



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Jorge Vital, 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 2022-84, 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 17, 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 17, 2022, which was prepared in connection with the Appointment of Selection Committee for Miami-Dade County Department of Transportation and Public Works Request to Advertise for Continuing Professional Service Agreement (PSA) for Engineering and Design for Safe Routes to School Projects under Local Agency Program (LAP) funds for the Department of Transportation and Public Works – Project No. E20-DTPW-03 (Substitution). 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 an alternate member of the selection committee made disclosures on his Neutrality Affidavit/Disclosure Form and résumé that merited submission to the Commission on Ethics for an opinion. The memorandum noted that: Alternate Selection Committee Member Miguel Riera from the Miami-Dade Aviation Department indicated that he was employed by Wolfberg, Alvarez & Partners, Inc., from April 1995 until May 1996. Wolfberg, Alvarez & Partners (Wolfberg) is identified as a subconsultant for Kimley-Horn and Associates, Inc., (KH), a respondent in this solicitation.

We conferred with Mr. Riera who works for Miami-Dade Aviation Department’s Civil Environmental Engineering Division as an Engineer 3. He indicated that he has been employed with the County’s Aviation Department for over 18 years; he worked for Wolfberg in 1995-1996 as a Project Engineer; his termination with

Wolfberg was amicable; neither he nor any immediate family member have any ownership or financial interests in Wolfberg; he does not have any business, close social or other relationship with any current principal or employee of Wolfberg; and he can be fair and objective in evaluating and assessing all respondents (and their respective subconsultants) 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. Riera, it does not appear that Mr. Riera has a conflict of interest under Section (v) of the County Ethics Code because he will not be directly affected by the vote or participation, and he does not have any of the enumerated relationships with an 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 their employment relations, would not apply to Mr. Riera since he stopped working for Wolfberg over 25 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 to the committee. *See* Section 2-1067, Miami-Dade County Code, and 2.1(b) of the COE Rules of Procedure.

As Mr. Riera’s employment with Wolfberg ended over 25 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.

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

Opinion:

Consequently, we see no reason why Mr. Riera should not serve on this selection committee in an alternate capacity, because he does 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 his 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.