



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Franklin Gutierrez, Selection Committee Coordinator  
Internal Services Department  
  
Sade Chaney, Research Manager  
Office of the Commission Auditor

**FROM:** Nolen Andrew Bunker, Staff Attorney  
Commission on Ethics (COE)

**SUBJECT:** INQ 2022-37, Voting Conflict of Interest § 2-11.1(v); Appearances of  
Impropriety

**DATE:** March 10, 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 March 1, 2022, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Aviation Department Request to Advertise for MIA Runway 9-27 Rehabilitation – Project No. E21-MDAD-02. The memorandum was prepared in connection with Resolution Number 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 members of the selection committee made disclosures on their Neutrality Affidavit/Disclosure Form that merited submission to the Commission on Ethics for an opinion. The memorandum noted that:

- A. Ernesto Beltre, Miami-Dade Aviation Department, indicated on his neutrality affidavit and resume that he was employed by Burns & McDonnell from January 1992 until July 1997. Burns & McDonnell Engineering Company, Inc. is identified as a subconsultant for Kimley-Horn & Associates, Inc., a respondent to this solicitation.

We conferred with Mr. Beltre. He is the Senior Section Chief for the Miami-Dade Aviation Department (“MDAD”). He confirmed that he previously worked for Burns & McDonnell Engineering Company, Inc. (“BMEC”) as a Civil Engineer. Mr. Beltre stated that he left his employment with BMEC in July 1997, and 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.

- B. Francis Barbeito, Water and Sewer Department, indicated on her neutrality affidavit that her husband, Jose Luis Vizoso, worked for 300 Engineering Group. 300 Engineering Group, P.A. is identified as a subconsultant for Kimley-Horn & Associates, Inc., a respondent to this solicitation.

We conferred with Ms. Barbeito. She is a Senior Professional Engineer for the Miami-Dade Water and Sewer Department (“WASD”). She confirmed that her husband, Mr. Vizoso, previously worked for 300 Engineering Group, P.A. (“300 EG”) as an Electrical Engineer. Ms. Barbeito stated that Mr. Vizoso left his employment with 300 EG in March 2017, and that the termination of his employment with 300 EG was amicable. Neither Ms. Barbeito nor her husband have any current ownership interest or other financial interest in the company. However, Ms. Barbeito advised that she and her husband maintain a personal friendship with the owner of 300 EG. Ms. Barbeito further stated that she believes her personal friendship *would* impair her ability to be fair and impartial when evaluating the respondents to this project.

#### Discussion:

The Miami-Dade Commission on Ethics and Public Trust (“COE”) conducts a review of issues arising under the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (“County Ethics Code”), which governs conflicts by members of County advisory and quasi-judicial boards. The COE also considers whether the circumstances create an appearance of impropriety and makes recommendations based on Resolution No. 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.

A. Mr. Beltre's Appointment to the Selection Committee.

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 currently 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* RQO 17-04; RQO 10-05; INQ 20-136.

Further, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the COE 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* Miami-Dade County Code § 2-1067; COE Rules of Procedure § 2.1(b).

As noted above, Mr. Beltre disclosed that he was previously employed by BMEC, a subconsultant to Kimley-Horn & Associates, Inc., 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 22-20; INQ 22-19; INQ 18-16.

B. Ms. Barbeito's Appointment to the Selection Committee.

Pursuant to Section 2-11.1(v) of the County Ethics Code, it does not appear that Ms. Barbeito will be directly affected by the vote, and neither she nor her husband currently 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 Ms. Barbeito since it was her husband, Mr. Vizoso, who was employed by 300 EG, and because he stopped working for 300 EG five years ago. *See* RQO 17-04; RQO 10-05; INQ 20-136.

However, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, the COE 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* Miami-Dade County Code § 2-1067; COE Rules of Procedure § 2.1(b). As the COE has previously noted on numerous occasions, "[i]n all procurement matters, appearances of integrity and fairness are paramount, [as 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 . . . .” INQ 17-131 (quoting INQ 14-242).

In prior informal opinions, the COE has recommended that a County employee should not serve on a selection committee, even though not specifically prohibited by the County Ethics Code, when there is a close personal relationship between the County employee and an individual that has either a) an ownership interest in one of the responding firms, or b) a managerial position in one of the responding firms and involvement in the project.

Specifically, the COE has previously opined that a Senior Professional Engineer at WASD should be excused from service on a selection committee because she maintained close social relationships with four individuals who worked for the respondents to the project and who would have defined roles should that contract be awarded to the respondents. *See* INQ 21-81. Additionally, the COE has similarly opined that the Chief of Terminal Development for the Port of Miami, of the Miami-Dade Seaport Department, should be excused from service on a selection committee because he maintained close friendships with five individuals who worked for a respondent to the project, and three of those individuals were identified as serving defined roles should that contract be awarded to the respondent. *See* INQ 21-108.

As noted above, Ms. Barbeito disclosed that her husband, Mr. Vizoso, was previously employed by 300 EG, a subconsultant to Kimley-Horn & Associates, Inc., a respondent to this solicitation. Ms. Barbeito advised that she and her husband maintain a long-standing friendship with the owner of 300 EG, and that she believes their personal friendship *would* impair her ability to be fair and impartial when evaluating the respondents to this project.

Opinion:

Accordingly, consistent with our holdings in prior ethics opinions, **Mr. Beltre does not have a conflict of interest under the County Ethics Code** that would prevent him from serving on this selection committee because he will not be directly affected by the vote, he does not have any enumerated relationship with an entity affected by the vote, and his service on the Selection Committee would not otherwise give rise to an appearance of impropriety. *See* INQ 22-20; INQ 22-19; INQ 18-16.

Ms. Barbeito also does not have a conflict of interest under the County Ethics Code that would prevent her from serving on this selection committee because she will not be directly affected by the vote, and she does not have any enumerated relationship with an entity affected by the vote.

However, while we emphasize that there has been no issue raised concerning Ms. Barbeito’s personal integrity and that her candor and honesty in this matter are appreciated, we must consider the personal friendship between Ms. Barbeito and the owner of 300 EG, which is a subconsultant to a respondent firm, as well as Ms. Barbeito’s own belief that their personal friendship *would* impair her ability to be fair and impartial when evaluating the respondents to this project. Thus, in light of these facts, **we recommend that the Internal Services Department consider excusing Ms. Barbeito from this selection committee** because of her expressed concerns that her ability to be fair and impartial when evaluating respondents would be *impaired* due to her current

friendship with the owner of 300 EG, a subconsultant to the respondent, and because of the *appearance of impropriety* created by the same social relationship. See INQ 22-13; INQ 21-108; INQ 21-81.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

This opinion is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>

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.