



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Franklin Gutierrez, 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
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2025-28, Voting Conflict of Interest § 2-11.1(v); County Resolution
R-449-14, Appearances of Impropriety

DATE: March 31, 2025

CC: All COE Legal Staff; Summer Johnson, Engineer 2, Miami-Dade Seaport
Department; Richard Cabrera, Chief North Terminal Development, Miami-Dade
Aviation Department; Kurt Dobbrunz, Project/Section Manager, HNTB

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 March 6, 2025, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Aviation Department Request to Advertise for Baggage Handling Systems – Project No. E24AV02. 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 three members 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. Summer Johnson, Miami-Dade Aviation Department, disclosed on her Neutrality Affidavit that she was involved in a design/build project for Miami-Dade Aviation

Department for the Baggage Handling System. BNP Associates, Inc., Burns & McDonnell Engineering Co., Inc., Vic Thompson Company, and JSM & Associates, LLC were respondents to the design/build project. Ms. Johnson states that she had minimal involvement with the parties named. Those respondents listed are respondents to this solicitation. Also, in an email dated March 4, 2025, sent from Franklin Gutierrez, SPD, Selection Committee Coordinator, notified OCA that the memo should reflect Ms. Johnson's current department, the Seaport Department, as she no longer works at the Miami-Dade Aviation Department.

We conferred with Ms. Johnson. She works as an Engineer 2 for the Miami-Dade Seaport Department. She stated that, with regard to interactions that she detailed in her neutrality affidavit regarding past interactions with BNP Associates, Inc., Burns & McDonnell Engineering Co., Inc., Vic Thompson Company, and JSM & Associates, LLC, all of those past interactions occurred in her capacity as a Miami-Dade County employee. She further clarified that she has not done business with the above-referenced companies outside of her responsibilities as a County employee. She stated that she does not have any personal, financial, or other relationship with any owner or employee of the above-referenced companies. Finally, Ms. Johnson stated that, regardless of her past professional interactions with the above-referenced companies, she can be fair and impartial when evaluating the respondents to this solicitation.

- B. Richard Cabrera, Miami-Dade Aviation Department, disclosed on his Neutrality Affidavit that he has had owner (MDAD) consultant dealings with BNP Associates, Inc., Burns & McDonnell Engineering Co. Inc., Gartek Engineering Corporation, Gurri Matute PA, Mobio Architecture, Inc., Introba, Inc., and AtkinsRealis USA, Inc. and others that he does not recall. The firms listed are respondents to this solicitation.

We conferred with Mr. Cabrera. He works as the Chief of North Terminal Development for the Miami-Dade Aviation Department. He stated that, with regard to interactions that he detailed in her neutrality affidavit regarding past interactions with BNP Associates, Inc., Burns & McDonnell Engineering Co., Inc., Gartek Engineering Corporation, Gurri Matute PA, Mobio Architecture, Inc., Introba, Inc., and AtkinsRealis USA, Inc., all of those past interactions occurred in his capacity as a Miami-Dade County employee. He further clarified that he has not done business with the above-referenced companies outside of his responsibilities as a County employee. He stated that he does not have any personal, financial, or other relationship with any owner or employee of the above-referenced companies. Finally, Mr. Cabrera stated that, regardless of his past professional interactions with the above-referenced companies, he can be fair and impartial when evaluating the respondents to this solicitation.

- C. Kurt Dobbrunz, HNTB, is not employed by Miami Dade County. HNTB is not a respondent to this solicitation.

We conferred with Mr. Dobbrunz. He works as a Project/Section Manager for HNTB Corporation ("HNTB"). HNTB describes itself as a company that helps "create infrastructure that best meets

the unique demands of its environment.”¹ Mr. Dobbrunz advised that his employer, HNTB, does business directly with, and counts among its clients, the following companies that are respondents or subconsultants to this solicitation: Avcon, Inc., BNP Associates, Inc., Burns & McDonnell Engineering Co., Inc., EXP US Services, Inc., Garver LLC, and Graef-USA Inc. Mr. Dobbrunz further advised that the following companies that are respondents or subconsultants to this solicitation are also contracted as subconsultants to his employer, HNTB: AtkinsRealis USA, Inc., Avcon, Inc., BNP Associates, Inc., Burns & McDonnell Engineering Co., Inc., Connico LLC, Digital Building Services, LLC, EXP US Services, Inc., Gartek Engineering Corp., Graef-USA Inc., Louis J. Aguirre & Associates, PA, Vic Thompson Company, and 305 Consulting Engineers LLC. However, Mr. Dobbrunz affirmed that his company’s ongoing business relationships with these companies would not affect his ability to be fair and impartial in his role as technical advisor to the Selection Committee.

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).

¹ *See About HNTB*, HNTB, <https://www.hntb.com/about/> (last visited Mar. 26, 2025).

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. Ms. Johnson's Appointment to the Selection Committee.

In this case, it appears that Ms. Johnson 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, 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). Here, because Ms. Johnson does not have any personal or financial relationship with any owner or employee of the respondents to this solicitation, and because her interactions with respondents to this solicitation were solely in her capacity as a County employee, her interactions would not give rise to any appearance of impropriety related to her service on this Selection Committee. *See* INQ 23-01; INQ 22-147.

B. Mr. Cabrera's Appointment to the Selection Committee as an Alternate.

In this case, it appears that Mr. Cabrera does not have a voting conflict of interest under Section 2-11.1(v) of the County Ethics Code because if he were to serve on this Selection Committee, 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 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). Here, because Mr. Cabrera does not have any personal or financial relationship with any owner or employee of the respondents to this solicitation, and because his interactions with respondents to this solicitation were solely in his capacity as a County employee, his interactions would not give rise to any appearance of impropriety related to his potential service on this Selection Committee. *See* INQ 23-01; INQ 22-147.

C. Mr. Dobbrunz'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 24-173; INQ 23-146.

In this case, there is no voting conflict for Mr. Dobbrunz because, as a technical advisor, he will not vote as part of his Selection Committee service. *See* INQ 24-173; 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 technical advisor to a County selection committee had to be excused from selection committee service due to an appearance of impropriety where the private company that employed him did business with companies that were respondents to the solicitation. *See* INQ 24-173. Similarly, a technical advisor to a County selection committee was 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. 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 id.*

Here, Mr. Dobbrunz's employer – HNTB – currently does business directly with one of the respondents to this solicitation – BNP Associates, Inc. – and does business directly with six of the sub-consultants to respondents to this solicitation – Avcon, Inc., Burns & McDonnell Engineering Co., Inc., EXP US Services, Inc., Garver LLC, and Graef-USA Inc. Additionally, two of the respondents to this solicitation – BNP Associates, Inc., and Vic Thompson Company – currently do business with HNTB as subconsultants, and ten of the subconsultants to respondents to this solicitation – AtkinsRealis USA, Inc., Avcon, Inc., Burns & McDonnell Engineering Co., Inc., Connico LLC, Digital Building Services, LLC, EXP US Services, Inc., Gartek Engineering Corp., Graef-USA Inc., Louis J. Aguirre & Associates, PA, and 305 Consulting Engineers LLC, currently do business with HNTB as subconsultants. In light of the current business contacts between Mr. Dobbrunz's employer, it is advisable to excuse Mr. Dobbrunz from service as a technical advisor on this Selection Committee in order to avoid any appearance of impropriety. *See* INQ 24-173; INQ 23-146.

Opinion:

Accordingly, consistent with our recommendations in prior ethics opinions, **Ms. Johnson and Mr. Cabrera do not have a conflict of interest under the County Ethics Code** that would prevent either of them from serving on this Selection Committee because they will not be directly affected by the vote, they do not have any enumerated relationships with an entity affected by the vote, and their service on the Selection Committee would not otherwise give rise to an appearance of impropriety for the reasons discussed above. *See* INQ 23-01; INQ 22-147.

However, both Ms. Johnson and Mr. Cabrera are reminded that the Selection Committee on which they serve 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, Ms. Johnson and Mr. Cabrera are prohibited from communicating about this solicitation/project with any of the respondents to this**

solicitation/project, including those with whom they interact as part of their respective County duties. See INQ 22-147.

Additionally, Mr. Dobbrunz does not have a voting conflict of interest under the County Ethics Code because, as a technical advisor to this Selection Committee, he will not cast a vote. See RQO 13-11; INQ 24-173; INQ 23-146. However, while we emphasize that there has been no issue raised concerning Mr. Dobbrunz's personal integrity, and that his candor and honesty in this matter are appreciated, we must consider his employer's current business transactions with respondents to this solicitation and any appearance of impropriety that may arise therefrom were he to serve as a technical advisor on this Selection Committee. Thus, consistent with our recommendations in prior ethics opinions, **we recommend that the Miami-Dade Strategic Procurement Department excuse Mr. Dobbrunz from this Selection Committee** in order to avoid any appearance of impropriety that could arise from the above-referenced circumstances. See INQ 24-173; INQ 23-146.

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.