

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, August 15, 2017 9:30 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: Juan Kuryla, PortMiami, Organizational conflict of interest-ISD Project No. DB17-SEA-01 (New Terminal B)/TyLin, INQ 17-198
Attachments: RQO 17-02 to Singer and LOI re OCI.pdf

[INQ 17-198 Kuryla](#)

From: Perez, Martha D. (COE)
Sent: Tuesday, August 15, 2017 8:09 AM
To: Kuryla, Juan (Seaport) <Juan.Kuryla@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>; Benitez, Hugo (CAO) <Hugo.Benitez@miamidade.gov>; Lebowitz, Lawrence (COE) <Lawrence.Lebowitz@miamidade.gov>
Subject: Juan Kuryla, PortMiami, Organizational conflict of interest-ISD Project No. DB17-SEA-01 (New Terminal B)/TyLin, INQ 17-198

Dear Mr. Kuryla,

You inquire whether this office will render a determination on the existence of an organizational conflict of interest in connection with TYLin with the County's procurement for the New Cruise Terminal B Project- ISD Project No. DB17-SEA-01 (hereinafter "New Terminal B").

Background

On or about June 2017, the County issued a Request for Design-Build Services (RDBS) for the New Terminal B, to provide professional services including, Port and waterway systems architectural and engineering, planning, design, construction and post-design services. Section 1.18 of the RDBS states, *inter alia*, that questions regarding organizational conflicts of interest shall be submitted to the Ethics Commission (COE), which will evaluate the request based on Federal Acquisition Regulation standards in order to determine the existence of organizational conflicts of interest.

On July 10, 2017, PortMiami received a letter from Jorge Munilla from MCM, one of the proposers in the New Terminal B project, requesting "to include TYLin as an entity that cannot be a part of a Proposer's Team on the subject project." MCM claimed in the letter that TYLin is a team member of one of the competing firms for this project which would afford the competing firm an unfair competitive advantage. MCM further requested that any disagreement over this assertion be referred to the COE for a determination of an organizational conflict of interest.

Upon receipt of this letter and in accordance with Section 1.18 of the RDBS, you forwarded a request to this office to determine whether TYLin has an organizational conflict of interest in the New Terminal B project which creates an unfair competitive advantage in the project.

Analysis

The Ethics Commission, relying on the County's established methodology and the Federal Acquisition Regulation standards for the handling of organizational conflicts of interest (OCIs), issued RQO 17-02 along with Amended Letter of Instruction to the County on April 13, 2017, modifying the COE's *limited* procedural role in OCIs. RQO 17-02 addresses

the Ethics Commission's involvement in the handling of OCI's arising in procurement matters. While recognizing that most questions regarding OCIs are raised by competing firms generally as a pre-bid or bid protest, the Ethics Commission lacks the knowledge and expertise demanded by this procurement process. A proper analysis of these issues requires, among other things: knowledge of the scope of services of the existing contract and prior contracts with competing firms and the County; expertise of the detailed scope of services which is essential in determining the potential for overlapping responsibilities; and, communication between the Contracting/Procurement Officer and the affected firms during the procurement phase in order to clarify or mitigate potential OCIs. The Ethics Commission determined that these decisions are best handled by the procurement officer/department, in consultation with the County Attorney.

The Ethics Commission further concluded that it was more logical and practical to limit its involvement to *approving* what the local government entity (County procurement officer/department) has determined to be the best course of action in the mitigation of these OCIs. See RQO 17-02 and Letter of Instruction attached herein. Consequently, the role of the COE in these matters is limited to the following:

- 1) Upon identification and/or disclosure of an OCI, the local government entity *will* ANALYZE and ADDRESS OCIs;
- 2) The local government entity *shall* decide how to address OCIs by:
 - a) Deciding which measures are appropriate to address the conflict (i.e., mitigation plan, if necessary); and,
 - b) Providing a *written* explanation to the COE and the OIG
- 3) The written analysis and proposed resolution of a reported OCI *shall* be forwarded to the COE Executive Director or his designee for APPROVAL (Disapproval of the submitted analysis and/or resolution may be appealed by the County to the COE board);
- 4) Copies of decisions regarding the final resolution of a reported OCI shall be forwarded to the COE (and OIG)

In accordance with the procedures set forth in the Amended Letter of Instruction, the COE is not responsible for identifying or determining the existence of OCIs in the County's procurement process but rather, that responsibility falls on the County officer or department involved in the respective procurement. Provided that an OCI is identified by the County, the COE's role is limited to the approval or disapproval of the measures implemented by the County to resolve the OCI. In this instance, the County has not identified an organizational conflict of interest by TYLin in the New Terminal B project, as explained in your letter to Mr. Munilla dated August 3, 2017. Consequently, the COE will not take any further action in this matter.

We recognize that PortMiami may not have been aware of the modifications to the COE's role in OCIs after RQO 17-02 and we hope that this inquiry will assist you in revising the OCI provisions included in future procurements.

This opinion is based on the facts as presented herein. If any of these facts change, please contact us.

Sincerely,

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
19 West Flagler St. Suite 820
Miami, FL 33130
(305)350-0656
PEREZMD@miamidade.gov

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