 23-146; INQ 23-01; 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 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.