



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Rita Silva, 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 2020-127 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: November 24, 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 November 19, 2020, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Department of Transportation and Public Works Request for Proposals for Rapid Mass Transit Solution for the North Corridor – RFP No. 01432. 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 member of the selection committee made disclosures on his Neutrality/Disclosure Form and/or Resume that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “Jimmy Usma, Department of Transportation and Public Works, indicated on his resume that he was previously employed at Siemens Energy & Automation, Inc. from 2005 to 2008. Note that Siemens Mobility, Inc. is a member of the team structure proposed by North Corridor Transit Partners LLC (Fengate), a respondent to the solicitation.”

We conferred with Mr. Usma. He is the Assistant Director of Rail Services at the Miami-Dade County Department of Transportation and Public Works (hereinafter “DTPW”). He

confirmed that he previously worked for Siemens Energy & Automation, Inc. (hereinafter “Siemens”). He stopped working for Siemens in June 2008. He indicated that the termination of his employment from Siemens was amicable. He has no current ownership interest in or other financial interest in the company.

Mr. Usma also indicated that he has a close friendship with two individuals at Siemens: Miguel Gimenez- who serves as the Business Development Manager, Digital Solutions; and Darwin Newton- who serves as the Head of Operations, Smart Infrastructure Electrical Services. Neither Mr. Gimenez nor Mr. Newton are listed in the proposal submitted that includes Siemens. They are not identified as having any defined roles should this project be awarded to the proposal team that includes Siemens. Further, they are not listed as one of the individuals that will appear and present before this selection committee.

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. Usma 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. Usma since he stopped working for Siemens over twelve 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 noted above, Mr. Usma noted that he has a close social friendships with two individuals that work at Siemens: Miguel Gimenez and Darwin Newton.

Somewhat similar to the circumstances in this case, this office previously considered whether the assistant director of Miami-Dade Fire Rescue (MDFR) could serve as a

member of a County negotiation committee, where the representative of one of the recommended proposers, was a personal friend. We opined that technically, the assistant director of MDRR did not have a prohibited conflict serving on a County negotiation committee where the lobbyist for one of the bidders happened to be his fraternity brother/personal friend, because the assistant director would not personally benefit from the vote and he did not have a prohibited relationship with any of the parties. However, the COE stated that in order to avoid an appearance of impropriety created by the close social relationship, the assistant director should consider withdrawing from the negotiation committee because “in all procurement matters, where appearances of integrity and fairness are paramount, “there is a need for the County to conduct its procurement operations in a manner that will not create appearances of impropriety, favoritism or undue influence... [which] may require a higher standard of ethics...”” See INQ 16-242, citing to INQ 14-242.¹

In contrast, in INQ 18-78, this office considered whether a prospective member of a selection committee may serve on the committee, where the prospective selection committee member maintained a close personal friendship with an employee of one of the respondents to the project. In that case, the COE again noted that the prospective member of the selection committee did not have a prohibited conflict of interest under the County Ethics Code because the County employee would not personally benefit from the vote and he did not have a prohibited relationship with any of the parties involved in the solicitation. However, this office did not find that there was any appearance of impropriety in this scenario because the individual that the prospective selection committee member maintained a personal friendship with at the respondent company was not listed in the proposal submitted, he had nothing to do with the company’s response to that particular solicitation, and the individual was not going to be making any type of presentation before the selection committee regarding that project.

In this case, neither of the two individuals that Mr. Usma maintains a close social friendship with -Mr. Gimenez and Mr. Newton- are listed in the proposal submitted that includes Siemens; they are not identified as having any defined roles should this project be awarded

¹ See also INQ 14-246 (An FIU Professor of Architecture will not have a prohibited conflict serving on a County selection committee where she has had professional relationships with some of the bidders to be considered by the selection committee, because the Professor of Architecture would not personally benefit from the vote and she does not have a prohibited relationship with the parties. However, in order to avoid an appearance of impropriety created by the Professor’s close professional relationships with some of the bidders, the County is advised to reconsider whether this person is an appropriate appointee for this selection committee); INQ 19-99 (a member of the selection committee for a project, whose spouse previously worked for a respondent to this project, Perez & Perez and Associates, should not serve on this selection committee, due to the possible appearance of impropriety, as she maintains a close social relationship with employees and the owner of the firm) and INQ 20-40 (it is recommended that ISD should consider withdrawing a prospective selection committee member from a selection committee due to the possible appearance of impropriety created by his close social/professional relationship with a current employee of one of the responding firms to a solicitation, who was identified by the respondent firm as a key member of their team, and was also identified as one of the individuals that would make a presentation before the selection committee).

to the proposal team that includes Siemens; and they are not listed as one of the individuals that will appear and present before this selection committee.

Opinion: Consequently, we see no reason why Mr. Usma should not serve on this committee because he does not have a conflict of interest under the Ethics Code.

Further, there does not appear to be any appearance of impropriety created by his service on this committee as neither of the two individuals that Mr. Usma maintains a close social friendship with -Mr. Gonzalez and Mr. Newton- are listed in the proposal submitted that includes Siemens; they are not identified as having any defined roles should this project be awarded to the proposal team that includes Siemens; and they are not listed as one of the individuals that will appear and present before this selection committee. *See* INQ 18-78.

Mr. Usma is however reminded that the selection committee, for which he will serve as a voting member, operates under the County's Cone of Silence, Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by Commissioners, City staff, selection committee members, and prospective contractors, as well as their lobbyists and consultants, regarding any procurement matter during the time that the Cone is in effect. Mr. Usma will therefore be prohibited under the Cone, from communicating with his friends Mr. Gimenez and Mr. Newton regarding this project, as Siemens Mobility, Inc. is a member of the team structure proposed by North Corridor Transit Partners LLC (Fengate), a respondent to the solicitation.

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.