



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Makeba Gassant, Member
Small Business Enterprise Goods and Services Advisory Board

Sherman Lewis
Procurement Contracting Officer I
Strategic Procurement Department

James Boyle
Procurement Contracting Officer I
Strategic Procurement Department

Jessica Tyrrell
Division Director, Acquisition & Sourcing
Strategic Procurement Department

Alonzo Joseph
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Strategic Procurement Department

FROM: Etta Akoni, Staff Attorney
Miami Dade County Commission on Ethics & Public Trust

SUBJECT: INQ 2023-10 [Advisory Board Member Contracting with County, Sec 2-11.1 (c)(3)]

DATE: February 9, 2023

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding potential limitations in applying to initiate new contractual business with the County through your privately owned company, Gassant Enterprises LLC., while serving as a member of the Small Business Enterprise Goods and Services Advisory Board.

Facts

Ms. Makeba Gassant is the President and Chief Executive Officer of Gassant Enterprises LLC., a for profit Florida corporation that provides procurement services specifically in the healthcare, foodservice, and commercial industries. In March 2021, then Mayor Carlos Gimenez appointed Ms. Gassant to the Internal Services Department Small Business Enterprise Goods and Services Advisory Board (Board). As of the date of this opinion, Ms. Gassant continues to serve on the Board.

Ms. Gassant requested an opinion from the Commission on Ethics to address any potential conflicts of interest which may arise from Gassant Enterprises LLC.'s submission of a response to the solicitation for Request to Qualify (RTQ) 02053 to the Strategic Procurement Department, the County agency tasked with the issuance and processing of the solicitation. The purpose of the solicitation is to establish a Prequalified Pool of Vendors that will be used to solicit for the purchase, maintenance, and repair of physical fitness equipment for Miami-Dade County (County). Placement in the Pool is not a contract between the County and the Vendor, but an acknowledgement that the Vendor meets the qualifications as outlined throughout this RTQ. Vendor Submittals are accepted throughout the term of the RTQ for placement in such Pool. Gassant Enterprises LLC. currently has two (2) contracts with the Miami-Dade County Corrections and Rehabilitation Department. The first contract, FB-01081, is for the provision of disposable fiber trays, which was established before Ms. Gassant was appointed to the Board. The second contract, Contract, BW-10280, was awarded on November 30, 2022, and is also for the provision of disposable fiber trays.

Issue

Whether Gassant Enterprises LLC. is prohibited from submitting a response to the solicitation for RTQ-02053 due to Ms. Gassant's Small Business Enterprise Goods and Services Advisory Board position and her relationship to Gassant Enterprises LLC.

Discussion

The Internal Services Department Small Business Enterprise Goods and Services Advisory Board was created by Miami Dade County ordinance Sections 2-8.1.1.1(3)(g) and 2-8.1.1.1.2(3)(g). The Small Business Enterprise Advisory Board – Goods and Services was created for the purpose of supporting and promoting the Small Business Enterprise (SBE) Goods and Services (G&S) Programs. The Board does not work with any other facet or division of the Internal Services Department, and does not work with the Strategic Procurement Department, the department that is handling the execution of the subject solicitation contract.

The Advisory Board operates as a focal point for the public and with the assistance of the County Mayor's designee collects, inputs, and disseminates information related to economic opportunities within Miami-Dade County government for SBE-G&S business owners. The Advisory Board was established for the purpose of supporting and promoting the Small Business Enterprise Programs and is not an authoritative entity over the Internal

Services Department, meaning that the Board does not provide any regulation, oversight, management, or policy creation or modification.

Sections 2-11.1(c) and (d) of the County Ethics Code addresses limitations and prohibitions on board members doing business with the County. Specifically, Section 2-11.1(c)(3) provides that a board member may enter into a contract with Miami Dade County individually or through a firm, corporation, partnership or business entity in which the board member or his immediate family has a controlling financial interest, as long as the board member does not contract with a County department or agency which is subject to being regulated, overseen, managed, engaged in policy-setting or quasi-judicial authority of the member's board agency. *See* RQO 09-22, INQ 19-78, INQ 20-124, INQ 22-04.

As this solicitation is being handled by the Miami Dade County Strategic Procurement Department, and not the Internal Services Department, it appears to be unlikely that a prohibited conflict of interest arises out of the service of Ms. Gassant as a member of the SBE-G&S Advisory Board, a function of the Internal Service Department. More specifically there is also no indication that the SBE-G&S Advisory Board would ever have occasion to consider the solicitation for RTQ-02053 nor does the SBE-G&S Advisory Board advise on individual contracts.

However, Section 2-8.1.1.1(3)(g)(9) states that Sections 2-11.1(c) and (d) of the Conflict of Interest and Code of Ethics Ordinance of Miami-Dade County are waived for [Internal Services Department Small Business Enterprise Goods and Services Advisory Board] members for transactions arising from the exercise of those powers given the Advisory Board by this section. As such, contracts executed through the Internal Services Department with advisory board members are not in violation of the prohibitions of Section 2-11.1(c)(3).

Conclusion:

Gassant Enterprises LLC. may submit a bid in response to and execute a contract for goods or services through the Strategic Procurement Department for the solicitation for RTQ-02053, because, based on the facts presented here and discussed above, no conflict of interest arises from Gassant Enterprises LLC. submission for the solicitation for RTQ-02053 based on the service of Ms. Gassant's position on the SBE-G&S Advisory Board.

However, you must adhere to the limitations provided below to avoid potential conflicts of interest:

- Section 2-11.1(m)(2) **prohibits a board member from appearing before the board in which he or she serves**, *either directly or through an associate*, and make a presentation on behalf of a third party. *See* RQO 07-39; INQ 17-254. This means you must not lobby or try to influence your board for the benefit of your company. *See* INQ 13-224. The Ethics Commission has interpreted these prohibited appearances to include signing proposals or submitting documents or correspondence on behalf of the third party. *See* INQ 09-33; INQ 11-178. Additionally, this Ethics Code section prohibits a board member from receiving

compensation, *directly or indirectly or in any form*, for any services rendered to the third party seeking a benefit from his or her Board. *See* RQO 07-12; INQ 15-229; INQ 19-12.

- Section 2-11.1(v) 3 prohibits a board member from voting on any matter where the member will be directly affected by the vote and has a prohibited relationship (i.e., officer, director, partner, of counsel, consultant, employee, fiduciary, beneficiary, stockholder, bondholder, debtor, or creditor) with any corporation, firm, entity or person appearing before the member's board or committee. *See* RQO 07-39; INQ 17-69.
- Section 2-11.1(n) prohibits a board member from participating in any official action, as a member of the Board, directly or indirectly, affecting a business in which you or a member of your immediate family has a financial interest. *See* INQ 19-78.
- Section 2-11.1(g) prohibits a board member from using his or her official position to secure special benefits, privileges or exemptions for herself or others. In other words, while a board member may share his or her knowledge and expertise in related matters, said board member may not use his or her service on the board to proffer or promote the use or sale of the board member's company or products. *See* INQ 21-121.

We appreciate your consulting with the Commission in order to avoid a possible prohibited conflict of interest. If the facts associated with your inquiry change, please contact us for additional guidance.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. Based on directives from state law, other conflicts may apply. 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 opinion to the Internal Services Department for inclusion in your file. The Commission on Ethics does not submit this memorandum 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.