



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Cristina Amores, Selection Committee Coordinator
Internal Services Department

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

FROM: Loressa Felix, Staff Attorney
Commission on Ethics (COE)

SUBJECT: INQ 2021-108, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: July 23, 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 June 30, 2021, 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-Build Services for Additional Elevators at Dadeland North Metrorail Station Parking Garage – Project No. DB20-DTPW-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 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) Patrick Szutar, Seaport Department, indicated on his Neutrality/Disclosure Form that he manages projects at PortMiami involving seven of the responding firms, reviewing documents impacting the financial status of the firms. Additionally, Mr. Szutar indicated that he worked for Bermello Ajamil for 18 years. Bermello Ajamil & Partners, Inc. is a subconsultant for Munilla Construction Management, LLC (hereinafter “MCM”), a

respondent to the solicitation. (2) Jeannine Gaslonde, Transportation Planning Organization, indicated on her Neutrality/Disclosure Form that her husband, Yunior Santana, was previously employed by Perez & Associates in 2013. Perez & Perez Architects Planners, Inc. is a subconsultant for Lemartec Corporation, a respondent to the solicitation.”

We conferred with Ms. Gaslonde. She is the Transit and Regional Manager for Miami-Dade Transportation Planning Organization (TPO). She confirmed that her husband, Yunior Santana, previously worked for CH Perez & Associates (hereinafter “CHPA”). Mr. Santana stopped working for CHPA in 2014. She indicated that the termination of Mr. Santana’s employment from CHPA was amicable. He has no current ownership interest in or other financial interest in the company. He also does not have any business, close social, or other relationship with any current employee at the company. Ms. Gaslonde believes she can be fair and impartial when evaluating the respondents to this project.

We also conferred with Mr. Szutar. He is the Chief of Terminal Development for the Port of Miami, Seaport Department. He confirmed that he previously worked for Bermello Ajamil & Partners, Inc. (hereinafter as “BAP”) as a Project Manager. Mr. Szutar stopped working for BAP on or about May 4, 2014. Mr. Szutar indicated that the termination of his employment with BAP was amicable. Mr. Szutar has no current ownership interest or other financial interest in the company. He also does not have any business relationship with any current employee at the company.

However, Mr. Szutar disclosed that he has close friendships with five employees of BAP - Willy Bermello, Luis Ajamil, Saul Suarez, Mirtha Gonzalez, and Raul Carreras. Regarding Willy Bermello and Luis Ajamil, both founding principles of BAP, Mr. Szutar indicated that he worked with them for eighteen years and are business acquaintances, occasionally socializing with their families and participating in campaign endeavors that they may host. Regarding Saul Suarez, a partner at BAP, Mr. Szutar noted that he was his direct supervisor for most of his eighteen years with BAP. Mr. Szutar described the relationship as close friends and the two see each other socially, including at Mr. Szutar’s home for various events. Regarding Mirtha Gonzalez, personal assistant to Ms. Bermello, Mr. Szutar noted their relationship as very close personal friends with both her and her family, they visit each other regularly and have travelled to Colorado on occasion as well. Lastly regarding Raul Carreras, Senior Associate at BAP, Mr. Szutar indicated that during his eighteen years at BAP, the two worked together and Mr. Szutar supervised Mr. Carreras.

According to the MCM proposal submission, only three of five disclosed employees were identified and listed within the proposal. Saul Suarez has a defined role within the proposal as a Project Manager for this project. Willy Bermello and Raul Carreras were both noted as key personnel working on specific elements of the overall project. None of the disclosed employees were listed on the ISD Form No. 5, which identifies persons that will appear and present before this 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.

It does not appear that Ms. Gaslonde and/or Mr. Szutar have a voting conflict of interest under Section (v) of the County Ethics Code because they will not be directly affected by the vote and they do 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 Mr. Szutar since he stopped working for BAP over seven years ago; and it would not apply to Ms. Gaslonde as she never worked for CHPA. *See* INQ 17-174, INQ 17-183, and INQ 18-229.

Notwithstanding, 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 noted above, Ms. Gaslonde disclosed that her spouse, Yunion Santana, was previously employed by CHPA, a subconsultant to the solicitation for Lemartec Corporation. As her spouse's employment at CHPA ended seven years ago, on an amicable basis, and he does not have any business, or close social relationship with current employees at the entity, it is our opinion that her spouse's prior employment at CHPA 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.

As to Mr. Szutar, he disclosed that he has close social friendships with five individuals that work for an entity (BAP) included in proposals submitted in response to this solicitation.

Somewhat similar to the circumstances in this case, the COE previously considered whether the Assistant Director of Miami-Dade Fire Rescue (MDFR) could serve as a member of a County negotiation committee, where the representative of one of the recommended proposers, was a personal friend. We opined that technically, the Assistant Director of MDFR did not have a prohibited conflict serving on a County negotiation committee where the lobbyist for one of the bidders happened to be his fraternity brother/personal friend, because the Assistant Director would not personally benefit from the vote and he did not have a prohibited relationship with any of the

parties. However, the COE stated that in order to avoid an appearance of impropriety created by the close social relationship, the Assistant Director should consider withdrawing from the negotiation committee because “in all procurement matters, where appearances of integrity and fairness are paramount, “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 16-242 and INQ 21-81, citing to INQ 14-242.¹

By contrast, in INQ 18-78, the COE considered whether a prospective member of a selection committee may serve on the committee, where the prospective selection committee member maintained a close personal friendship with an employee of one of the respondents to the project. In that case, the COE again noted that the prospective member of the selection committee did not have a prohibited conflict of interest under the County Ethics Code because the County employee would not personally benefit from the vote and he did not have a prohibited relationship with any of the parties involved in the solicitation. However, this office did not find that there was any appearance of impropriety in this scenario because the individual that the prospective selection committee member maintained a personal friendship with at the respondent company was not listed in the proposal submitted, he had nothing to do with the company’s response to that particular solicitation, the individual had for the most part retired from the company, and the individual was not going to be making any type of presentation before the selection committee regarding that project.

In this case, Mr. Szutar maintains a close social relationship with five individuals that work for BAP. Three of those individuals are listed in the proposals submitted in response to this solicitation and are identified as serving in various defined roles should this contract be awarded to the respondent team.

Opinion:

Consequently, consistent with the COE’s holding in prior ethics opinions, Ms. Gaslonde and Mr. Szutar do not have a conflict of interest under the Ethics Code that would prevent them from serving on this selection committee because neither will be directly affected by the vote nor do

¹ See also INQ 14-246 (An FIU Professor of Architecture will not have a prohibited conflict serving on a County selection committee where she has had professional relationships with some of the bidders to be considered by the selection committee, because the Professor of Architecture would not personally benefit from the vote and she does not have a prohibited relationship with the parties. However, in order to avoid an appearance of impropriety created by the Professor’s close professional relationships with some of the bidders, the County is advised to reconsider whether this person is an appropriate appointee for this selection committee); INQ 19-99 (a member of the selection committee for a project, whose spouse previously worked for a respondent to this project, Perez & Perez and Associates, should not serve on this selection committee, due to the possible appearance of impropriety, as she maintains a close social relationship with employees and the owner of the firm) and INQ 20-40 (it is recommended that ISD should consider withdrawing a prospective selection committee member from a selection committee due to the possible appearance of impropriety created by his close social/professional relationship with a current employee of one of the responding firms to a solicitation, who was identified by the respondent firm as a key member of their team, and was also identified as one of the individuals that would make a presentation before the selection committee).

they currently have any of the enumerated relationships with any entity affected by the vote. See INQ 14-246, INQ 16-242, INQ 19-99, INQ 20-40, and INQ 21-81.

However, in order to avoid an appearance of impropriety, as Mr. Szutar maintains close social relationships with individuals that not only work for an entity listed in the proposals submitted, but in three of five cases, are also listed in the proposals submitted and have been identified by the proposals as serving in various defined roles should this contract be awarded to the respondent team that their employers are a part of, we recommend that ISD should consider excusing Mr. Szutar from this selection committee because “in all procurement matters, where appearances of integrity and fairness are paramount, 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 16-242, citing to INQ 14-242; INQ 14-246, INQ 15-206.

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.