

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Friday, January 04, 2019 9:55 AM
To: Sanchez, Rodzandra (COE)
Subject: INQ 18-266, Joe L. Gomez, Member, JHS, General Obligation Bond Citizens' Advisory Committee; Transacting Business 2-11.1(c)
Attachments: INQ Gomez.docx

INQ 18-266 Gomez

From: Perez, Martha D. (COE)
Sent: Thursday, December 27, 2018 11:40 AM
To: Gomez, Joe L <Joe.Gomez@terracon.com>
Cc: Kokoruda, Chris (CAO) <Chris.Kokoruda@miamidade.gov>; isa.nunez@jhsiami.org; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Subject: INQ 18-266, Joe L. Gomez, Member, JHS, General Obligation Bond Citizens' Advisory Committee; Transacting Business 2-11.1(c)

Dear Mr. Gomez,

Thank you for contacting the Miami-Dade Commission on Ethics & Public Trust, seeking our guidance in connection with your employment with a County vendor and your service as a member of the JHS GOB Citizens' Advisory Committee. Please find our opinion regarding same attached.

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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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: José L. Gomez
Chairman, JHS General Obligation Bond, Citizens' Advisory Committee

FROM: José Arrojo, Executive Director
Martha D. Perez, Staff Attorney

SUBJECT: INQ 18- 266 (§2-11.1 (c), Transacting Business with the County; Section 2-2181 *et. seq.*, Miami-Dade County Code, Jackson Health Systems General Obligation Bond Citizens' Advisory Committee

DATE: December 27, 2018

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and requesting our guidance regarding whether there is a prohibited conflict of interest in connection with your membership in the Jackson Health System General Obligation Bond Citizens' Advisory Committee (the "Committee") and your employment at Terracón, a County vendor/service provider/consultant.

Facts: The Committee was established by the Board of County Commissioners (BCC) in 2014,¹ to advise the BCC, the Public Health Trust (PHT) and the Mayor regarding the JHS General Obligation Bond Program (Bond Program). The Committee's membership is composed of, among other professional categories, a professional engineer. You have served as the professional engineer member of the Committee since 2014 and, presently, as Chair of the Committee.

The Committee's duties and responsibilities include reviewing and monitoring performance and program achievements related to the Bond Program; advising the BCC, PHT, Mayor and community at large of the Bond Program's accomplishments regarding JHS capital projects; reviewing recommendations of PHT for the use of Bond Program

¹ Ordinance No. 14-44.

funds; and, participating in citizen outreach efforts relating to JHS capital projects funded in whole or in part with Bond Program funds.² The Committee is not involved with the County's selection of firms or vendors performing services (i.e., consulting, construction, design, etc.) for the Bond-funded capital projects.

In October 2018, you became employed by Terracón, a national engineering and consulting firm with several thousand employees and offices in several counties, including Miami-Dade. You serve Terracón in the capacity of Principal and Director of Florida Construction Services. You are a salaried employee. Terracón is an employee-owned company. Presently, you have not purchased any individual shares in Terracón stock, but you will have the option to do so in November 2019. You anticipate your ownership stake at that time will be less than 1%.

Terracón is currently providing construction materials consulting services for the County's Christine E. Lynn Rehabilitation Center Project (Rehab Project) [Project E15-PWWM-08].³ Bond Program funds are being used for the construction of the Rehab Project, including funding for the consulting services being provided by Terracón. While Terracón is not involved with other Bond-funded capital projects, the company is also providing construction materials testing for the new Cooling Tower at JHS Campus, also under E-15-PWWM-08. Both contracts are overseen by the County's Public Works and Waste Management Department (PWWM).

You are not, directly or indirectly, supervising any Terracón employees engaged in the consulting services for the Rehab Project.

You advise that any *future* JHS-related projects/RFPs (Bond-funded or not) will be evaluated by Terracón as they become available.

Discussion: Your inquiry implicates the following provisions of the Miami-Dade County Code:

- I. Section 2-11.1(c) (3) of the County Ethics Code allows an advisory board member to transact business with the County, individually or through a firm or corporation in which he has a controlling financial interest, but not with any department or agency which is subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the board in which he or she serves.

² Section 2-2182 (b), Miami-Dade County Code.

³ The Rehab Project is a capital project which incorporates the construction of a new rehabilitation hospital which will house the Miami Project to Cure Paralysis, offering comprehensive inpatient and outpatient rehabilitation services for patients with spinal cord and brain injuries. See Memorandum from K. Robertson, JHS, 12/4/2015. Terracón has been providing construction services on this project [E15-PWWM-08] since 2017.

- II. Section 2-2183(b) provides that no JHS/GOB/CAC Member shall have *any* financial interest, direct or indirect, in *any* of the capital projects that are to be funded [in whole or in part] by the Bond Program. This section excludes committee membership to those persons whose livelihood (or their immediate family member's livelihood) depends on the area administered or dealt with by the Committee.

- III. Section 2-2183 (f) states that, "neither members of the Advisory Committee nor their employers nor corporations in which they hold an ownership stake may, as determined by the Commission on Ethics, *obtain, seek or bid on projects at Public Health Trust Designated Facilities, whether funded by the Bond Program or other sources, during the Advisory Committee Member's term...*" Also, the Committee Member may not lobby the PHT of JHS employees during his service on the Committee.

The Conflict of Interest and Code of Ethics Ordinance (County Ethics Code) applies to the Committee. *See* Section 2-2130 (f), Miami-Dade County Code (MDC Code).

The County Ethics Code at Section 2-11.1 (c) (3) allows board members who have a controlling financial interest (10% or more of the capital stock), to enter into a contract, individually or through a firm, corporation or business entity, with Miami-Dade County, as long as the contract does not interfere with the board member's duties to the County as member of the Committee. This means that, as Principal and Director of Florida Construction Services for Terracón, a County vendor, you may transact business with the County but not with any County department or agency subject to the regulation, oversight, management, policy-setting or quasi-judicial authority of the Committee.

You advise that your company is a County consultant on the Rehab Project. The Rehab Project is wholly or partially funded with GOB funds. Recommendation for the use of these funds for the different PHT/JHS capital projects is submitted to your Committee for approval before it is presented to the PHT. Therefore, the Committee's role in the use or allocation of the funding for PHT capital projects, including the Rehab Project, is significant. Notably, the Committee does not become involved in the oversight or management of vendors, consultants and/or service providers for these capital projects.

In this instance, Terracón was already performing its consulting services in the County's Rehab Project before you became employed by the company; hence, the allocation of funding for the Rehab Project is not pending any recommendation from the Committee. Although the Rehab Project is admittedly a JHS Capital Project, Terracón's contract in this instance is overseen and managed by PWWM, a County department which is not regulated, managed or overseen by the Committee or PHT. There is no involvement between the Committee and Terracón regarding the Rehab Project other than receiving updates and

quarterly reports. Consequently, Section 2-11.1(c) of the County Ethics Code does not prohibit you, through your employer/corporation, from serving as Chair of the Committee. See RQO 15-06.

Our analysis also implicates Sections 2-2181 to 2183 of the MDC Code. This office has considered instances where the existence of a financial interest or an ownership stake in an entity doing business with JHS/PHT has resulted in a more stringent application of conflict of interest standards.

In INQ 15-06, the Vice-President (V-P) in charge of bond construction for JHS inquired whether she could oversee and manage the RFP for a program manager to manage the construction and capital improvement program at JMH when one of the proposer firms employed her spouse as a project administrator. *The spouse was not involved in any aspect of the project at hand; the spouse was a salaried employee; the spouse was involved with County projects which did not concern JHS; and, the County V-P agreed she would not participate in the selection process for this contract.* This office concluded that, under these circumstances, the County V-P had no financial interest in the project; however, she was advised that, given the heightened standard of conflict imposed on the JHS/PHT, she should divest herself from any oversight over the project should the spouse's firm be awarded the contract.

In INQ 15-283, a Committee Member inquired whether there was a prohibited conflict where his employer law firm represented a subcontractor on a bond project that had been recommended by the Committee. *The Member did not have any shareholder interest in the firm and was not involved in any legal work stemming from the representation of the subcontractor.* The Committee played no role in the selection of contractors (subcontractors) on bond projects and its power was limited to making recommendations in connection with projects that were already selected prior to any solicitation. This office opined that, based on the specific circumstances presented, where the Member had no financial interest and his employer would not be appearing before the Committee, there would not be a conflict under Section 2-11.1(c) of the County Ethics Code.

The latter opinion went on to consider the stricter standard announced in Section 2-2183(f) of the MDC Code which prohibits a Member of the Committee from obtaining, seeking or bidding on projects at PHT designated facilities, *whether funded by the Bond Program or other sources*, during the Committee Member's service on the Committee or for two years after.

These previous opinions raise the issue of your continued service in the Committee while you are employed by a County vendor presently providing services at JHS facilities. Specifically, whether you, as a Principal and Director of Florida Construction for Terracón, a County service provider on a PHT/JHS Capital Project, have any *financial interest*, direct

or indirect, in the Rehab Project which makes you ineligible to serve on the Committee under Section 2-2181(b).

You have advised that you are a salaried employee and Terracón is an employee-owned company. You will be eligible to purchase stock in the company next year at the annual schedule offered in November 2019. You anticipate your ownership stake at that time will be less than 1%. Hence, as of today, you assert that you do not have a financial interest in Terracón.

Although a direct or indirect ownership of less than 1% does not meet County or State definitions of a controlling (10% or more) or material (more than 5%) financial ownership interest (RQO 15-06, §112.312(15), Fla. Stat.), the ordinance prohibits *any financial interest*.⁴ It is anticipated that by November 2019, you will have a financial interest and/or ownership stake in Terracón, albeit minimal, and any *future* transactions which may occur between Terracón and the County involving JHS/PHT and/or the Committee must be closely scrutinized to avoid a violation of Section 2-2183 of the MDC Code or the County Ethics Code.

Opinion: Consequently, while at this time, you may continue your service in the Committee, you must recuse yourself from participating or voting on any recommendations regarding any projects involving Terracón [2-11.1(v)]; you may not participate in any official action, directly or indirectly, affecting Terracón [2-11.1(n)]; you may not lobby PHT or JHS [2-2181 (f)]; you may not appear before the Committee on behalf of Terracón or any other third party [2-11.1(m)(2)]; and, you must file a sworn statement disclosing your employment with Terracón with the County Clerk of the Board [2-11.1(f)].

In addition, you advise that Terracón may evaluate Bond-funded and/or non-Bond-funded projects which may become available *in the future*. It is important to note that, during your service as a Member of the Committee, you **shall not have any financial interest in any JHS capital project(s) that are to be funded in whole or in part by the Bond Program** [§ 2-2181 (b)].

Additionally, *neither you nor your employer or corporation in which you hold an ownership stake may obtain, seek or bid on projects at Public Health Trust Designated Facilities, whether funded by the Bond Program or other sources, during your board service or two years thereafter* [§ 2-2181(f)]. This subsection may effectively bar you and Terracón from obtaining, seeking or bidding on any projects involving any JHS

⁴ Generally, a financial interest is defined as an interest involving money or its equivalent; especially, an interest in the nature of an investment. See Black's Law Dictionary (9th ED., 2009). The County Ethics Code defines 'financial interest,' pursuant to Section 769 of the Restatement of Torts, as an investment or an interest in the nature of an investment. For example, a stockholder has such an interest. See Section 2-11.1(n), County Ethics Code

facility/site, without regard to the type of services contracted for, the source of funding or the County department overseeing or managing the project.

We are mindful that, in the spirit of Section 2-2183(f), the County Ethics Code “shall not operate to preclude individuals from serving as Advisory Committee members on the basis of interest relating to the County when such interest does not conflict with matters dealt with by the Committee or PHT.” Consequently, should you and/or Terracón consider other opportunities with the County which involve JHS facilities, it is recommended that you seek a conflict of interest opinion from the Ethics Commission regarding your continued service in the Committee.

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.