



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Amado Gonzalez, 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 2021-43 [Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety]

**DATE:** March 9, 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 February 24, 2021, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Water and Sewer Department Request to Advertise for Construction Management and Inspection Services – Project No. E20-WASD-04A (Substitution No. 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 two members of the selection committee made disclosures on their Neutrality/Disclosure Form and/or resumé that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “(1) Miguel Riera, Aviation Department, indicated on his resumé that he was employed by Milian, Swain & Associates, Inc. from May 1996 to June 1997. Milian, Swain & Associates, Inc. is a subconsultant for SRS Engineering, Inc, a respondent to the solicitation. (2) Juan Curiel, Water and Sewer Department, indicated on his Neutrality/Disclosure Form that he was previously employed by Nova Consulting, Inc. where he was engaged in the PSIP Program which involved working with BND Engineers, Inc. BND Engineers is a respondent to the solicitation.”

We conferred with Mr. Riera. He is employed as Engineer 3, at the Miami-Dade Aviation Department (MDAD). He confirmed that he previously worked for Milian, Swain & Associates, Inc. (hereinafter "MSA"). He stopped working for MSA on June 13, 1997. He indicated that the termination of his employment with MSA 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. Mr. Riera believes he can be fair and impartial when evaluating the respondents to this project.

We also conferred with Mr. Curiel. He is employed as Senior Professional Engineer, at the Miami-Dade Water and Sewer Department (WASD). He confirmed that he was previously employed by Nova Consulting, Inc. (hereinafter "Nova"). He stated that during the time he worked for Nova, he worked on the WASD PSIP project.<sup>1</sup> He explained that the PSIP project consists of five firms. Nova is the major stakeholder (largest percentage of contract) and BND Engineers, Inc. (hereinafter "BND"), was also part of the team (conglomerate of five firms). While employed by Nova, he therefore worked with BND employees, on the WASD PSIP project. He stopped working for Nova in 2017.

Importantly, he clarified that BND is not a subsidiary of Nova. He also stated that he was never employed by BND, a respondent to the solicitation. He stated that he has no current ownership interest or other financial interest in BND. He also does not have any business, close social, or other relationship with any current employee at BND. Mr. Curiel believes he can be fair and impartial when evaluating the respondents to this project.

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. Riera and/or Mr. Curiel have a voting conflict of interest under Section (v) of the County Ethics Code because they will not be directly affected by the vote and they do not currently 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

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<sup>1</sup> The Pump Station Improvement Program (PSIP) was created in 2013 by the Miami-Dade Water and Sewer Department (WASD) to assess, rehabilitate and improve wastewater pump stations throughout the County classified as "Out of Compliance" by the United States Environmental Protection Agency (USEPA).

following termination of the employment relations, would not apply to Mr. Riera since he stopped working for MSA over twenty-three years ago; and it would not apply to Mr. Curiel as he never worked for BND, a respondent to this solicitation. *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, Mr. Riera disclosed that he was employed by MSA, a subconsultant for SRS Engineering, Inc, a respondent to the solicitation. As his employment at MSA ended over twenty-three 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 MSA 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.

As to Mr. Curiel, he disclosed that he was previously employed by Nova where he was engaged in the PSIP Program which involved working with BND, a respondent to the solicitation. Mr. Curiel however, clarified that he never worked for BND, and BND is not a subsidiary of NOVA. As Mr. Curiel has unequivocally stated that he was never employed by BND, and he does not have any business, or close social relationship with current employees at the entity, it is our opinion that his work with BND employees on the PSIP project, while he was employed by Nova, 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, Mr. Riera and Mr. Curiel do not have a conflict of interest under the Ethics Code that would prevent them from serving on this selection committee, and there does not appear to be any appearance of impropriety created by their 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.