



FILE COPY

February 26, 2010

ETHICS COMMISSIONERS

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Betty Alexander
Division Director
Project Review and Analysis
Department of Small Business Development
111 N.W. First Street
19th Floor
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION-RQO 10-5

Dear Ms. Alexander:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on February 26, 2010 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether whether you are barred from serving on a selection committee when your former department head is serving as a subconsultant for one of the proposers.

In your letter, you advised the Ethics Commission that the Aviation Department is currently in the process of reviewing proposals for a firm to provide luggage wrapping services at Miami International Airport. The scope of services provides that the firm will install, operate and maintain luggage wrapping and other necessary machines for the provision of services at MIA. The machines shall be operational 365 days a year and available in all concourses and terminals as well as curbside. The RFP requires the participation of an airport concession disadvantaged business enterprise (ACDBE).

The firm of Sinapsis Trading submitted a proposal to provide luggage wrapping services. The proposal provides that the firm of Crown Global Services shall serve as the ACCBE entity and be responsible for recruiting, training and managing machine operators. The proposal also provides that the Vailon Group headed by Marsha Jackman, who served as department head for the Department of Business Development (now Small Business Development), shall serve as ACDBE and Living Wage compliance officer. In that capacity, Jackman will be responsible for ensuring that the DBE firm performs the required percentage of the work and that all workers are paid in accordance with county living wage guidelines.

Administrative Order 3-34 governs the formation of county selection committees. The administrative order requires all county selection committees to contain a representative from the Department of Small Business Development. All selection committee members are also required to sign a neutrality affidavit regarding their compliance with various provisions of the Conflict of Interest ordinance. One of the statements contained in the neutrality affidavit states that "I certify that I and the members of my immediate family are not now employed and have not been employed by any entity or affiliate of such entity with regard to any contract or subcontract on this project."

You were appointed to serve as SBD's representative on the luggage wrapping selection committee. You worked as an employee and a division director under Marsha Jackman during her tenure as department head of the Department of Business Development. Marsha Jackman served as department head until 2007. Most of the current employees of Small Business Development served under Jackman during her tenure as department director.

The Ethics Commission found you may serve as a member of the selection committee for the luggage wrapping agreement. The Conflict of Interest ordinance only prohibits employees from serving as members of selection committees under Section 2-11.1(n) (actions prohibited where financial interests involved) or Section 2-11.1(x) (barring employees from performing any contract related duties regarding a former employer for two years after they leave the private entity).

The language of the neutrality affidavit tracks the restriction contained in Section 2-11.1(x) (reverse two-year rule). Section 2-11.1(x) provides that " no person included in subsections (b) (5) (departmental personnel and (b) (6) (employees) who was previously employed by or held a controlling financial interest in a for-profit firm, partnership or other business entity may perform any County contract related duties regarding the business entity or any successor in interest where the business entity is a County bidder, proposer, service provider, contractor or vendor." Under Section 2-11.1 (x), contract related duties include service on an evaluation or selection committee.

In the first instance, Section 2-11.1(x) is limited to former employment by business entities and not county departments. A county employee is not prohibited from serving on a selection committee because their former department head serves as a bidder, proposer, consultant or subconsultant on an agreement.

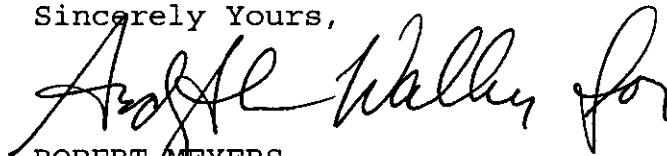
Further, the plain language of the ordinance and the affidavit refer to former employment by one of the entities seeking the contract rather than a particular individual who may be providing services under the agreement. You are not a former employee of the Vailon Group or any other entity that will be providing services under the contract.

Accordingly, you may sign the neutrality agreement and serve as a member of the selection committee.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call the undersigned at (305) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Ardyth Walker for", written over the typed name of Robert Meyers.

ROBERT MEYERS
Executive Director

cc: Marie Clark, Miami-Dade Aviation
Department