



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Brian Webster, Non-Voting Chairperson
Internal Services Department

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

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-48 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: March 19, 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 March 18, 2021, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Department of Transportation and Public Works Request for Proposals for Development of Vizcaya Station Property – RFP No. 01673 (Substitution 2). 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 her Neutrality/Disclosure Form and/or resumé that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “Marie Denis, Department of Cultural Affairs, indicated on her Neutrality/Disclosure Form that her domestic partner, David Figueredo, is currently under a contract with Grass River Property for consulting services. Grass River Property is a proposed subcontractor for Vizcaya Roads Partners, a respondent to the solicitation.”

We conferred with Ms. Denis. She is employed as Capital and Construction Projects Chief at the Miami-Dade County Department of Cultural Affairs (hereinafter “DOCA”). She

confirmed that her domestic partner, David Figueredo, is currently under contract with Grass River Property, LLC (hereinafter “GRP”) for consulting services. She explained that he currently serves as Site Supervisor for GRP’s tenant improvement development project at Cocowalk. GRP hired him to do that project as an independent contractor on a contract basis. She stated that the only difference between Mr. Figueredo and a regular GRP employee is that GRP does not offer/provide benefits to Mr. Figueredo. This is Mr. Figueredo's sole employment at this time. It is a full-time position.

As Mr. Figueredo was hired by GRP as an independent contractor, specifically for the Cocowalk project, he has no current direct financial interest in the project that is the subject of this solicitation. GRP has also made no offers or promises to Mr. Figueredo regarding the project that is the subject of this solicitation. However, Mr. Figueredo’s current contract with GRP is set to expire in June 2021. Ms. Denis acknowledged that GRP could always offer Mr. Figueredo a contract relating to the project that is the subject of this solicitation, should the team that includes GRP be awarded this contract.

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. Denis has a voting conflict of interest under Section (v) of the County Ethics Code 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.

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 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.

Various formal and informal opinions issued by the COE have recommended that an individual should not serve on a selection committee if their immediate family member has a financial interest in one of the responding firms.¹ For example, in RQO 11-11, the COE

¹ Miami Dade County Code of Ethics at Section 2-11.1(n) also prohibits County employees and County officials from participating in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. “Immediate family” is defined in Section 2-11.1(b)(9) of the Ethics code, as spouse, **domestic partner**, parents, stepparents, children and stepchildren of the person. (Emphasis added)

held that an individual could not serve on a selection committee because their spouse's employer was bidding on the project. *See* RQO 11-11.

Similarly, in INQ 17-131, we advised that a County employee exercising his discretion over approval of a sub-contractor could be perceived as an act of exploitation under the Ethics Code. The County Ethics Code at Section 2-11.1(g) titled, "Exploitation of official position prohibited," states that County employees, County officials, and County advisory board members shall not use or attempt to use their official position to secure special privileges for themselves or others.

Notably, in INQ 17-131, the County employee's son was an employee of the subject firm, who had no involvement with regard to the scope of services to be provided by the entity in the project and had no financial interest to gain by his father's (the County employee's) approval of the entity as sub-contractor with said firm. The COE nevertheless recommended that the County employee delegate his authority to approve the subcontractor to another County manager/employee, so as to avoid an appearance of impropriety because appearances of integrity and fairness are paramount in procurement matters, as "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 17-131 citing INQ 14-232, INQ 12-180, and INQ 12-63.

As noted above, Ms. Denis disclosed that her domestic partner, is **currently** employed as a contractor/consultant for GRP, a proposed subcontractor for Vizcaya Roads Partners, a respondent to the solicitation. She explained that this is currently his full-time employment, and the only difference between Mr. Figueredo and a regular GRP employee is that GRP does not offer/provide benefits to Mr. Figueredo. She also indicated that while Mr. Figueredo's current contract with GRP, does not include work on the project that is the subject of this solicitation, GRP could always offer Mr. Figueredo a contract relating to this project, should the team that includes GRP be awarded this contract.

Opinion: As the COE has stated in past opinions, procurement decisions are among the most sensitive and scrutinized decisions in the County regarding procedural fairness. *See* INQ 17-174 and INQ 17-200. While Ms. Denis may have expertise that would be valuable in this selection process, it is our recommendation that she should not serve on this selection committee due to the possible appearance of impropriety, given that her domestic partner is a **current** contractor/consultant of GRP, a subconsultant of a responding proposer for this project; and there is a possibility of his continued employment with GRP on other projects, and more specifically on the project that is the subject of this solicitation, should the team that includes GRP be awarded this contract. *See* INQ 19-83.²

² It is recommended that an individual who served as an adjunct professor for Florida International University (FIU) merely two months ago, should not serve on a selection committee for a solicitation that FIU is one of the responding firms, because his recent relationship with FIU and possible future employment with the university, would likely obscure his independence of judgment in the performance of his public duties as a selection committee member.

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.

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.