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INQ 16-70 Pepe

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Wednesday, March 09, 2016 2:11 PM  
**To:** 'Thomas Pepe' <tpepe@southmiamifl.gov>  
**Cc:** Centorino, Joseph (COE) <CENTORI@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>  
**Subject:** Thomas Pepe, City Attorney, City of South Miami (Organizational Conflicts) INQ 16-70

Mr. Pepe:

Your inquired whether a firm hired by the City of South Miami as a consultant to provide Planning and Zoning services to the city would be excluded from bidding on a future RFQ to revamp the City's Comprehensive Plan and its Land Development Code.

As we discussed over the phone, the County Ethics Commission does not have jurisdiction to issue binding ethics opinions regarding City contractors or bidders unless the Ethics Commission has been named in the contract as the authority to opine and criteria upon which to base the opinion are identified. *See* RQO 13-03. For the COE to exercise binding authority over the issue of organizational conflicts, one of three conditions would have to be present: 1) the issue involving the private contractor or subcontractor is explicitly subject to the Miami-Dade Conflict of Interest and Code of Ethics Ordinance ("the Ordinance"); 2) the ITN(or RFP or RFQ), or the terms of the proposed contract or subcontract explicitly provide the COE with the authority to make a binding determination of the issue presented; or 3) pursuant to Section 2-11.1(13) of the Ordinance, the contract staff of the private contractor or subcontractor has been designated by the Manager or the Manager's designee as being required to comply with the provisions of the Ordinance denoted in the latter section. *See* attachment titled 'Organizational Conflicts of Interest.'

As City Attorney, you may wish to include appropriate language in the solicitation documents that will put bidders on notice of any limitations, or lack of limitations, related to bidding on subsequent projects. We note that organizational conflicts frequently arise when a contractor is in a position to evaluate its own work, process its own payments, specify products and services that only it can provide, or obtain information not available to others and which it can subsequently use to its advantage. *See* 48 CFR § 9.5 (2016).

Please contact us if we may be of further assistance.

Best regards,

Gilma (Mimi) Diaz-Greco  
Staff Attorney



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**From:** Thomas Pepe [<mailto:tpepe@southmiamifl.gov>]  
**Sent:** Wednesday, March 02, 2016 12:24 PM  
**To:** Diaz-Greco, Gilma M. (COE) <[GDIAZGR@miamidade.gov](mailto:GDIAZGR@miamidade.gov)>  
**Subject:** RE: [BULK] RE: NEW Question re Contractor for City

Thank you.

*Thomas F. Pepe*

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**From:** Diaz-Greco, Gilma M. (COE) [<mailto:GDIAZGR@miamidade.gov>]  
**Sent:** Wednesday, March 2, 2016 11:45 AM  
**To:** 'Thomas Pepe' <[tpepe@southmiamifl.gov](mailto:tpepe@southmiamifl.gov)>  
**Subject:** [BULK] RE: NEW Question re Contractor for City  
**Importance:** Low

Let me research this and I'll get back to you.

Best-

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**From:** Thomas Pepe [<mailto:tpepe@southmiamifl.gov>]  
**Sent:** Wednesday, March 02, 2016 11:41 AM  
**To:** Diaz-Greco, Gilma M. (COE) <[GDIAZGR@miamidade.gov](mailto:GDIAZGR@miamidade.gov)>  
**Subject:** NEW Question re Contractor for City

I do not see a problem but I wanted to run it by you. We have a planning expert that we want to hire on a temporary basis to provided advise and recommendations to fill the void created by the resignation of our Planning and Zoning Director. We are also putting out an RFQ for a

revamping of the City's Comprehensive Plan and its Land Development Code. The City Manager does not want to limit the potential respondents to the RFQ by entering into the contract in question and thus eliminating the planning expert from being able to respond to the solicitation. Do you see a conflict that would prevent the planning expert, if he is hired by the City, to also respond to the solicitation in question?

The planning expert has a company, of which he is the president, that specializes in land planning. If there is a conflict created by hiring the president, would it prevent the company from responding to the solicitation?

*Thomas F. Pepe*

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