

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Tuesday, May 21, 2019 12:49 PM
To: Sanchez, Rodzandra (COE); Perez, Martha D. (COE); Diaz-Greco, Gilma M. (COE)
Subject: FW: INQ 19-53, Felix Lasarte, Esq., on behalf of BCC Engineering, Inc. (Organizational Conflict of Interest)
Attachments: INQ 19-53.pdf

From: Turay, Radia (COE)
Sent: Tuesday, May 21, 2019 12:48 PM
To: 'Felix Lasarte' <Felix@lasartelaw.com>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Bravo, Alice (DTPW) <alice.bravo@miamidade.gov>; Guyamier, Frank (DTPW) <Frank.Guyamier@miamidade.gov>; Hernandez, Albert A. (DTPW) <Albert.Hernandez@miamidade.gov>
Subject: INQ 19-53, Felix Lasarte, Esq., on behalf of BCC Engineering, Inc. (Organizational Conflict of Interest)

Dear Mr. Lasarte,

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust, seeking our guidance in connection with the request from BCC Engineering, Inc., for a determination on whether the firm's participation in the upcoming solicitation for design-build services for Contract No. CIP155-DTPW18-01: South Corridor (South-Dade Transitway) Rapid Transit Project (the Project), represents a conflict of interest. Please find our opinion regarding same attached.

Cordially,

RADIA TURAY

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Miami-Dade Commission on Ethics and Public Trust
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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Felix Lasarte, Esq.
on behalf of BCC Engineering, Inc.

FROM: Radia Turay, Esq., Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-53, [Organizational Conflict of Interest]

DATE: May 20, 2019

CC: Alice N. Bravo, P.E., Director
Department of Transportation and Public Works

Hugo Benitez, Esq., Chief
Commercial & Construction Litigation Section
County Attorney's Office

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 are in receipt of correspondence from Alice Bravo, Director of Miami-Dade Department of Transportation and Public Works (DTPW), dated May 16, 2019. The correspondence addressed a request from BCC Engineering, Inc., for a determination on whether the firm's participation in the upcoming solicitation for design-build services for Contract No. CIP155-DTPW18-01: South Corridor (South-Dade Transitway) Rapid Transit Project (the Project), represents a conflict of interest.

BCC Engineering, Inc. (BCC Engineering) and other firms have participated as either a Prime or sub-consultant throughout the Planning and Project Development phase, selection of the Locally Preferred Alternative, and development of the Design Criteria Package (DCP) for the Project. These firms are contracted under Professional Services Agreement No. CIP142-1-TPW16-PE (2) for Engineering Services for the DTPW's Capital Improvement Plan, awarded to AECOM Technical Services, Inc. (AECOM).

Issue: BCC Engineering has requested a determination on whether the firm’s participation in the upcoming solicitation represents a conflict of interest due to the work that they performed under the Professional Services Agreement.

Discussion: The Ethics Commission issued RQO 17-02 along with an Amended Letter of Instruction to the County on April 13, 2017, delineating the COE’s limited procedural role in the handling of organizational conflicts of interest (OCIs).

The Amended Letter of Instruction specifically states that the COE’s role in the handling of OCIs in connection with a contract with a local government entity will be limited to the following circumstances:

- 1) The terms of the local government contract or proposal must state the standards by which the organizational conflicts of interest will be determined.
- 2) Disclosures of organizational conflicts of interest shall be reported by the local government entity to the Ethics Commission.
- 3) The local government entity will analyze and address organizational conflicts of interest on a case by case basis.
- 4) The local government entity’s decision of how to address an organizational conflict of interest shall be subject to the approval of the Executive Director of the Ethics Commission or his/her designee, who will render his/her determination promptly. Disapproval by the Executive Director or designee may be appealed by the local government entity to the Ethics Commission board.
- 5) Copies of decisions regarding the resolution of a reported conflict of interest shall be forwarded to the Ethics Commission.

In accordance with the procedures set forth in the Amended Letter of Instruction, the COE is not responsible for identifying or determining the existence of OCIs in the County’s procurement process, but rather, that responsibility falls on the County officer or department involved in the respective procurement. *See* INQ 17-198. Provided that an OCI is identified by the County, the COE’s role is limited to the approval or disapproval of the measures implemented by the County to resolve the OCI. *See* INQ 17-198.

In this instance, we are in receipt of a letter from Alice Bravo, Director of DTPW, dated May 16, 2019, regarding “Organizational Conflicts of Interest for Contract No. CIP155-DTPW18-01: South Corridor (South-Dade Transitway) Rapid Transit Project.”

Ms. Bravo, in her letter, indicates that the DTPW has analyzed the scope of services rendered by the various firms and did not identify an organizational conflict of interest by BCC Engineering, in regard to the upcoming solicitation for design-build services for Contract No. CIP155-DTPW18-01: South Corridor (South-Dade Transitway) Rapid Transit Project (The Project).^{1 2}

¹ DTPW analyzed the scope of services rendered by the various firms and concluded that only AECOM, PMA Consultants, Inc., Creativision Media, Inc. and T.Y. Lin International have a conflict of interest due to their substantial involvement of the Design Criteria Package for the new Project.

² *See* Matrix attached to Alice Bravo’s letter dated May 16, 2019.

Conclusion: Consequently, as the County has not identified an organizational conflict of interest by BCC Engineering, the COE will not take any further action in this matter. *See* RQO 17-02 and INQ 17-198.

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.