



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

Overtown Transit Village North
701 Northwest 1st Court · 8th Floor · Miami, Florida 33136
Phone: (305) 579-2594 · Facsimile: (305) 579-0273
Website: ethics.miamidade.gov

MEMORANDUM

TO: Santiago A. Pastoriza
Procurement Contracting Officer
Miami-Dade County Internal Services Department

Michael G. Fresco, Sr.
Member
Miami-Dade County Community Action Agency Board

Michael G. Fresco, Jr.
Commission Aide
Miami-Dade County Board of County Commissioners

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-117, Section 2-11.1(c), Limitations on Contracting with the County.

DATE: July 19, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest arising from Cooper-General Corporation's bid in response to Solicitation RTQ-02124 and the service of a corporate owner/officer on a County advisory board and the County employment of that same corporate owner/officer's son.

Facts

Cooper-General Corporation ("Cooper-General") has submitted a bid in response to Solicitation RTQ-02124 – Telecom Services, Equipment, and Materials Prequalification Pool – from the Miami-Dade Internal Services Department ("ISD"). Solicitation RTQ-02124 is a Request to Qualify ("RTQ") to establish a prequalified pool of vendors from which the County will then solicit telecommunications installation services, repairs, utilities locations, equipment, tools, and material purchases for use by multiple County departments. There are four pre-qualified groups that will be established by RTQ-02124, and Cooper-General has applied to participate in "Group 4 – Telecommunications Equipment, Wiring, Cabling, Installation Hardware, Tools, and Related

Accessories.” Pre-qualified vendors in Group 4 will subsequently be invited to participate in future spot market competition in the form of an Invitation to Quote (“ITQ”) or a Work Order Proposal Request (“WOPR”) to provide the following non-exclusive list of products:

single and multi-line telephone desk sets, wireless telephones, elevator phones, telephone headsets, conference phones, voice over IP (VOIP) systems and accessories, copper wire, fiber optic cable, telephone and network patch cables, voice and data wall jacks, plates, connectors, patch panels, cable racks, wire management systems, technician installation tools and testing devices, safety equipment, and telecom rectifier components systems with the required provision and commissioning upon installation.¹

Mr. Santiago A. Pastoriza, the Procurement Contracting Officer for ISD overseeing Solicitation RTQ-02124, advised that the vendor pool established this Solicitation will go before the Miami-Dade County Board of County Commissioners (“BCC”) for final approval.

Cooper-General is a Florida for-profit corporation that provides public safety communications equipment to local agencies and municipalities, including police departments, fire departments, and schools. Dr. Michael G. Fresco, Sr. is the fifty-percent owner and President of Cooper-General. His responsibilities with Cooper-General primarily include overseeing Cooper-General’s daily operations, and he stated that he would be involved in Cooper-General’s compliance with and fulfillment of any County contract pursuant to Solicitation RTQ-02124.

Dr. Fresco, Sr. is a member of the Miami-Dade County Community Action Agency Board (“CAA Board”). The CAA Board is a County advisory board that helps to guide the development, planning, implementation, and evaluation of Community Service Block Grant programs, as well as other Community Action and Human Services Department (“CAHSD”) programs.² Dr. Fresco, Sr. stated that the CAA Board does not and would not have any occasion to review contracts concerning telecommunications equipment like the ITQs and WOPRS stemming from Solicitation RTQ-02124 at issue here.

Mr. Michael G. Fresco, Jr., the son of Dr. Fresco, Sr., is employed by the BCC as a Commission Aide. Specifically, Mr. Fresco, Jr. works as the Director of Public Relations and Social Media for the BCC District 11 office. Mr. Fresco, Jr. stated that his primary responsibilities in that position include constituent outreach, organizing events, managing the social media accounts associated with BCC District 11, and some minor legislative duties, such as preparing meeting binders. Mr. Fresco, Jr. advised that he does not have any role in or involvement with Cooper-General, nor is he employed by Cooper-General.

¹ See Solicitation RTQ-02124.

² See *Community Action Agency Board*, MIAMIDADE.GOV, <https://www.miamidade.gov/global/government/boards/community-action-agency.page> (last visited July 7, 2022).

Issue

Whether there is any prohibited conflict of interest related to Cooper-General's bid in response to Solicitation RTQ-02124 from ISD arising from the participation of one of Cooper-General's owners and corporate officers on a County advisory board or the County of employment of the son of that same corporate owner/officer.

Analysis

The Miami-Dade County Conflict of Interest and Code of Ethics ("County Ethics Code") Sections 2-11.1(c)(1) and (d) of the County Ethics Code prohibit County employees, advisory personnel, and members of their immediate family³ from contracting or transacting business with the County, individually or through a business in which they have a controlling financial interest. "Transacting business" with the County is defined as the purchase or sale of goods or services for consideration. County Ethics Code § 2-11.1(b)(10).

A. County Advisory Board Service and Michael G. Fresco, Sr.

As to County advisory personnel, the County Ethics Code prohibits a County advisory board member from contracting with the County only if the advisory board on which he or she serves would oversee that contract. *See* County Ethics Code § 2-11.1(c)(3). In practice, this has meant that no prohibited conflict of interest arose when a member of the City of Miami Beach Capital Improvements Project Oversight Committee ("CIPOC") sought to contract with the City of Miami Beach because the CIPOC did not "oversee, manage, set policy, or exert any quasi-judicial authority over RFPs related" to the matters about which the CIPOC member sought to privately contract with the city. RQO 09-22. Additionally, service of its corporate officers/employees on the Miami-Dade County Living Wage Commission and the Miami-Dade Small Business Enterprise Advisory Board – Goods and Services did not give rise to a prohibited conflict of interest that prevented said corporation from contracting with the County because those boards would not have occasion to consider that corporation's County contract. *See* INQ 22-43; INQ 22-30.

Here, regarding Dr. Fresco, Sr.'s service on the CAA Board, County ordinance provides that CAA Board members are subject to the County Ethics Code and CAA Board members are considered advisory personnel for purposes of the County Ethics Code. *See* County Ethics Code § 2-11.1(b)(4); Miami-Dade County Code § 2-2049. Thus, applying the County Ethics Code and based on the information provided to us at this time, it appears unlikely that a prohibited conflict of interest arises out of the service of Dr. Fresco, Sr. as a member of the CAA Board in relation to Cooper-General's response to Solicitation RTQ-02124. There is no indication that the CAA Board would ever have occasion to consider Solicitation RTQ-02124, or any subsequent ITQs and WOPRs issued to the Group 4 vendor pool generated by this RTQ because the Group 4 vendor pool is generated for the provision of telecommunications equipment and related tools and accessories, whereas the CAA Board is a County advisory board concerned with Community Service Block Grant programs and other CAHSD programs. *See* RQO 09-INQ 22-43; INQ 22-30.

³ Immediate family includes parents and children. *See* County Ethics Code § 2-11.1(b)(9).

B. County Employment and Michael G. Fresco, Jr.

As to County employees and their immediate family, the County Ethics Code provides a limited exclusion from the general prohibition on doing business with the County, so long as:

- (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County,
- (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and
- (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance.

See County Ethics Code § 2-11.1(c)(2). In the practice, this has meant that no prohibited conflict of interest arose when a company owned by the spouse of an Assistant to the Deputy Mayor sought to contract with the County because the Assistant to the Deputy Mayor did not have any participation in determining contract requirements, awarding the contract, or enforcing, overseeing, administering, extending, terminating, or forbearing any part of the contract. *See* INQ 20-44. Additionally, no prohibited conflict of interest arose when a company owned by the parents of a Miami-Dade Police Officer sought to register as a vendor with the County so long as the company did not contract with the Miami-Dade Police Department and the Miami-Dade Police Officer whose parents owned the company did not participate in determining contract requirements, awarding any County contract, or enforcing, overseeing, administering, extending, terminating, or forbearing any part of a County contract. *See* INQ 09-174; *see also* INQ 10-07 (no prohibited conflict of interest arose when a company owned by the parents of a Senior Assistant in Government Affairs for the Miami-Dade County Water and Sewer Department (“WASD”) so long as the company did not contract with WASD and the Senior Assistant did not participate in determining contract requirements, awarding any County contract, or enforcing, overseeing, administering, extending, terminating, or forbearing any part of a County contract).

Here, based on the information provided to us at this time, it appears unlikely that a prohibited conflict of interest arises Mr. Fresco, Jr.'s employment as a Commission Aide to the BCC District 11 office. Solicitation RTQ-02124, at issue here, is administered by ISD, not the BCC District 11 office. *See* INQ 09-174. Furthermore, while Mr. Fresco, Jr. is a Commission Aide, his working title is Director of Public Relations and Social Media for District 11, and his primary job responsibilities do not concern the determination of contract requirements, awarding County contracts, or enforcing, overseeing, administering, extending, terminating, or forbearing contracts with the County concerning telecommunications equipment like the ITQs and WOPRS stemming from Solicitation RTQ-02124 at issue here. *See* INQ 20-44; INQ 09-174.

However, Mr. Fresco, Jr. stated that he has minor legislative duties, and the vendor pool established by Solicitation RTQ-02124 will ultimately go before the BCC for final approval. As such, Mr. Fresco, Jr., should recuse himself from any involvement in any matter concerning Solicitation RTQ-02124, including any public relations or social media communications related to

the Solicitation and District 11, to avoid any appearance of impropriety. *See* INQ 22-09 (County Mayor’s Senior Director of Communications should recuse herself from any matter involving Brightline trains because her husband is Brightline’s Vice President of Operations).

Opinion

Accordingly, based on the facts presented here and discussed above, no prohibited conflict of interest arises from Dr. Fresco, Sr.’s service on the CAA Board or from Mr. Fresco, Jr.’s County employment as a Commission Aide that would prevent Cooper-General from contracting with the County pursuant to Solicitation RTQ-02124 to participate in the Group 4 pre-qualified vendor pool, nor would Cooper-General be prevented from bidding on subsequent spot market quotes (ITQs or WOPRs) for the provision telecommunications equipment issued to the Group 4 pre-qualified vendor pool. **However, if there is an ITQ or WOPR for the provision of telecommunications equipment issued to the Group 4 pre-qualified vendor pool specifically for the provision of telecommunications equipment for the BCC, Cooper-General may not submit a bid in response to that ITQ or WOPR because the BCC is Mr. Fresco, Jr.’s employing County department.** *See* County Ethics Code § 2-11.1(c)(2) (the limited exclusion permitting immediate family members of County employees to contract with the County does not extend to contracts with the County employee’s employing department).

Furthermore, the Commission on Ethics strongly recommends that Dr. Fresco, Sr. abide by the following limitations:

- Dr. Fresco, Sr. is advised that he may not appear before the CAA Board, either directly or through an associate, on any matter related to Cooper-General because County advisory personnel, which includes members of advisory boards like the CAA Board, are prohibited from appearing before the County board or agency on which they serve to make a presentation on behalf of a third party with respect to any “license, contract, certificate, ruling, decision, opinion, rate schedule, franchise, or other benefit sought by a third person.” County Ethics Code § 2-11.1(m)(2); INQ 19-78.
- Dr. Fresco, Sr. may not participate in any official CAA Board action, directly or indirectly, that affects Cooper-General. *See* County Ethics Code § 2-11.1(n); INQ 19-78.
- “No [advisory personnel] . . . shall vote on any matter presented to an advisory board . . . on which the person sits if the board member will be directly affected by the action of the board on which the member services, 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 . . .” County Ethics Code § 2-11.1(v) (emphasis added). Accordingly, if the CAA Board ever has occasion to seek the provision of telecommunications equipment from the Group 4 pre-qualified vendor pool established by Solicitation RTQ-02124, Dr. Fresco, Sr., as owner and President of Cooper-General, must recuse himself from any discussion and/or vote regarding that matter. *See id.*; INQ 19-78.

Furthermore, the Commission on Ethics strongly recommends that Mr. Fresco, Jr. abide by the following limitations:

- The County Ethics Code prohibits County employees from exploiting their official position to secure specific privileges or exemptions for himself or another. *See* County Ethics Code § 2-11.1(g). Accordingly, as discussed above, **Mr. Fresco, Jr. should recuse himself from any involvement in any matter concerning Solicitation RTQ-02124 when that matter comes before the BCC.** *See id.*; INQ 22-09.
- Mr. Fresco, Jr. may not lobby the County on behalf of Cooper-General, meaning he may not appear before any County board or agency to represent Cooper-General, nor contact anyone within the County in an attempt to influence a decision about any contract that Cooper-General is seeking. *See* County Ethics Code § 2-11.1(m)(1); INQ 20-44. Specifically, this means that he may not discuss Cooper-General's bid in response to Solicitation RTQ-02124 with anyone in the County, including the BCC District 11 office beyond informing them that he has a conflict of interest and must recuse himself.
- Mr. Fresco, Jr. may not disclose and/or use any confidential and/or proprietary information acquired because of his County employment with the BCC District 11 office to derive a personal benefit, or for the benefit of his father, Dr. Fresco, Sr., or for Cooper-General. *See* County Ethics Code Section 2-11.1(h).
- If Cooper-General successfully contracts with the County pursuant to Solicitation RTQ-02124, then Mr. Fresco, Jr. **must file** a sworn statement disclosing his father, Dr. Fresco, Sr.'s, employment and financial interest in Cooper-General, with the Clerk of the Court in accordance with Section 2-11.1(f) of the County Ethics Code. *See* INQ 20-128 (County Mayor's Chief of Staff must file a sworn statement disclosing her husband's employment with a company doing business with the County).

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply based on directives from ISD, the BCC, or the CAA Board or under state law. Questions regarding possible conflicts based on ISD, BCC, or CAA Board directives should be directed to the respective named entities or to the Mayor's Office. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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 Commission on Ethics 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.