



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Julie Whiteside, Non-Voting Chairperson
Internal Services Department

Phillip G. Edwards, Esq., BCC Legislative Research Manager
Office of the Commission Auditor (OCA)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2020-99 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: October 5, 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 September 24, 2020, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Department of Transportation and Public Works Request to Advertise for Construction, Engineering and Inspection Services for Dadeland South Intermodal Station – Project No. E20-DTPW-04. 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 two members of the selection committee made disclosures on their neutrality/disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: (1) Dennis Fernandez, Department of Transportation and Public Works, indicated on his Neutrality/Disclosure Form that his daughter, Darlene Fernandez, was previously employed at Atkins North America, Inc. Atkins is a subconsultant to a respondent (305 Consulting Engineers, LLC) to the solicitation. (2) Alexander Gorgas, Department of Transportation and Public Works, indicated on his Neutrality/Disclosure Form that he was employed by EAC Consulting Engineering, Inc. from 2011 to 2016. EAC Consulting is a subconsultant to a respondent (New Millennium Engineering, Inc.) to the solicitation. Moreover, Mr. Gorgas indicated

on his Neutrality/Disclosure Form that his wife, Jeanette Gorgas, currently works for Media Relations Group. Media Relations Group is a subconsultant to a respondent (Gannett Fleming, Inc.) to the solicitation.

We conferred with Mr. Fernandez. He is Chief of the Road, Bridge and Canal Maintenance Division at the Miami-Dade Department of Transportation and Public Works (hereinafter "DTPW"). He confirmed that his daughter previously worked for Atkins North America, Inc. (hereinafter "Atkins"). She stopped working for Atkins in 2015. She currently works for Miami-Dade County and has been so employed since 2015. His daughter has no current ownership interest in or other formal or financial interest in Atkins. She also does not have any business, close social, or other relationship with any current employee at the company. Mr. Fernandez believes he can be fair and impartial when evaluating the respondents to this project.

We also consulted with Mr. Gorgas. He is a Senior Professional Engineer in the Design and Engineering Division at DTPW. He indicated that the termination of his employment from EAC Consulting Engineering, Inc. (hereinafter "EAC") in 2016, was amicable. He has no current ownership interest in or other formal or financial interest in the company.

Mr. Gorgas also confirmed that his spouse, Jeanette Gorgas, is an employee for Media Relations Group (MRG) which is a subconsultant to respondent, Gannett Fleming, Inc. (hereinafter Gannett Fleming). She is the Senior Public Information Officer at MRG. His spouse does not have any ownership interest in MRG; she did not work on the proposal submitted by respondent, Gannett Fleming; and, she will not receive a direct financial benefit should Gannett Fleming be awarded this contract. However, his spouse's supervisor, Alicia Gonzalez, will participate in oral presentation(s) before the selection committee.

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.

With regard to Mr. Fernandez, it does not appear that he 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.

Mr. Gorgas similarly does not have a voting conflict of interest under Section (v) of the County Ethics Code because as a technical adviser to the selection committee, he would not 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 to Mr. Gorgas since he stopped working for EAC over four years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229.

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.

Various formal and informal opinions issued by the COE have recommended that an individual should not serve on a selection committee if their immediate family member has a financial interest in one of the responding firms.¹ For example, in RQO 11-11, the COE held that an individual could not serve on a selection committee because their spouse's employer was bidding on the project. *See* RQO 11-11.

Similarly, in INQ 17-131, we advised that a County employee exercising his discretion over approval of a sub-contractor could be perceived as an act of exploitation under the Ethics Code. The County Ethics Code at Section 2-11.1(g) titled, "Exploitation of official position prohibited," states that County employees, County officials, and County advisory board members shall not use or attempt to use their official position to secure special privileges for themselves or others.

Notably, in INQ 17-131, the County employee's son was an employee of the subject firm, who had no involvement with regard to the scope of services to be provided by the entity in the project and had no financial interest to gain by his father's (the County employee's) approval of the entity as sub-contractor with said firm. The COE nevertheless recommended that the County employee delegate his authority to approve the sub-contractor to another County manager/employee, so as to avoid an appearance of impropriety because appearances of integrity and fairness are paramount in procurement matters, as "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 17-131 citing INQ 14-232, INQ 12-180, and INQ 12-63.

In this case, as to Mr. Fernandez, neither of the previously mentioned opinions apply to him because his daughter is not a current officer, director, partner, of counsel, consultant,

¹ Miami Dade County Code of Ethics at Section 2-11.1(n) also prohibits County employees and County officials from participating in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest.

employee, fiduciary or beneficiary of any of the respondents to this solicitation, as she stopped working for Atkins over five years ago; and Mr. Fernandez' daughter does not have any ownership or financial interest in Atkins or any of the other respondent firms. *See* INQ 19-109.

However, as to Mr. Gorgas, it is our recommendation that Mr. Gorgas not serve on this selection committee due to the possible appearance of impropriety, given that his spouse is an employee of MRG, a subconsultant of a responding proposer for this project; and his spouse's immediate supervisor would be presenting before the selection committee. *See* RQO 11-11; INQ 14-242, INQ 17-131, and INQ 19-02.

Opinion: Consequently, we see no reason why Mr. Fernandez should not serve on this 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 this committee.

However, as to Mr. Gorgas, it is our recommendation that he not serve on this selection committee due to the possible appearance of impropriety, given his close familial relationship with an employee of MRG, a subconsultant of a responding proposer for this solicitation, because in all procurement matters, appearances of integrity and fairness are paramount, as "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* RQO 11-11; INQ 14-242, INQ 17-131, INQ 19-02.

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.