



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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TO: Saba Musleh, 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 2022-87, 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 20, 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 Multiple Miami-Dade County Departments Request for Proposals for Maintenance and Repair Services for Conveyance Equipment – RFP No. 01615.¹ 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 prospective member of the selection committee and an alternate member/ technical advisor made disclosures on their Neutrality Affidavit/Disclosure Form or résumé(s) that merited submission to the Commission on Ethics for an opinion. The memorandum noted that:

¹ The multiple County departments include the Aviation Department.

1. Alternate Selection Committee Member and Technical Advisor Amaury Martell² from the Miami-Dade Aviation Department, indicated on his Neutrality Affidavit and résumé that he was employed by ThyssenKrupp Elevator Company (TK) from April 1981 until May 2004. TK is identified as a respondent in this solicitation.³
2. Prospective Selection Committee Member Jorge Sariego from the Miami-Dade Aviation Department, indicated on his résumé that he has performed (or currently performs) as Project Manager for a County project with TK, a respondent to this solicitation.

We conferred with Mr. Martell who works for Miami-Dade Aviation Department as an Elevator Contract Coordinator in the Department's Facilities Maintenance Division. He indicated that he has been employed with the County's Aviation Department for approximately four (4) years; he worked for TK's⁴ Elevator Division between 1981 and 2004 in the capacity of Mechanic and Foreman; his termination with TK was amicable; neither he nor any immediate family member have any ownership or financial interests in TK; he is presently working with TK's Elevator Division and another respondent in a contract management capacity on Aviation maintenance contracts; he does not have any business, close social or other relationship with any current principal or employee of TK or other respondents; and he confidently stated he can be fair and objective in evaluating and assessing all respondents in this solicitation and will not show any advantage or leniency toward one respondent over another ("It's all the same to me").

We also conferred with Mr. Sariego who is the Division Director of the Aviation Department's Terminal Building Maintenance Division. Mr. Sariego mentioned that he was the Project Manager for TK's Passenger Loading Bridge Installation at MIA about 7 to 10 years ago. He indicated that neither he nor his immediate family have any financial or ownership interest in TK; he does not have any business, close social, or other relationship with the principals and employees of TK or the other respondents. During our conversation, Mr. Sariego also mentioned that there was another respondent to this solicitation which he had also recently had dealings with in his County capacity. When asked about his impartiality in evaluating all respondents, he stated that although he would "try to be as fair as possible," he did not feel comfortable serving in the committee due to recent events regarding one of the respondents 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

² The memorandum incorrectly referred to Mr. Martell as Amaury "Mitchell."

³ TK is comprised of two main divisions according to the Selection Committee Coordinator; one is the Elevator Division which is the subject of this solicitation; the other is the Passenger Boarding Bridges Division.

⁴ TK f/k/a Miami Elevator.

Ethics Code”), which governs conflicts by members of County advisory and quasi-judicial boards.⁵ The 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. Martell and Mr. Sariago, it does not appear that they have a conflict of interest under Section 2-11.1 (v) of the County Ethics Code prohibiting their service on this selection committee 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.

Notably, during this analysis, this office was advised that Mr. Martell will be serving in this committee solely in a technical advisor capacity. Therefore, there is no conflict under (v) since as a technical advisor, he will not vote. *See* INQ 18-78

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. Martell since he stopped working for TK over 15 years ago. *See* INQ 17-174, INQ 17-183, and INQ 18-229

Notwithstanding, as noted above, due to the sensitivity of the procurement process and the need to sustain public confidence in it, this agency also *provides input concerning appearance issues* when they raise a question regarding the objectivity of a selection committee member. *See* Section 2-1067, Miami-Dade County Code, Rule 2.1(b) of the COE Rules of Procedure, and INQ 19-03

To that end, ISD may consider whether Mr. Sariago’s apprehension, due to very recent events impacting one or more respondents to this solicitation, should serve on this committee, “ as perhaps the most sensitive pressure point within County government, the procurement process, has always

⁵ 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

maintained stronger ethical standards than the minimum provided under the Ethics Code.” (as quoted in INQ 19-20, INQ 17-200)

Opinion:

Consequently, Mr. Martell and Mr. Sariego do not have a voting conflict of interest under Section (v) of the County Ethics Code preventing their service on this committee.

Also, Mr. Martell does not have a prohibited conflict of interest under Section (x) of the County Ethics Code as his employment with respondent TK ended over 15 years ago.

While this office has consistently opined that *absent some other factor*, the fact that a prospective selection committee member has or has had supervisory authority over respondents in a solicitation does not create any legal voting conflict under Section (v) of the County Ethics Code,⁶ we cannot ignore Mr. Sariego’s concern and apprehension in this particular solicitation due to his recent supervision of one of the respondents to this solicitation. Consequently, it is *recommended* that Mr. Sariego be excused from service as a selection committee member in this solicitation. *See* INQ 19-03

We stress that this is a *recommendation* which should not in any way be interpreted to suggest that Mr. Sariego, whose honesty and candor in this matter are appreciated, would not be a suitable or appropriate person to serve on a different selection committee.

We also remind all selection committee members and technical advisors to this selection committee that this solicitation is under the Cone of Silence, Section 2-11.1(t) of the County Ethics Code. Consequently, while they may communicate with responding firms on *existing* County contracts/projects, there should be no communication about this competitive solicitation with any of the respondents or their teams (absent permissible communications as per the Cone), Commissioners, Mayor (and their staffs) or other members of the County’s Professional Staff/Client Department who are involved in any way with this solicitation, while the Cone remains in effect.

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 also 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) 4887864, <http://www.ethics.state.fl.us/>

⁶ See INQs 22-50, 19-99, 18-47, 18-21, 17-286, 16-165

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.