



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Justin Espagnol, Non-Voting Chairperson
Internal Services Department

Phillip G. Edwards, Esq., Senior Research Analyst
Office of the Commission Auditor (OCA)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-39 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: May 4, 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 April 22, 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 Transit and Public Works Projects – Project No. A19-DTPW-01. 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 three 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) Isabel Padron indicated on her Neutrality/Disclosure Form and resumé that she was an employee of Bliss & Nyitray, Inc. from 1986 to 1987. Bliss & Nyitray is a sub-consultant for two respondents (Wolfberg Alvarez & Partners, Inc. And R.E. Chisholm Architects, Inc.) to this project. (2) Ammad Riaz indicated on his Neutrality/Disclosure Form and resumé that he was an employee of HNTB Corporation from 1993 to 1999. HNTB Corporation is a sub-consultant for a respondent (ACAI Associates, Inc.) to this project. (3) Rashid Istambouli indicated on his Neutrality/Disclosure Form and resumé that he was an employee of Nova Consulting, Inc.

from 2001 to 2007. Nova Consulting, Inc., is a sub-consultant for two respondents (Bermello Ajamil & Partners, Inc. and Zyscovich, Inc.) to this project.”

We have conferred with Ms. Padron. She is Chief of the Design and Engineering Division at the Miami-Dade Department of Transportation and Public Works (hereinafter “DTPW”). She indicated that the termination of her employment from Bliss & Nyitray Inc. (hereinafter “B&N”) in 1987, was amicable. She has no current ownership interest in or other formal or financial interest in the company. She does not have any business, close social, or other relationship with any current employee at the company. She believes she can be fair and impartial when evaluating the respondents to this project.

We also consulted with Mr. Riaz. He is Chief of the Aviation Planning Division at Miami-Dade Aviation Department (hereinafter “MDAD”). He indicated that the termination of his employment from HNTB Corporation (hereinafter “HNTB”) in 1999, was amicable. He has no current ownership interest in or other formal or financial interest in the company. He does not have any business, close social, or other relationship with any current employee at the company. He believes he can be fair and impartial when evaluating the respondents to this project.

Further, we consulted with Mr. Istambouli. He is Senior Chief of the Division of Environmental Resource Management at Miami-Dade Department of Regulatory and Economic Resources (hereinafter “RER”). He confirmed that he previously worked for Nova Consulting, Inc. (hereinafter “Nova”). He stopped working for them in 2007. He has no other formal or financial interest in Nova. He does however maintain a close social relationship with five employees at Nova, including the owner of Nova and the owner’s sister (they held a baby shower for him when he had his first child). He indicated that due to their close social ties he did not feel comfortable serving on this committee; and he is not sure whether he would be partial to Nova when making his evaluation.

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.

With regard to Ms. Padron and Mr. Riaz, it does not appear that they 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 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 Ms. Padron and Mr. Riaz since Ms. Padron stopped working for B&N over thirty years ago, and Mr. Riaz stopped working for HNTB over twenty 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 Ms. Padron's employment with B&N ended over thirty years ago, and Mr. Riaz stopped working for HNTB over twenty years ago -both on an amicable basis, and they have no business, or close social relationship with any current employee at the respective entities that they worked for, it is our opinion that their prior employments would not create any appearance of impropriety or in any way detract from the County's conducting a fair and objective evaluation for this projects. *See* INQ 17-192, and INQ 18-261.

As to Mr. Istambouli, it does not appear that he 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 have any of the enumerated relationships with an entity affected by the vote.¹

Also, 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. Istambouli because he stopped working for Nova over 10 years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229.

However, as noted above, Mr. Istambouli has indicated that he maintains a close social relationship with five employees at Nova, including the owner of Nova and the owner's sister. He indicated that due to their close social ties he did not feel comfortable serving on this committee. More importantly, he stated that he is not sure whether he would be partial to Nova when making his evaluation.

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,

¹ Please note that while this may not be a direct violation of the County Ethics Code, Section 286.012, Florida Statutes states that, "If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice."

transparency and fairness. *See* INQ 17-281. As noted above, this agency, pursuant to Resolution No. R449-14, as well as Commission on Ethics Rule of Procedure 2.1(b), has provided input concerning appearance issues when they may raise a question regarding the objectivity of a selection committee member.

Based on the representations made by Mr. Istambouli, it is our recommendation that he should not be required to serve on this particular committee as he has specifically noted that he is not sure whether he would be partial to Nova when making his evaluation; and indicated that he did not feel comfortable serving on this committee due to his close social ties with the owner and other employees at Nova. Nova is a sub-consultant for two respondents (Bermello Ajamil & Partners, Inc. And Zyscovich, Inc.) to this project.

Opinion: Consequently, although not strictly prohibited by the County Ethics Code, it is our recommendation that Mr. Istambouli not serve on this selection committee due to his close social relationship with employees of Nova, a sub-consultant for two respondents to this solicitation, because in all procurement matters, appearances of integrity and fairness are paramount, as “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 17-281.

As to Ms. Padron and Mr. Riaz, we see no reason why they 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.

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.