



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Franklin Gutierrez, Selection Committee Coordinator
Strategic Procurement Department

Sade Chaney, Research Manager
Office of the Commission Auditor

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

SUBJECT: INQ 2022-153, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: November 8, 2022

CC: All COE Legal Staff; Pablo Valin, Strategic Procurement Department

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 November 7, 2022, which was prepared in connection with the Revision to the Appointment of Selection Committee for Miami-Dade Transportation Planning Organization Request to Advertise for 2050 Regional Transportation Plan – Project No. E22-TPO-01 (Removal Request). 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 members of the selection committee made a disclosure on their Neutrality/Disclosure Form that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum noted the following:

- Andrew Uhlir, Palm Beach Transportation Planning Agency, disclosed business relationships within his Neutrality Affidavit, including work with the TPA and various firms identified as respondents to this solicitation.

- Nilia Cartaya, Florida Department of Transportation District Six, disclosed business relationships within her Neutrality Affidavit, including oversight of FDOT consultant contracts, including WSP USA Inc., Alfred Benesch & Company, Renaissance Planning Group, Inc., Infinite Source Communications Group LLC, Exp U.S. Services Inc., and Caltran Engineering Group, Inc. All six firms are respondents and/or subconsultants to this solicitation.
- Lois Bush, Florida Department of Transportation District Four, disclosed business relationships within her Neutrality Affidavit, including management of districtwide consultant contracts, including Kittelson & Associates, Inc., Renaissance Planning Group Inc., and Kimley-Horn & Associates, Inc. All three firms are respondents and/or subconsultants to this solicitation.
- Barbara Handrahan, South Florida Regional Transportation Authority, disclosed business relationships within her Neutrality Affidavit, including SFRTA contracts with WSP USA Inc. and Kimley-Horn & Associates, Inc. Both firms are respondents to this solicitation.

We conferred with Mr. Uhlir. He is the Deputy Director of Programs for Palm Beach Transportation Planning Agency (Palm Beach TPA). He has worked for Palm Beach TPA in that capacity for over 5 years. He confirmed that he is currently managing a general service contract that includes respondents to the solicitation, specifically, Kittelson & Associates, Inc. (Kittelson), a respondent to this solicitation and Kimley-Horn & Associates, Inc. (Kimley-Horn), a subconsultant for WSP USA, Inc., a respondent to this solicitation. Mr. Uhlir does not believe that his current supervision of Kittelson or Kimley-Horn 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 conferred with Ms. Cartaya. She is a Modal Development Administrator for the Florida Department of Transportation (FDOT). She has worked in that capacity for FDOT for over 4 years. She confirmed that she is currently serving as the project/contract manager for several projects that include respondents to this solicitation, specifically, WSP USA, Inc., a respondent to this solicitation, Alfred Benesch & Company, a subconsultant for Kittelson, a respondent to this solicitation, Renaissance Planning Group, Inc., a subconsultant for Kittelson, a respondent to this solicitation, Infinite Source Communications Group LLC, a subconsultant for Kittelson, a respondent to this solicitation, Exp U.S. Services Inc., a subconsultant for WSP USA, Inc., a respondent to this solicitation, and Caltran Engineering Group, Inc., a subconsultant for WSP USA, Inc., a respondent to this solicitation. Ms. Cartaya does not believe that her current supervision of any of these entities would impair her independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation. She also does not maintain any close friendships with any of the employees at these entities.

We conferred with Ms. Bush. She is the Senior Policy Planning Analyst for the Florida Department of Transportation, District Four. She has worked for FDOT in that capacity for 20 years. She confirmed that she is currently managing two districtwide general planning support continuing services contracts. One project has Cambridge Systematics as the prime consultant and Kittelson and Renaissance Planning Group, Inc. among the sub-consultants. The other project has

Kittelton as the prime consultant. Kittelson is a respondent to this solicitation and Renaissance Planning Group, Inc., is a subconsultant for Kittelson, a respondent to this solicitation. Her contract management revolves around assignment and monitoring of work under task work orders issued consistent with contract scopes of services. Ms. Bush does not believe that her current supervision of Kittelson and Renaissance Planning Group, Inc. would impair her independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation. She also does not maintain any close friendships with any of the employees at these entities.

Lastly, we conferred with Ms. Handrahan. She is the Transportation Planning Manager for the South Florida Regional Transportation Authority (SFRTA). She has worked for SFRTA in that capacity for 11 years. She confirmed that she is currently managing a contract that includes a respondent to the solicitation, specifically, Kimley-Horn, a subconsultant for WSP USA, Inc., a respondent to this solicitation. As part of its contract, Kimley-Horn is tasked with preparing a Rail Vehicle Replacement Grant. Kimley-Horn. Ms. Handrahan does not believe that her current supervision of Kimley-Horn would impair her independence of judgment when evaluating the various proposals that have been submitted in response to this solicitation. She 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 any of the proposed selection committee members have a voting conflict of interest under Section (v) of the County Ethics Code because none of them will be directly affected by the vote, and none 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, each of the four proposed selection committee members have confirmed that they currently manage projects that include respondents to the solicitation. 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 public 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. Uhlir, Ms. Cartaya, Ms. Bush, and Ms. Handrahan 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 all 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. Uhlir, Ms. Cartaya, Ms. Bush, and Ms. Handrahan will therefore be prohibited under the Cone from communicating with any of the responding entities to this solicitation that they currently supervise regarding their respective projects.

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.