



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)

Pablo Valin, Non-Voting Chairperson
Internal Services Department (ISD)

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-30 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: February 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 February 9, 2021, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade Department of Transportation and Public Works Request to Advertise for Professional Services for N.W. 17th Avenue Bridge Over Miami River Project Development & Environmental Study – Project No. E20-DTPW-06 (Substitution No. 1). 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 that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “Helga Sommer, Seaport Department, indicated on her Neutrality/Disclosure Form that she worked for AECOM for 12 years, from 2004 to 2016. AECOM Technical Services, Inc., is a respondent to this solicitation. Ms. Sommer also indicated on the form that she worked for MWH, which was purchased by Stantec, from 1998 to 2004. Stantec Consulting Services, Inc. is a subconsultant to this solicitation for respondent EAC Consulting, Inc. Lastly, Ms. Sommer indicated on her Disclosure Form that her husband, Guillermo Regalado, worked at AECOM for 14 years,

from 2003 to 2017. As stated, AECOM Technical Services is a respondent to this solicitation.”

We conferred with Ms. Sommer. She is a Chief of Engineering at PortMiami. She confirmed that she previously worked for AECOM. She stopped working for AECOM in February 2016. She indicated that the termination of her employment from AECOM was amicable. She has no current ownership interest or other financial interest in the company. She also does not have any business, close social, or other relationship with any current employee at the company.

She also confirmed that she previously worked for MWH, which was purchased by Stantec. She stopped working for MWH in August 2004, prior to Stantec’s purchase of MWH. She indicated that she was laid off by MWH, due to the closure of MWH’s design center. She never worked for Stantec. She however indicated that her termination from MWH was amicable. She has no current ownership interest or other financial interest in MWH and/or Stantec. She does not have any business, close social, or other relationship with any current employee at Stantec.

Further, she confirmed that her spouse, Guillermo Regalado, previously worked for AECOM. He stopped working for AECOM in July 2017. She indicated that the termination of her spouse’s employment from AECOM was amicable. He has no ownership interest or other financial interest in AECOM. He does not have any business, close social, or other relationship with any current employee at the company.

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. Sommer has a voting conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote and she does not have any of the enumerated relationships with an 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 Ms. Sommer since she stopped working for AECOM over five years ago; and she never worked for Stantec. *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 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, Ms. Sommer disclosed that she was previously employed by AECOM, a respondent to the solicitation. As her employment at AECOM ended over five years ago on an amicable basis, and she does not have any business, or close social relationship with current employees at the entity, it is our opinion that her 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.

Ms. Sommer also disclosed that she previously worked for MWH, which was purchased by Stantec, a subconsultant to this solicitation for respondent EAC Consulting, Inc. Ms. Sommer however never worked for Stantec. She stated that she stopped working for MWH in August 2004, prior to Stantec's purchase of MWH. As she never worked for Stantec, and she does not have any business, or close social relationship with current employees at the entity, it is our opinion that her prior employment at MWH, prior to its purchase by Stantec, 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.

Further, Ms. Sommer disclosed that her spouse previously worked for AECOM. He however stopped working for AECOM in July 2017. As her spouse's employment with AECOM was terminated 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 her spouse's 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.

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

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.