



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Manuel Jimenez, Selection Committee Coordinator
Internal Services Department

Sade Chaney, Research Manager
Office of the Commission Auditor

FROM: Martha D. Perez
General Counsel, Commission on Ethics & Public Trust

SUBJECT: INQ 2022- 121, Voting/Participation Conflict of Interest § 2-11.1(v); Reverse Two Year Rule § 2-11.1(x); Appearances of Impropriety; County Resolution R-449-14

DATE: August 2, 2022

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 July 28, 2022, which was prepared in connection with the Appointment of Selection Committee for the Miami-Dade County Public Housing and Community Development Request for Qualifications for Redevelopment of County Properties Under the Rental Assistance Demonstrations Program Pool – RFQ No. 01295

The memorandum was prepared in connection with Resolution Number 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 pursuant to OCA’s background check, Tangie White, a member of the selection committee, served as Director of a Respondent firm in this solicitation- Tacolcy Economic Development Corp. (hereinafter TED)¹

¹ TED is a non-profit entity which serves communities by focusing on affordable housing initiatives.

We conferred with Ms. White who is the Community Development Division Chief for Miami Dade County Public Housing and Community Development Department (PHCD). Ms. White was a member of the Board of Directors and/or Director of TED from 2000 to 2019. She advised that she was originally asked to join the organization because of her knowledge and expertise in commercial real estate lending. She was not compensated for her service while at TED. Her resignation from TED was amicable. She stated that she worked with Carol Gardner, the current President of TED, who appears in the firm's proposal. However, she indicated she does not have any close social relationships with any TED board members. She feels she can be fair and impartial in evaluating the respondents in this solicitation.

Discussion:

The Miami-Dade Commission on Ethics and Public Trust ("COE") conducts a review of issues arising under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code"), which governs conflicts by members of County advisory and quasi-judicial boards.² The COE also considers whether the circumstances create an appearance of impropriety and makes recommendations pursuant to Resolution No. 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.

Based on the responses provided by Ms. White, it does not appear that she has a conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote or participation, 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 their employment relations, would not technically apply to Ms. White since she resigned from TED sometime in September 2019 (2.9 years ago) and the subject Respondent entity is a not-for-profit entity.⁴

² A selection committee is a County board for purposes of assessing a conflict of interest under Section 2-11.1(v), County Ethics Code. *See* INQ 17-206

⁴ Records of TED non-profit corporation revealed that Ms. White was the Director of TED in March 2019; the Articles of Incorporation of the company filed September 2019 also list Ms. White as Director of TED.
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However, 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 created by past relationships that a member has with individuals or entities involved with a particular project 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.

Ms. White's relationship with one of the Respondents in this solicitation ended approximately 2.9 years ago and although the entity is a non-profit entity which does not implicate the restrictions under the County's Reverse Two- Year Rule ordinance, we must nevertheless consider the appearance of impropriety in Ms. White's continued service in this committee. *See* INQ 17-200 (County employee who was former Executive Director of governmental agency which is a subconsultant on the proposal and who remains friendly with former partner/consultant who will be involved with the contract, should be considered by ISD in determining whether he may serve on this board. "As perhaps the most sensitive pressure point within County government, the procurement process has always maintained stronger ethical standards than the minimum provided under the Ethics Code. The creation of any perception of favoritism should always be avoided." ; INQ 12-62 (an appointment to a selection committee shortly after the two-year proscription, although not strictly prohibited by the Ethics Code, may create an appearance of impropriety); *See also* INQ 17-174 (service in a selection committee by the former Executive Director of a subconsultant *non-profit firm* "would create an obvious appearance of favoritism on the committee that would not reflect well on the fairness of the process leading to the selection committee's recommendation" even though the previous employer is a not-for-profit entity)

Opinion:

Consequently, while there is no *per se* prohibition in Ms. White's service on this selection committee, we recommend that she be excused from service due to her recent role/position and service with one of the respondents in this solicitation. This recommendation should not in any way be interpreted to suggest that Ms. White, whose honesty in this matter is appreciated, would not be a suitable or appropriate person to serve on a different 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, 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 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.