



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Justin Espangol, Selection Committee Coordinator
Miami-Dade County Internal Services Department

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

FROM: Etta Akoni, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-50 Voting Conflict of Interest § 2-11.1(v); Appearances of
Impropriety

DATE: March 23, 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 March 9, 2022, which was prepared in connection with the Appointment of the Selection Committee for Miami-Dade County Parks, Recreation and Open Spaces Department Request to Advertise for Professional Services for Crandon Park Basin Dredging Phase 1 – Project No. E21-PROS-02. 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 “Roberto Rodriguez, Parks, Recreation and Open Spaces Department, indicated on his neutrality affidavit that he is currently a Project Manager for an active project with A.D.A. Engineering, Inc. A.D.A. Engineering, Inc. is identified as a subconsultant for GHD Services, Inc., a respondent to this solicitation.”

We conferred with Mr. Rodriguez. He is a Construction Manager 2 for the Miami-Dade Parks, Recreation and Open Spaces Department. He confirmed that he is currently a project manager for the project at Chapman Field Park (project number 511901-14-001), an active project with A.D.A. Engineering, Inc. Mr. Rodriguez has never worked for A.D.A. Engineering, Inc. or GHD Services, Inc. Mr. Rodriguez has no current ownership interest or other financial interest in A.D.A. Engineering, inc. or GHD Services, Inc. Mr. Rodriguez also does not have any business, close social, or other relationship with any current employee at A.D.A. Engineering, Inc. or GHD Services, Inc. Mr. Rodriguez 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. Rodriguez 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.

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. Rodriguez stated that he currently serves as Project Manager on a Miami-Dade County Parks Recreations and Open Spaces project with A.D.A. Engineering, Inc., a subconsultant for GHD Services, Inc., a respondent to this solicitation. The COE 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 County 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 18-47, INQ 18-230, and INQ 19-99. The COE'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 18-47, INQ 18-230, and INQ 19-99.

OPINION

We find that Mr. Rodriguez' service on this selection committee does not presents a conflict of interest under the County Ethics Code because he does not have a current employment, financial, personal, or business relationship with A.D.A. Engineering, inc. or GHD Services, Inc.; nor does he have any personal interest in the contract itself. *See* INQ 19-99. The fact that a selection committee member has supervisory authority over a respondent to a competitive procurement does not create any legal voting conflict of interest for that member under Section 2-11.1(v) of the County Code of Ethics, nor does said service on this selection committee present any appearance of impropriety. *See* INQ 18-47 and INQ 19-99.

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.