



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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

Justin Espagnol, Non-Voting Chairperson
Internal Services Department (ISD)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-15 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: January 29, 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 January 26, 2021 which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade Internal Services Department Request to Advertise for Rehabilitation and Renovation Services for the Stephen P. Clark Government Center Building – Project No. A20- ISD-03. 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: “Jorge I. Perez, Internal Services Department, indicated on his Neutrality/Disclosure Form that he worked for AECOM. Mr. Perez’s resume shows that he was employed at AECOM Design from March 1996 to September 2013. AECOM Technical Services, Inc. is a respondent to this solicitation.”

We conferred with Mr. Perez. He is a Senior Registered Architect in the Facilities Infrastructure Management Division at Miami-Dade Internal Services Department (ISD). He confirmed that he previously worked for AECOM. He stopped working for AECOM in 2013. He indicated that the termination of his employment from AECOM was amicable.

He has no current ownership interest 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.¹

Mr. Perez also currently serves as Project Manager on two Miami-Dade County projects for which AECOM is a consultant. He does not believe that his current supervision of the various entities would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation. He stated that he will be fair and impartial when evaluating the respondents to 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).

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

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. Perez since he stopped working for AECOM over seven years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229.

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

¹ Mr. Perez previously disclosed in May 2020, that his good friend Scott Tao works for AECOM. Based on those representations, the COE issued INQ 2020-40. We discussed the issue of his professional relationship with Mr. Tao, during our conference with Mr. Perez. Mr. Perez advised that Mr. Tao no longer works for AECOM. We were able to corroborate this information through LinkedIn. Mr. Tao's LinkedIn page shows that he stopped working for AECOM in July 2020. Further we conferred with Mr. Justin Espagnol, the ISD non-voting chairperson for this selection committee. Mr. Espagnol indicated that Scott Tao is not listed in the proposal submitted by AECOM. Mr. Tao is not listed as one of the participants that could make a presentation before the selection committee. AECOM's proposal also does not identify Mr. Tao as a key support staff member of the AECOM team.

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, Mr. Perez disclosed that he was previously employed by AECOM, a respondent to the solicitation. As his employment at AECOM ended over 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 his prior employment at AECOM 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.

Mr. Perez also stated that he currently serves as Project Manager on two Miami-Dade County projects for which AECOM is a consultant. 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 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. 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.

Opinion: Consequently, we see no reason why Mr. Perez should not serve on this committee because he does not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by his service on this committee.

However, Mr. Perez is reminded that the selection committee, for which he will serve as a voting member, operates under the County's Cone of Silence, Section 2-11.1(t) of the County Ethics Code. The Cone of Silence puts significant restrictions on oral communications made by Commissioners, City staff, selection committee members, and prospective contractors, as well as their lobbyists and consultants, regarding any procurement matter during the time that the Cone is in effect. Mr. Perez will therefore be prohibited under the Cone, from communicating with any of the responding entities to this solicitation that he currently supervises, regarding this project.

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.