



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

Phone: (305) 579-2594 · Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO: Thomas B. Davis, Esq.
Director of Policy and Legislation Division, OCA

Justin Espagnol, Non-Voting Chairperson
Internal Services Department

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-16 [Voting Conflict of Interest § 2-11.1(v); Prohibition on
official actions involving personal financial interest § 2-11.1(n);
Appearances of Impropriety]

DATE: February 25, 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 February 6, 2020, prepared in connection with the Appointment of Selection Committee for Miami-Dade County Department of Transportation and Public Works Request to Advertise for Professional Services for Bridge Inspection and Structural Analysis-Project No. E19-DTPW-08. 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, Ms. Lydia Carolina Alfonso stated on her neutrality/disclosure form that her spouse, Juan Alfonso, was a prior employee of AECOM. Also, Mr. Keith Emard stated on his neutrality/disclosure form that his brother, Mr. Lee Emard, currently works for Atkins North America (hereinafter "Atkins"). Both AECOM and Atkins are respondents on this project.

We conferred with Ms. Alfonso. She works as a Construction Projects Manager for the Miami-Dade County Department of Cultural Affairs. She stated that her husband is a

current AECOM employee. He is Vice-President and Florida Business Unit Leader at AECOM. He also owns stock in AECOM. As noted above, AECOM is a respondent on this project.

We have also conferred with Mr. Emard. He works as a Structural Inspection supervisor for the Miami-Dade County Department of Transportation and Public Works (DTPW). He has been so employed for 34 years. He confirmed that his brother works for Atkins as a consultant. He candidly indicated that he may not be suitable for this selection committee because he did not know whether he could be fair and impartial when evaluating the proposals. He also indicated that it may create a hardship if he served on the committee, as selection committee members have to also adhere to the cone of silence.

Discussion: This agency conducts reviews of these issues under Section 2-11.1(v) of the County Ethics Code, which governs voting 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.

Neither Ms. Alfonso or Mr. Emard have a voting conflict under Section 2-11.1(v) of the Ethics Code as they do not have any of the enumerated relationships with a respondent to the project.

However, the Ethics Code at Section 2-11.1(n) prohibits County employees and County officials from participating in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. "Immediate family" is defined in Section 2-11.1(b)(9) of the Ethics Code, as spouse, domestic partner, parents, stepparents, children and stepchildren of the person.

The Ethics Commission has opined that Section 2-11.1(n) of the Ethics Code, would prohibit an individual from serving on a selection committee if their immediate family member has a financial interest in one of the responding firms to the solicitation. *See* RQO 11-11 and INQ 11-133.

As to Ms. Alfonso, her spouse is the Vice President- Florida Business Unit Leader of AECOM, a respondent to this solicitation. He also owns stock in AECOM. Under Section (n) of the Ethics Code, Ms. Alfonso is prohibited from serving on this selection committee because her official actions on the committee will directly or indirectly affect a business in which her spouse has a financial interest. *See* RQO 11-11 and INQ 11-133.

As to Mr. Emard, his brother is a consultant for Atkins, a respondent to this solicitation. While “brother” is not included in the definition of “immediate family” in the Ethics Code, we do not recommend that he serve on this selection committee. 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.

In prior informal opinions, the Ethics Commission has recommended that a County employee should not serve on a selection committee, even though not specifically prohibited by the Ethics Code, if the selection committee member has a familial relationship with an individual that has some ownership interest in one of the responding firms.

Specifically, in INQ 19-66, the Ethics Commission recommended that an individual should not serve on this selection committee, due to the possible perception of a conflict of interest given that his brother owned an entity, which was listed as a consultant to one of the proposing firms on this project.

Similarly, in INQ 17-214, the COE recommended that an individual not serve on a selection committee where his brother-in-law was the owner and principal of one of the sub-consultants for a responding prime contractor, even though it was not specifically prohibited by the Ethics Code. The COE in that instance stated that the County employee should not serve on the selection committee due to the possible perception of a conflict of interest, given his familial relationship with the owner of a sub-consultant for one of the competing prime contractors.

In this case, Mr. Emard did not know whether his brother owned an ownership interest in Atkins, nor did he know whether or not his brother would receive any type of financial benefit in the event Atkins is awarded the contract.

He was however, clear that as a result of his brother’s employment with Atkins, he did not know whether he could be fair and impartial when evaluating the proposals. He also indicated that it may create a hardship if he served on the committee, as selection committee members have to adhere to the cone of silence.

The procurement process in the County, as you are aware strives to follow procedures that not only abide by the Ethics Code, but also serve to promote the highest values of integrity, transparency and fairness. *See* INQ 17-281.

Based on the representations made by Mr. Emard, it is our recommendation that he should not serve on this selection committee as he has specifically stated that he did not know whether he could be fair and impartial when evaluating the proposals and may have difficulty adhering to the Cone of Silence. This recommendation should not in any way be

interpreted to suggest that Mr. Emard, whose honesty and candor in this matter are appreciated, would not be a suitable or appropriate person to serve on a different selection committee.

Opinion: Consequently, Ms. Alfonso should be removed from this selection committee, pursuant to Section (n) of the Ethics Code, which prohibits an individual from serving on a selection committee if their immediate family member has a financial interest in one of the responding firms to the solicitation.

As to Mr. Emard, although not strictly prohibited by the County Ethics Code, it is our recommendation that he not serve on this selection committee due to the fact that his brother works for one of the responding firms to this solicitation and he has indicated that he did not know whether he could be fair and impartial when evaluating the proposals and may have difficulty adhering to the Cone of Silence.

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.