



## 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 (OCA)

**FROM:** Martha D. Perez, General Counsel  
Commission on Ethics

**SUBJECT:** INQ 2022- 60 [Voting Conflict of Interest § 2-11.1(v); Appearances of Impropriety]

**DATE:** March 17, 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 , which was prepared in connection with the appointment of Selection Committee for Miami-Dade County Aviation Department Request to Advertise for Aviation Planning & Programming Consultant Services - Project No. E20-MDAD-04. 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 the alternate member of the selection committee made disclosures on her Neutrality Affidavit that merited submission to the Commission on Ethics (COE) for an opinion. Specifically, the memorandum notes that: “Becky Hope, Seaport Department, indicated on her neutrality affidavit that her husband and son, Juan Borges, and Lucas Hope, are employed by NV5, Inc. NV5, Inc. is identified as a subconsultant for T.Y. Lin International, Inc., a respondent to this solicitation.”

We conferred with Ms. Hope. She is an Assistant Port Director at the Seaport.

Ms. Hope confirmed that her husband, Juan Borges, is employed as a Project Engineer at NV5, Inc. Mr. Borges has been working at NV5, Inc., for over ten years; *he has ownership interest in NV5, Inc. (significant number of stocks in the company)*; neither he nor his supervisors worked on the proposal submitted by respondent TY Lin; neither he nor his supervisors will participate in the oral presentation(s) before the selection committee; and *he will receive a financial benefit should TY Lin be awarded this contract (as result of his ownership interest in the sub firm NV5, Inc.)*.

Ms. Hope also confirmed that her son, Lucas Hope, is employed as a Mechanical Engineer at NV5, Inc. Mr. Lucas has been working with NV5, Inc., on a part-time basis for a year; he has no ownership interest in NV5, Inc.; neither he nor his supervisors worked on the proposal submitted by respondent T Y Lin; and he will not receive any financial benefit should T Y Lin be awarded the contract.

Ms. Hope believes she 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 Ms. Hope has a voting conflict of interest under Section (v) of the County Ethics Code because she will not be directly affected by the vote, and she does not have any enumerated relationships with an entity affected by the vote.

However, the Ethics Code at Section 2-11.1(n) prohibits County employees and County officials from participating in any official action directly or indirectly affecting a business in which he or any member of his immediate family has a financial interest. "Immediate family" is defined in Section 2-11.1(b)(9) of the Ethics Code, as *spouse*, domestic partner, parents, stepparents, children, and stepchildren of the person. The Ethics Commission has opined that Section 2-11.1(n) of the Ethics Code, would prohibit an individual from serving on a selection committee if their immediate family member has a financial interest in one of the responding firms to the solicitation. *See* RQO 11-11 and INQ 11-133. For example, in RQO 11-11, the COE held that an individual could not serve on a selection committee because their spouse's employer was bidding on the project.<sup>1</sup>

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<sup>1</sup> *See also*, INQ 11-133, in which the COE recommended that a County official may not participate in any official action directly or indirectly affecting a business that employs his son, because his son arguably had a financial interest in the firm as an employee of the firm.

Under Section (n) of the Ethics Code, Ms. Hope is prohibited from serving on this selection committee because, although she is an alternate member, she has the opportunity to take official action on this selection committee which will directly or indirectly affect a subcontracting firm in which her husband has a financial interest. *See* RQO 11-11; INQ 20-16 and INQ 11-133.

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 removal of a member of a selection committee. *See* Section 2-1067, Miami-Dade County Code; Section 2.1(b), Ethics Commission Rules of Procedure

Accordingly, we advised a County employee with authority to approve a subcontractor in a project that he should delegate his authority to another manager because: (1) his son was an employee of the subcontractor firm and such act could be perceived as an exploitation under the County Ethics Code; and (2) although his son had no involvement with the project and had no financial interest to gain by his father's approval of his employer-subcontractor firm, delegating his authority to another manager was appropriate because integrity and fairness are paramount in procurement matters, 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 higher standard of ethics..." *See* INQ 17-131 (citing to INQ 14-232, INQ 12-180, INQ 12-63)

Opinion: Consequently, we recommend that Ms. Hope be excused from participating as an alternate member of this selection committee, pursuant to Section (n) of the Ethics Code, which prohibits an individual from serving on a selection committee/ board if their immediate family member has a financial interest in one of the responding firms to the solicitation. *See* RQO 11-11, INQ 2021-48 and INQ 11-133. Further, there is an appearance of impropriety created given her close familial relationship with two employees of NV5, Inc., a subconsultant of a responding proposer for this solicitation.

This recommendation should not be interpreted to suggest that Ms. Hope would not be suitable for service on a different selection committee.

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.