



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Amado Gonzalez, Selection Committee Coordinator
Internal Services Department

Sade Chaney, Research Manager
Office of the Commission Auditor

FROM: Martha D. Perez
General Counsel, Commission on Ethics & Public Trust

SUBJECT: INQ 2022-80, Voting/Participation Conflict of Interest § 2-11.1(v); Reverse Two Year Rule § 2-11.1(x); Appearances of Impropriety; County Resolution R-449-14

DATE: May 10, 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 May 9, 2022, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade Aviation Department Request to Advertise for Design-Build Services for MIA – Park 6 Employee Garage- Project No. DB21-MDAD-01. 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 a member of the selection committee and a technical advisor made disclosures on their Neutrality Affidavit/Disclosure Form or resume(s) that merited submission to the Commission on Ethics for an opinion. The memorandum noted that:

1. Prospective Selection Committee member, José Luis Rodriguez from the Miami-Dade Aviation Department, indicated on his resumé that he was employed by Wolfberg, Alvarez & Associates from September 1985 until June 1986 and also from April 1989 until December 1990. Wolfberg, Alvarez & Partners (Wolfberg) is identified as a subconsultant for Lemartec Corporation (Lemartec), a respondent in this solicitation.

2. Technical Advisor to the Selection Committee, José Requejo, Miami-Dade Aviation Department, indicated on his résumé that he was employed by Perez & Perez Architects from April 2000 until June 2003. Perez & Perez Architects Planners, Inc., (Perez) is also identified as a subconsultant for Lemartec.

We conferred with Mr. Rodriguez who works for Miami-Dade Aviation Department's Maintenance Division as Engineer IV. He indicated that he has been employed with the County's Aviation Department for 31 ½ years; he worked for Wolfberg before that; his termination with Wolfberg was amicable; neither he nor any immediate family member have any ownership or financial interests in Wolfberg; although he has worked with Wolfberg in his County capacity on other projects, he does not have any business, close social or other relationship with any current employee of Wolfberg; and he can be fair and objective in evaluating and assessing all respondents (and their respective subconsultants) in this solicitation.

We also conferred with Mr. Requejo who works as an Architect 3 in the Aviation Department. He indicated he was employed by Perez from 2000 to 2003; his employment with Perez ended amicably; neither he nor his immediate family have any financial or ownership interest in the firm (Perez); he does not have any business, close social, or other relationship with the employees or Principals at Perez; and he stated he can be "totally unbiased" in his role as technical advisor to the selection committee in this solicitation.

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.¹The COE also considers whether the circumstances create an appearance of impropriety and makes recommendations pursuant to 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.

Based on the responses provided by Mr. Rodriguez and Mr. Requejo, it does not appear that Mr. Rodriguez or Mr. Requejo have a conflict of interest under Section (v) of the County Ethics Code because they will not be directly affected by the vote or participation, and they do not have any of the enumerated relationships with an entity affected by the vote.

¹ A selection committee is a County board for purposes of assessing a conflict of interest under Section 2-11.1(v), County Ethics Code. *See* INQ 17-206

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 their employment relations, would not apply to Mr. Rodriguez since he stopped working for Wolfberg over 30 years ago. Similarly, Section 2-11.1(x) would not apply to Mr. Requejo since he stopped working for Perez approximately 19 years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229

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 or advisor to the committee. *See* Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

As Mr. Rodriguez' employment with Wolfberg ended over 30 years ago on an amicable basis, and he has no business, professional, or close social relationship with any current member of Wolfberg, it is our opinion that his prior employment there would not create any appearance of impropriety or in any way detract from the County's conducting a fair and objective evaluation for this project. *See* INQ 17-261.

Similarly, as Mr. Requejo's employment with Perez ended 19 years ago, and he has no business, professional, or close relationship with any current employee of Perez, it is our opinion that his prior employment there would not create any appearance of impropriety on in any way detract from the County's conducting a fair and objective evaluation for this project. *Id*

Opinion:

Consequently, we see no reason why Mr. Rodriguez and Mr. Requejo should not serve on this selection committee in their respective capacities, because they do not have a voting conflict of interest under Sections (v) and (x) of the County Ethics Code, and there does not appear to be any appearance of impropriety created by their service on this committee. *See* INQ 17-261, and INQ 17-158

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