

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, October 30, 2017 2:34 PM
To: Sanchez, Rodzandra (COE)
Subject: Jose Burgos, Filed Test Engineer, Miami-Dade Department of transportation and Public Trust (Outside Employment) INQ 17-249

INQ 17-249 Burgos

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, October 30, 2017 2:30 PM
To: Burgos, Jose (DTPW) <Jose.Burgos@miamidade.gov>
Cc: Armorer, Colin (DTPW) <Colin.Armorer@miamidade.gov>; Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: Jose Burgos, Filed Test Engineer, Miami-Dade Department of transportation and Public Trust (Outside Employment) INQ 17-249

Dear Mr. Burgos:

You have inquired about possible conflicts of interest between your County employment and your proposed outside employment.

Background

You are employed at the Miami Dade-County Department of Transportation & Public Works (“DTPW”) as a Field Test Engineer. Your County job duties involve providing engineering support to all Metrorail and Metromover tracks and rails. This work includes track and rail inspections and oversight of track and rail maintenance. It also includes making recommendations to DTPW’s Operations Division regarding purchases of replacement components for the tracks and rails to ensure that the components meet technical specifications. Your County work does not include oversight of any municipal transportation projects.

You are seeking to engage in outside employment as the owner of Decom, Inc. (“Decom”). Your private company provides engineering, construction and management services to private individuals and companies outside of Miami-Dade County and within the County at the municipal level. For example, you explained that your private work at the municipal level would not involve municipal transportation projects, but would consist preparing engineering drawings for permits for the construction of private pools, or other private home projects, as well as commercial projects such as preparing drawings for a powder coating oven. In addition, you advise that Decom would seek to bid for County engineering services contracts. This work is performed outside of your County employment hours.

Legal Analysis

Providing engineering services to private persons and businesses outside of Miami-Dade County and within Miami-Dade Municipalities

Sections 2-11.1(j) and (k) of the County Ethics Code prohibit County employees from engaging in outside employment which would impair the County employee’s independence of judgment in the performance of his or her official duties or creates a conflict between the County employee’s public duties and his or her private interests. *See also* AO 7-1 (County’s administrative order reiterates that, “under no circumstances shall a County employee accept outside employment...where a real or apparent conflict of interest with one’s official or public duties is possible”).

Additionally, State law prohibits an employee of an agency from having or holding any employment or contractual relationship that will create continuing or frequently recurring conflicts between his private interests and the performance of his public duties. §112.313(7)(a), Fla. Stat. (2017).

Conflicting employment can occur when the outside employment is closely related to the employee's public duties and/or where the County employee deals with the same people or entities in both his/her outside employment and in his/her public position, e.g., similar clients, suppliers, or subcontractors. See COE's Outside Employment Guidelines, August 2017 and RQO 15-03 (IT Senior Analyst should not be permitted to engage in outside employment as an IT consultant for a private client because the outside employment was closely related to the work he performed for the County, and divided loyalties were likely to develop between his County employment and his private employment). In general, if an employee's outside employment is totally unrelated to his/her County employment, conflicts would generally not arise.

After a review of all of the facts presented regarding your outside employment providing engineering services to private individuals and businesses outside Miami-Dade County and within Miami-Dade municipalities, we concur with your supervisor that this type of work is not likely to create conflicting employment. This opinion is based on the following factors:

- Decom's clients are private homeowners and businesses situated outside of Miami-Dade County and within local municipalities and the projects Decom would undertake for these clients would be unrelated to any County or municipal transportation projects. Therefore you would be unlikely to deal with the same persons or entities in your outside employment that you deal with during your job functions at DTPW.
- Your public duties and job functions as a DTPW Field Test Engineer providing engineering support to all Metrorail and Metromover tracks and rails is unrelated to your outside employment providing engineering service to private homeowners and businesses that do not involve any transportation matters. Thus, the job functions would not be closely related.
- Your work with GSAM involves a small amount of hours and would occur outside of your County hours.

However, please note that certain limitations will apply:

- You may not use County time or resources in the furtherance of your outside employment (Miami-Dade Code § 2-11.1(g)).
- You are prohibited from using any confidential information acquired as a result of your County employment to derive a personal benefit (Miami-Dade Code § 2-11.1(h));and
- You cannot represent any of Decom's clients in any matter before the County (Miami-Dade Code § 2-11.1(m)).

Furthermore, we remind you that all county employees engaged in outside employment must obtain permission to engage in that employment on a yearly basis. ([Request for Outside Employment](#)) Miami-Dade Code § 2-11, Administrative Procedure 7-1, and Procedure 403. **Full-time** County employees are also required to file an [Outside Employment Statement](#) on a yearly basis. See Miami-Dade Code § 2-11.1(k)(2).

Limitations on transacting business with the County

With respect to Decom seeking to bid for County engineering services contracts, the County Ethics code permits a County employee to contract with the County through the employee's privately owned business, provided that the contract does not interfere with the full and faithful discharge of the employee's duties to the County. See the County Ethics Code at Secs. 2-11.1 (c) (2) and (d). This includes the condition that you may not participate in determining the contract requirements or in awarding any contract to Decom. Additionally, none of your job responsibilities and job descriptions may require you to be involved in the contract in any way including, but not limited to, the enforcement, oversight, administration, amendment, extension, termination or forbearance of any contract between

Decom and the County. Finally, the County Ethics Code prohibits a County employee from contracting with the department where he is employed. Consequently, Decom would be prohibited for entering into any contract with DTPW. *See e.g.* INQ 17-216. The County's procurement department will direct you to obtain an ethics opinion at the time you respond to any County solicitation. The Ethics opinion form can be found at:

http://ethics.miamidade.gov/library/forms/county_employee_seeking_to_be_a_county_vendor_2013.pdf

This opinion is based on the facts presented. If these facts change or if you have any further questions, please contact me.

Cordially,

Gilma (Mimi) Diaz-Greco
Staff Attorney



Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 579-2594
Fax: (305) 579-0273
gdiazgr@miamidade.gov
www.facebook.com/MiamiDadeEthics

From: Burgos, Jose (DTPW)
Sent: Tuesday, August 29, 2017 3:59 PM
To: Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>
Cc: Burgos, Jose (DTPW) <Jose.Burgos@miamidade.gov>
Subject: Jose Burgos Outside Employment

Good afternoon Gilma,

Thanks for returning my call. It was very helpful all your recommendations.

Per our phone conversation, I have the Outside Employment approved for self-employed for my company, Decom, Inc. to provide engineering, construction and management services. Currently I am employed with Miami Dade County – Department of Transportation & Public Work (DTPW) as a DTPW Field Test Engineer providing engineering support to Rail Services – Track & Guideway for Metrorail and Metromover.

I am providing engineering services to my client where I am preparing the engineering drawings for a job for a Powder Coating Oven with City of Doral to obtain the permits on behalf of my client.

Per our conversation, I consider this service should not be a conflict with my employment with Miami Dade County because in my position I have no supervision or decision making for the approval of these drawings.

Please review the information provided and please let me know if you need any additional information.

Thanks for all your assistance,

Jose Burgos, P.E.
786-683-8974