



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Franklin Gutierrez, Selection Committee Coordinator
Internal Services Department

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

FROM: Martha Diaz Perez, General Counsel
Miami-Dade Commission on Ethics and Public Trust (COE)

SUBJECT: INQ 2021- 147, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: November 18, 2021

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 November 17, 2021, which was prepared in connection with the Appointment of Selection Committee for Transportation Planning Organization Request to Advertise for General Planning Consultant (GPC) Phase VIII – Project No. E21-TPO-01. 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 the alternate member of the selection committee made disclosures on her resume that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “Kimberly Brown, Department of Regulatory and Economic Resources, indicated on her resume that she was employed by Vanasse Hangen Brustlin, Inc. from July 2007 to January 2009 as a Senior Land Planner.” Vanasse Hangen Brustlin, Inc.(VHB) is a proposed subconsultant for Transystems Corporation, a respondent to the solicitation.

We conferred with Ms. Brown. She is employed as a Supervisor in the Planning Section at the Department of Regulatory and Economic Resources (RER). She confirmed that she was employed by VHB from 2007 to 2009 as a Senior Land Planner. She indicated that the termination of her employment with VHB was due to her move to Miami and was amicable. She has no current ownership interest or other financial interest in the company. She also does not have any business, close social, or other relationship with any current employee at the company. Ms. Brown believes she can be fair and impartial when evaluating the respondents to this solicitation.

Discussion

The Ethics Commission 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 advisory personnel shall vote on any matter presented to an advisory 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. Brown has a voting conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote, and she does not currently have any of the enumerated relationships with any entity affected by the 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 Ms. Brown since she stopped working for VHB approximately eleven (11) 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 excusing or removing 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 noted above, Ms. Brown disclosed that she was employed by a subconsultant of one of the respondents to the subject solicitation. That employment ended amicably. Additionally, Ms. Brown does not have any business, or close social relationship with current employees at the entity, hence, it is our opinion that her service in the selection committee would not create an appearance of impropriety or in any way detract from the County's conducting a fair and objective evaluation for this project. *See* INQ 20-73, INQ 18-202, and INQ 17- 69.

Consequently, we see no reason why Ms. Brown 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.

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.