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Via email at: Alisa.Caballero@miamidade.gov

February 22, 2018

Alisa L. Caballero
Quality and Assurance Officer
Administrative Services Division
Miami-Dade County Dept. of Public Housing
& Community Development
701 NW 1st Ct., 16th Floor
Miami, FL 33136

Re: RQO 18-02 Limitations on Transacting Business with the County. Miami-Dade Code § 2-11.1 (c)(2). Actions Prohibited When Financial Interests Involved. Miami-Dade Code § 2-11.1 (n). Prohibition on Exploitation of Official Position. Miami-Dade Code § 2-11.1 (g).

Dear Ms. Caballero:

IN A PUBLIC MEETING on February 14, 2018, the Miami-Dade Commission on Ethics and Public Trust ("County Ethics Commission") opined that the County Ethics Code does not prohibit your spouse's privately owned company from contracting as a sub-contractor to County vendors, provided that you do not oversee or administer any contract or subcontract involving your spouse's company. In addition, the County Ethics Commission held that you may not be involved in the oversight, administration, or determination of the Section 3 Certification (which grants preferences in bidding on construction contracts for housing projects subsidized by Federal funds) to your spouse's company because the County Ethics Code prohibits County employees from taking actions in their public positions affecting the privately-owned businesses of immediate family members.

As background, the County entered into a Master Development Agreement ("MDA") with the Related Urban Development Group, LLC ("RUDG"), the affordable housing arm of the Related Group, to assume all construction responsibilities involving design, construction, and related services needed to re-develop the Liberty Square Rising project ("Liberty Square").¹ The Development Division of the

¹ The Liberty Square project consists of the redevelopment of the occupied Liberty Square public housing site and the vacant Lincoln Gardens public housing site. The project encompasses demolishing existing units at this site (approximately 60-acre site), and constructing new public housing rental, affordable rental, market-rate rental, and affordable homeownership units in phases. Funding is provided by Federal funding sources (Hope Grant VI, Replacement Housing Factor, and Capital Fund Financing Program); State funding sources (Low Income Tax Credits and Surtax funds); and local funding sources (Building Better Communities Bond Program, and General Obligation Bond Program). The Federal funding for this project requires compliance with Federal Section 3 reporting and certification.

County's Public Housing and Community Development department ("PHCD") administers the MDA between the County and RUDG.

You are employed by PHCD as a Quality and Assurance Officer in the Administrative Services Division. In your position as a Quality and Assurance Officer you do not oversee the County's contract with RUDG or any of its subcontractors. However, while your County job duties do not include monitoring Liberty Square's contractual requirements, they do include supervision over the administration and oversight of Federal Section 3 reporting and certification requirements which are part of this project.²

You have inquired about two (2) separate issues. The first issue is whether the County Ethics Code would prohibit Caballero Plumbing, Inc. ("CPI"), your spouse's privately-owned company, from bidding on plumbing subcontracts with Fortune,³ the prime subcontractor (general contractor) under the MDA agreement with RUDG. CPI is not seeking to contract directly with Miami-Dade County. Nevertheless, CPI is seeking to bid on plumbing subcontracts with Fortune Construction, the prime subcontractor (general contractor) hired by RUDG to oversee the development of Liberty Square.⁴ The second issue is whether you may be involved in CPI's application for Section 3 Certification which is administered by the Administrative Services Division which employs you as the Quality and Assurance Officer.

Several sections of the County Ethics Code are relevant to the analysis of these issues:

A) Limitations on contracting with the County

Generally, the County Ethics Code permits County employees and their immediate family members⁵ to transact business with the County under certain circumstances.⁶ However, it prohibits County employees and their immediate family members from transacting business with the County departments that employ them:

... [Allowing County employees to do business with the County under certain circumstances] "shall not be construed to authorize an employee or his or **her immediate family member** to enter into a

² Administration and oversight of Section 3 requires compiling and providing annually to HUD, training and new hire information from general contractors and subcontractors working on PHCD federally subsidized construction projects, and certifying Section 3 businesses. Section 3 Certification allows vendors who are bidding on housing projects subsidized by federal funds to obtain preferences in bidding on construction contracts for these subsidized housing projects. 24 C.F.R. § 135 (2017). Section 3 review and certification is completed by Mr. Jorge Rendon, PHCD's Section 3 Coordinator and Compliance Reviewer, whom you supervise.

³ RUDG hired Fortune Urban Construction, LLC ("Fortune") to serve as the general contractor on the Liberty Square project. It is our understanding that RUDG has an ownership interest in Fortune Urban Construction, LLC. However the County contract is with RUDG, not with Fortune. PHCD Staff advises that HUD is aware of this relationship and has approved Fortune as the General Contractor on the Liberty Square project.

⁴ See INQ 13-69 (Staff opinion issued to Ms. Caballero in 2013 holding that the County Ethics Code did not prohibit CPI from subcontracting with the prime subcontractor of a County vendor responsible for rehabilitating the Joe Moretti Public Housing Apartments; no Section 3 issue raised in that INQ).

⁵ The County Ethics Code defines the term "immediate family members" as "the spouse, domestic partner, parents, stepparents, children and stepchildren of the person involved." Miami-Dade Code § 2-11.1(b)(9).

⁶ Miami-Dade Code § 2-11.1 (c)(2) states in relevant part that County employees are not prohibited from transacting business with the County provided that: (1) entering into the contract would not interfere with the full and faithful discharge by the employee of his or her duties to the County, (2) the employee has not participated in determining the subject contract requirements or awarding the contract, and (3) the employee's job responsibilities and job description will not require him or her to be involved with the contract in any way, including, but not limited to, its enforcement, oversight, administration, amendment, extension, termination or forbearance.

contract with Miami-Dade County or any person or agency acting for Miami-Dade County if the employee works in the County department which will enforce, oversee or administer the subject contract.”⁷
(Emphasis added)

B) Actions prohibited when financial interests involved

The County Ethics Code prohibits any County employee from participating in any official action directly or indirectly affecting a business in which he or she, or any member of his or her immediate family has a financial interest.⁸

C) Prohibition on exploitation of official position

The County Ethics Code provides that County employees may not use or attempt to use their official position to secure special privileges or exemptions for themselves or others.⁹

With respect to the first issue, while the County Ethics Code prohibits County employees and their immediate family members from contracting with the department that employs them, it does not prohibit immediate family members from contracting as sub-contractors to County vendors.¹⁰ Consequently, the Miami-Dade Ethics Code does not prohibit CPI, your spouse’s privately-owned company, from subcontracting with construction firms that are developing the Liberty Square project because all contracting responsibilities involving design, construction, and related services needed to develop the Liberty Square project have been turned over to RUDG. In this instance, CPI would not be contracting directly with any PHCD divisions, but rather with the prime-subcontractor, Fortune, or other contractors or subcontractors who are all under the direct supervision of RUDG.

However, Section 2-11.1(n) would prohibit you from overseeing or administering any contract or subcontract involving CPI because no County employee may participate in any official action which will directly or indirectly affect a business in which her husband has a financial interest.¹¹

Regarding the second issue, the County Ethics Code would prohibit your participation in any oversight of Section 3 Certification because employees may not take actions involving the privately-owned businesses of immediate family members and would also bar a County employee from using his or her County position to grant special privileges or exemptions for him or herself or for another. Consequently, you may not be involved in any oversight, administration or decision regarding CPI’s application for Section 3 Certification. PHCD is advised to delegate CPI’s Section 3 determination to another PHCD staff member who is not under your supervision.

Please note that several other sections of the County Ethics Code would govern the facts presented:

- The County Ethics Code at Sec. 2-11.1(m)(1) would prohibit you from meeting with any County personnel to affect a decision on behalf of CPI.
- The County Ethics Code at 2-11.1 (h) prohibits you from disclosing confidential information acquired by reason of your official County position.

⁷ Miami-Dade Code § 2-11.1(c)(2).

⁸ Miami-Dade Code § 2-11.1(n).

⁹ Miami-Dade Code § 2-11.1(g).

¹⁰ See RQO 10-32. Also see *e.g.* COE staff opinions INQ 11-20 (A County board member’s company may contract as a subcontractor to a prime contractor working for the County, but the board member may not appear before his board on behalf of his company, nor may he vote on any matter that would benefit his privately-owned company); INQ 17-217 (The parent of a County employee may enter into a subcontract with a County vendor through his privately-owned engineering company, but he may not contract directly with the County department that employs his son).

¹¹ See RQO 04-150 (County employee may not be involved in any decisions or actions taken by the County department that employs her related to her husband’s privately owned business).

This opinion is based on the facts presented and construes the Miami-Dade Conflict of Interest and Code of Ethics Ordinance only. If the facts change, please contact the Commission on Ethics. The opinion is not applicable to any conflict under state law. Inquiries regarding possible conflicts under state law should be directed to the State of Florida Commission on Ethics.

Please feel free to contact me or Gilma Diaz-Greco, Staff Attorney, if we can be of further assistance.

Sincerely,



MICHAEL P. MURAWSKI

Advocate

On behalf of JOSEPH M. CENTORINO

Executive Director