



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Amado Gonzalez, A/E Consultant Selection Coordinator,  
ISD Procurement Management

Phillip G. Edwards, Esq.,  
Senior Research Analyst

**FROM:** Radia Turay, Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 20-40 [Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety]

**DATE:** May 5, 2020

**CC:** All COE Legal Staff

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Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed action.

**Facts:** We have reviewed your memorandum dated May 1, 2020, prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Internal Services Department Request to Advertise for Owner's Representative for Civil and Probate Courthouse Project – Project No. A19-ISD-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 a voting member of the selection committee made disclosures on his Neutrality/Disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, Jorge I. Perez stated on his Neutrality/Disclosure form that he was employed by AECOM from 1996-2013. AECOM Technical Services, Inc. is a respondent to this project.

We have conferred with Mr. Perez. He states that he is a Senior Registered Architect in the Facilities Infrastructure Management Division at Miami-Dade Internal Services

Department (ISD). He currently serves as Project Manager on a Miami-Dade County project for which AECOM is a consultant.

Mr. Perez indicated that the termination of his employment from AECOM in September 2003 was amicable. He has no current ownership interest in or other formal or financial interest in the company.

However, Mr. Perez stated that he has some professional acquaintances that work for AECOM. He indicated that from time to time, he might call one of his professional acquaintances to consult with them regarding professional matters.

Further, he works with Scott Tao, a line architect at AECOM, from time to time on projects outside of his Miami-Dade County employment. Mr. Perez indicated that he does not have any formal partnership or business relationship with Mr. Tao, but they work together sporadically on various projects. He stated that they have no outstanding debts between them. Mr. Tao is not a principal at AECOM.

We conferred with Mr. Amado Gonzalez, the ISD non-voting chairperson for this selection committee. Mr. Gonzalez indicated that Scott Tao is listed in the proposal submitted by AECOM. Mr. Tao is listed as one of the participants that could make a presentation before the selection committee. AECOM's proposal also identifies Mr. Tao as a key support staff member of the AECOM team.

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. Perez 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.

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 since Mr. Perez stopped working for AECOM over six years ago. *See* INQ 16-118, INQ 17-174, INQ 17-183, and INQ 18-229.

Notwithstanding, 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. Perez stated that he currently serves as Project Manager on a Miami-Dade County project for which AECOM is a consultant. 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.

However, Mr. Perez also noted that he has some social/professional acquaintances that work for AECOM. Of particular concern is his friendship with Scott Tao. Mr. Tao is an architect at AECOM. Mr. Perez indicated that he works with Mr. Tao from time to time on matters outside of his Miami-Dade County employment. Mr. Perez explained that they do not have any formal partnership or business relationship, but they work together sporadically on various projects.

Somewhat similar to the circumstances in this case, this office 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 MDFR 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..."<sup>1</sup> *See* INQ 16-242, citing to INQ 14-242.<sup>1</sup>

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<sup>1</sup> *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

In contrast, in INQ 18-78, this office again 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, 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 our case, Mr. Perez, a prospective voting member of this selection committee maintains a social and professional relationship with Mr. Tao, an employee of AECOM, a respondent to this solicitation. Unlike INQ 18-78, but similar to INQ 16-242, Mr. Tao is listed in the proposal submitted by AECOM. He is identified as one of the members of the AECOM team that could make a presentation before the selection committee. He is further identified as a key support staff of the AECOM team on this project.

Opinion: Consequently, consistent with the COE's holding in INQ 16-242, we do not find that Mr. Perez's service on this selection committee presents a conflict of interest under the County Ethics Code because he does not have a current employment, financial or business relationship with AECOM or Mr. Tao; nor does he have any personal interest in the contract itself. *See* INQ 16-242, INQ 19-99, and INQ 14-246.

However, in order to avoid an appearance of impropriety created by the close social/professional relationship between Mr. Perez and Mr. Tao (who is identified by respondent, AECOM, as a key member of their team), ISD should consider withdrawing Mr. Perez from this selection 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; INQ 14-246, and INQ 19-99.

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.

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committee); and 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).

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.