

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Wednesday, December 12, 2018 4:38 PM
To: Diaz-Greco, Gilma M. (COE); Sanchez, Rodzandra (COE); Perez, Martha D. (COE)
Subject: FW: INQ 18-258, Amado Gonzalez, A/E Consultant Selection Coordinator, Miami-Dade Internal Services Department (Voting Conflict 2-11.1(v); Appearance of Impropriety)
Attachments: INQ 18-258 Davis (RFA DB17-WASD-02).pdf

From: Turay, Radia (COE)
Sent: Wednesday, December 12, 2018 4:37 PM
To: Gonzalez, Amado (ISD) <Amado.Gonzalez@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Subject: INQ 18-258, Amado Gonzalez, A/E Consultant Selection Coordinator, Miami-Dade Internal Services Department (Voting Conflict 2-11.1(v); Appearance of Impropriety)

Hello,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking our guidance regarding this WASD project and the Consultant Selection Committee. Please find our opinion regarding same attached.

Best regards,

RADIA TURAY

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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Thomas B. Davis, Esq.,
Director of Policy and Legislation

Amado Gonzalez, Non-Voting Chairperson,
ISD Procurement Management

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 18-258, [Voting Conflict of Interest § 2-11.1(v); Appearance of
Impropriety]

DATE: December 12, 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: We have reviewed your memorandum dated November 27, 2018, prepared in connection with the Appointment of Selection Committee for Miami-Dade Water and Sewer Department Request to Advertise for Design-Build Services for the Installation of a 54-inch Diameter Water Transmission Main near Red Road from John E. Preston Treatment Plant to west 53 Street- Project No. DB17-WASD-02 (Substitution 2). 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 two voting members appointed to the selection committee made disclosures on their neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Byron Dowell, Miami-Dade Parks, Recreation and Open Spaces, stated on his neutrality disclosure form that his spouse, Maria E. Dowell is the Vice President for WSP USA, Inc. a responding proposer for this project. Further, Carlos Benavides,

Miami-Dade Water and Sewer Department stated on his neutrality/disclosure form that his son, Carlos Benavides, is also employed by WSP USA, Inc., as a project engineer.

We have conferred with Mr. Dowell and Mr. Benavides regarding their respective disclosures on their neutrality/disclosure form. They have both confirmed the above listed information.

Mr. Dowell stated that his wife is the Vice President of Transit and Rail in the Miami office at WSP USA, INC. We spoke directly with Mrs. Dowell who indicated that although she is not directly involved with the submitted proposal at this time, she may become involved with the project based on her role as Vice President in the Miami office. She owns some stock in WSP USA, INC., which is multinational company that has more than 500 offices, across 40 countries. Mr. Dowell however, has no financial interest in WSP USA, Inc; nor does he serve as officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, of the entity.

We also discussed this matter with Mr. Benavides. He explained that his son is a project engineer at WSP USA, INC. His son does not own WSP USA, INC. He did not believe that his son would be involved with this project. Mr. Benavides stated that he did not have any personal financial interest in WSP USA, Inc., and he does not serve as officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, of the entity.

Discussion: This agency conducts reviews of these issues under Section 2-11.1(v) of the County Ethics Code, which governs voting 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).

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.

In this case, it does not appear that Mr. Dowell and/or Mr. Benavides have a voting conflict under Section 2-11.1(v) of the Code, as they would not be directly affected by the vote and do not have any of the enumerated relationships with the respondents to the project.

However, the COE has noted that the County's Procurement Division has generally imposed stricter standards on its employees and selection/evaluation committee members than those provided by law. The COE has thereby opined on the existence of possible appearances of impropriety, by virtue of its mandate under its enabling ordinance to act as "guardian of the public trust." See Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

Various formal and informal opinions issued by the Ethics Commission have recommended that an individual should not serve on a selection committee if their immediate family member has a financial interest in one of the responding firms.¹ For example, in RQO 11-11, the Ethics Commission held that that an individual could not serve on a selection committee because their spouse's employer was bidding on the project.²

Similarly, in INQ 17-131, the COE advised that a County employee exercising their discretion over approval of a sub-contractor could be perceived as exploitation under the Ethics Code. The County Ethics Code at Section 2-11.1(g) titled, "Exploitation of official position prohibited," states that County employees, County officials, and County advisory board members shall not use or attempt to use their official position to secure special privileges for themselves or others.

Notably in INQ 17-131, the County employee's son was an employee of the firm, who had no involvement with regard to the scope of services to be provided by the entity in the project and had no financial interest to gain by his father, the County employee's, approval of the entity as sub-contractor with said firm. The COE nevertheless recommended that the County employee delegate his authority to approve the sub-contractor to another County manager/employee, so as to avoid an appearance of impropriety because appearances of integrity and fairness are paramount in procurement matters, as "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 17-131 *citing* INQ 14-232, INQ 12-180, and INQ 12-63.

Further, in INQ 17-214, the Ethics Commission recommended that an individual not serve on a selection committee where his brother-in-law was the owner and principal of one of the sub-consultants for a responding prime contractor, even though it was not specifically prohibited by the Ethics Code. The COE in that instance stated that the County employee should not serve on the selection committee due to the possible perception of a conflict of interest, given his familial relationship with the owner of a sub-consultant for one of the competing prime contractors.

Opinion: Consequently, although not strictly prohibited by the County Ethics Code, it is our recommendation that Mr. Dowell and Mr. Benavides not serve on this selection committee due to the possible appearance of impropriety, given their close familial relationship with various employees of WSP USA, Inc., a responding proposer for this project, because in all procurement matters, appearances of integrity and fairness are paramount, as "there is a

¹ Miami Dade County Code of Ethics at Section 2-11.1(n) also prohibits County employees and County officials from participating in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. "Immediate family" is defined in Section 2-11.1(b)(9) of the Ethics code, as spouse, domestic partner, parents, stepparents, children and stepchildren of the person.

² See also, INQ 11-133, in which the COE recommended that a County official may not participate in any official action directly or indirectly affecting a business that employs his son, because his son arguably had a financial interest in the firm as an employee of the firm.

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 14-242 and INQ 17-131.

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.