

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Thursday, December 20, 2018 11:34 AM
To: Sanchez, Rodzandra (COE)
Cc: Diaz-Greco, Gilma M. (COE); Perez, Martha D. (COE)
Subject: INQ 18-262, Brian Webster, Procurement Contracting Officer, Miami-Dade Internal Services Department (Voting Conflict of Interest 2-11.1(v); Appearance of Impropriety)
Attachments: DTPW - Advanced Traffic Management System - RFP No. 01058.pdf; INQ 18-262 Davis (DTPW RFP No. 01058).pdf

From: Turay, Radia (COE)
Sent: Thursday, December 20, 2018 11:32 AM
To: Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Webster, Brian (ISD) <Brian.Webster@miamidade.gov>
Cc: Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>
Subject: FW: DTPW - RFP No. 01058

Hello,

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust, seeking our guidance in connection with the Appointment of Selection Committee for Miami-Dade Department of Transportation and Public Works Request for Proposals for Advanced Traffic Management System-RFP No. 01058. Please find our opinion regarding same attached.

Thanks,

From: Johnson, Jannesha (OCA)
Sent: Tuesday, December 11, 2018 1:15 PM
To: Webster, Brian (ISD) <Brian.Webster@miamidade.gov>
Cc: Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: DTPW - RFP No. 01058

Good Afternoon –

This email is being sent on behalf of Thomas B. Davis, Esq., Director of Policy and Legislation for the Office of the Commission Auditor.

Thanks.

Jannesha V. Johnson, MBA 
Office of the Commission Auditor
111 NW 1 Street Suite 1030
Miami, Florida 33128



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

Brian Webster, Non-Voting Chairperson,
ISD Procurement Management

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 18-262 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: December 20, 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 December 10, 2018, prepared in connection with the Appointment of Selection Committee for Miami-Dade Department of Transportation and Public Works Request for Proposals for Advanced Traffic Management System-RFP No. 01058. 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 a technical advisor, non-voting member of the selection committee, made disclosures on her neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, Evelin Legcevic, Department of Transportation and Public Works, stated on her neutrality/disclosure form that her nephew is employed by SICE, a subcontractor proposed by Horse Power Electric. Horse Power Electric is a proposing vendor on this project.

We have conferred with Ms. Legcevic, who confirmed the above listed information. She stated that her nephew is a low level engineer at SICE. He started working for SICE sometime

this year, and has been so employed for just a few months. He is not included as a staff member of SICE on the proposal that was submitted. She does not believe that he has any ownership interest in the company. He does not live with her; nor does he owe her rent or money. She believes that she can be completely fair and objective in assessing the qualification of the competing firms.

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).

Specifically, 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.

There is no voting conflict for Ms. Legcevic under Section 2-11.1(v) since as technical advisor, she will not vote. See INQ 17-174; and INQ 18-11.

As noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, this agency also opines concerning whether there may be an appearance of impropriety in a given situation that would justify the removal of a member of an appointed selection committee. 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 works for, or has a financial interest in one of the responding firms. For example, in INQ 17-131, the COE advised that a County employee exercising their discretion over approval of a sub-contractor, where the employee's son worked for the 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.

Also, 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 as "brother-in-law" is not included in the Ethics Code's definition of "immediate family member."

However, we do not believe that either of the previously mentioned opinions apply to this case for two main reasons: (1) "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. "Nephew" is not included in the definition of immediate family member under the Ethic Code; and (2) unlike the individual in INQ 17-214, Ms. Legcevic's nephew does not have any ownership interest in SICE; nor does he serve as a director or officer of the entity. He is employed as a low level engineer.

Opinion: Consequently, at this juncture, Ms. Legcevic does not have a voting conflict of interest under Section 2-11.1(v), since as technical advisor, she will not vote; and it does not appear that her nephew's employment with SICE, a sub-consultant of one of the proposers, would create an appearance of impropriety, as he has no ownership interest in the entity and does not serve as a director/officer of the entity. See INQ 18-21.

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.



**BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**

M E M O R A N D U M

TO: Brain Webster, Non-Voting Chairperson,
ISD Procurement Management

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

A handwritten signature in blue ink, which appears to read "Thomas B. Davis", is written over the printed name and title.

DATE: December 10, 2018

**SUBJECT: Appointment of Selection Committee for Miami-Dade County
Department of Transportation and Public Works Request for
Proposals for Advanced Traffic Management System – RFP No.
01058**

Pursuant to Resolution No. R-449-14 dated May 6, 2014, the Office of Commission Auditor (OCA) is directed to conduct background checks on members serving on evaluation or selection committees.

Issue: Evelin Legcevic stated on her neutrality/disclosure form that her nephew is employed by a subcontractor proposed by the Horse Power Electric (SICE). Horse Power Electric is a vendor on this project.

The results of the background check will be submitted to the Internal Services Department or other County department(s) overseeing and administering the competitive procurement process as well as the Commission on Ethics, if applicable.

The voting members of the selection committee are:

- Darlene Fernandez, Department of Transportation and Public Works
- Rosie Perez, Information Technology Department
- Omar Meitin, Florida Department of Transportation
- Maurice Jenkins, Miami-Dade Aviation Department
- Becky Hope, Seaport Department
- Antonio J. Cotarelo, Water and Sewer Department (Alternate)

The non-voting members of the selection committee are:

- Brian Webster, Internal Services Department, Non-Voting Chair
- Frank Aira, Department of Transportation and Public Works
- Evelin Legcevic, Department of Transportation and Public Works
- Hector Garnica, Information Technology Department

Findings: Pursuant to Resolution No. R-449-14, OCA completed the required background research other than “**Issues**” noting no adverse findings for the voting and non-voting selection committee members.

cc: Namita Uppal, Chief Procurement Officer, ISD
Jose Arroyo, Executive Director, Commission on Ethics and Public Trust