



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: Julie Whiteside, Selection Committee Coordinator
Internal Services Department

Sade Chaney, Research Manager
Office of the Commission Auditor (OCA)

FROM: Martha Diaz Perez, General Counsel
Miami-Dade Commission on Ethics and Public Trust (COE)

SUBJECT: INQ 2022- 13, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: February 11, 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.

Background

We have reviewed your memorandum dated February 9, 2022, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Seaport Department Request to Advertise for Realignment of North Bulkhead Cruise Berths 1-6 – Project No. DB21-SEA-01. 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 Richard Garcia, an employee of the Miami-Dade Aviation Department and a voting member of the selection committee, made disclosures on his Neutrality/Disclosure form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that: “his family member, Pedro Rodriguez Morado, is currently employed

by Acciona-Condotte JV as a Machinery Assets Manager and Engineer. OCA noted that Acciona-Condotte JV is a respondent to this solicitation.” (Project) ¹

We conferred with Mr. Garcia. He is employed as Chief of the Signage Division at the Aviation Department. ² He is the second cousin of Pedro Rodriguez-Morado. Mr. Rodriguez-Morado resides in Spain. Notwithstanding, both gentlemen are very close and have frequent contact through several means of communication. They visit each other every year.

Mr. Garcia advised that Mr. Rodriguez-Morado has been employed at A-C for over a decade. Although he does not know whether Mr. Rodriguez-Morado has any financial/ownership interest in A-C, he asserts that his cousin holds a high-level position in the company and would likely be involved in the Project given his duties and responsibilities as Machinery Assets Manager and Engineer for A-C. ³

Although he would strive to be fair and impartial, Mr. Garcia does not feel comfortable when evaluating the Respondents on this particular solicitation.

Discussion

The Ethics Commission 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). ⁴

Specifically, Section 2-11.1(v) of the County Ethics Code states that 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 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. ⁵

¹ Acciona-Condotte JV, hereinafter “A-C.”

² This is the division of the County’s Aviation Department charged with the planning, design and implementation of all signage systems in all Airport facilities.

³ In lay terms, the project in question involves the building out of the cruise berths (allocated space within a dock) to achieve alignment thereby facilitating docking.

⁴ Depending on the circumstances, these reviews may also implicate other sections of the County Ethics Code.

⁵ 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

In this instance, Mr. Garcia does not maintain a current employment, financial or business relationship with Respondent A-C; he will not be directly affected by the vote, and he does not currently have any of the enumerated relationships with A-C (or any other entity affected by the vote). Therefore, it does not appear that Mr. Garcia has a voting conflict of interest under Section 2-11.1 (v) of the County Ethics Code.

However, the COE has noted that the County's Procurement Division has generally imposed stricter standards on County employees and selection/evaluation committee members than those provided by law/ordinance. As noted, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the COE also opines concerning whether there may be an appearance of impropriety in a given situation that would justify excusing or removing 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.

In prior informal opinions, the Ethics Commission has recommended that a County employee should not serve on a selection committee, even though not specifically prohibited by the Ethics Code, if the selection committee member has a *familial relationship* with an individual that has some ownership interest in one of the responding firms:

In INQ 17-214, the Ethics Commission recommended that an individual not serve on a selection committee where his brother-in-law was the owner and principal of one of the sub-consultants for a responding prime contractor, even though it was not specifically prohibited by the Ethics Code. The COE in that instance stated that the County employee should not serve on the selection committee due to the possible perception of a conflict of interest, given his *familial relationship* with the owner of a sub-consultant for one of the competing prime contractors.

In INQ 18-258, the Ethics Commission recommended that a County employee whose spouse owned stock in the respondent firm and as V-P, could possibly become involved with the project based on her role, should not serve on the selection committee due to the possible appearance of impropriety. Similarly, another County employee whose son was also employed at the Respondent firm but would not be involved in the project, should nevertheless refrain from service in the selection committee due to the possible appearance of impropriety given the close *familial relationship*.

In INQ 20-16, the Ethics Commission recommended that a County employee whose brother worked for one of the respondents as a consultant and who candidly indicated that he may not be suitable for this selection committee because he did not know whether he could be fair and impartial when evaluating the proposals, should be removed from the selection committee due to an appearance

of impropriety created by the familial relationship and the need to sustain public confidence in the procurement process.⁶

Although it is not certain whether Mr. Rodriguez-Morado has an ownership interest in A-C, he holds a high-level position in the firm and is likely to play a significant role in the Project. Moreover, Mr. Garcia indicated that he would not feel comfortable serving on this selection committee given his close and familial relationship with his cousin.

Conclusion

Consequently, it is our recommendation that Mr. Garcia not serve on this selection committee due to the possible appearance of impropriety, given his close and familial relationship with a high-level employee of A-C, a respondent in this solicitation, because, “appearances of integrity and fairness are paramount in all procurement matters, [as] “there is a need for the County to conduct its procurement operations in a manner that will not create appearances of impropriety, favoritism or undue influence...[which] may require a higher standard of ethics....” See INQ 17-131, citing to INQ 14-242, INQ 12-180, INQ 12-63

This recommendation should not in any way be interpreted to suggest that Mr. Garcia, whose honesty and candor in this matter are appreciated, would not be a suitable or appropriate person to serve on a different selection committee.

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.

⁶ The procurement process in the County, as you are aware strives to follow procedures that not only abide by the Ethics Code, but also serve to promote the highest values of integrity, transparency and fairness. See INQ 17-281.

