



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jorge Vital, 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 20-60 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: June 17, 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 June 16, 2020, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Department of Transportation and Public Works Request to Advertise for Design Services for Roadway Improvements to SW 127th Avenue from SW 136th Street to SW 128th Street – Project No. E19-DTPW-05. 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 member of the selection committee made disclosures on her neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that “Gisela Cubeddu, Water and Sewer Department, indicated on her Neutrality/Disclosure Form that her husband was an employee of ADA Engineering, Inc. between July 2013 and January 2014. ADA Engineering is a subconsultant for a respondent (Goal Associates, Inc.) to the solicitation.”

We have conferred with Ms. Cubeddu. She is Senior Construction Specifications Writer at the Miami-Dade Water and Sewer Department (hereinafter “WASD”). She stated that her spouse is currently an employee at the City of Miramar. She confirmed that her spouse previously worked for ADA Engineering, Inc. (hereinafter “ADA”). He was a Senior

Inspector. He stopped working for them in 2014. His separation from ADA was amicable. He has no other formal business or financial interest in ADA. She nor her spouse currently maintain any close social, or other relationship with employees at ADA. She believes she can be fair and impartial when evaluating the respondents to this project.

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 Ms. Cubeddu has a voting conflict of interest under Section (v) of the County Ethics Code because she would not be directly affected by the vote and she does not have any of the enumerated relationships with an entity affected by the vote.

Additionally, Section 2-11.1(n) of the County 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, would not apply as neither Ms. Cubeddu nor her spouse have any current financial interest in ADA. See RQO 11-11 and INQ 11-133.

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. Cubeddu's spouse's employment with ADA ended over six years ago on an amicable basis, and they have no business, or close social relationship with any current employee at ADA, it is our opinion that her spouse's prior employment with ADA would not create any appearance of impropriety nor will it detract from the County's conducting a fair and objective evaluation for this project. *See* INQ 17-192, and INQ 18-261.

Opinion: Consequently, we see no reason why Ms. Cubeddu should not serve on this committee because she does not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by her 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.