

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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December 28, 2018

Namita Uppal, C.P.M.
Chief Procurement Officer
Miami-Dade County Internal Services Department
111 NW 1st Street, Suite 1300
Miami, FL 33128

Re: RQO 18-05 Namita Uppal/ Lobbying, Section § 2-11.1(s), County Ethics Code

Dear Ms. Uppal:

In a public meeting on December 13, 2018, the Miami-Dade Commission on Ethics and Public Trust ("COE") opined that a principal of a corporation and/or a person, firm, or corporation employed or retained by a principal, IS REQUIRED to register as a lobbyist prior to participating in negotiation sessions with the County on a bid waiver contract that is procured through the County's non-competitive procurement process, if the contract requires review or approval by the County Commission, County Mayor or a County board or committee.¹

As background, the COE received information from the Office of the Inspector General (OIG) involving a possible violation related to the lobbyist registration requirement under Section 2-11.1(s) of the Conflict of Interest and Code of Ethics Ordinance (Ethics Code). The OIG discovered the possible violation during their review of Bid Waiver Contract No. BW9872-1/20 for Traffic Signal System Modernization (the Contract).

The negotiation of various terms of the draft Contract between Miami-Dade County Internal Services Department (ISD) and Econolite representatives took place over the early months of 2017.² The completed proposed contract award was executed by Econolite on March 9, 2017 and

¹ Under the County Ethics Code, a principal is the owner, president or chief shareholder of a corporation or an individual who has been designated or who has the apparent authority to make a final decision on behalf of a corporate entity during the decision-making process (including negotiation phase) on any action, decision or recommendation by County personnel that requires review or approval of County Mayor, boards, committees or the BCC. See RQO 08-41.

² In bid waiver contracts, the action, decision and recommendation to engage with a specific vendor has already been made by the user department. After receiving the request from the user department, ISD's contracting officer, among other duties, drafts a contract and enters into negotiations with the vendor's representative(s) regarding the various

was logged into the Clerk's Agenda Coordination Office on March 30, 2017. The first record of any individual registering to encourage the passage or modification of the contracting agreement was not until April 12, 2017, approximately one month after the contract was executed.³ Additional representatives registered on behalf of Econolite on May 9, 2017.⁴ The Contract was awarded to Econolite by the Board of County Commissioners on July 6, 2017.

The procurement contracting officer who handled the contract negotiations with Econolite for the County followed ISD's standard non-competitive procurement process for a bid waiver contract. ISD's non-competitive procurement procedure on bid waiver contracts does not indicate that vendors or their representatives are required to register as lobbyists prior to engaging in contract negotiations, therefore, ISD contracting officers do not request or verify lobbyist registration documents prior to engaging in contract negotiations with vendors or their representatives.⁵

The following question was submitted to the Ethics Commission for consideration:

Whether a principal of a corporation, and/or a person, firm, or corporation employed or retained by a principal, is required to register as a lobbyist prior to participating in negotiation sessions with the County on a bid waiver contract that is procured through the County's non-competitive procurement process.

The Ethics Commission determined that the absence of a competitive solicitation scenario does not excuse a lobbyist from his or her registration requirements when the lobbyist is seeking to encourage the passage, defeat or modification of official actions or decisions of a governmental entity.

The Commission noted that neither the County Ethics Code at Section 2-11.1(s), nor the COE in any of its opinions, have ever set forth an exception to the lobbyist registration requirement based on whether a contract is procured through the County's competitive procurement process as opposed to the County's non-competitive procurement process (i.e. bid waiver contracts).⁶ Instead, the COE has consistently held that the lobbying provisions in the Ethics Code apply to the time period of the *entire decision-making process* on such action decision or recommendation, which foreseeably will be reviewed by the County Commission or a County board or committee.⁷

The Ethics Commission further concluded that appearances at any meetings with the intent to influence County personnel to contract with an entity or to negotiate terms of any

³ On or about April 12, 2017, Roly Marante registered on behalf of Econolite.

⁴ On or about May 9, 2018, Mark Nogaki, V-P, Sales and Douglas Terry, Project Manager for Econolite registered.

⁵ ISD's procurement contracting officer who handled the contract negotiations with Econolite explained that if the contract was going to be awarded through a competitive procurement, she would have verified that Econolite's representatives were registered as lobbyist(s) prior to the start of the negotiations. She concluded by saying that negotiations for this specific procurement were solely related to ISD's non-competitive procurement process as it was a bid waiver contract so Econolite's representatives were not required to register to lobby prior to engaging in contract negotiations.

⁶ See RQO 06-63, RQO 06-65, RQO 10-28, and INQ 15-187.

⁷ See RQO 12-09; RQO 13-12; INQ 12-47; INQ 15-93; INQ 15-187; and INQ 18-248

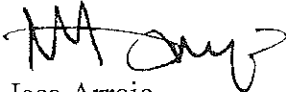
contract/agreement between the County and an entity would require registration as a lobbyist irrespective of the County department in which the meetings are taking place.⁸

Consequently, a principal of a corporation and/or a person, firm, or corporation employed or retained by a principal, IS REQUIRED to register as a lobbyist prior to participating in negotiation sessions on a bid waiver contract with the County, if the contract requires review or approval by the County Commission, County Mayor, or a County board or committee.

Furthermore, all County officials and personnel must be diligent in ascertaining compliance with lobbyist registration requirements. "Commissioners or County personnel may not knowingly permit a person who is not registered...to lobby [a] Commissioner, or the relevant committee, board or *County personnel*."⁹

If you have any questions regarding this opinion, please contact Radia Turay or Martha D. Perez, Staff Attorneys, at (305) 579-2594.

Sincerely,



Jose Arrojo
Executive Director

⁸ In RQO 08-41, the Ethics Commission held that the representative of a corporation that is engaged in contract negotiations with the County is required to register as a lobbyist. In that case a member of a board of directors of a corporation was engaged in contract negotiations with the County's Seaport on an agreement that required approval by the Board of County Commissioners. The Ethics Commission explained that the individual who was appointed to serve as the representative of the corporation in negotiations with the County, is considered a "principal" under Section 2-11.1(s) of the County Ethics Code and is required to register as a lobbyist *prior* to attending negotiation sessions with the County on the proposed contract.

⁹ See Section 2-11.1(s) (10), County Ethics Code; INQ 16-94.