



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Pablo Valin, Senior A/E Coordinator
Miami-Dade County Internal Services Department

FROM: Radia Turay, Esq., Staff Attorney
Commission on Ethics and Public Trust

Martha D. Perez, General Counsel
Commission on Ethics and Public Trust

SUBJECT: INQ 20-78 [Organizational Conflict of Interest]

DATE: July 24, 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: The Miami-Dade County Internal Services Department (ISD) is currently in the process of revising its Notice to Professional Consultants (NTPC) for architecture and engineering solicitations.

You have forwarded for our review a draft of the revised **Section 1.16** of the NTPC, which addresses organizational conflicts of interest.

Discussion: As background, the Ethics Commission issued RQO 17-02 along with an Amended Letter of Instruction to the County on April 13, 2017, delineating the COE's limited procedural role in the handling of organizational conflicts of interest (OCIs).

The Amended Letter of Instruction specifically states that the COE's role in the handling of OCIs in connection with a contract with a local government entity will be limited to the following circumstances:

- 1) The terms of the local government contract or proposal must state the standards by which the organizational conflicts of interest will be determined.

- 2) Disclosures of organizational conflicts of interest shall be reported by the local government entity to the Ethics Commission.
- 3) The local government entity will analyze and address organizational conflicts of interest on a case by case basis.
- 4) The local government entity's decision of how to address an organizational conflict of interest shall be subject to the approval of the Executive Director of the Ethics Commission or his/her designee, who will render his/her determination promptly. Disapproval by the Executive Director or designee may be appealed by the local government entity to the Ethics Commission board.
- 5) Copies of decisions regarding the resolution of a reported conflict of interest shall be forwarded to the Ethics Commission.

In accordance with the procedures set forth in the Amended Letter of Instruction, the COE is not responsible for identifying or determining the existence of OCIs in the County's procurement process, but rather, that responsibility falls on the County officer or department involved in the respective procurement. Provided that an OCI is identified by the County, the COE's role is limited to the approval or disapproval of the measures implemented by the County to resolve the OCI. *See* INQ 17-198.

After reviewing the draft of the revised **Section 1.16** of the NTPC, please find our suggested edits below, highlighted in yellow, for your consideration.

DRAFT SUBMITTED BY ISD

1.16 ORGANIZATIONAL CONFLICTS OF INTEREST

Questions by any bidder, proposer, contractor, or subcontractor regarding potential organizational conflicts pertaining to its own bid; or by the local government contracting officer or County client department; regarding potential organizational conflicts pertaining to any bidder, proposer, contractor, or subcontractor shall be addressed pursuant to the Commission on Ethics and Public Trust (COE) [*Amended Letter of Instructions Organizational Conflict of Interest*](#) issued on April 13, 2017. Per the aforementioned document, the Client Department shall identify, disclose, and submit a specific methodology to address any potentially existing or future organizational conflict of interest by the bidder, proposer, contractor, or subcontractor. The Commission on Ethics shall evaluate the request based on standards established under the Federal Acquisition Regulation (FAR) at [48 CFR § 9.5](#) (2013) to make its determination or its approval. Determinations by the COE Executive Director or his/her designee may be appealed to the COE Board by (Enter Client Department).

EDITS SUGGESTED BY COE

1.16 ORGANIZATIONAL CONFLICTS OF INTEREST

Questions regarding potential organizational conflicts (OCI) by any bidder, proposer, contractor, or subcontractor, pertaining to the bid shall be submitted prior to the submittal date and will be addressed in accordance with the Commission on Ethics and Public Trust (COE) [*Amended Letter of Instructions Organizational Conflict of Interest*](#) issued on April 13, 2017. Per the aforementioned document, the Client Department shall identify, disclose to the COE, analyze, and submit a specific methodology to address any potential existing or future organizational conflict of interest by the bidder, proposer, contractor, or

subcontractor. Provided that an OCI is identified by the Client Department, the Executive Director of the Ethics Commission or his/her designee, will approve or disapprove the measures implemented by the County to resolve the OCI. Disapproval of such measures by the COE Executive Director or his/her designee may be appealed to the COE Board by (Enter Client Department).

Conclusion: After reviewing the draft of the revised **Section 1.16** of the NTPC, please find our suggested edits above, highlighted in yellow. Please review these proposed edits with your supervisors, Department Director and the County Attorney, prior to the form being finalized.

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.