

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Monday, January 28, 2019 2:34 PM
To: Sanchez, Rodzandra (COE); Diaz-Greco, Gilma M. (COE)
Subject: INQ 19-03 Julie Whiteside, A/E Consultant Selection Coordinator, Miami-Dade Internal Services Department (ISD) (Voting Conflict 2-11.1(v); Appearance of Impropriety)
Attachments: OCA memo re WASD - DB18-WASD-01 Sub. 1 (003).pdf; INQ19-03 Final.pdf

Hello Everyone,

Please find INQ 19-03 attached.

Thanks,
Radia.

From: Turay, Radia (COE)
Sent: Thursday, January 10, 2019 10:05 AM
To: Whiteside, Julie (ISD) <Julie.Whiteside@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>
Cc: Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Khadar, Pearle D. (WASD) <Pearle.Khadar@miamidade.gov>
Subject: INQ 19-02 Thomas B. Davis, Director of 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 Water and Sewer Department Request to Advertise for Design-Build Services for the Installation of a 36-inch Diameter Sanitary Sewer Force Main along 107 Avenue from N.W. 7th Street to N.W. 25th Street – Project No. DB18-WASD-01 (Substitution 1). 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: Khadar, Pearle D. (WASD)
Sent: Monday, January 07, 2019 9:39 AM

To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>

Subject: RE: Selection Committee

Good Morning Radia,

Please see my responses below in red.

Regards,

Ms. Pearle Khadar,

W&S Construction Projects Supervisor 1

Construction Management Section

Capital Program Management Division

Miami-Dade Water and Sewer Department

3501 NW 46th St

Miami, FL 33142

Cell: 305-323-3900

pdkha01@miamidade.gov

www.miamidade.gov/water

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From: Turay, Radia (COE) <Radia.Turay@miamidade.gov>

Sent: Thursday, January 3, 2019 4:39 PM

To: Khadar, Pearle D. (WASD) <Pearle.Khadar@miamidade.gov>

Subject: RE: Selection Committee

No worries. It can wait until you get back next week.

Enjoy, the last of your holidays!

From: Khadar, Pearle D. (WASD)

Sent: Thursday, January 03, 2019 4:38 PM

To: Turay, Radia (COE) <Radia.Turay@miamidade.gov>

Subject: Re: Selection Committee

Radia,

I'm off for this week but I will respond to your email on Friday.

Thank you.

Sent from my iPhone

On Jan 3, 2019, at 3:28 PM, Turay, Radia (COE) <Radia.Turay@miamidade.gov> wrote:

Hello Ms. Khadar,

I am following up on my e-mail below. I also called and left telephone messages as well. Please send your responses when you get a chance.

Thanks,
Radia

From: Turay, Radia (COE)
Sent: Monday, December 31, 2018 11:02 AM
To: Khadar, Pearle D. (WASD) <Pearle.Khadar@miamidade.gov>
Subject: Selection Committee

Hello Ms. Khadar,

My name is Radia Turay. I am a staff attorney at the Miami-Dade Commission on Ethics and Public Trust. We spoke briefly about your disclosure that you are currently providing construction management and inspection services on behalf of Miami-Dade County Water and Sewer Department (WASD) for two firms listed as respondents on this project. I have a few follow-up questions:

- 1) What is your position at the County? **W&S Construction Projects Supervisor 1.**
- 2) What are the names of the two firms listed as respondents on this project that you supervise? **David Mancini and Sons Inc., and under RicMan International the sub-Consultants 300 Engineering Group PA.**
- 3) What does your role as supervisor of each of the two firms listed as respondents on this project entail? **My role with David Mancini and Sons Inc, is the supervision, management and processing of the following for the WASD project within the Port Of Miami, this includes review of change orders, review and processing of As-builts, review and processing of monthly pay estimates, review and delegation of RFI's, review and approval of daily inspection reports, application for clearances from the DOH, attending and coordinating bi-weekly progress meetings, and an almost daily correspondence with the project managers and pertinent staff regarding any issues within the project. My role with the firm 300 Engineering Group PA, is coordination with the Project Engineer regarding any issues, RFI's , Construction Schedule, As-Builts and DOH Clearances on the WASD project within Miami Springs.**
- 4) Do you have any personal/financial interest in any of the firms? **No.**
- 5) Do you have 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? **No.**
- 6) Do you think that your current supervision of these two firms would impair your independence of judgment when you are evaluating the various respondents on this project: Project No. DB18-WASD-01 (Substitution 1)? **Yes.**
- 7) Do you think that your service on this selection committee would somehow impair your independence of judgement in your current supervision of the two firms in your current County position? **No.**

- 8) Do you think that your service on this selection committee would directly affect your current County position? **No.**
- 9) Can you be fair and impartial when evaluating the various respondents to this project even though you actively supervise two of the respondent firms? **To be honest, I have seen the work quality of David Mancini and Sons Inc, and it would be hard for me to be impartial to that.**
- 10) As a selection committee member you, you must adhere to the County Code of Silence, Section 2-11.1(t) of the Ethics Code, which prohibits oral communications regarding the pending solicitation, between selection/evaluation committee members and responding vendors, or their lobbyists or consultants. Would you be able to adhere to this prohibition given that you have current daily contact/communications with various members of two of the firms listed as respondents on this project? **I believe I could.**

Thanks,

RADIA TURAY

Staff Attorney

Miami-Dade Commission on Ethics and Public Trust

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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

Julie Whiteside, Non-Voting Chairperson,
ISD Procurement Management

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-03, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: January 9, 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: We have reviewed your memorandum dated December 13, 2018, prepared in connection with the Appointment of Selection Committee for Miami-Dade Water and Sewer Department Request to Advertise for Design-Build Services for the Installation of a 36-inch Diameter Sanitary Sewer Force Main along 107 Avenue from N.W. 7th Street to N.W. 25th Street – Project No. DB18-WASD-01 (Substitution 1). 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 a 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, Pearle Khadar stated on her Neutrality/Disclosure form that she is currently providing construction management and inspection services on behalf of Miami-Dade County Water and Sewer Department (WASD) for two firms listed as respondents on this project.

We have conferred with Ms. Khadar. She confirmed that she currently serves as a Project Supervisor 1 at WASD. She stated that she currently supervises respondents, David Mancini and Sons Inc., and under RicMan International the sub-consultants 300 Engineering Group PA.

Specifically, in her role as supervisor of David Mancini and Sons Inc, she supervises, manages and processes a WASD project within the Port Of Miami, which includes review of change orders, review and processing of As-builts, review and processing of monthly pay estimates, review and delegation of RFI's, review and approval of daily inspection reports, application for clearances from the DOH, attending and coordinating bi-weekly progress meetings, and an almost daily correspondence with the project managers and pertinent staff regarding any issues within the project. As to the firm 300 Engineering Group PA, she coordinates with the Project Engineer regarding any issues, RFI's, Construction Schedule, As-Builts and DOH Clearances on the WASD project within Miami Springs.

Ms. Khadar indicated that she did not have a direct interest in any of the respondent firms to this solicitation, nor does she serve as officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, to any of the entities. She has however, noted that her current supervision of the two firms would impair her independence of judgment when she is evaluating the various respondents on this project. Specifically, she stated the following: "To be honest, I have seen the work quality of David Mancini and Sons Inc., and it would be hard for me to be impartial to that."

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 recommendation 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. Khadar has a voting conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote and she does not have any of the enumerated relationships with an entity affected by the vote.¹

However, as noted above, Ms. Khadar has indicated that her current supervision of the two firms would impair her independence of judgment when she is evaluating the various respondents on this project. Specifically, she stated the following: “To be honest, I have seen the work quality of David Mancini and Sons Inc., and it would be hard for me to be impartial to that.”

The procurement process in the County, as you are aware, strives to follow procedures that not only abide by the Ethics Code but also serve to promote the highest values of integrity, transparency and fairness. *See* INQ 17-281. This agency, pursuant to Resolution No. R449-14, as well as Commission on Ethics Rule of Procedure 2.1(b), has provided input concerning appearance issues when they may raise a question regarding the objectivity of a selection committee member.

Based on the representations made by Ms. Khadar, it is our recommendation that she should not serve on this particular committee as she has specifically noted that her current supervision of the two firms would impair her independence of judgment when she is evaluating the various respondents on this project; more specifically, that she has seen the work quality of David Mancini and Sons Inc., and it would be hard for her to be impartial. This recommendation should not in any way be interpreted to suggest that Ms. Khadar, who has exhibited honesty and candor in this matter, would not be a suitable or appropriate person to serve on a different selection committee for a project that did not involve David Mancini and Sons.

Opinion: Consequently, although not strictly prohibited by the County Ethics Code, it is our recommendation that Ms. Khadar not serve on this selection committee given that she has specifically noted that her current supervision of the two firms would impair her independence of judgment when she is evaluating the various respondents on 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

¹ Please note that while this may not be a direct violation of the County Ethics Code, Section 286.012, Florida Statutes states that, “If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.”

will not create appearances of impropriety, favoritism or undue influence...[which] may require a higher standard of ethics....” See INQ 17-281.

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: Julie Whiteside, Non-Voting Chairperson,
ISD Procurement Management

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

DATE: December 13, 2018

SUBJECT: Appointment of Selection Committee for Miami-Dade Water and Sewer Department Request to Advertise for Design-Build Services for the Installation of a 36-inch Diameter Sanitary Sewer Force Main along 107 Avenue from N.W. 7th Street to N.W. 25th Street – Project No. DB18-WASD-01 (Substitution 1)

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: Pearle Kadar stated on her Neutrality / Disclosure form she is currently providing construction management and inspection services on behalf of Miami-Dade County Water and Sewer Department for two firms listed as a respondent.

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:

- Sergio Garcia, Water and Sewer Department
- David Vazquez, Water and Sewer Department
- Lin Li, Parks, Recreation and Open Spaces Department
- Marcia Steelman, Department of Regulatory and Economic Resources
- Pearle Kadar, Water and Sewer Department
- James Sumoski, Department of Transportation and Public Works (Alternate)

The non-voting members of the selection committee are:

- Julie Whiteside, Internal Services Department, Non-Voting Chairperson
- Enrique Febles, Water and Sewer Department, Technical Advisor

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, Staff Attorney, Commission on Ethics and Public Trust