

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Monday, November 19, 2018 10:12 AM
To: Sanchez, Rodzandra (COE)
Subject: NQ 18-248. Deborah F. Silver, DSWM Business Architect, DSWM, Lobbying (section 2-11.1(s))
Attachments: INQ 18-248.pdf

INQ 18-248 Silver

From: Arrojo, Jose (COE)
Sent: Friday, November 16, 2018 3:49 PM
To: Silver, Deborah F. (DSWM) <DeborahF.Silver@miamidade.gov>
Cc: Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Ross, Rachele (COE) <Rachele.Ross@miamidade.gov>
Subject: INQ 18-248

Dear Ms. Silver:

Thank you for engaging with the Miami-Dade Commission on Ethics and Public Trust regarding your preselection vendor demonstration project. Attached is your requested opinion.

Please do not hesitate to contact us should you require any additional assistance.

Best regards,

Jose J. Arrojo

Executive Director
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Jose.Arrojo@miamidade.gov
Tel: (305) 579-2594
Fax: (305) 579-0273
<http://ethics.miamidade.gov/>





MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 □ Miami, Florida 33130

Phone: (305) 579-2594 □ Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO: Deborah F. Silver, DSWM Business Architect
Miami-Dade County Department of Solid Waste Management

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 18-248, Lobbying, Section 2-11.1(s), Lobbying

DATE: November 16, 2018

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: You have advised that the Department of Solid Waste Management (DSWM) seeks to implement a vehicle-based driver safety video service. DSWM initiated this effort through independent research and contacted several firms for product information and demonstrations (which took place last year) with an ultimate plan to engage in a multi-firm pilot to be followed up with an RFP once DSWM staff determines DSWM's preferred requirements.

After this, it was decided to further expand on the information-gathering to work with the Miami-Dade Internal Services Department (ISD) pursuant to a "Request for Information" (RFI #000943). Through this process, staff identified three additional software product offerings which DSWM staff wish to learn more about. To see this software in action, DSWM has invited the three firms to conduct product presentations in the coming weeks. In this way, the features and functions of the software can be examined and evaluated in a live demonstration/presentation environment.

You have indicated that DSWM is still in the information-gathering stage at this point and has not settled on any single firm or product. Through these planned product demonstrations, it is hoped that DSWM will be able to: 1) narrow down its list of possible candidates for a pilot based on the quality and utility of the various software products; 2) become more educated regarding a service/industry with which DSWM has little background; and 3) have a better and more definitive list of product requirements that would be included in a future RFP.

You have advised that no County board, committees, or public official is involved in the determination of DSWM's preferred requirements for the vehicle-based driver safety video service. Further, the determination of DSWM's preferred requirements at the product demonstration meetings with the three firms will not include discussions/negotiations of any contract/agreement terms with the various invited entities.

Discussion: Pursuant to the Miami Dade County Code of Ethics at Section 2-11.1(s) a "lobbyist" is any person, firm or corporation seeking to influence the adoption, modification or defeat of legislation; or any action, decision or recommendation of the Mayor and the Board of County Commissioners (Board). Additionally, a lobbyist is defined as any person seeking to influence any action, decision or recommendation of County Personnel with delegated authority to act or make decisions or recommendations on the Board's behalf such as a council, trust, task force or review committee. *See* RQO 06-63.

Generally, appearance at a meeting with department staff at the department's request to obtain information about an entity and its services does not constitute lobbying. *See* INQ 15-187, INQ 15-93, and INQ 06-137. Further, individuals who are advocating for decisions that can be made at the sole discretion of an individual County employee (i.e. decisions that are not determined by a voting body) are not lobbying. *See* RQO 12-09, INQ 14-203, and 13-192.

Opinion: Consequently, the individuals from the three firms that appear at the product demonstrations scheduled over the next two weeks, would not be required to register as lobbyists to attend the demonstrations because the demonstrations were specifically requested by DSWM staff for obtaining information about the various entities specific software product offerings.

However, please note that appearances at meetings with the intent to influence DSWM's staff to contract with an entity or to negotiate terms of any contract/agreement between DSWM and a particular entity would require registration as a lobbyist. *See* RQO 06-63, RQO 06-65, RQO 10-28, and INQ 15-187. For example, a meeting to negotiate rates of payment or any other terms of a contract/agreement between DSWM and an entity would require registration as a lobbyist. Thus, if you anticipate that during these product demonstration meetings, the entities that are conducting the demonstrations will engage in a conversation that would involve an attempt to persuade DSWM's staff to contract with their specific entity, or DSWM will negotiate contract/agreement terms, then the individuals attending the meeting should register as a lobbyist prior to the demonstrations.

You may also wish to review the County's Master Procurement Implementing Order, I.O. 3-38, that addresses documentation of contacts between county personnel and industry representatives in these types of market research engagements.

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.