



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jorge Vital, 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 2020-136 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: December 29, 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 December 15, 2020, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade Department of Transportation and Public Works Request to Advertise for Professional Services for Bridge Structural Engineering Projects – Project No. E20-DTPW-02. 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 four 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) Franchesca Taylor, Department of Transportation and Public Works, indicated on her Neutrality/Disclosure Form that she currently manages projects that include or have included respondents to the solicitation; (2) Gabriel Delgado, Department of Transportation and Public Works, stated on his Neutrality/Disclosure Form that his brother, Domingo Delgado, currently works for BCC Engineering, LLC, a respondent to the solicitation; (3) German A. Arenes, Department of Transportation and Public Works, stated on his Neutrality/Disclosure Form that Mr. Albert Hernandez, P.E., his former supervisor, works for HNTB Corporation, a subconsultant to AECOM Technical Services, Inc, a respondent to the solicitation; and (4) Jacqueline Alcina, Department of Regulatory and Economic Resources, indicated on her

resumé and Neutrality/Disclosure Form that she was employed by HNTB Corporation from 1999 to 2004. HNTB Corporation is a subconsultant for AECOM Technical Services, Inc, a respondent to the solicitation.

The Internal Services Department indicated that they would replace Gabriel Delgado and German A. Arenes. This memorandum will thereby only address the OCA's findings as to Ms. Taylor and Ms. Alcina.

We conferred with Ms. Taylor. She is Principal Planner at the Miami-Dade County Department of Transportation and Public Works (hereinafter "DTPW"). She confirmed that she currently manages projects that include or have included respondents to the solicitation, specifically, WSP USA Inc., Goal Associates Inc., and GEOSOL Inc. In her role as project manager for the above identified entities, she manages the scope of work for each project the entities are assigned. She also reviews and approves invoices and deliverables and offers direction on work tasks for the listed entities. She does not believe that her current supervision of the various entities would impair her independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation. She does not maintain any close friendships with any of the employees at these entities.

We have also conferred with Ms. Alcina. She is an Engineer II in the Water and Wastewater Division at the Miami-Dade Department of Regulatory and Economic Resources (RER) Division of Environmental Resources Management (DERM). She confirmed that she previously worked for HNTB Corporation (hereinafter "HNTB"). She stopped working for HNTB in 2004. She indicated that the termination of her employment from HNTB was amicable. She has no current ownership interest or other financial interest in the company. She also does not have any business, close social, or other relationship with any current employee at the company. Ms. Alcina believes she 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 Ms. Taylor and Ms. Alcina have a voting conflict of interest under Section (v) of the County Ethics Code because they will not be directly affected by the vote and they do not currently have any of the enumerated relationships with any 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 Ms. Alcina since she stopped working for HNTB over six 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, Ms. Taylor stated that she currently manages projects that include or have included respondents to the solicitation, specifically, WSP USA Inc., Goal Associates Inc., and GEOSOL Inc. The COE has indicated in various informal opinions that, absent some other factor, the mere fact that a selection committee member has interactions with a respondent in connection with the member's County duties would not create an appearance of a conflict that could affect the public trust in the integrity of the procurement process. *See* INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, and INQ 18-230. The COE's opinions note that, in fact, it may be valuable to have an individual on a selection committee who is personally familiar with the work of one or more of the responding firms, particularly where the member also has some special expertise in the services that are being sought by the County. *See* INQ 18-21, INQ 18-47, and INQ 18-230.

As to Ms. Alcina, she disclosed that she was employed by HNTB, a subconsultant for AECOM Technical Services, Inc, a respondent to the solicitation. As her employment at HNTB ended over six years ago- on an amicable basis, and she does not have any business, or close social relationship with current employees at the entity, it is our opinion that her prior employment at HNTB 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 Ms. Taylor and Ms. Alcina should not serve on this committee because they do not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by their service on this committee.

However, Ms. Taylor is reminded that the selection committee, for which she 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. Ms. Taylor will therefore be prohibited under the Cone, from communicating with any of the responding entities to this solicitation that she currently supervises, regarding this project.

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.