

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, March 06, 2018 9:34 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: Francisco Martinez, Asst. Dir. Water Operations, WASD,(Exploitation (g)), INQ 18-58

INQ 18-58 Martinez

From: Perez, Martha D. (COE)
Sent: Tuesday, March 06, 2018 9:26 AM
To: Martinez, Francisco J. (WASD) <Francisco.Martinez2@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: Francisco Martinez, Asst. Dir. Water Operations, WASD, Exploitation (g), INQ 18-58

Dear Mr. Martinez,

You inquire whether there is a conflict of interest in assigning partial or mutual oversight of a County project to a County employee whose spouse is employed by the County Contractor assigned to the project.

Background

The County's Water & Sewer Department (WASD) currently has a consulting contract (Contract) related to water operations with Hazen & Sawyer (HS), a County Contractor firm. You are considering appointing a WASD employee/resource (County Engineer) to assist you in the oversight and management of the Contract, which will consist of: reviewing and approving task authorization(s); defining scope of work; negotiating costs; and, submittal and tracking of the approval process.

You have been advised that the County Engineer's spouse is a *shareholder at HS and member of HS Board*. Her responsibilities include Office Manager in Broward County as well as involvement with two other current WASD projects- the Consent Decree and Sewer Design-Built contract(s). She is *not* involved with the Contract in question. You have not been provided with additional information concerning the spouse's financial/ownership interest in HS.

Analysis

The County Ethics Code at Section 2-11.1(g) prohibits a County employee from using his official position to secure special privileges for himself or others. In this instance, the County Engineer's spouse is a shareholder and member of the Board of the County Contractor firm. Notably, she has no involvement with regard to the scope of services to be provided by the County Contractor in *this* particular project. However, as shareholder and board member of the County Contractor firm, she conceivably has a financial interest in all contracts between the County and HS. *See* RQO 15-06; INQ 17-131; INQ 11-133

In all procurement matters, where appearances of integrity and fairness are paramount, "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..." *See* INQ 14-242. Exploitation can take many forms, but often involves taking action or making decisions that specifically

benefit oneself *or others*, or disclosing confidential information in order to benefit oneself *or others*. See Section 2-11.1(h), County Ethics Code; INQ 16-123. Exercising oversight of a County contract when one's spouse is a shareholder and board member of the County Contractor firm could be perceived as an exploitation. See INQ 12-180; INQ 12-63; INQ 17-131.

It should also be pointed out that the County Ethics Code at Section 2-11.1(n) precludes a County employee from participating in any official action directly or indirectly (i.e. overseeing or administering a County contract) involving a business entity in which his spouse has a *financial interest*. See RQO 18-02; RQO 07-20; INQ 11-133

* Consequently, the County Engineer should not have any involvement with the HS consulting contract/project and you should appoint or delegate this responsibility and authority to another WASD employee.

A few weeks ago I inquired into the County Engineer spouse's financial/ownership interest in the County Contractor firm. I understand you requested this information, however, to date, you have not been provided with a response. The reason for my inquiry is that a potential issue is raised in instances where an immediate family member transacts business with the County department which employs his or her spouse. Sections 2-11.1(c) and (d) of the County Ethics Code establish prohibitions against County officials, personnel and employees from transacting business with the County. These prohibitions extend to members of an employee's immediate family. Generally, a transaction (or contract) between a business employing an employee's immediate family member (i.e. a spouse) and the County is barred if the family member owns a *controlling financial interest* in the company. See INQ 11-133. Consequently, should you become aware of a potential conflict of interest regarding the County Engineer and his spouse's business transactions, please contact our office.

Lastly, Section 2-11.1(f) of the County Ethics Code requires disclosure by County employees or their immediate family members if they work for a firm that has *substantial business commitments* with the County.

* Therefore, the County Engineer must file a sworn statement disclosing his spouse's employment with HS with the County Clerk of the Board. See RQO 15-06 [Please contact WASD's DPR or ethics officer for assistance]

This opinion is based on the facts as presented herein. If any of these facts change or, if additional facts are provided to this office pursuant to our request, specifically as it pertains to the County Engineer spouse's ownership/financial interest in a County Contractor firm, please contact us.

Sincerely,

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
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From: Martinez, Francisco J. (WASD)
Sent: Thursday, February 15, 2018 12:29 PM
To: Ethics (COE) <ethics@miamidade.gov>
Subject: Consultation

Good afternoon,

At the present time we have in place a consulting contract with the Company Hazen and Sawyer, related to water operations.

From that contract, Task Authorizations (TA's) are created and submitted for approval depending on needs.

My question is as follows; there is an internal resource (engineer) that I would like to use to assist me on managing this contract and TA's; including defining scope of works, negotiate cost and submittal and tracking of the approval process.

The situation is that this engineer's spouse is an employee of Hazen and Sawyer. However I was told and today I confirmed with the firm, that she is not involved at all with this particular contract with the Water and Sewer Department.

Would we enter in any conflict if I were to use this engineer for the purpose above described?

Thank you,

Francisco J. Martinez, PE, Assistant Director
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