



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
Director of Policy and Legislation Division

Caroline T. Burgos, Non-Voting Chairperson
Internal Services Department

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-81 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: August 27, 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 August 8, 2019, prepared in connection with the Appointment of Selection Committee for Miami-Dade County Department of Solid Waste Management Request for Proposals for Scalehouse Operations System-RFP No. 00754 (Substitution 1). 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 of the selection committee made disclosures on his neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, Thomas Dratler, stated on his neutrality/disclosure form that he is currently the County's lead analyst supporting Paradigm's software in the existing operation. Paradigm is a respondent on this RFP.

We have conferred with Mr. Dratler. He stated that he is a Senior Systems Analyst/Programmer at the County. He explained that Paradigm, which is also a respondent to the RFP, currently has an existing scale house software operation at the County. Mr. Dratler, in his County position, serves as the lead analyst supporting that existing software operation at the County.

Specifically, in his role as lead analyst, he is the point of contact for all technical issues pertaining to the Paradigm's existing Scale house software operation. His duties include

responding to problem reports, requesting additional capabilities (new reports, new user set up, etc.), requesting ad-hoc data, and general troubleshooting. He also shares on-call responsibilities in rotation with other members of his County work group.

Mr. Dratler stated that he did not believe that his current supervision/familiarity with Paradigm would in any way interfere with his objective and independent judgment in the selection process.

Additionally, he indicated that he did not have a direct interest in Paradigm or any of the responding firms to the RFP; nor does he serve as officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, to any of the entities.

Further, he stated that he does not have any personal friendships or relationships with persons that work for Paradigm that would prevent him from exercising his best judgment for the benefit of the County.

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 Mr. Dratler has a voting conflict of interest under Section (v) of the County Ethics Code because he will not be directly affected by the vote and he does not have any of the enumerated relationships with an entity affected by the vote. The fact that a selection committee member has interactions with a respondent to a competitive procurement as a result of the member's County duties does not create any legal voting conflict of interest for that member under Section (v) of the County Code of Ethics. *See* INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, and INQ 18-230.

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.

However, the COE has stated in various informal opinions, that absent some other factor, the mere fact that a selection committee member has interactions with a respondent in connection with the member's County duties would not create an appearance of a conflict that could affect the public trust in the integrity of the procurement process. See INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, and INQ 18-230. The COE's opinions note that, in fact, it may be valuable to have an individual on a selection committee who is personally familiar with the work of one or more of the responding firms, particularly where the member also has some special expertise in the services that are being sought by the County, See INQ 18-21, INQ 18-47, and INQ 18-230.

Opinion: Consequently, at this juncture, we see no reason why Mr. Dratler should not serve on this selection committee, because he does not have a voting conflict of interest under Section (v) of the County Ethics Code, and there does not appear to be any appearance of impropriety created by his service on this committee. See INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, and INQ 18-230.

Mr. Dratler is however reminded that the selection committee, for which he will serve, operates under the County's Cone of Silence, Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by Commissioners, City staff, selection committee members, and prospective contractors, as well as their lobbyists and consultants, regarding any procurement matter during the time that the Cone is in effect. Mr. Dratler will therefore be prohibited under the Cone, from communicating with employees of Paradigm, regarding this solicitation, as Paradigm is a respondent on this RFP. The Cone will remain in effect until the Mayor makes a written recommendation to the County Commission for the final selection.

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

MEMORANDUM

TO: Caroline T. Burgos, Non-Voting Chairperson
Internal Services Department

FROM: Thomas B. Davis, Esq., Director
Policy & Legislation Division

DATE: August 8, 2019

SUBJECT: Appointment of Selection Committee for Miami-Dade County
Department of Solid Waste Management Request for Proposals for
Scalehouse Operations System – RFP No. 00754 (Substitution 1)

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: Mr. Thomas Dratler, Information Technology Department stated on his neutrality/disclosure form he is currently the lead analyst supporting Paradigm's Software in the existing operation. Paradigm is a respondent to this request.

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

The voting members of the selection committee are:

- Rick Rayborn, Department of Solid Waste Management
- Karen Graham, Department of Solid Waste Management
- Deborah Silver, Department of Solid Waste Management
- Thomas Dratler, Information Technology Department
- Tekeia Clark, Water and Sewer Department

The non-voting members of the selection committee is:

- Caroline T. Burgos, Internal Service Department, Non-Voting Chairperson
- Lou Broughton, Information Technology Department, Technical Advisor
- Vivian Delgado, Finance Department, Technical Advisor
- Ranjana Warier, Information Technology Department, Technical Advisor
- Keith Lynn, Department of Solid Waste Management, Technical Advisor

Findings: Pursuant to Resolution No. R-449-14, OCA completed the required background research concluding there were no adverse findings for the voting and non-voting selection committee.

c: Jose Arrojo, Executive Director, Commission on Ethics and Public Trust
Radia Turney, Staff Attorney, Commission on Ethics and Public Trust
Namita Uppal, Chief Procurement Officer, ISD
Adeyinka Majekodunmi, Commission Auditor