



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Gabriel Delgado, P.E.
Project Manager, Highway Bridge Engineering
Miami-Dade Department of Transportation and Public Works

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 20-58 [Recommending Professional Services, Section 2-11.1(p),
County Ethics Code]

DATE: June 16th, 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:

You are a Project Manager in the Engineering, Planning and Development Division at Miami-Dade Department of Transportation and Public Works. You advise that you are frequently asked to be included as a reference by outside consultants/vendors who you oversee/supervise in your County employment.

You stated that you are not currently serving on any County selection committee. Usually, the consultants/County vendors ask to include you as a reference for work that they are seeking in other municipalities **outside** of County government.

Issue:

Whether you can be used as a reference by a County vendor/consultant, with which you are familiar through your County position, in connection with the firm's efforts to obtain work outside of County government.

Discussion:

In general, there is no provision in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance that explicitly prohibits a County employee from serving as a reference for a County vendor/consultant, with which they are familiar through their County position, in connection with the firm's efforts to obtain work outside of County government.¹ However, the following sections of the County Ethics Code should be addressed:

- Sec. 2-11.1(p) of the Ethics Code, prohibits County employees from recommending the services of a lawyer or law firm, architect or architectural firm, public relations firm, or any other person or firm, professional or otherwise, to assist in any transaction involving the County or any of its agencies, provided that such recommendation may properly be made when required to be made by the duties of office and in advance at a public meeting attended by other County official or employees.

While this section does not address the issue of County employees providing letters of reference for a County Contractor when those recommendations are not made to assist in a transaction which involves the County or its agencies, the COE has advised that such letters of reference should avoid express advocacy which could be construed as lobbying and there should not be any payment or other incentive for providing the reference. *See* INQ 13-318 and INQ 12-52. The COE has therefore suggested that County employees should only respond to inquiries rather than engaging in any express advocacy for a County contractor/County vendor; and, the County employee should also obtain approval from their supervisor prior to providing the reference. *See* INQ 16-47 and INQ13-318.

- Sec. 2-11.1(g) prohibits County employees from exploiting County resources to secure special privileges or exemptions for him/herself or others. We have not interpreted that section to disallow a County employee/official from serving as a reference for a County vendor seeking additional work outside of the County, even where the employee/official is identified in the communication by his or her official title. *See* INQ 17-243, INQ 10-133, INQ 12-175. However, you are cautioned to avoid excessive use of County resources for any project that may not serve a public purpose. *See* RQO 00-15, RQO 02-17; and INQ 13-144.
- Section 2-11.1(h) prohibits County employees from accepting employment or engaging in any business or professional activity which he or she might reasonably

¹ Please note that RQO 05-27 states that a proposer may not seek a professional reference from a **Miami-Dade County selection committee member** but may use a prior reference it obtained before the advertised solicitation. *See* RQO 05-27. In this case, you have specifically stated that you do not serve on any Miami-Dade County selection committee and that the reference would be provided for work that the consultants are seeking outside of Miami-Dade County government.

expect would require or induce him or her to disclose confidential information acquired by him or her by reason or his or her official position, nor shall he or she in fact ever disclose confidential information garnered or gained through his or her official position with the County, nor shall he or she ever use such information, directly or indirectly, for his or her personal gain or benefit. Therefore, you must ensure that you providing a reference would not require you to disclose confidential information acquired through your position at the County.

Conclusion:

While it would be permissible for a County consultant/County vendor to utilize you as a reference in connection with the firm's efforts to obtain work **outside** of County government, based on your familiarity with their work in your County position, consistent with the COE prior opinions, we recommend that such letters of reference should avoid express advocacy which could be construed as lobbying and there should not be any payment or other incentive for providing the reference.

Further, in addition to the considerations previously mentioned above, please obtain approval from your supervisor prior to you providing the requested reference.

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.

