



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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**TO:** Cristina Amores, 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 2021-129, Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety, Resolution No. 449-14

**DATE:** September 17, 2021

**CC:** All COE Legal Staff

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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, and forwarded to this office on September 16, 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 Additional Elevators at Dadeland North Metrorail Station Parking Garage-Project No. DB20-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 an alternate member of the selection committee made disclosures on his Neutrality/Disclosure Form that merited submission to the Commission on Ethics(COE) for an opinion. Specifically, the memorandum notes that: Alternate selection committee member Ricardo Ayala “worked for BCC Engineering from 2009 to 2014 [and] for Bermello Ajamil & Partners from 2005 until 2009.” Per OCA, BBC Engineering (BCC) and Bermello Ajamil & Partners, Inc. (Bermello) are included as subconsultants in the List of Respondents for this solicitation.

We conferred with Mr. Ayala who works as a Construction Manager 2 at the County’s Parks Recreation and Open Spaces Department (PROS). Mr. Ayala manages construction projects related to parks, playgrounds, and marinas.

Mr. Ayala indicated that he worked for Bermello as a civil engineer from 2005 to 2009. His separation from employment was amicable; he does not hold any current ownership or other financial interest in the company; he does not have any *prohibited* relationships with Bermello, i.e., officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary' or (ii) stockholder, bondholder, debtor or creditor; and he does not maintain any close social or personal relationships with the principals or employees at Bermello.

Mr. Ayala also indicated that he worked for BCC as a civil engineer from 2009 to 2014 when he decided to take his work to the public sector. His separation from employment was amicable; he does not hold any current ownership or other financial interest in the company; he does not have any *prohibited* relationships with BCC, i.e., officer, director, partner, of counsel, consultant, employee, fiduciary or beneficiary' or (ii) stockholder, bondholder, debtor or creditor; and he does not maintain any close social or personal relationships with the principals or employees at BCC.

Mr. Ayala indicated that he is familiar with some of the respondents or subconsultants in this solicitation on a professional capacity only. Mr. Ayala feels he can be fair and impartial when evaluating the respondents and subconsultants in this solicitation. He asserts that his prior employment with the subconsultant firms will not in any way interfere with his objective and independent judgment in the selection process.

### 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).

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 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. Consequently, Mr. Ayala **would not** have a conflict under this section because he will not be directly affected by the vote, and he does not have any of the enumerated relationships with any entity affected by the vote. *See* Section 2-11.1(v)

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. Ayala since he stopped working for both firms over two years ago: Bermello- twelve (12) years ago and BCC- seven (7) years ago. *See* INQ 18-144, INQ 19-14; INQ 21-14; INQ 21-15; INQ 21-30; INQ 21-67

As a member of a County selection committee, Mr. Ayala 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. Ayala does not maintain any current employment, financial or other business relationship with the named 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

Further, 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 (alternate) member of an appointed selection committee. *See* Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure. Here, Mr. Ayala was employed by two of the subconsultants identified in this solicitation and is familiar with their work and the work of others in a professional capacity. 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 team 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.

Opinion:

Accordingly, Mr. Ayala does not have a conflict of interest under the Ethics Code that would prevent him from serving as alternate member on this selection committee, and there does not appear to be any appearance of impropriety created by his 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.

