



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Amado Gonzalez, Non-Voting Chairperson
Internal Services Department

Phillip G. Edwards, Esq., BCC Legislative Research Manager
Office of the Commission Auditor (OCA)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-112 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: October 20, 2020

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 October 9, 2020, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade Aviation Department Request to Advertise for MIA Terminal Wide Re-Roofing and Lighting System Upgrades – Project No. A19-MDAD-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 two members of the selection committee made disclosures on their Neutrality/Disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: (1) Juan Paan, Aviation Department, indicated on his Neutrality/Disclosure Form that he was previously employed at Burns & McDonnell Engineering Company, Inc. from August 1988 to May 1991. Burns & McDonnell Engineering Company, Inc. is a subconsultant to a respondent (Gurri Matute PA) to the solicitation. (2) A background check was not conducted for Lissette Martinez, Parks, Recreation and Open Spaces Department, as neither a Neutrality/Disclosure Form nor resume were submitted for her. The Internal Services Department explained that Ms. Martinez is retiring and will not be participating in the selection process.

This memorandum will thereby only address the OCA's findings as to Mr. Juan Paan.

We conferred with Mr. Paan. He is Senior Section Chief of the Facilities Maintenance, Planning, Engineering and Construction Division at the Miami-Dade Aviation Department (hereinafter "MDAD"). He confirmed that he previously worked for Burns & McDonnell Engineering Company, Inc. (hereinafter "BMEC"). He stopped working for BMEC in May 1991. He indicated that the termination of his employment from BMEC was amicable. He has no current ownership interest in or other financial interest in the company. He also does not have any business, close social, or other relationship with any current employee at the company. Mr. Paan believes he can be fair and impartial when evaluating the respondents to this project.

Discussion: This agency conducts reviews of these issues under the County Ethics Code, which governs 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. Paan 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 currently 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 to Mr. Paan since he stopped working for BMEC over twenty-nine 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.

As Mr. Paan's employment at BMEC ended over twenty-nine years ago- on an amicable basis, and he does not have any business, or close social relationship with current employees at the entity, it is our opinion that his prior employment at BMEC would not create any appearance of impropriety or in any way detract from the County's conducting

a fair and objective evaluation for this project. *See* INQ 20-73, INQ 18-202, and INQ 17-69.

Opinion: Consequently, we see no reason why Mr. Paan should not serve on this committee because he does not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by his service on this committee.

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.