



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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TO: Cristina Amores, Selection Committee Coordinator
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Office of the Commission Auditor (OCA)

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

SUBJECT: INQ 2021-126, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety, Resolution No. 449-14

DATE: September 14, 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 September 10, 2021, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade Department of Transportation and Public Works (DTPW) Department Request to Advertise for Design-Build Services for the Underline-Phases 3-9- Project No. DB21-DTPW-01 (Substitution Request). 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 Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “Marsh Kriplen, MAKwok, indicated on his Neutrality/Disclosure Form that his employer is a team member on projects that include “STANTEC” and “Behar Font,” Per OCA, Stantec Consulting Services, Inc. and RJ Behar and Company, Inc. are listed as subconsultants to respondents to this solicitation.

We conferred with Mr. Kriplen. He is the President (and Secretary) of MAKwok, a small architectural and landscaping design firm servicing residential and commercial venues. MAKwok is presently involved with some projects which include two of the subcontractors in this RFP.

With regard to Stantec Consulting Services (hereinafter “Stantec”), MAKwok is the landscape architect firm working *alongside* Stantec (which is the architect of record) on a project for the Client. ¹ Importantly, Mr. Kriplen does not have a contractual relationship with Stantec and holds no ownership or other financial interest in Stantec.

The Memorandum incorrectly indicated that Mr. Kriplen’s firm also had a professional relationship with R J Behar & Company Inc. (RJ Behar); however, MAKwok is currently working with Behar Font, not RJ Behar, as stated in the memo.

During our inquiry, Mr. Kriplen advised that he is well acquainted with several of the subcontracting firms in this RFP on a professional level.² However, he holds a personal social relationship with Mr. Roberto Rovira, whose firm, Studio Roberto Rovira (SRR) is identified as a subconsultant to Proposer/Respondent Lead Ryan JV LLC. In fact, Mr. Kriplen considers Mr. Rovira a personal friend.

Mr. Kriplen feels he can be fair and impartial when evaluating the respondents in this solicitation.

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).

A person who is not a County employee may serve on a County selection committee and he or she will be considered a County official. *See* RQO 13-11 (determining that “official” includes County and non-County employees who serve as selection committee members)

Conflicts of interest for County selection committees are analyzed under Section 2-11.1(v) of the County Ethics Code, which deals with conflicts of interest for advisory personnel. 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.

¹ MAKwok’s contract is with the Client, not with Stantec.

² For example, Sub-consultants James Corner Field Operations LLC, Miller Legg & Associates Inc., and Bermello Ajamil & Partners Inc., are also professional acquaintances.

Consequently, it does not appear that Mr. Kriplen would have a conflict under this section as there is no direct impact on him personally, nor any of the required prohibited relationships with the Respondents or the sub-consultants to this solicitation that could create such a conflict. *See* Section 2-11.1(v).

As a member of a County selection committee, Mr. Kriplen is also subject to Section 2-11.1(j) of the County Ethics Code, which prohibits committee members from engaging in activities which would impair their independence of judgment in the performance of their public duties. Consequently, selection committee members may not participate in selections or evaluations where their private interests outweigh their faithful discharge of responsibilities to the County under this RFP. *See* INQ 12-217. In this instance, Mr. Kriplen does not maintain any current employment, financial or business relationship with the Respondents or their subconsultants, nor does he have any personal interest in the contract itself, thus, his service in the selection committee does not present a conflict of interest under the County Ethics Code. *See* INQ15-206

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.

With regard to Mr. Kriplen's *professional relationships* for several subcontractors in this solicitation, the COE has indicated in various informal opinions that, absent some other factor, the mere fact that a selection committee member has interactions with a respondent or subcontractor in connection with the member's County duties would not create an appearance of a conflict that could affect the public trust in the integrity of the procurement process. *See* INQ 14-279, INQ 16-165, INQ 17-286, INQ 18-21, INQ 18-47, and INQ 18-230.³

However, somewhat similar to the circumstances in this case, the COE previously considered whether a prospective member of a selection committee may serve on the committee, where the prospective selection committee member maintained *close personal friendships* with employees of respondent firms who were identified and listed in defined roles in the proposals and also as individuals who would be appearing and presenting before the selection committee. In that opinion, although noted that the selection committee member did not have a prohibited conflict of interest under the County Ethics Code, this office recommended that the Internal Services Division should consider excusing the member from the 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,

³ The COE's opinions note that, in fact, it may be valuable to have an individual on a selection committee who is personally familiar with the work of one or more of the responding firms, particularly where the member also has some special expertise in the services that are being sought by the County, *See* INQ 18-21, INQ 18-47, and INQ 18-230.

favoritism or undue influence [which] may require a higher standard of ethics.” See INQ 2021-81 (quoting INQ 16-242)⁴

Here, Mr. Kriplen is friends with Mr. Roberto Rovira, founder of Studio Roberto Rovira (SRR).⁵ RSS is listed as subconsultant in one of the proposals and logically, Mr. Rovira has been identified as serving a defined role should the contract be awarded to the respondent team his firm belongs to. Also, although premature at this phase of the solicitation, Mr. Rovira may be involved in the oral presentations following the initial evaluation process.

Opinion:

There is no conflict of interest under the County Ethics Code prohibiting Mr. Kriplen’s service in this selection committee.

Notwithstanding, in light of a perceived appearance of impropriety, as Mr. Kriplen maintains a close social relationship with an individual whose firm is listed in the proposal submitted and has been identified by the proposal as serving in a defined subconsultant role should this contract be awarded to the respondent team that his firm is a part of, ISD may wish to reconsider Mr. Kriplen’s service in 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 15-206.⁶

⁴ *But see* INQ 18-78 where this office did not find that there was any appearance of impropriety where the individual that the prospective selection committee member maintained a personal friendship with at the respondent company **was not** listed in the proposal submitted, had nothing to do with the company’s response to that particular solicitation, had for the most part retired from the company, and was not going to be making any type of presentation before the selection committee regarding that project.

⁵ Studio Roberto Rovira (SRR) was founded by Roberto Rovira, “a registered landscape architect with a design, engineering, and fine arts back-ground, his teaching, research, and creative work explore the field of landscape architecture through various lenses that often test the concepts of time and transformation and the potential of landscape architecture to play a pivotal role in envisioning and shaping public space landscape architect.” Mr. Rovira will serve as the Project’s plazas and amenities lead designer.

⁶ While this is ultimately a decision to be made by the County’s procurement personnel, one of the factors to consider is the type of solicitation described herein which involves a design-build service with objective certification standards in place, i.e.: Step One evaluation meeting is based on scoring three criteria (qualification of firms including team members; knowledge and past experience of similar type projects; and past performance); completion of Step One will result in

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.

the progression of 3 (out of 4) firms into ATC process which involves the review of technical options; and, upon acceptance of options, Step Two would consist of oral presentations and scoring of firms. This solicitation is mainly guided by project value.