

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Monday, December 31, 2018 3:30 PM
To: Sanchez, Rodzandra (COE)
Cc: Diaz-Greco, Gilma M. (COE); Perez, Martha D. (COE)
Subject: FW: INQ 18-260, Amado Gonzalez, A/E Consultant Selection Coordinator, Miami-Dade Internal Services Department (Voting Conflict 2-11.1(v); Appearance of Impropriety)
Attachments: INQ 18-260 Davis (Project No. E 17-MDAD-02 B).pdf

From: Turay, Radia (COE)
Sent: Wednesday, December 12, 2018 4:59 PM
To: Gonzalez, Amado (ISD) <Amado.Gonzalez@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Subject: INQ 18-260, Amado Gonzalez, A/E Consultant Selection Coordinator, Miami-Dade Internal Services Department (Voting Conflict 2-11.1(v); Appearance of Impropriety)

Hello,

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking our guidance in connection with the Appointment of Selection Committee for Miami-Dade Aviation Department Request to Advertise for General MEP Engineering and Design Services- Project No. E17-MDAD-02 (B). Please find our opinion regarding same attached.

Thanks,

RADIA TURAY

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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Thomas B. Davis, Esq.,
Director of Policy and Legislation

Amado Gonzalez, Non-Voting Chairperson,
ISD Procurement Management

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 18-260 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: December 12, 2018

CC: All COE Legal Staff

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 November 30, 2018, prepared in connection with the Appointment of Selection Committee for Miami-Dade Aviation Department Request to Advertise for General MEP Engineering and Design Services- Project No. E17-MDAD-02 (B). 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 two voting members appointed to the selection committee made disclosures on their neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Anely Herrera stated on her neutrality/disclosure form that her spouse, Ricardo Herrera, operates a civil engineering firm and regularly deals with most architects and engineers in Miami-Dade County. Additionally, Olga Cordero stated that from 1995-1997, she was an employee of Wolfberg/Alvarez & Partners, Inc., a respondent on this project

We have conferred with the two individuals. Ms. Herrera confirmed that her husband is the owner of a civil engineering company who regularly deals with most architects and engineers in Miami-Dade County. She went over with her husband the names of all the firms involved in the proposals submitted for this project. She determined that her husband is currently working on a project with a developer, for which Youssef Hachem Consulting Engineering, Inc. (YHCE) is also participating. YHCE is listed as a sub-consultant on one of the proposals submitted for this project. Ms. Herrera however clarified that her husband has no direct current contract, consultancy, or business relationship with YHCE or any of the firms that could be involved in this project. Neither Ms. Herrera nor her husband serve as officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, to any of the proposers or their sub-consultants for this project.

We also discussed this matter with Ms. Cordero. She indicated that the termination of her employment from Wolfberg/Alvarez was amicable in 1997. She has no current business, or other professional relationship with the company. She does not have any business, professional, social or other relationship with any current employee at the company. She also feels that she can be completely fair and objective in assessing the qualifications of the competing firms.

Discussion: This agency conducts reviews of these issues under Section 2-11.1(v) of the County Ethics Code, which governs voting 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 Ms. Herrera and/or Ms. Cordero have a voting conflict of interest under Section (v) of the County Ethics Code because they will not be directly affected by the vote and they do not have any of the enumerated relationships with an entity affected by the vote.

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.

As to Ms. Hererra, given the remoteness of the business contact that her husband may have had with some of the firms, and the fact that her husband has no direct current contract, consultancy, or business relationship with YHCE or any of the firms that could be involved in

this project, we do not believe that her presence on the selection committee would create any inappropriate appearances concerning her objectivity in the evaluation process. See INQ 17-158.

Similarly, as Ms. Cordero's employment with the vendor ended 20 years ago on an amicable basis, and she has no business, professional, or social relationship with any current member of Wolfberg/Alvarez, it is our opinion that her prior employment there would not create any appearance of impropriety or in any way detract from the County's conducting a fair and objective evaluation for this project. See INQ 17-261.

Opinion: Consequently, at this juncture, we see no reason why Ms. Herrera and/or Ms. Cordero should not serve on this selection committee, because they do not have a voting conflict of interest under Section (v) of the County Ethics Code and there does not appear to be any appearance of impropriety created by serving on this committee. See INQ 17-261, and INQ 17-158.

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.

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.