

**Frigo, Victoria (COE)**

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**From:** Frigo, Victoria (COE)  
**Sent:** Wednesday, December 23, 2009 1:55 PM  
**To:** 'Dotson, Gail A.'  
**Cc:** Meyers, Robert (COE)  
**Subject:** City Commissioner's CPA firm contracting with city  
**Attachments:** City Resolution 09-00721.pdf; DDA Board Conflict.pdf

Hello Gail,

This is to follow up on our conversation yesterday in which we discussed the ethics conflict for a city commissioner if his CPA firm were to enter into a contract with the city.

After further research, I wanted to clarify that both the city and county codes provide for waivers for commissioners under certain circumstances. You asked specifically how Nitin Motwani of the Miami Worldcenter Group, Inc., resolved his conflict. In July 2009, he obtained a waiver from the city commission to contract with the city. Although Mr. Motwani is a DDA advisory board member, not an elected commissioner, the city code deals with both groups the same. The county code subjects elected officials to different prohibitions, but the county code also allows commissioners to obtain waivers. (The relevant sections of both codes are copied below.)

Attached is City Resolution 09-00721, which granted Mr. Motwani a waiver. Also attached is the earlier informal opinion given to Alyce Robertson, Executive Director of the DDA, on this matter.

Additionally, you asked if the commissioner's CPA firm could subcontract with a city contractor, e.g., Holland and Knight. Based on **INQ 04-06**, the answer is no. Cynthia Curry was advised that a newly elected commissioner could maintain his previous subcontract with a current county contractor, but once elected, he was not allowed to engage in any new subcontracts with county contractors. See Section 2-11.1 (c)(1) of the county code that prohibits commissioners from having any financial interest, direct or indirect, in the contract.

Please note, however, that the commissioner's CPA firm may contract with city vendors as long as the contract does not relate to city business. **INQ 02-59**, requested by City Attorney Elizabeth Hernandez on behalf of City of Coral Gables Commissioner Cabrera, delineates limitations under the county code related to commissioners contracting with city vendors in non-city business situations. I'll send you the two INQs separately.

Please feel free to contact me if you'd like to discuss any of these issues further.

Happy Holidays,

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**City of Miami Code at Sec. 2-614. Waiver of requirements of article.**

- (a) The requirements of this article may be waived for a particular transaction or transactions only by an affirmative vote of four-fifths of the members of the city commission after public hearing. Such waiver may be effected only after findings by four-fifths of the members of the city commission, as follows:
- (1) An open-to-all sealed competitive bid has been submitted by a city person as set forth in section 2-611 hereof; *or*
  - (2) The bid has been submitted by a person or firm offering services within the scope of practice of architecture, landscape architecture, professional engineering or registered land surveying, as defined by the laws of the state and pursuant to provisions of the Consultant’s Competitive Negotiation Act as are now in force and as may be hereinafter enacted, and when the bid has been submitted by a city person as set forth in section 2-611 hereof; *or*
  - (3) The property or services to be involved in the proposed transaction are unique and the city cannot avail itself of such property or services without entering into a transaction which would violate this section but for waiver of its requirements; *and*
  - (4) The proposed transaction will be to the best interest of the city.
- (b) Such findings shall be spread on the minutes of the commission. This section shall be applicable only to prospective transactions, and the commission may in no case ratify a transaction entered in violation of this section.

**Miami-Dade County Code at Sec. 2-11.1 (c)(6).**

Extension of waiver to [city] Commissioners.... The requirements of this Subsection may be waived for a particular transaction only by affirmative vote of two-thirds (2/3) of the entire [city commission], after public hearing. Such waiver may be affected only after findings by two-thirds (2/3) of the entire [commission] that:

\* \* \*

- (3) The property or services to be involved in the proposed transaction are unique and the [city] cannot avail itself of such property or services without entering a transaction which would violate this Subsection but for waiver of its requirements, *or*
- (4) That the property or services to be involved in the proposed transaction are being offered to the [city] at a cost of no more than 80% of fair market value based on a certified appraisal paid for by the provider, *and*
- (5) That the proposed transaction will be to the best interest of the [city].

Such findings shall be spread on the minutes of the Board. This Subsection shall be applicable only to prospective transactions, and the [commission] may in no case ratify a transaction entered in violation of this Subsection.