

Sanchez, Rodzandra (COE)

From: Turay, Radia (COE)
Sent: Wednesday, June 05, 2019 1:44 PM
To: Sanchez, Rodzandra (COE)
Cc: Diaz-Greco, Gilma M. (COE); Perez, Martha D. (COE)
Subject: FW: INQ 19-59, Margaret Brisbane, Assistant Director, ITD
Attachments: INQ 19-59 Brisbane.pdf

From: Turay, Radia (COE)
Sent: Wednesday, June 5, 2019 1:37 PM
To: Brisbane, Margaret (ITD) <Margaret.Brisbane@miamidade.gov>; Malcolm, Mari (ITD) <Maricarme.Malcolm@miamidade.gov>; Cardoso, Mirta Lopez (ITD) <Mirta.Cardoso@miamidade.gov>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Rosenthal, Oren (CAO) <Oren.Rosenthal@miamidade.gov>
Subject: INQ 19-59, Margaret Brisbane, Assistant Director, ITD

Hello Ms. Brisbane,

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust, seeking our guidance in connection with your attendance and participation as an inaugural member of the Infor's Public Sector Industry Council. Please find our opinion regarding same attached.

Thanks,
Radia.

RADIA TURAY

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MEMORANDUM

TO: Margaret Brisbane, Assistant Director
Miami-Dade County Information Technology Department

Mirta Lopez Cardoso, CPPO, IT Senior Contracts & Procurement Officer
Miami-Dade County Information Technology Department

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 19-59 [Sections 2-11.1 (h), (w), (p), (m), and (g), County Ethics Code]

DATE: June 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:

Infor is a current Miami-Dade County vendor and its contract to provide maintenance to a proprietary software program designed to track inventory was recently approved by the BCC as a sole source or non-competitive procurement. The value of the current contract is approximately 8.8 million dollars and the term of the contract runs through 2023.

Infor is hosting a Public Sector Industry Council (PSIC) meeting in NYC in July and has invited Miami-Dade County Internal Services Department (ITD) personnel, Margaret Brisbane-Assistant Director at ITD, and Mirta Lopez Cardoso- IT Senior Contracts & Procurement Officer, to attend and participate, as inaugural members of the PSIC. Neither Ms. Brisbane nor Ms. Cardoso have any financial interest in Infor.

It is an uncompensated advisory position. Infor's Industry Public Sector Strategy Lead will select the PSIC membership. Infor's objective is to have a diverse group of organizations across geographical regions and segments within the Public Sector industry.

The PSIC charter states that its role is to provide specific opportunities for customer organizations to identify need in their business and industry as well as provide input on the efficiency and effectiveness of Infor's industry focus, strategy, and potential products and services.

It also indicates that the PSIC will function in an advisory capacity only and serve as a mechanism to: provide Infor with a global view of the important issues facing Public Sector entities; provide ongoing customer feedback on strategies, services, regulations, policies, procedures and general customer experience; identify new/alternative strategies, services and products to meet future industry needs; determine customer priorities and needs; and serve as a reference and spokesperson for Infor as needed and as appropriate.

Additionally, the council members will have the added benefit of: access to a select group of peers for networking throughout the year; contact with Infor executives, product managers and strategy leaders; greater insight into Infor's products and plans; and participating and partnering as trusted advisor to help guide development and investment plans.

The PSIC will meet face-to face on an annual basis. It may alter the meeting frequency if needed to allow time, as necessary, for committees and/or subcommittees to function. Travel cost to attend the meetings will be at the expense of the member's organization. Infor will typically cover all ground transportation and lodging as permissible by the member's organization. However, ITD has represented that the County will pay all travel related expenses of the two County personnel that would participate in PSIC.

The PSIC charter further states that membership on the Industry Council will be for a minimum of 2 years. Failure to attend meetings will result in surrender of membership and a new member will be chosen. All council members are **required** to participate in the formal reference program as much as allowed by organization policy.

Issue:

Ms. Brisbane and Ms. Cardoso have inquired whether there are any possible conflicts of interest regarding their participation on Infor's PSIC.

Discussion:

In general, there is no provision in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance that explicitly prohibits a County employee from accepting appointment as an

uncompensated, advisory board member of a for-profit corporation.^{1 2 3} However, the following sections of the County Ethics Code should be addressed:

Sec. 2-11.1(h) provides that no County employee shall accept employment or engage in any business or professional activity which he or she might reasonably expect would require or induce him/her to disclose confidential information acquired by him or her by reason of his or her official position, nor shall he or she in fact ever disclose confidential information garnered or gained through his official position with the county, nor shall he or she ever use such information directly or indirectly for his or her personal gain or benefit. Therefore, you must ensure that your participation on the PSIC does not require you to disclose confidential information acquired through your positions at the County.

Section 2-11.1(w) prohibits County employees from accepting travel or travel expenses from County vendors, regardless of the purpose of the travel. However, ITD has relayed that it will cover all costs related to travel.

Sec. 2-11.1(p) prohibits County employees from recommending the services of a lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the County or any of its agencies, provided that such recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other County official or employees.

While subsection (p) does not address the issue of County employees providing letters of reference for a County Contractor when those recommendations are not made to assist in a transaction which involves the County or its agencies, the COE has advised that such letters of reference should avoid express advocacy which could be construed as lobbying and there should not be any payment or other incentive for providing the reference. *See* INQ 16-47, INQ 13-318 and INQ 12-52. The COE has also stated that other factors to be considered in such cases are the circumstances under which the reference will be utilized, the possibility that the contractor will have further business in the County, and whether the supervisor of the person providing the reference has given approval, among other considerations. *See* INQ 13-318.

Sec. 2-11.1(m)(1) prohibits County employees from appearing before any County board or agency or meeting with staff or elected officials to make a presentation or to seek a benefit on behalf of a

¹ *See* INQ 05-132, in which the COE opined that the County's Supervisor of Elections may accept the appointment and serve on a national advisory board, organized by Elections Systems and Software (ES&S), a County vendor.

² COE Outside Employment Guidelines (2019, 2017, and 2014) states that uncompensated board membership on a for-profit board would be considered outside employment if the employee is actively involved in the management of the for-profit entity. *See also* RQO 08-36 and RQO 07-24.

³ The COE has previously opined that the decision to participate in this type of activity involving a County vendor is a managerial one in which the prohibitions provided in the Ethics Code must be kept in mind. *See* INQ 13-144.

third person with respect to a license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by the third person. Therefore, you may not appear before any county board or agency or meeting with County staff or elected officials to make a presentation or to seek a benefit on behalf of Infor.

Sec. 2-11.1(g) prohibits County employees from exploiting County resources to secure special privileges or exemptions for him/herself or others. We therefore caution you both and the IT Department that while the use of a limited amount of County time or resources, is not likely to violate the County Ethics Code if the effort helps a County vendor improve its products for County users, however, you must avoid using excessive County resources, for a council that may not serve a public purpose. *See* INQ 13-144. Additionally, you may not use your County positions to help Infor achieve special privileges or exemptions that are not available to other organizations. *See* RQO 00-15, RQO 02-17.

Further, we recommend that, in order to avoid the appearance of impropriety, you refrain from any involvement regarding your County position and the company.⁴ *See* INQ 16-22. Although you may not appear before any County board or agency to seek any benefit on behalf of the organization, *it is also advisable*, in your role as a member of PSIC, to recuse yourself from voting or participating in discussions and/or votes relating to County applications for funding, County contracts or any other Infor initiatives involving the County. *See* INQ 16-22, INQ 12-13, INQ 11-01, INQ 10-201.

Infor may continue to enter into contracts with the County *as long as* neither of you have attempted to influence an official decision by the County to benefit the company in any way. Please be advised that the County Ethics Commission has interpreted this prohibition very expansively to include any communications, in any form, intended to influence an individual within the County to take an official action. *See* INQ 16-22, INQ 12-13, INQ 11-01, INQ 10-201.

Conclusion:

Under the facts provided, subject to the above-described limitations and cautionary guidance, there is no provision in the Code of Ethics that would prohibit your appointment to the Infor Public Sector Industry Council (PSIC) or your participation as a member of the PSIC.

⁴ Please note that in RQO 01-28, the COE opined that physicians who work for JHS and serve on a pharmaceutical company's advisory board may not serve on any JHS Pharmacy and Therapeutics committee or vote on matters regarding the pharmaceutical companies with whom they are associated.

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.