



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Julie Whiteside, Selection Committee Coordinator
Internal Services Department

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

FROM: Loressa Felix, Staff Attorney
Commission on Ethics (COE)

SUBJECT: INQ 2022-19, Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: February 18, 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.

Facts:

We have reviewed your memorandum dated February 11, 2022, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Seaport Department Request to Advertise for Port Representation Services – Engineering Services – Project No. E21-SEA-01 (Substitution 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 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 “Ernesto Beltre, Miami-Dade Aviation Department, indicated on his resume that he was employed by Burns & McDonnell from January 1992 until July 1997. Burns & McDonnell Engineering Company, Inc. is a respondent to this solicitation.”

We conferred with Mr. Beltre. He is the Senior Section Chief for Miami-Dade Aviation Department. He confirmed that he previously worked for Burns & McDonnell Engineering

Company, Inc. (hereinafter as “BMEC”) as a Civil Engineer. Mr. Beltre stopped working for BMEC on or about July 1997. Mr. Beltre indicated that the termination of his employment with BMEC was amicable. Mr. Beltre has no current ownership interest or other financial interest in the company. He also does not have any business, close social, or other relationship with any current employee at the company. Mr. Beltre believes he can be fair and impartial when evaluating the respondents to this project.

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. Beltre 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 have any of the enumerated relationships with any entity affected by the vote.

Additionally, Section 2-11.1(x) of the County Ethics Code, commonly referred to as the Reverse Two-Year Rule, which 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 employment relations, would not apply to Mr. Beltre since he stopped working for BMEC over twenty-five years ago. *See* INQ 17-174, INQ 17-183, INQ 18-229, and INQ 20-136.

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, Me. Beltre disclosed that he was previously employed by BMEC, a respondent to this solicitation. As Mr. Beltre’s employment at BMEC ended twenty-five years ago, on an amicable basis, and he does not have any business, or close social relationship with current employees at the entity, it is our opinion that Mr. Beltre’s prior employment at BMEC would not create an appearance of impropriety or in any way detract from the County’s conducting a fair and objective evaluation for this project. *See* INQ 20-73, INQ 18-202, INQ 17- 69 and INQ 20-136.

Opinion:

Consequently, consistent with the COE's holding in prior ethics opinions, Mr. Beltre does not have a conflict of interest under the Ethics Code that would prevent him from serving on this selection committee because he will not be directly affected by the vote, nor does he have any of the enumerated relationships with any entity affected by the vote. *See* INQ 14-246, INQ 16-242, INQ 19-99, INQ 20-40, and INQ 21-81.

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.