

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Wednesday, July 03, 2019 4:13 PM
To: Perez, Martha D. (COE); Diaz-Greco, Gilma M. (COE); Sanchez, Rodzandra (COE); Anderson, Machell (COE)
Subject: FW: INQ 19-70, Thomas Davis, Esq., Director of Policy and Legislation, Office of the Commission Auditor [Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety; Reverse Two-year Rule § 2-11.1(x)]
Attachments: INQ 19-70.pdf

From: Turay, Radia (COE)
Sent: Wednesday, July 3, 2019 4:11 PM
To: Brazle, Cedric (OCA) <Cedric.Brazle@miamidade.gov>; Gonzalez, Amado (ISD) <Amado.Gonzalez@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>
Cc: Majekodunmi, Yinka (OCA) <Adeyinka.Majekodunmi@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>; Pantoja Kirtland, Nancy B. <NPantojaKirtland@miami-airport.com>
Subject: INQ 19-70, Thomas Davis, Esq., Director of Policy and Legislation, Office of the Commission Auditor [Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety; Reverse Two-year Rule § 2-11.1(x)]

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 Seaport Department Request to Advertise for Civil Infrastructure Engineering Services – Project No. E18-SEA-04. Please find our opinion regarding same attached.

Thanks,

RADIA TURAY

Staff Attorney
Miami-Dade Commission on Ethics and Public Trust
19 W. Flagler Street, Suite 820
Miami, FL 33130
Tel: (305) 350-0601
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Ethics.miamidade.gov

From: Brazle, Cedric (OCA)
Sent: Wednesday, July 3, 2019 10:55 AM
To: Gonzalez, Amado (ISD) <Amado.Gonzalez@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Cc: Majekodunmi, Yinka (OCA) <Adeyinka.Majekodunmi@miamidade.gov>; Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>
Subject: ISD PROJECT NO. E18-SEA-04 - CIVIL INFRASTRUCTURE ENGINEERING SERVICES

Good Morning,

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

From: Gonzalez, Amado (ISD)
Sent: Monday, July 01, 2019 4:01 PM
To: Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>
Cc: Brazle, Cedric (OCA) <Cedric.Brazle@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Clerk of the Board (COC) <Clerk.Board@miamidade.gov>
Subject: RE: IISD PROJECT NO. E18-SEA-04 - CIVIL INFRASTRUCTURE ENGINEERING SERVICES

Good afternoon Mr. Thomas,

Please commence the background review of the Competitive Selection Committee (CSC) members assigned to the subject project. Attached are the Neutrality Affidavits and Resumes for all staff assigned to this project with the exception of Mr. Isaac Smith that will be excused from participating on this project. Also provided is the List of Respondents and the CSC memorandum for the same project. Note that Ms. Nancy Pantoja has indicated a possible conflict with one of the firms.

Best regards,

Amado Gonzalez, A/E Consultant Selection Coordinator
Miami-Dade County -ISD Strategic Procurement Division
111 N.W. 1st Street, Suite 1300, Miami, FL 33128
(305) 375-3888

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MEMORANDUM

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

Amado Gonzalez, Non-Voting Chairperson,
Internal Services Department

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-70 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety; Reverse Two-year Rule § 2-11.1(x)]

DATE: July 3, 2019

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 July 10, 2019, prepared in connection with the Appointment of Selection Committee for Miami-Dade Seaport Department Request to Advertise for Civil Infrastructure Engineering Services – Project No. E18-SEA-04. 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 voting member, appointed to the selection committee, made disclosures that merited submission to our office for an opinion. Specifically, Nancy B. Pantoja Kirtland, P.E., stated that she was employed (02/2007 – 01/2017) by T.Y. Lin International/HJ Ross Associates (hereinafter “T.Y. Lin”). She also disclosed that her daughter was employed by the same entity from June 2009-August 2009. The memorandum further states that T.Y. Lin is listed as a consultant on this project.

We have conferred with Ms. Pantoja. She indicated that the termination of her employment from T.Y. Lin was amicable in January 2017. She has no current ownership interest in or other formal or financial interest in the company. She maintains a cordial

professional relationship with various individuals at the firm. However, she does not have any close social, or other relationship with any current employee at the company. She also explained that her daughter did an internship at T.Y. Lin in 2009. Her daughter's separation from T.Y. Lin was also amicable. Ms. Pantoja believes that she can be completely fair and objective in assessing the qualifications 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.

It does not appear that Ms. Pantoja has a voting conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote and she does not have any of the enumerated relationships with an entity affected by the vote.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the Reverse Two-Year Rule, which bars County employees from participating in contract-related duties on behalf of the County with a former employer for a period of two years following termination of the employment relations, would not apply since Ms. Pantoja stopped working for T.Y. Lin over 2 years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229.

Further, 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.

The COE has advised in some of its informal opinions that an individual's appointment to a selection committee shortly after the two-year proscription, although not prohibited by the Ethics Code, may create an appearance of impropriety. *See* INQ 12-62, and INQ 16-161. In both cited informal opinions, the individuals were appointed to the selection committee prior to the termination of the two-year prohibition, but the actual selection committee meetings commenced after the two-year period expired. In both cases, the COE advised that the individuals should not serve on those selection committees as they were appointed and began their official duties prior to the expiration of the two-year period.

In this case, Ms. Pantoja was appointed to the selection committee on May 14, 2019, which was four months **after** the expiration of the two-year ban. The COE however recommends that the Internal Services Department's Procurement Management Services Division consider whether Ms. Pantoja should serve on this selection committee, due to the relatively short period of time (four months) between the expiration of the two-year prohibition under Section(x) of the Ethics Code, and her appointment to the selection committee, as perhaps the most sensitive pressure point within County government, the procurement process, has always maintained stronger ethical standards than the minimum provided under the Ethics Code.¹

Opinion: Consequently, it does not appear that Ms. Pantoja has a conflict of interest under the Ethics Code that would prohibit her service as a voting member of the selection committee. However, the Internal Services Department's Procurement Management Services Division should consider whether Ms. Pantoja should serve on this selection committee, due to the relatively short period of time (four months) between the expiration of the two-year prohibition under Section(x) of the Ethics Code, and her appointment to the selection committee. As perhaps the most sensitive pressure point within County government, the procurement process, has always maintained stronger ethical standards than the minimum provided under the Ethics Code. *See* INQ 17-200. The creation of any perception of favoritism should always be avoided. *See* INQ 17-200.

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.

¹ See INQ 17-193 and INQ 17-200.