

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Monday, January 28, 2019 11:56 AM
To: Sanchez, Rodzandra (COE); Diaz-Greco, Gilma M. (COE)
Subject: INQ 19-02, Brian Webster, A/E Consultant Selection Coordinator, Miami-Dade Internal Services Department (ISD) (Voting Conflict 2-11.1 (v); Appearance of Impropriety)
Attachments: Transportation - RFP 01058 - Revised.pdf; INQ Brian Webster (Becky Hope) renumbered 19-02.pdf

Hello Everyone,

Please find INQ 19-02 attached to this email.

Thanks,
Radia.

From: Turay, Radia (COE)
Sent: Wednesday, January 2, 2019 3:04 PM
To: Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>; Webster, Brian (ISD) <Brian.Webster@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>
Subject: INQ 19-01, Thomas B. Davis, Director or Policy and Legislation, Office of the Commission Auditor (Voting Conflict 2-11.1 (v); Appearance of Impropriety)

Hello,

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust, seeking our guidance in connection with the Appointment of Selection Committee for Miami-Dade Department of Transportation and Public Works Request for Proposals for Advanced Traffic Management System-RFP No. 01058- Revised. Please find our opinion regarding same attached.

Thanks,

RADIA TURAY


Staff Attorney
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 350-0601
Fax: (305) 579-0273
Ethics.miamidade.gov

From: Johnson, Jannesha (OCA)
Sent: Wednesday, December 26, 2018 2:17 PM
To: Webster, Brian (ISD) <Brian.Webster@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>
Subject: Transportation - Advanced Traffic Management System - RFP 01058 Revised

Good Afternoon –

This email is being sent on behalf of Thomas B. Davis, Esq. Director of Policy and Legislation for the Office of the Commission Auditor.

Thanks.

Jannesha V. Johnson, MBA 
Office of the Commission Auditor
111 NW 1 Street Suite 1030
Miami, Florida 33128
305-375-1466



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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

Brian Webster, Non-Voting Chairperson,
ISD Procurement Management

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-02 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: January 2, 2019

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: The Office of the Commission Auditor (OCA) initially issued a memorandum dated December 10, 2018, regarding this solicitation entitled: Appointment of Selection Committee for Miami-Dade Department of Transportation and Public Works Request for Proposals for Advanced Traffic Management System-RFP No. 01058.

The initial memorandum noted that a technical advisor, non-voting member of the selection committee, made disclosures on her neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, Evelin Legcevic, Department of Transportation and Public Works, stated on her neutrality/disclosure form that her nephew is employed by SICE, a subcontractor proposed by Horse Power Electric. Horse Power Electric is a proposing vendor on this project. The COE issued INQ 18-262, which specifically addressed whether Ms. Legcevic could serve on the selection committee for this project.

We recently received a memorandum dated December 20, 2018, prepared in connection with the same project. It restates the disclosure made by Ms. Legcevic and adds that voting selection committee member Becky Hope also stated on her updated neutrality/disclosure

form that her husband, Juan Borges works for NV5. NV5 is a proposed subcontractor on this project.

Since the COE has already issued an opinion regarding whether Ms. Legcevic can serve on the selection committee for this project, INQ 18-262, this memorandum will only address the disclosure made by Ms. Hope.

We have conferred with Ms. Hope who confirmed the above listed information. Ms. Hope stated that her husband works as a Project Manager for NV5. He also owns stock in the company. Ms. Hope, however, has no personal/individual direct financial interest in NV5; nor does she serve as officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, of the entity.

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. ¹

In this case, it does not appear that Ms. Hope has a voting conflict under Section 2-11.1(v) of the Code, as she would not be directly affected by the vote and does not have any of the enumerated relationships with the vendors responding to the project.

However, the COE has noted that the County's Procurement Division has generally imposed stricter standards on its employees and selection/evaluation committee members than those provided by the ethics code. The COE has thereby opined on the existence of possible appearances of impropriety, by virtue of its mandate under its enabling ordinance to act as "guardian of the public trust." See Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

Various formal and informal opinions issued by the COE have recommended that an individual should not serve on a selection committee if their immediate family member has a financial interest in one of the responding firms. ² For example, in RQO 11-11, the COE held that an

¹ A selection committee formed by a County department may be considered to be a County advisory board for purposes of assessing a conflict under Section 2-11.1(v) of the County Ethics Code. See INQ 17-206

² Miami Dade County Code of Ethics at Section 2-11.1(n) also prohibits County employees and County officials from participating in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. "Immediate family" is defined in Section 2-

individual could not serve on a selection committee because their spouse's employer was bidding on the project.³

Similarly, INQ 17-131, advised that a County employee exercising their discretion over approval of a sub-contractor could be perceived as exploitation under the Ethics Code. The County Ethics Code at Section 2-11.1(g) titled, "Exploitation of official position prohibited," states that County employees, County officials, and County advisory board members shall not use or attempt to use their official position to secure special privileges for themselves or others.

Notably, in INQ 17-131, the County employee's son was an employee of the firm, who had no involvement with regard to the scope of services to be provided by the entity in the project and had no financial interest to gain by his father's (the County employee's) approval of the entity as sub-contractor with said firm. The COE nevertheless recommended that the County employee delegate his authority to approve the sub-contractor to another County manager/employee, so as to avoid an appearance of impropriety because appearances of integrity and fairness are paramount in procurement matters, 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...." See INQ 17-131 *citing* INQ 14-232, INQ 12-180, and INQ 12-63.

Further, in INQ 17-214, the COE recommended that an individual not serve on a selection committee where his brother-in-law was the owner and principal of one of the sub-consultants for a responding prime contractor, even though it was not specifically prohibited by the Ethics Code. The COE in that instance stated that the County employee should not serve on the selection committee due to the possible perception of a conflict of interest, given his familial relationship with the owner of a sub-consultant for one of the competing prime contractors.

Opinion: Consequently, although not strictly prohibited by the County Ethics Code, it is our recommendation that Ms. Hope not serve on this selection committee due to the possible appearance of impropriety, given her close familial relationship with an employee of NV5, a responding proposer for this project, because 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...." See INQ 14-242 and INQ 17-131.

11.1(b)(9) of the Ethics code, as spouse, domestic partner, parents, stepparents, children and stepchildren of the person.

³ See also, INQ 11-133, in which the COE recommended that a County official may not participate in any official action directly or indirectly affecting a business that employs his son, because his son arguably had a financial interest in the firm as an employee of the firm.

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.



**BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**

M E M O R A N D U M

TO: Brain Webster, Non-Voting Chairperson,
ISD Procurement Management

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

A handwritten signature in blue ink that reads "Thomas B. Davis".

DATE: December 20, 2018

**SUBJECT: Appointment of Selection Committee for Miami-Dade County
Department of Transportation and Public Works Request for
Proposals for Advanced Traffic Management System – RFP No.
01058 – Revised**

Pursuant to Resolution No. R-449-14 dated May 6, 2014, the Office of Commission Auditor (OCA) is directed to conduct background checks on members serving on evaluation or selection committees.

Issue: Evelin Legcevic stated on her neutrality/disclosure form that her nephew is employed by a subcontractor proposed by the Horse Power Electric (SICE). Horse Power Electric is a vendor on this project. Also, Becky Hope stated on her updated neutrality/disclosure form that her husband, Juan Borges works for NVE. NVE is a proposed subcontractor on this project.

The results of the background check will be submitted to the Internal Services Department or other County department(s) overseeing and administering the competitive procurement process as well as the Commission on Ethics, if applicable.

The voting members of the selection committee are:

- Darlene Fernandez, Department of Transportation and Public Works
- Rosie Perez, Information Technology Department
- Omar Meitin, Florida Department of Transportation
- Maurice Jenkins, Miami-Dade Aviation Department
- Becky Hope, Seaport Department
- Antonio J. Cotarelo, Water and Sewer Department (Alternate)

The non-voting members of the selection committee are:

- Brian Webster, Internal Services Department, Non-Voting Chair
- Frank Aira, Department of Transportation and Public Works
- Evelin Legcevic, Department of Transportation and Public Works

- Hector Garnica, Information Technology Department

Findings: Pursuant to Resolution No. R-449-14, OCA completed the required background research other than “**Issues**” noting no adverse findings for the voting and non-voting selection committee members.

cc: Namita Uppal, Chief Procurement Officer, ISD
Jose Arroyo, Executive Director, Commission on Ethics and Public Trust
Radia Turay, Commission on Ethics and Public Trust