



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Justin Espagnol, Non-Voting Chairperson
Internal Services Department

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

FROM: Radia Turay, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2021-44 [Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety]

DATE: March 9, 2020

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 24, 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 of ISD Courthouses and Judicial Facilities – Project No. A20-ISD-04 (Substitution No. 1).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: “Lourdes M. Gonzalez, Eleventh Judicial Circuit of Florida, indicated on her Neutrality/Disclosure Form that she is currently involved in the design of the new Civil and Probate Courthouse Project with some of the respondents to the solicitation. Ms. Gonzalez explained on the form that she is an end user providing input on the design, having no personal financial interest in the project.”

We conferred with Ms. Gonzalez. She is the Court Facilities Manager at the Administrative Office of the Court, Eleventh Judicial Circuit (hereinafter “AOC”). She confirmed that she

¹ This procurement is unrelated to the new Civil and Probate Courthouse Project.

is currently involved in the design of the new Civil and Probate Courthouse Project with some of the respondents to the solicitation. She explained that in her role at the AOC, she provides information on the court needs to the firms; reviews plans to verify that they reflect the information provided; and provides input on design changes as required. She also participates in meetings with the firms to discuss adherence to court needs and technical specifications provided by the County and discusses how court operations affect design.

Importantly, she indicated that even though she will have daily communications with various members of the respondent firms through her employment at the AOC, her communications will not include the pending solicitation. She does not believe that her role at the AOC would impair her independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation.

Ms. Gonzalez also stated she has no current ownership interest or other financial interest in the firms that have responded to this solicitation. She does not have any business, close social, or other relationship with any current employee at the respondent firms. She believes she can 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 Ms. Gonzalez 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 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.

As noted above, Ms. Gonzalez stated that in her role as Court Facilities Manager at AOC, she is involved in the design of the new Civil and Probate Courthouse Project with some of the respondents to the solicitation. She however explained that even though she has daily communications with various members of the respondent firms through her employment at the AOC, her communications will not include this pending solicitation. 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, Ms. Gonzalez does not have a conflict of interest under the Ethics Code that would prevent her from serving on this selection committee.

However, Ms. Gonzalez is reminded that the selection committee, for which she 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. Ms. Gonzalez will therefore be prohibited under the Cone, from communicating with any of the responding entities to this solicitation that she currently supervises, regarding this project.

If Ms. Gonzalez believes that her daily interactions with responding entities to this solicitation in her role as an end-user representative on behalf of the Courts, in the new Civil and Probate Courthouse Project, will create an appearance of impropriety that might lead other proposers in this procurement to believe that she is showing unfounded preference for proposers that she interacts with daily, then she may wish to consider not serving on this selection 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.