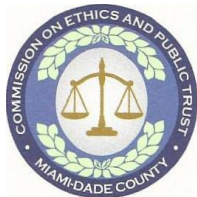


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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September 14, 2021

Mr. Jack Kardys

Via email: jkstrategiesllc@gmail.com

RE: INQ 2021-125, Sections 2-11.1 (c), (d), County Ethics Code

Dear Mr. Kardys:

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and seeking guidance on the applicability of the County Ethics Code to a County employee whose parent is engaged as a subcontractor in a County solicitation/ project overseen and administered by the County employee's department.

Background:

Pursuant to the information you provided to this office, we note that, you own and manage J Kardys Strategies LLC (hereinafter “JKS”), a consulting company dedicated to providing consulting services for strategic planning and organizational reviews.¹ You were part of a team which submitted an unsolicited proposal to the County for the improvement and operation of the Rickenbacker and Venetian Causeways. The unsolicited proposal culminated in a competitive solicitation- RFP-01982 - Develop, Maintain and Operate Rickenbacker and Venetian Causeways and Associated Recreational Elements (hereinafter “Project”), overseen and administered by the County's Parks, Recreation and Open Spaces Department (PROS).

Your firm, J Kardys Strategies, LLC (hereinafter “JKS”), has been asked to join the same team involved in the unsolicited proposal which is also submitting a proposal to this RFP. In the event the Prime Contractor, Partners Group (hereinafter “PG”) is awarded this contract, you would like to know whether you may serve in a subcontractor capacity in the Project in light of your

¹ You were employed with the County as Director of PROS and retired on or about January 2017, hence, Section 2-11.1 (q) of the County Ethics Code (Two-Year Rule) is inapplicable to this inquiry.

daughter's employment at PROS, the County department charged with the oversight, administration, management, and enforcement of the contract/Project.

We consulted with your daughter, Rachael Kardys. Ms. Kardys stated that she works at PROS as a Park Planner 2 in the Planning, Design and Construction Division. Her primary responsibilities involve the development of general plans and planning studies for Miami-Dade County parks and participation in the South Florida Parks Coalition. She was not involved in the drafting of this RFP and has taken no action on any part of this RFP. Moreover, Ms. Kardys will not exercise any oversight, administration, or enforcement of this project since her duties and responsibilities do not involve any work related to the County's bridges or causeways. Ms. Kardys does not supervise any employee involved with this RFP/ Project. Importantly, she has no ownership or other interest in JKS.

Issue:

Whether a conflict of interest exists which prohibits a subconsultant in a pending competitive solicitation from: (a) assisting the proposer with a response to the RFP; and, if awarded the contract, (b) providing sub-consulting services to the Prime Contractor, in a project overseen by the County department which employs the subconsultant's daughter.

Jurisdiction:

The Miami-Dade Commission on Ethics and Public Trust (COE) has jurisdiction to provide advisory opinions on prospective issues to County employees whose actions may be subject to relevant provisions under the County Ethics Code or to "suitable surrogates who ask for opinions on behalf of persons subject to the Code." *See* INQ 18-161, citing to Section 2-1074(y), Miami-Dade County Code

Accordingly, as the immediate family of a County employee and the President of a sub-consulting company doing business with a prospective County vendor, you may seek and obtain ethics guidance on the implication of the County Ethics Code on your proposed activities.

Discussion:

A. Assisting Respondent PG with proposal to solicitation:

We note that Ms. Kardys does not hold any prohibited relationships or ownership interest in JKS or PG. Additionally, she is not involved in the drafting, selection, evaluation, or negotiation phases of this RFP nor does she supervise any employees who may be involved in any stage of this Project.

Consequently, you do not have a prohibited conflict of interest in assisting PG- a respondent to this RFP- with its proposal or presentation.

B. Providing sub- consulting services to Prime Contractor PG if awarded the contract:

You further inquire about your limitations in contracting with a firm which may be contracting with the County on a project overseen by PROS, where your daughter is employed. The County Ethics Code at Sections 2-11.1(c) and (d) allow the immediate family (parent) of a County employee to enter into a contract with the County but not with the department that employs the County employee. However, you have indicated that, if the Project is awarded to PG, you plan to serve as *subcontractor* on that contract.

In RQO 10-32, the Ethics Commission recognized that the spouse of a County employee is not prohibited from contracting *with firms that are working on County-funded projects*.

Later, in RQO 18-02, the Commission concluded that the County Ethics Code does not prohibit immediate family members from contracting *as subcontractors* to County vendors because the subcontractor would not be contracting directly with any County division (including the employee's division) but rather, would be contracting with the prime subcontractor or other contractors who are all under the supervision of the main contractor.

Accordingly, the Miami-Dade Ethics Code does not prohibit your company, JKS, from subcontracting with a firm that may be awarded the Project because your firm would not be directly transacting business with the County's PROS but rather, would be in privity of contract with the Prime Contractor in this project. *See* INQ 17-217 (concluding that the parent of a County employee may subcontract with a County vendor through his privately-owned company, but he may not contract directly with the department that employs his son); *See also* INQ 13-69² and INQ 11-20³

In the event that the Prime Contractor who has retained your services as subconsultant in this Project is awarded this contract, the following limitations in the County Ethics Code may be applicable to Ms. Kardys (albeit highly unlikely): ⁴

² INQ 13-69: The husband of a PHCD employee is not prohibited from *subcontracting* with construction firms servicing projects managed by PHCD because her husband would not be contracting with PHCD but rather, with the prime contractor and subcontractors (who are all under the direct supervision of the prime contractor)

³ INQ 11-20: The member of a County board charged with hearing appeals of DERM decisions, who has an ownership interest along with his immediate family in a company *subcontracting* with a prime contractor doing business with DERM may enter into a contract with the prime contractor but is prohibited from entering into contracts directly with his board or DERM.

⁴ As noted in INQ 17-217, it may become problematic under the Ethics Code for your company to act as a subcontractor where the work might be subject to oversight or management by the subcontractor's son in connection with his departmental duties. Nonetheless, Ms. Kardys has asserted that she does not have and will not have any involvement with the Project in question.

Section 2-11.1(n) (*Actions prohibited when financial interest involved*) prohibits a County employee from taking any action involving the business of an immediate family member. Therefore, Ms. Kardys is prohibited from overseeing, administering, monitoring, enforcing any matters involving the Project where you would be providing services to the Prime Contractor.⁵

Section (m)(1) (*Certain appearances prohibited*) prohibits Ms. Kardys from appearing before a County board or agency on behalf of JKS or Prime Contractor RP to make a presentation with respect to any “license, contract, certificate, ruling, decision, opinion, rate schedule, franchise or other benefit.”

Section 2-11.1(g) (*Exploitation of official position*) prohibits Ms. Kardys from using her position to secure any special privileges or benefits for JKS or RP.

Section 2-11.1(h) (*Prohibition on use of confidential information*) prohibits Ms. Kardys from disclosing any confidential information to JKS or RP which information is for her personal benefit or the benefit of a third-party.

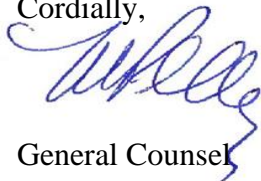
Conclusion:

JKS is not prohibited from assisting respondent RP in a sub-consultant capacity during the Project solicitation because your immediate family member did not have and will not have any direct or indirect involvement in the solicitation/Project.

Also, in the event that Prime Contractor RP is awarded the contract, you are not prohibited from contracting with Prime Contractor RP in the Project because you will be in privity of contract with the Prime Contractor and not with the County. Notwithstanding, your daughter must abide by the provisions of the County Ethics Code discussed herein. In the event that your daughter becomes involved during any stage of this Project, we strongly recommend that she seek an opinion from the Ethics Commission prior to engaging.

This opinion is based on the facts which have been submitted to this office. It is not applicable to any other conflict under State law. Inquiries regarding possible conflicts under State law should be directed to the State of Florida Commission on Ethics. Please contact us if we may be of further assistance.

Cordially,



General Counsel

Cc: COE Legal Staff
Rachael Kardys, Park Planner 2, PROS

⁵ Ms. Kardys has already indicated that she did not have, nor will she have any future involvement with any aspect of this Project.