



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: Yosmel Milian, Chief
Seaport Terminal Development
Port of Miami

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

SUBJECT: INQ 2022-157, Doing Business with the County, Section 2-11.1(c), County Ethics Code

DATE: November 29, 2022

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding your company's participation in the Small Business Enterprise (SBE) certification program.

Facts:

You are employed by the Port of Miami as the Chief of Seaport Terminal Development. You are also currently employed with A & H Environmental Corp. ("A & H") as a general contractor, qualifier, and license holder. While you are not involved with the day-to-day management for the company, you are listed as a director in the company's corporate documents. You assist solely with quality control and technical issues as the licensed general contractor on the construction projects. A & H is seeking certification through the SBE program in its efforts to contract with the County and become a County vendor.

Miami-Dade County's SBE Certification programs were created for any business entity providing construction, architectural, engineering, goods, services, and aeronautical support services. This program is a gender and race neutral program specifically for firms that are defined as independent construction companies. It is designed to provide opportunities for firms that meet the following criteria: (1) located and performing a commercially useful function in Miami-Dade County; (2) not exceeding 3 year average gross receipts of \$10 million for general building (NAICS 236/SIC

15), \$6 million for heavy construction contractors (NAICS 237/SIC 16), and \$5 million for specialty trade contractors (NAICS 238,SIC 17); (3) local business tax receipt for 1 year prior to certification; (4) qualifier must own at least 10% of the certified firm's issued stock; (5) personal net worth does not exceed \$1,500,000 for each owner; (6) owner can have only one Small Business Enterprise - Construction certified firm; and (7) annual renewal of certification required.¹

Analysis and Opinion

Your inquiry involves several sections of the County Ethics Code which are analyzed below:

A. Outside Employment

Work conducted for A & H constitutes outside employment. The County Ethics Code prohibits County employees from engaging in conflicting outside employment. Conflicting employment is sometimes created when a County employee comes in contact with the same or similar people or entities in both her outside employment and in her County job or when she uses the same or similar resources in her outside employment as she uses in her County work. Also note that you may not use County time or resources in the performance of your outside employment. See County Ethics Code §§ 2-11.1 (g) and (j), Miami-Dade Code 2-11, and Administrative Order 7-1.²

*Please note that this memorandum does not grant you permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department Director. Given that you are a full-time employee, you **must also** file the related outside employment financial disclosure form, the Outside Employment Statement yearly. Additionally, this opinion does not address whether the proposed outside employment may constitute conflicting employment as defined in Section 2-11.1(j) of the County Ethics Code.*

B. Contracting with the County

The County Ethics Code at Sections 2-11.1 (c)(2) and (d) allows A & H to enter a contract, individually or through a firm, with Miami-Dade County, as long as the contract does not interfere with the full and faithful discharge of your duties to the County.

¹ See <https://www.miamidadade.gov/smallbusiness/enterprise-construction.asp>.

² Requestor advised that he previously received approval for his outside employment on an annual basis.

This includes the condition that you may not participate in determining the contract/workshop or certification requirements or in awarding the contract or certification. Additionally, none of your County job responsibilities and job descriptions may require you to be involved in the contract/workshops or the certification in any way including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination, or forbearance. Finally, **you may not work in any County department that would enforce, oversee or administer the contract/workshop or certification.** See Sections 2-11.1(c) and (n), Miami-Dade County Ethics Code. Consequently, A & H may not enter contracts with Seaport or the Port of Miami.

C. Lobbying

Additionally, you may not lobby the County. In this case, it means that you may not contact anyone within the County through any means of communication, in an attempt to influence a decision about A & H's application for SBE certification or any contract A & H may seek. See Section 2-11.1(m)(1), Miami-Dade County Ethics Code.

D. Exploitation of Official Position

Finally, the County Ethics Code prohibits County employees from exploitation of their official position. This means that you may not use your County position to secure **special privileges or exemptions** with respect to any certification program or County contract to which A & H is applying. See Section 2-11.1(g), Miami-Dade County Ethics Code.

Please submit this memorandum to the Small Business Development division of the Internal Services Department. The Ethics Commission does not submit it on your behalf.

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.

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.