



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Manuel O. Garcia  
Assistant Director, Construction & Maintenance, DTPW

**FROM:** Martha D. Perez  
General Counsel

**SUBJECT:** INQ 20-17

**DATE:** February 27, 2020

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Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding conflict of interest provisions that may apply following your retirement from the County, specifically as it relates to your prospective employment with a County vendor and Section 2-11.1(q) of the County Ethics Code- the Two-Year Rule..

#### Background

You state that you will be retiring in December 2020 (or sooner) from your County position as Assistant Director of Construction & Maintenance for the Department of Transportation & Public Works (DTPW). You describe your duties and responsibilities at DTPW to include oversight over the maintenance operations, construction projects and permitting for work within the public rights-of-ways, and supervision of 316 employees under your organization.

You state that you were part of the negotiation team for RFP- 01058, Advanced Traffic Management Systems (ATMS).<sup>1</sup> Sometime in November 2019, you were contacted by the proposer which was recommended for the award of the RFP (the initial recommendation for award

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<sup>1</sup> Inquiry into RFP-01058 revealed that: The contract will provide: an upgrade of the Advanced Traffic Management System for traffic signal controllers; engineering services related to traffic signal controls; and, design and construction services for the implementation of traffic detection systems. The RFP was issued on October 4, 2018; the selection committee made recommendations to negotiate with Siemens on February 25, 2019; negotiations took place during the following months of 2019, culminating in an award recommendation made on October 30, 2019. As a result of disputed issues related to the bid, the recommendation was rescinded on January 22, 2020 and the negotiation committee resumed negotiations on January 29, 2020, which resulted in an award recommendation recommending the same proposer on February 19, 2020. See Memorandum from Mayor Gimenez on Recommendation for Approval to Award Contract RFP No. 01058, ATMS stamped by the Clerk of the Board, 2/19/2020

was submitted on 10/30/2019). The proposer offered you employment as Senior Project Manager for the RFP construction project with the County.<sup>2</sup>

You state that your responsibilities under the proposed employment with the County Contractor would include: *Oversight of the design and construction activities* for the deployment of vehicle and pedestrian detection; oversight and guidance for related activities, including survey, design, and engineering, *permits and approvals* and field deployment; *management* of interface and *related communication between all involved in the installation phase; and, facilitating issue resolution.*<sup>3</sup> You state that the firm will have to pull permits for the locations they are working on the County's rights of way but that the project will be managed by DTPW's Traffic Engineering division.

You indicated during our telephone discussion that, in your private role as Senior Project Manager working for the County Contractor, you would not be dealing with personnel or employees you previously supervised as Assistant Director for DTPW although clearly the project would be monitored and managed by DTPW.

### Discussion

Section 2-11.1(q) of the County Ethics Code- *The Two-Year Rule*- does not prohibit County employees from working with or for a County vendor or contractor, provided the former County employee does not engage in lobbying on behalf of that County vendor/contractor. RQO 06-54; RQO 11-24

The remaining question is whether you may be involved in certain activities concerning the RFP contract between the County Contractor and DTPW. To that end, the Two-Year Rule prohibits a County employee who separated from County employment less than two years, from *lobbying* any County officer, departmental personnel or employee. The ordinance is designed to limit a former employee's ability to use his or her former County position and contacts for personal benefit or business interests through lobbying, to the detriment of others who do not have County connections. (emphasis added)

Lobbying activities described in the Two-Year Rule are more expansive than those found under the general lobbying ordinance found at Section 2-11.1(s) of the County Ethics Code. *See* RQO 01-38. Whereas the lobbying ordinance characterizes lobbying as advocating for issues that will foreseeably be decided or recommended by the Board of County Commissioners, the Mayor or County board, the Two-Year Rule makes no such limiting connection to matters that will foreseeably be brought before voting bodies or the Mayor.

Consequently, although you are not prohibited from working for the referenced Contractor and performing consulting services related to County DTPW projects, you **are prohibited** from advocating for decisions that may be made at the sole discretion of any County personnel. For

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<sup>2</sup> At the time of this inquiry, a contract recommendation had been submitted recommending Siemens. As of the date of this response, a second contract recommendation has been submitted recommending the same proposer, Siemens.

<sup>3</sup> Job description provided by requestor includes additional responsibilities which were not highlighted.

example, you are prohibited from arranging, representing or participating in any meetings, negotiations, presentations, interactions or other discussions on behalf of the Contractor, if the meetings or discussions are convened for the purpose of persuading or influencing County personnel to take official action or make an official decision or recommendation regarding the contract/ agreement/project. *See* RQO 00-145; RQO 12-09

While you may interact with County personnel in connection with ministerial matters, you must be careful not to attempt to persuade anyone in connection with a discretionary decision. *See* INQ 16-75. Also, while you may share technical information, you may not attempt to influence the decision of any County personnel. *See* RQO 12-09; INQ 17-114; INQ 18-37

A cursory review of the description of the position which has been offered to you suggests that your duties and responsibilities may involve communications of the type prohibited under the Two-Year Rule.

Two other provisions of the County Ethics Code which may impact County employees are the following:

- Section 2-11.1(g) of the County Ethics Code- *Exploitation of Official Position*- which prohibits the use of one's official County position to secure a privilege or exemption for himself or others. Careful attention must be paid to ensure that one is not using his official position or duties to bestow a benefit for himself or a third party. For example, any official actions which may have been taken to benefit yourself or the proposer which offered you employment may implicate this section.
- Section 2-11.1(h)- *Confidential information*- which prohibits the disclosure of confidential information gained through one's position with the County or the use of such information, directly or indirectly, for personal gain or benefit. If the decision-making process on the services the Contractor provides to the County is *related* to the work you perform or supervise for DTPW, you should consider whether you have access to confidential information gained through your position which may give the Contractor (prospective employer) an advantage in its dealings with the County. *See* INQ 16-109; INQ 17-114; INQ 18-37.

Although there is no indication at this time to suggest any improper actions on your part, you are reminded that the County Ethics Code represents a minimal standard of conduct for those who serve in government.

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.