



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Walfrido Pevida, President, Pevida Highway Designer's PLLC

FROM: Gilma Diaz-Greco, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-117

DATE: 11-02-20

CC: COE Legal Staff; Monica R. Nuevo, Comptroller, Pevida Highway Designers

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding recertification as a Small Business Enterprise and limitations on immediate family members of County employee transacting business with the County.

Facts:

You advise that while you are not a Miami-Dade County employee, your spouse, Alice Bravo, is employed by the County in the position of Director of the Miami-Dade County Department of Transportation and Public Works (DTPW).

You are seeking to transact business with the Miami-Dade Expressway Authority ("MDX") through your privately owned firm, Pevida Highway Designers, PLLC. ("PHWD"). MDX is an Agency of the State of Florida created pursuant to the Florida Expressway Authority Act. MDX is an independent agency; it is not a County Department. It was created pursuant to the Florida Expressway Authority Act, at Chapter 348¹, Florida

¹ Chapter 348, Florida Statutes, was amended in 2019. Section 348.0304 of the Chapter creates the Greater Miami Expressway Agency. This Agency would also be an independent Agency of the State and would not

Statutes, and Miami-Dade Code ARTICLE XVIII. MDX receives no County funds and no Miami-Dade staff are assigned to the agency.

In order to transact business with MDX as a small business, PHWD must obtain a Small Business Enterprise (SBE) certification. Miami-Dade County administers and oversees SBE certification for the County. The County SBE certification list is sometimes used by other governmental entities as part of their vendor application review process.

Issue:

Whether the County Ethics Code would prevent your privately-owned company, PHWD, from seeking SBE Certification with the County or from transacting business with MDX.

Discussion and Opinion

With respect to the SBE certification, the County Internal Services Department, Small Business Development Division (SBD), advises that it provides SBE certification to companies. While these companies may seek to become County vendors, SBE certification is independent of a company also seeking to become a County vendor. After review and certification, SBD posts a list of County SBE certified companies.² Consequently, given that PHWD is seeking to contract with MDX, not with the County, and that registration as a County vendor is not required to obtain the County's SBE certification, nothing in the County Ethics Code would prohibit PHWD from seeking SBE certification with the County or contracting with MDX.

Although you have stated that you are not currently seeking to contract with Miami-Dade County, it is noted that previously, in INQ 17-177, you were advised that if PHWD planned to transact business with the County in the future, that the company could do so as long as it did not transact business with DTPW, the department which employs your spouse. Upon additional review, that opinion must be amended. This is because your spouse's County position as a Departmental Director is defined as "Departmental Personnel"³ by Section (b)(5) of the County Ethics Code. Persons classified as "Departmental Personnel" are

be funded or staffed by Miami-Dade County. This amended statute is the subject of pending litigation between the State of Florida and Miami-Dade County.

² SBD does not provide SBE certification for governmental entities other than Miami-Dade County. However, as addressed previously in this memorandum, other governmental entities will sometimes use SBD's list of County SBE certified companies as part of their vendor application review process.

³ Miami-Dade Code Section 2-11.1(b)(5) states: The term "departmental personnel" shall refer to the Manager, his or her department heads, the County Attorney, and all Assistant County Attorneys.

excluded from the Section (c)(2) provision permitting County employees and their immediate family members to transact business with the County on a limited basis.⁴ Consequently, this opinion will serve to clarify that as long as your spouse is employed in a “Departmental Personnel” position, PHWD will be prohibited from transacting business with Miami-Dade County.

This opinion is limited to the facts as you presented them to the Commission on Ethics regarding conflicts under Subsections (c)(2) and (d) of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Other conflicts based on directives from MDX or otherwise under state or federal law may apply. Questions regarding the state ethics laws should be addressed to the State of Florida Commission on Ethics.

Please submit this letter to the relevant County Departments and MDX. The Ethics Commission does not submit this memorandum on your behalf.

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.

⁴ Miami-Dade Code 2-11.1 Section (c)(2) provides that certain County employees or their immediate family members may enter into contracts with the County under certain circumstances, but that “Departmental personnel is excluded from this provision: “[excluding departmental personnel as defined by subsection (b)(5)] or his or her immediate family as defined by subsection (b)(9)...”