

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Tuesday, February 12, 2019 11:44 AM
To: Sanchez, Rodzandra (COE); Diaz-Greco, Gilma M. (COE)
Subject: FW: INQ 19-14, Pablo Valin, Non-Voting Chairperson, ISD Procurement Management (Voting Conflict 2-11.1(v); Appearance of Impropriety)
Attachments: INQ Davis (Project No. A18-SEA-01) Final .pdf

From: Turay, Radia (COE)
Sent: Tuesday, February 12, 2019 11:44 AM
To: Valin, Pablo (ISD) <Pablo.Valin@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Majekodunmi, Yinka (OCA) <Adeyinka.Majekodunmi@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>
Subject: RE: INQ 19-14, Pablo Valin, Non-Voting Chairperson, ISD Procurement Management (Voting Conflict 2-11.1(v); Appearance of Impropriety)

Correction: this opinion was renumbered INQ 19-14

From: Turay, Radia (COE)
Sent: Tuesday, February 5, 2019 5:59 PM
To: Valin, Pablo (ISD) <Pablo.Valin@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>; Majekodunmi, Yinka (OCA) <Adeyinka.Majekodunmi@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>
Subject: INQ 19-13, Pablo Valin, Non-Voting Chairperson, ISD Procurement Management (Voting Conflict 2-11.1(v); Appearance of Impropriety)

Dear Mr. Valin,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance. Attached is INQ 19-13 addressing the Appointment of Selection Committee for Miami-Dade Seaport Department Request to Advertise for Architectural and Engineering Services for PortMiami Cruise Terminals and Ropax Facilities- Project No. A18-SEA-01. Do not hesitate to contact me if you need further assistance.

Best regards,

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
Fax: (305) 579-0273
Ethics.miamidade.gov

From: Johnson, Jannesha (OCA)
Sent: Tuesday, January 29, 2019 9:20 AM
To: Valin, Pablo (ISD) <Pablo.Valin@miamidade.gov>; Uppal, Namita (ISD) <Namita.Uppal@miamidade.gov>
Cc: Majekodunmi, Yinka (OCA) <Adeyinka.Majekodunmi@miamidade.gov>; Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: RE: CSC Background check request for A18-SEA-01: Architectural and Engineering Services for PortMiami Cruise Terminals and Ropax Facilities

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.

Thanks.

Jannesha V. Johnson, MBA 
Office of the Commission Auditor
111 NW 1 Street Suite 1030
Miami, Florida 33128
305-375-1466

From: Valin, Pablo (ISD)
Sent: Tuesday, January 22, 2019 11:34 AM
To: Davis, Thomas (OCA) <Thomas.Davis@miamidade.gov>
Cc: Martinez, Angie (COM) <Angie.Martinez@miamidade.gov>; Johnson, Jannesha (OCA) <Jannesha.Johnson@miamidade.gov>; Jackson, Cathy (AMS) <Cathy.Jackson@miamidade.gov>
Subject: CSC Background check request for A18-SEA-01: Architectural and Engineering Services for PortMiami Cruise Terminals and Ropax Facilities

Good Morning Mr. Davis,

Attached please find a copy of the List of Respondents, CSC Appointment Memo, Neutrality Affidavit Forms and Resumes for all CSC members, for the referenced project.

Please initiate the background checks so that we may proceed to the First Tier meeting which is tentatively scheduled for the second week of February.

Please call me with any questions and thank you for your assistance.

Regards,

Pablo

Pablo Valin, Acting Sr. A/E Consultant Selection Coordinator
Miami-Dade County Internal Services Department
111 NW 1st Street, 13th Floor, Miami, FL 33128
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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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Website: ethics.miamidade.gov

MEMORANDUM

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

Pablo Valin, Non-Voting Chairperson,
ISD Procurement Management

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-14, [Voting Conflict of Interest § 2-11.1(v); Appearance of
Impropriety]

DATE: February 4, 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 January 24, 2019, prepared in connection with the Appointment of Selection Committee for Miami-Dade Seaport Department Request to Advertise for Architectural and Engineering Services for PortMiami Cruise Terminals and Ropax Facilities- Project No. A18-SEA-01. 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 on his neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Lazaro Alvarez stated on his neutrality/disclosure form that he was employed by Bermello, Ajamil & Partners (2000-2014) and BC Architects A1A (2014-2016). Mr. Alvarez also stated that his spouse was employed by Bermello, Ajamil, & Partners (1999-2011). Bermello, Agamil and Partners (BAP) and BC Architects A1A are proposers for this project.

We have conferred with Mr. Alvarez regarding the disclosures on his neutrality/disclosure form. He confirmed the above listed information. He stated that he terminated his employment with both firms under amicable circumstances, without any type of dispute or rancor; he has no ownership interest or other formal or financial ties to either firm; and, with regard to BC Architects AIA, he has no close personal or social relationships with anyone at the company.

Similarly, his spouse terminated her employment with BAP in 2011 under amicable circumstances without any type of dispute or rancor; and, she has no ownership interest or other formal or financial ties to the company. Neither Mr. Alvarez nor his spouse serve as officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary, stock holder, bondholder, debtor or creditor, of BAP.

However, Mr. Alvarez stated that his mother-in-law is currently employed as an Executive Assistant to one of the owners of BAP, however, she has no ownership interest in the company.

Further, Mr. Alvarez stated that in his position at the County, his duties include overseeing the work that both firms currently perform at Miami-Dade Seaport. He believes that he can be completely fair and objective in assessing the qualification of all 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).

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. Alvarez has a voting conflict under Section 2-11.1(v) of the Code, as he would not be directly affected by the vote and he does not have any of the enumerated relationships with the respondents to the project.

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 Mr. Alvarez stopped working for both firms over 2 years ago. See INQ 17-174, INQ 17-183, and INQ 18-229.

As noted above, due to the sensitivity of the procurement process and the need to preserve public confidence in it, this agency also opines 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, neither of the previously mentioned opinions apply to this case because: (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. "Mother-in-law" is not included in the definition of immediate family member under the Ethic Code; and (2) unlike the individual in INQ 17-214, Mr. Alvarez's mother-in-law does not have any ownership interest in BAP, nor does she serve as a director or officer of the entity.

In his neutrality/disclosure form, Mr. Alvarez disclosed that in his current County position, he oversees the work that both firms perform at the Miami-Dade Seaport. The COE has stated that the fact that a selection committee member may supervise or oversee work done by a respondent to a solicitation does not create either a conflict or an appearance of a conflict. *See* INQ 18-21, INQ 18-47 and INQ 18-75. Further, "absent some other factor, the mere fact that one of the members [of a selection committee] 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 18-21 and INQ 18-47.

Opinion: Consequently, Mr. Alvarez does not have a voting conflict of interest under Section 2-11.1(v), of the County Ethics Code, to serve in the selection committee for the project described herein, as he would not be directly affected by the vote and he does not have any of the enumerated prohibited relationships with the respondents to the project.

Secondly, the Reverse Two-Year Rule, under Section 2-11.1(x), 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 he stopped working for both firms over 2 years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229.

Thirdly, it does not appear that his mother-in-law's employment with BAP, a respondent to this solicitation, would create an appearance of impropriety because the mother-in-law has no ownership interest in the entity and does not serve as a director/officer of the entity. *See* INQ 18-21.

Lastly, absent some other factor, the fact that he currently supervises or oversees the work of two of the respondents to this solicitation in connection with his 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 18-21 and INQ 18-47.

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.