



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Michael Cabrejos
Contracts Compliance Specialist 1
Miami-Dade County Water and Sewer Department

FROM: Nolen Andrew Bunker, Staff Attorney
Commission on Ethics

SUBJECT: INQ 2023-05, Section 2-11.1(c), Limitations on Contracting with the County, and Section 2-11.1(j), Conflicting Employment Prohibited.

DATE: January 18, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding possible conflicts of interest concerning you and your parents' company's participation in Miami-Dade County's Small Business Enterprise ("SBE") Certification Programs and potential future contracts with the County.

Facts

You are employed by the Miami-Dade County Water and Sewer Department ("WASD") as a Contracts Compliance Specialist 1. You advised that you work under WASD's General Maintenance Division, and that your job responsibilities primarily include supervision of the contractor for lawn service and beautification of WASD pump stations to ensure that such services are conducted monthly. You further advised that your WASD position does not include any oversight or administration of the County's SBE Certification Programs.

You advised that you and your parents, Mr. Walter Cabrejos and Ms. Fany Cabrejos, own and operate a Florida for-profit corporation named Elite Global Security LLC ("EGS"). EGS provides trained and licensed security personnel for private security, executive protection, and security

enforcement services.¹ You advised that your parents each own forty percent of EGS, and you own twenty percent of EGS. You advised that you have a Florida issued Class “MB” license, which you utilize in your position as a corporate manager for EGS.² You advised that your involvement in EGS is limited to providing expert recommendations based on your years of experience in the security services field, as well as covering for EGS security personnel who call out and helping with equipment transfer and maintenance. Regarding compensation, you advised that you are compensated when you assist in covering an absent employee or when you help with equipment transfer and maintenance. You advised that EGS would like to apply to participate in the County’s SBE Certification Programs. You further advised that EGS would like to contract with the County in the future, but that there is no specific County solicitation to which EGS has submitted a bid at this time.

Miami-Dade County’s SBE Certification Programs were created for any business entity providing construction, architectural, engineering, goods, services, and aeronautical support services. The SBE Certification Programs are gender and race neutral. The County’s SBE - Services Certification Program is designed to provide contracting opportunities for independent firms that meet the following criteria: (a) must have a Miami-Dade County Local Business Tax (“LBT”) Receipt issued for at least one year; (b) the personal net worth for each owner cannot exceed \$1.5 million; (c) the last three years’ average gross receipts must not exceed \$8 million; (d) business license holder and qualifier (if applicable) must own at least ten percent of the applicant’s issued stocks or otherwise have at least a ten percent ownership interest; and, (e) the business owner alone, or as a member of a group, shall own or control only one certified SBE at a time. SBE Certification is valid for a three-year period.³

Issue

Whether there is a prohibited conflict of interest that would prevent Elite Global Security LLC, you and your parents’ privately owned business, from participating in the County’s SBE Certification Programs and then contracting with the County.

Analysis

This inquiry involves several sections of the Miami-Dade County Code of Ethics and Conflict of Interest Ordinance (“County Ethics Code”), each of which is analyzed in turn below:

¹ See *About Us*, ELITE GLOBAL SECURITY, <https://eliteglobalsecurityllc.com/company/> (last visited Jan. 17, 2023).

² A Class “MB” license classification is a private security license issued by the State of Florida for, “[a]ny individual who performs the services of a manager for a Class “B” security agency or branch office.” A Class “B” security agency is, “[a]ny person, firm, company, partnership, or corporation that engages in business as a private security agency.” *License Classifications*, Private Security Licenses, <https://www.fdacs.gov/Business-Services/Private-Security-Licenses> (last visited Jan. 17, 2023).

³ See *Goods and Services*, SMALL BUSINESS CERTIFICATION PROGRAMS, <https://www.miamidade.gov/global/business/smallbusiness/certification-programs.page> (last visited Jan. 17, 2023).

A. Outside Employment

Work conducted by you for EGS constitutes outside employment, as defined by the County Ethics Code. *See* RQO 17-03 (citing RQO 16-01). The County Ethics Code prohibits County employees from accepting outside employment, “which would impair his or her independence of judgment in the performance of his or her public duties.” Section 2-11.1(j). Additionally, Miami-Dade County Administrative Order 7-1 provides that, “[u]nder no circumstances shall a County employee accept outside employment . . . where a real or apparent conflict of interest with one’s official or public duties is possible.” Conflicting employment can occur when a County employee encounters the same or similar persons or entities in both his County and outside employment. County employees may not use County time or resources in the performance of their outside employment. *See* INQ 21-27; INQ 20-21.

Based on the information provided to us at this time, it appears to be unlikely that the type of outside employment that you engage in through EGS would impair your independence of judgment in the performance of your County duties as a Contracts Compliance Specialist 1 with WASD because your WASD duties are limited to overseeing contracts related to lawncare and beautification. *See* RQO 17-03 (citing RQO 16-01).

However, County department directors and their subordinate supervisors have the discretion to deny a request for outside employment if they determine that, at any time, the proposed outside employment would be contrary, detrimental, or adverse to the interests of the County or the employee’s department. *See* AO 7-1; RQO 16-02; RQO 00-10; INQ 13-28. **Accordingly, this memorandum does not grant permission to engage in outside employment. You must obtain permission to engage in outside employment yearly from your department director. Given that you are a full-time County employee, you must also file an outside employment financial disclosure form – Outside Employment Statement – on an annual basis.**⁴

B. Contracting with the County

Regarding EGS’s participation in the County’s SBE Certification Programs, once you obtain permission to engage in outside employment with EGS, then EGS **may participate in the County’s SBE Certification Programs**. However, it may do so only so long as WASD is not involved in any way in processing, administering, overseeing, or enforcing the SBE Certification Programs. *See* INQ 22-157 (County employee’s company may participate in County’s SBE Certification Program so long as his employing County department does not enforce, oversee, or administer the SBE Certification Programs). This includes the condition that you may not participate in determining or awarding the SBE Certification. Additionally, none of your job responsibilities or job descriptions may

⁴ You can find the required form online at: <https://www.miamidade.gov/elections/library/forms/outside-employment-statement.pdf>.

require you to be involved in the SBE Certification Programs in any way, including enforcement, oversight, administration, amendment, extension, termination, or forbearance. *See* County Ethics Code §§ 2-11.1(c), (n).

Regarding contracting with the County generally, sections 2-11.1(c) and (d) of the County Ethics Code restrict the ability of County employees to contract with the County. A County employee is permitted to transact business with the County only if the contract does not interfere with the full and faithful discharge of the County employee's duties, the County employee does not participate in negotiating or awarding the contract, and the County employee's job duties will not require him or her to be involved with enforcing or overseeing the contract. *See* County Ethics Code §§ 2-11.1(c), (d).⁵ Additionally, the County Ethics Code prohibits a County employee from transacting business with the County department for which he or she works. *See* County Ethics Code § 2-11.1(c)(2). Here, you have indicated that EGS is interested generally in seeking to contract with the County, but it has not responded to any specific solicitations to bid or requests to quote. Accordingly, you are encouraged to request further ethics guidance when EGS decides to submit a bid on a pending County solicitation or request to quote, bearing in mind that neither you, your parents,⁶ nor EGS may contract with WASD. *See id.*

C. Lobbying

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 EGS's application to participate in County's SBE Certification Programs. *See* County Ethics Code § 2-11.1(m)(1).

D. Exploitation of Official Position

The County Ethics Code prohibits County employees from exploitation of their official position. *See* County Ethics Code § 2-11.1(g). This means that you may not use your County position to secure any special privilege or exemption with respect to EGS's application to, and ultimate participation in, the County's SBE Certification Programs, or to any other County certification programs to which you or EGS are applying.

⁵ *But see* Section 112.313(7)(a), Florida Statutes, providing that:

No public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, any agency of which he or she is an officer or employee

⁶ The County Ethics Code also restricts the ability of immediate family members of County employees to contract with the County, and parents are considered immediate family. *See* County Ethics Code §§ 2-11.1(b)(9), (c)(1).

Opinion

Based on the facts presented here and discussed above, EGS's participation in Miami-Dade County's Small Business Certification Programs does not appear to give rise to any prohibited conflict of interest, subject to the limitations discussed above. Additionally, EGS's potential future business with the County will require further evaluation once a specific County solicitation or contract is contemplated.

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

This opinion is limited to the facts as presented to the Commission on Ethics and to an interpretation of the County Ethics Code only. 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/>.

Please submit this memorandum to the Small Business Development Division of the Internal Services Department ("ISD"). The Commission on Ethics does not submit it on your behalf.

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 Commission on Ethics 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.