



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Saba Musleh, CPPB, Procurement Contracting Officer III  
Selection Committee Coordinator  
Miami-Dade County Strategic Procurement Department

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

**FROM:** Etta Akoni, Staff Attorney  
Miami-Dade Commission on Ethics and Public Trust

**SUBJECT:** INQ 2022-161 Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety, Resolution No. 449-14

**DATE:** December 9, 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 action.

FACTS:

We have reviewed The Office of the Commission Auditor memorandum dated November 21, 2022, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Transit and Public Works Department Request to Proposals for Modernization, Maintenance, and Repair Services for Conveyance Equipment - RFP No. 02030. 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 two (2) members of the selection committee made disclosures on their Neutrality Affidavits that merited submission to the Commission on Ethics for an opinion. Specifically, the memorandum notes that:

Gregory Perello, Internal Services Department, disclosed business relationships within his Neutrality Affidavit, including contractual

matters with elevator vendors. Additionally, Mr. Perello's resume lists Thyssenkrupp Elevator and Schindler Elevator Corporation as former employers. TK Elevator Corporation, also known as Thyssen Elevator Company, and Schindler Elevator Corporation are respondents to this solicitation.

Marcos Bermudez, Department of Transportation and Public Works, listed ThyssenKrupp Elevator Company on his resume as a former employer. TK Elevator Corporation, also known as Thyssen Elevator Company, is a respondent to this solicitation.

We conferred with Mr. Bermudez, a technical advisor to the selection committee. He is an Elevator Contract Specialist for the Miami-Dade County Department of Transportation and Public Works. (Hereinafter referred to as "DTPW"). He confirmed that he previously worked for ThyssenKrupp Elevator Company as a service manager from 2000 to 2002 and his separation from ThyssenKrupp Elevator Company was amicable. Mr. Bermudez confirmed that he has no current ownership interest or other financial interest in ThyssenKrupp Elevator Company. Mr. Bermudez confirmed that he does not have any business, close social, or other relationship with any current employee at ThyssenKrupp Elevator Company.

Mr. Bermudez also confirmed that he is and has been a Director for All USA Elevator Services, Inc. since 2005<sup>1</sup>. All USA Elevator Services, Inc. is a Florida for profit corporation operating out of Miami Dade County, Florida. Mr. Bermudez' role as Director of All USA Elevator Services, Inc. includes planning and development. All USA Elevator Services, Inc. is not a registered contractor with Miami Dade County, and per Mr. Bermudez, All USA Elevator Services, Inc. will not participate in Solicitation RFP No. 02030 in any way. Mr. Bermudez also provided information about an additional outside employment at Barracuda Tactical, LLC<sup>2</sup>. But Barracuda Tactical, LLC's purpose and products for sale have no tangents to Solicitation RFP No. 02030 and, generally, elevators. Mr. Bermudez believes he can be fair and impartial when evaluating the respondents to this project.

We also conferred with Mr. Perello, a voting member of the selection committee. Mr. Perello is an Elevator Inspector and Contract Administrator with the Miami Dade County Internal Services Department. (Hereinafter referred to as "ISD"). He confirmed that he previously worked for ThyssenKrupp Elevator Company as a Project Manager or Superintendent from

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<sup>1</sup> Mr. Bermudez has provided this writer with evidence that he timely filed his annual Miami Dade County Outside Employment Declaration, Request, and Statement for 2022. Moreover, Mr. Bermudez' employment with All USA Elevator Services, Inc. was previously addressed and approved by the Miami Dade Commission on Ethics and Public Trust in 2010. *See* RQO 2010-01.

<sup>2</sup> Mr. Bermudez is and has been a Director of Barracuda Tactical, LLC. since 2015. Barracuda Tactical, LLC. is a Florida Limited Liability Company, based in Miami Dade County, Florida. Barracuda Tactical, LLC. creates and sells gun-related products. [www.barracudatactical.com](http://www.barracudatactical.com)

2015 to 2018 and his separation from ThyssenKrupp Elevator Company was amicable. Mr. Perello confirmed that he has no current ownership interest or other financial interest in ThyssenKrupp Elevator Company. Mr. Perello also confirmed that he previously worked for Schindler Elevator Company as a Service Mechanic Repair and Service Helper from 1988 to 1994 and subsequently as a Service, Construction, and Modernization Departments Superintendent from 2003 to 2008. Mr. Perello indicated that both of his separations from Schindler Elevator Company were also amicable. Mr. Perello confirmed that he has no current ownership interest or other financial interest in Schindler Elevator Company. However, Mr. Perello disclosed that he and Michael Gandy, a Modernization Supervisor for Schindler Elevator Company, are childhood friends of forty (40) years. Additionally, Mr. Perello also disclosed closed personal relationships with three (3) additional Schindler Elevator Company employees and three (3) ThyssenKrupp Elevator Company employees. Mr. Perello believes he can be fair and impartial when evaluating the respondents to this project.

We conferred with Mr. Saba Musleh, a Procurement Contracting Officer III with the Miami Dade County Strategic Procurement Department (“SPD”) and the Selection Committee Coordinator for Solicitation RFP-02030. Mr. Musleh provided the Solicitation Tabulation Packet for Solicitation RFP-02030 which catalogues all persons listed by Schindler Elevator Company and ThyssenKrupp Elevator Company who may participate in an oral presentation before a Miami-Dade County evaluation, selection, technical review or similar committee or subcommittee; and/or recorded negotiation meeting or sessions involving Solicitation RFP-02030. Mr. Michael Gandy is listed in the Solicitation Tabulation Packet for Solicitation RFP-02030 for Schindler Elevator Company as an employee who may participate in an oral presentation before a Miami-Dade County evaluation, selection, technical review or similar committee or subcommittee; and/or recorded negotiation meeting or sessions. None of the other Schindler Elevator Company and ThyssenKrupp Elevator Company employees disclosed to this agency by Mr. Perello, as being his close personal friends, are listed Solicitation Tabulation Packet for Solicitation RFP-02030 for either company.

#### DISCUSSION:

This agency conducts reviews of potential 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).

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.

Mr. Bermudez disclosed that he was previously employed by ThyssenKrupp Elevator Company, a respondent to the solicitation. As his employment at ThyssenKrupp Elevator Company ended twenty (20) years ago on an amicable basis, and he does not have any business, or close social relationship with current employees at the entity, Mr. Bermudez' prior employment at ThyssenKrupp Elevator Company would not create a conflict of interest, an appearance of impropriety, or in any way detract from the County's conduct of a fair and objective evaluation for this project. *See* INQ 20-73, INQ 18-202, and INQ 17- 69.

Mr. Perello disclosed that he was previously employed by ThyssenKrupp Elevator Company and Schindler Elevator Company, both respondents to the Solicitation for RFP-02030. Mr. Perello's prior employment at ThyssenKrupp Elevator Company ended four (4) years ago on an amicable basis, and he does not have any business with the entity. Moreover, Mr. Perello's last employment at Schindler Elevator Company ended fourteen (14) years ago on an amicable basis, and he does not have any business with the entity. Based on this information, it does not appear that Mr. Perello has a voting conflict of interest under Section (v) of the County Ethics Code because he will not be directly affected by the vote, and he does not currently have any of the enumerated relationships with any entity affected by the vote. *See* INQ 21-81, INQ 16-242, and INQ 19-99.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the "Reverse Two-Year Rule," 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 the prior employment. In this case, Section 2-11.1(x) prohibitions would not apply to Mr. Perello since he last worked for ThyssenKrupp Elevator Company over four (4) years ago and Schindler Elevator Company fourteen (14) years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229. Section 2-11.1(x) would also not apply to Mr. Bermudez as his employment at ThyssenKrupp Elevator Company ended twenty (20) years ago. *Id.*

Further, 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. Perello disclosed that he is childhood friends with Michael Gandy, the Modernization Supervisor for Schindler Elevator Company. This office has previously considered the *appearance of impropriety* in situations involving professional and social relationships between a prospective selection committee member and an officer or employee of a respondent firm. In INQ 14-246, an FIU Professor of Architecture did not have a prohibited conflict by serving on a County selection committee where she has had professional relationships with some of the bidders to be considered by the selection committee, because the Professor of Architecture would not personally benefit from the vote, and she did not have a prohibited relationship with the parties. However, in order to avoid an appearance of impropriety created by the Professor's close professional relationships with some of the bidders, the County was advised by the COE to reconsider whether this person is an appropriate appointee for this selection committee. *See Also* INQ 16-242, INQ 14-242, and INQ 15-206. Also, in INQ 20-40, the COE recommended that ISD consider withdrawing a prospective selection committee member from a selection

committee due to the possible appearance of impropriety created by his close social/professional relationship with a current employee of one of the responding firms to a solicitation, who was identified by the respondent firm as a key member of their team and was also identified as one of the individuals that would make a presentation before the selection committee.

With regard to Mr. Perello's three (3) close friends employed Schindler Elevator Company and his three (3) close friends employed by ThyssenKrupp Elevator Company, who will not participate in any presentations or negotiations involving Solicitation RFP-02030 for either company, this agency has previously opined in a similar circumstance. Specifically, in INQ 18-78 this office considered whether a prospective member of a selection committee may serve on the committee, where the prospective selection committee member maintained a close personal friendship with an employee of one of the respondents to the project. In that case, this office did not find that there was a prohibited conflict of interest nor any appearance of impropriety because the individual that the prospective selection committee member maintained a personal friendship with at the respondent company had nothing to do with the company's response to that particular solicitation, and the individual was not going to be making any type of presentation before the selection committee regarding that project.

#### OPINION

We find that Mr. Bermudez' service on this selection committee does not presents a conflict of interest under Section (v) of the County Ethics Code because he does not have current employment with any entity affected by the vote; nor any financial, personal, or business relationship(s) with any entity affected by the vote; and he will not be directly affected by the vote.

With regard to Mr. Perello, we do not find that Mr. Perello's service on this selection committee presents a conflict of interest under the County Ethics Code because he will not be directly affected by the vote, and he does not currently have any of the enumerated relationships with any entity affected by the vote. Mr. Perello's close friendships with employees of companies who are responsive to Solicitation RFP-02030, but who will not participate in any presentations or negotiations for Solicitation RFP-02030 does not present any potential appearances of impropriety. *See* INQ 18-78. However, in order to avoid an appearance of impropriety, as Mr. Perello maintains close social relationship with an individual that works for an entity that has responded to the proposal, is listed in the proposals submitted, have been identified by the proposal as serving in a defined roles should this contract be awarded to the respondent team that his employer is a part of, and who would appear and make presentations before this selection committee; we recommend that SPD should consider excusing Mr. Perello from this selection committee because "in all procurement matters, where appearances of integrity and fairness are paramount, 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 16-242, citing to INQ 14-242; INQ 14-246, INQ 19-99, and INQ 20-40.

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/>.

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 Commission on Ethics 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.