



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Jorge Vital, Selection Committee Coordinator  
Internal Services Department

Sade Chaney, Research Manager  
Office of the Commission Auditor

**FROM:** Loressa Felix, Staff Attorney  
Commission on Ethics and Public Trust

**SUBJECT:** INQ 2022-147, Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety

**DATE:** October 26, 2022

**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 October 20, 2022, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Aviation Department Request to Advertise for Environmental Management System/ISO 14001:2015 Consulting Services – Project No. E22-MDAD-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 member of the selection committee made a disclosure on his Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that “Victor Mendez, Miami-Dade Aviation Department, indicated in his neutrality affidavit that EXP US Services Inc. is a consultant for an active County contract under his purview. EXP US Services Inc. is identified as a subconsultant for Apex Companies, LLC, a respondent to this solicitation. Alejandro Montalvo, Miami-Dade Aviation Department, indicated in his neutrality affidavit that he is assigned an active County project in

which NOVA Consulting, Inc. is a service provider. NOVA Consulting, Inc. is identified as a subconsultant for NV5, Inc., a respondent to this solicitation.”

We conferred with Mr. Mendez. He is a Construction Manager 3 for the Miami-Dade Aviation Department (MDAD). He has worked for the County for over 30 years. He confirmed that he is currently managing a project that includes respondents to the solicitation, specifically, EXP US Services Inc. (EXP) which is a subconsultant for Apex Companies, LLC, a respondent to this solicitation. EXP is currently providing engineering services to the MDAD Maintenance Initiation & Engineering Section. Mr. Mendez serves as the project manager and selected EXP through the County’s EDP PSA Contract program. The project is a multi-service EDP project related to the 40-Year Recertification of various MDAD Buildings. Mr. Mendez does not believe that his current supervision of EXP would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation. He also does not maintain any close friendships with any of the employees at these entities.

We also conferred with Mr. Montalvo. He is an Engineer 4 for the MDAD. He has worked for the County for 29 years. He confirmed that he is currently managing a project that includes respondents to the solicitation, specifically, NOVA Consulting, Inc. (NOVA) a subconsultant for NV5, Inc., a respondent to this solicitation. NOVA provides testing services for stockpiles on the Central Base Apron Improvements project. Mr. Montalvo is the assigned MDAD project manager. However, NOVA reports to another MDAD staff member. He does not believe that his current supervision of NOVA would impair his independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation. He also does not maintain any close friendships with any of the employees at these entities.

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. Mendez or Mr. Montalvo has a voting conflict of interest under Section (v) of the County Ethics Code because neither will be directly affected by the vote, and neither has 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, Mr. Mendez and Mr. Montalvo have confirmed that they currently manage projects that include respondents to the solicitation, specifically, EXP and NOVA Consulting, Inc., respectively. The Commission on Ethics 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, INQ 18-230, and INQ 20-136. The Commission'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, INQ 18-230, and INQ 20-136.

Opinion:

Consequently, we see no reason why Mr. Mendez and Mr. Montalvo should not serve on this committee because they do not have a conflict of interest under the Ethics Code and there does not appear to be any appearance of impropriety created by their service on this committee.

However, they are both reminded that the selection committee, for which they 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. Mr. Mendez and Mr. Montalvo will therefore be prohibited under the Cone from communicating with any of the responding entities to this solicitation that they currently supervise regarding this project.

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.

We appreciate your consulting with the Commission in order to avoid possible prohibited conflicts of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

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.