



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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

Jorge Vital, Non-Voting Chairperson
Internal Services Department (ISD)

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

SUBJECT: INQ 20-80 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: July 27, 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 July 24, 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 Professional Services Agreement for Engineering Services for Department of Transportation and Public Works – Project No. E19- DTPW-12. 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 his resume that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes: Javier Heredia, Department of Transportation and Public Works, stated on his Neutrality/Disclosure Form that he was the recipient of the Kimley-Horn Scholarship in December 1995 while at Florida International University. Kimley-Horn & Associates, Inc. is a respondent to this solicitation.

We conferred with Mr. Heredia. He is a Senior Professional Engineer at the Miami-Dade County Department of Transportation and Public Works (DTPW). He confirmed that in 1995, while he was a student at Florida International University (FIU), he was the recipient of a Kimley-Horn Scholarship, in the amount of \$1000. However, he never performed any

work for Kimley-Horn & Associates, Inc. (Kimley-Horn), a respondent to this solicitation. He does not have any formal personal, business or financial interest in Kimley-Horn. He does not maintain any close social, or other relationship with employees at Kimley-Horn. He believes he 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 serves 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.

In this case, it does not appear that Mr. Heredia has a voting conflict under Section 2-11.1(v) of the Code, because he will not be directly affected by the vote and he does not have any of the enumerated relationships with the respondents to the project.

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 Mr. Heredia never worked for Kimley-Horn, he does not have any financial interest in the entity, and he does not have any business, or close social relationship with current employees at the entity, it is our opinion that the fact that he received a scholarship from Kimley-Horn approximately twenty-five years ago while he was a student at FIU, would not create any appearance of impropriety or in any way detract from the County's conducting a fair and objective evaluation for this project.

Opinion: Consequently, we see no reason why Mr. Heredia should not serve on this selection committee because he does not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by his service on the 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.