



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Henry A. Flores
ITD Enterprise Portfolio Manager
Information Technology Department

FROM: Loressa Felix, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2022-54, Doing Business with the County, Section 2-11.1(c),
County Ethics Code

DATE: March 31, 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 wife's participation in the Small Business Enterprise (SBE) certification program.

Facts:

You are employed by the Information Technology Department (ITD) as an ITD Enterprise Portfolio Manager. Your wife, Leonor Flores, is applying for the SBE certification program with the Small Business Development (SBD) division of the Internal Services Department (ISD) for the County.

Flores Construction Group, LLC (FCG), your wife's privately-owned company, is seeking certification through the SBE program in its efforts to contract with the County and become a County vendor. As the principal owner of FCG and a licensed general contractor, your wife's company focuses on construction and construction management projects. You are listed a manager for the company but not involved in the day-to-day management, as you only assist with very minimal annual filings.

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. Contracting with the County

The County Ethics Code at Sections 2-11.1 (c)(2) and (d) allows your wife 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.

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, FCG **may not** enter contracts with ITD.

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

B. Lobbying

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

C. 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 FCG 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.