



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jorge Vital, Non-Voting Chairperson
Internal Services Department

Phillip G. Edwards, Esq., BCC Legislative Research Manager
Office of the Commission Auditor (OCA)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-81 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: May 7, 2021

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 April 26, 2021, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Water and Sewer Department Request to Advertise for Integrated Master Plan and Engineering Technical Support Services – Project No. RFP E20- WASD-08. 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 member of the selection committee made disclosures on her Neutrality/Disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “Amanda Kinnick, Water and Sewer Department, indicated on her Neutrality/Disclosure Form that she was previously employed at AECOM Technical Services, Inc. from 2010 through 2017. AECOM is a respondent to this solicitation.”

We conferred with Ms. Kinnick. She is Senior Professional Engineer at Miami-Dade Water and Sewer Department (hereinafter “WASD”). She confirmed that she previously worked for AECOM Technical Services, Inc. (hereinafter “AECOM”). She stopped

working for AECOM in August 2017. She indicated that the termination of her employment from AECOM was amicable. She has no current ownership interest in or other financial interest in the company. She also does not have any business relationship with any current employee at the company.

However, Ms. Kinnick also disclosed that she has close friendships with Dianys Arocho, an employee of Black & Veatch; Andres Gomez, an employee of AECOM; Catalina Lopez Velandia, an employee of Nova; and Guillermo Regalado, an employee of Hazen & Sawyer (hereinafter “H&S”). She indicated that she considers all four individuals as “close” friends; she has known them for years; they were all invited to her wedding; and prior to the pandemic, she had lunch regularly, with them.

We conferred with Mr. Jorge Vital, the ISD non-voting chairperson for this selection committee. He advised that all four of these individuals were identified and listed with defined roles, in proposals submitted by Team #1, which includes H&S and AECOM. They were also listed on ISD Form No. 5 and identified as persons that will appear and present before this selection committee.

Discussion: This agency conducts reviews of these issues under the County Ethics Code, which governs 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. Kinnick 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 currently have any of the enumerated relationships with any entity affected by the vote.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the Reverse Two-Year Rule, which bars County employees from participating in contract-related duties on behalf of the County with a former employer for a period of two years following termination of the employment relations, would not apply to Ms. Kinnick since she stopped working for AECOM over four years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229.

Further, 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 noted above, Ms. Kinnick disclosed that she has close social friendships with four individuals that work for entities that are included in proposals submitted in response to this solicitation.

Somewhat similar to the circumstances in this case, this office previously considered whether the assistant director of Miami-Dade Fire Rescue (MDFR) could serve as a member of a County negotiation committee, where the representative of one of the recommended proposers, was a personal friend. We opined that technically, the assistant director of MDFR did not have a prohibited conflict serving on a County negotiation committee where the lobbyist for one of the bidders happened to be his fraternity brother/personal friend, because the assistant director would not personally benefit from the vote and he did not have a prohibited relationship with any of the parties. However, the COE stated that in order to avoid an appearance of impropriety created by the close social relationship, the assistant director should consider withdrawing from the negotiation committee because “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 16-242, citing to INQ 14-242.¹

In contrast, in INQ 18-78, this office considered whether a prospective member of a selection committee may serve on the committee, where the prospective selection committee member maintained a close personal friendship with an employee of one of the respondents to the project. In that case, the COE again noted that the prospective member of the selection committee did not have a prohibited conflict of interest under the County Ethics Code because the County employee would not personally benefit from the vote and he did not have a prohibited relationship with any of the parties involved in the solicitation. However, this office did not find that there was any appearance of impropriety in this scenario because the individual that the prospective selection committee member maintained a personal friendship with at the respondent company was not listed in the proposal submitted, he had nothing to do with the company’s response to that particular

¹ See also INQ 14-246 (An FIU Professor of Architecture will not have a prohibited conflict serving on a County selection committee where she has had professional relationships with some of the bidders to be considered by the selection committee, because the Professor of Architecture would not personally benefit from the vote and she does not have a prohibited relationship with the parties. However, in order to avoid an appearance of impropriety created by the Professor’s close professional relationships with some of the bidders, the County is advised to reconsider whether this person is an appropriate appointee for this selection committee); INQ 19-99 (a member of the selection committee for a project, whose spouse previously worked for a respondent to this project, Perez & Perez and Associates, should not serve on this selection committee, due to the possible appearance of impropriety, as she maintains a close social relationship with employees and the owner of the firm) and INQ 20-40 (it is recommended that ISD should consider withdrawing a prospective selection committee member from a selection committee due to the possible appearance of impropriety created by his close social/professional relationship with a current employee of one of the responding firms to a solicitation, who was identified by the respondent firm as a key member of their team, and was also identified as one of the individuals that would make a presentation before the selection committee).

solicitation, the individual had for the most part retired from the company, and the individual was not going to be making any type of presentation before the selection committee regarding that project.

In this case, Ms. Kinnick maintains a close social relationship with four individuals that not only work for entities listed in the proposals submitted in response to this solicitation, but the individuals that she is friends with are listed in the proposals submitted and are identified as serving in various defined roles should this contract be awarded to the respondent team that their entities belong. Further, her close friends are also listed on ISD Form No. 5, and identified as persons that will appear and present before this selection committee

Opinion: Consequently, consistent with the COE's holding in prior ethics opinions, we do not find that Ms. Kinnick's service on this selection committee presents a conflict of interest under the County Ethics Code because she will not be directly affected by the vote and she does not currently have any of the enumerated relationships with any entity affected by the vote. *See* INQ 16-242, INQ 19-99, INQ 20-40, and INQ 14-246.

However, in order to avoid an appearance of impropriety, as Ms. Kinnick maintains close social relationships with individuals that not only work for entities listed in the proposals submitted, but in all four cases, are also listed in the proposals submitted and have been identified by the proposals as serving in various defined roles should this contract be awarded to the respondent team that their employers are a part of. These persons are also identified as persons who would appear and make presentations before this selection committee. Consequently, we recommend that ISD should consider excusing Ms. Kinnick from this selection committee because "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 16-242, citing to INQ 14-242; INQ 14-246, INQ 19-99, and 20-40.

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.