

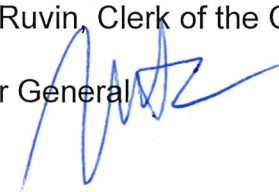


Memorandum



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To: The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County
The Honorable Audrey M. Edmonson, Chairwoman
and Members, Board of County Commissioners, Miami-Dade County
The Honorable, Harvey Ruvin, Clerk of the Courts of Miami-Dade County

From: Mary T. Cagle, Inspector General 

Date: August 13, 2019

Subject: OIG Final Report Re: Review of Potential Conflicts Relating to the
County's P3 Solicitation to Design, Build, Finance, Operate, and Maintain
a New Civil and Probate Courthouse, Ref. IG 19-0006-O

Attached please find the above-captioned Final Report issued by the Office of the Inspector General (OIG). The Final Report details the OIG's review, initiated at the request of Clerk Ruvin, to determine whether the representation by Bilzin Sumberg Baena Price & Axelrod, LLP (Bilzin), of a proposer in the procurement for the new civil and probate courthouse, posed prohibited conflicts given their simultaneous, and long-standing, representation of the Clerk of Courts of Miami-Dade County (the Clerk). The OIG also examined if there were any communications by the proposer, M-S-E Judicial Partners, LLC, through its representative, Bilzin, that were in violation of provisions in the Conflict of Interest and Code of Ethics Ordinance and provisions in the bid documents.

The OIG's review of this matter did not find evidence of prohibited conflicts or violations as governed by the County's Conflict of Interest and Code of Ethics Ordinance; nor did we find any violation of any of the restrictions in the bid documents. Notwithstanding our conclusions, external evidence supports that this matter could have been avoided had the Clerk's General Counsel timely communicated to Clerk Ruvin, Bilzin's disclosure that the firm was (or would be) representing a client in the upcoming competitive procurement for the new courthouse. The lack of communication was a missed opportunity to dispel the perceived conflict, and openly air and address the matter. Last, our review identified several areas that can be improved upon to ensure that the County standards of fairness and impartiality in its procurement processes are enhanced and maintained. The report contains four recommendations. The OIG is working with the County's Internal Services Department (ISD) on the recommendations.

A draft of this report was previously provided to the Clerk, Harvey Ruvin; Mr. Luis Montaldo, General Counsel for the Clerk's Office; ISD; and Ms. Eileen Mehta, Esq. of Bilzin for their review and the opportunity to provide a written response. The OIG has received responses from all, and they are attached as Appendices A – D.

Attachment

cc: Honorable Bertila Soto, Chief Judge, Eleventh Judicial Circuit
Honorable Jennifer Bailey, Administrative Judge, Civil Div. Eleventh Judicial Circuit
Abigail Price-Williams, County Attorney
Edward Marquez, Deputy Mayor
Tara Smith, Director, Internal Services Department
Namita Uppal, Chief Procurement Officer, Internal Services Department
Cathy Jackson, Director, Audit and Management Services Department
Yinka Majekodunmi, Commission Auditor
Parties previously provided with the Draft Report (under separate cover)

MIAMI-DADE COUNTY

OFFICE OF THE INSPECTOR GENERAL



FINAL REPORT

IG 19-0006-O

*Review of Potential Conflicts Relating to the County's
P3 Solicitation to Design, Build, Finance, Operate, and
Maintain a New Civil and Probate Courthouse*

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OIG FINAL REPORT

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Appendix C: Response of Bilzin Sumberg's General Counsel,
Mr. David Trench, Esq.

Appendix D: Response of Internal Services Department

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I. INTRODUCTION & SYNOPSIS

On April 12, 2019, the Office of the Inspector General (OIG) was notified by the Reyes Law Firm, which had been recently retained as supplemental outside counsel for the Clerk of Courts of Miami-Dade County (the Clerk), that Bilzin Sumberg Baena Price & Axelrod, LLP (Bilzin), the Clerk's outside counsel, was also representing M-S-E Judicial Partners, LLC (M-S-E). M-S-E is one of the shortlisted proposers on the County's Public-Private Partnership (P3) solicitation for a new courthouse.

At the time of the notification, the County was in the middle of a competitive procurement process to select a developer and award a contract to design, build, finance, operate, and maintain a civil and probate courthouse (new courthouse). Solicitation RFP-00953 (the RFP), issued on August 1, 2018, replaced RFQ-00820 (the RFQ), which had been issued on January 31, 2018, and later rejected by the Board of County Commissioners (BCC) on June 5, 2018. The replacement solicitation (RFP-00953) was issued in two phases. Phase 1 was issued on August 1, 2018, with the purpose of qualifying a shortlist of proposers. Phase 2, which requested the submittal of the financial and technical proposals, was issued on May 24, 2019.

The Clerk's Office was listed as a Key Stakeholder in the earlier RFQ and in the later RFP. Three members of the Clerk's Office were on the Competitive Selection Committee (CSC) for the RFQ and Phase 1 of the RFP – one as a voting member and two as technical advisors.

Prior to the limited representation by the Reyes Law Firm, which began on or about March 22, 2019, the Clerk had a longstanding, 21-year, legal representation agreement with Bilzin. In addition, the OIG was informed that Bilzin had a specific engagement with the Clerk entitled, "Engagement of Counsel Pertaining to issues Concerning the Repair and/or Replacement of the County Courthouse." Bilzin's representation and participation in the M-S-E proposal was not known by the Clerk, Harvey Ruvin. This matter became a concern given the participation of Clerk's Office staff on the CSC for both the RFQ and the RFP.

Upon being informed of these facts, the OIG was asked to review the matter to determine whether the on-going representations by Bilzin, of a proposer and a stakeholder, posed prohibited conflicts. The OIG also examined if there were any communications by the proposer, M-S-E, through its representative, Bilzin, that were in violation of provisions in the Conflict of Interest and Code of Ethics Ordinance and provisions in the bid documents. It should be noted that the OIG was unaware that the Clerk had a longstanding engagement with Bilzin as outside counsel.

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The OIG's review of this matter did not find evidence of prohibited conflicts or violations as governed by the County's Conflict of Interest and Code of Ethics Ordinance; nor did we find any violation of any of the restrictions in the bid documents. Notwithstanding our conclusions, external evidence supports the testimony of Bilzin's attorney, Ms. Eileen Mehta, that she disclosed early on to the Clerk's General Counsel, Luis Montaldo, that her firm, was (or would be) representing a client in the upcoming competitive procurement for the new courthouse. This matter could have been avoided had Mr. Montaldo timely communicated the information to the Clerk or if Bilzin had directly informed the Clerk. The review also determined that during the procurement process, there were opportunities early on to dispel the perceived conflict had this matter been openly aired and addressed. Last, our review identified several areas that can be improved upon to ensure that the County standards of fairness and impartiality in its procurement processes are enhanced and maintained. The OIG is already working with ISD on some of these areas.

Following our jurisdictional statement and review methodology, stated directly below, the remainder of the report is divided into five sections. First, a background section provides a discussion of the Bilzin firm's representation of the Clerk and M-S-E. Second, in order to give context to the OIG's analysis, we provide a timeline of events explaining the progression of the procurement leading up to the discovery that Bilzin represented shortlisted proposer, M-S-E. The third and fourth sections are the OIG's factual findings and the analysis of the potential conflicts and restrictions, based on those findings. The report's final section contains the OIG's conclusions and recommendations.

II. OIG JURISDICTIONAL AUTHORITY

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs; audit, inspect and review past, present and proposed County programs, accounts, records, contracts, and transactions; conduct reviews, audits, inspections, and investigations of County departments, offices, agencies, and boards; and require reports from County officials and employees, including the Mayor, regarding any matter within the jurisdiction of the Inspector General.

III. REVIEW METHODOLOGY

During the review, the OIG was provided access to email communications, invoices, and engagement letters, by both the Clerk's Office and the Bilzin law firm. The OIG also reviewed the procurement documents issued under both the RFQ and Phase 1 of the RFP, as well as the proposals submitted by M-S-E for each of the two solicitations. All

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procurement documents such as the Competitive Selection Committee Member Neutrality/Disclosure Form Background Check (Neutrality Affidavit) and bid tabulations were also reviewed. For Phase 1 of the RFP, the OIG listened and/or watched all taped meetings of the CSC, and the Individual Proposer Negotiation Sessions.

This review required the OIG to conduct numerous interviews. From the Clerk's Office, the OIG interviewed the Clerk, Harvey Ruvin; the General Counsel, Luis Montaldo; Legal Services Manager and Paralegal, Lourdes Arruza; the Clerk's Finance Director Liza Saboya-Fernandez; and the Chief of Staff, Michael Henderson. From the M-S-E team, the OIG interviewed Jonathan Dingle, Senior Investment Director, Asset Management of Meridiam Infrastructure North America, Corporation. From Bilzin, the OIG interviewed attorneys, Eileen Ball Mehta, Andrej Micovic, and General Counsel David Trench. From the Internal Services Department (ISD), the OIG interviewed Rita Silva, Chief of Policy, P3 and Innovative Procurement, who also happens to be the Point of Contact, Procurement Manager, and Non-Voting Chair of the courthouse CSCs, and Dan Chatlos, the assigned Project Manager on the courthouse procurement. All of the above-named individuals were interviewed by the OIG under oath. Last, the OIG spoke with Assistant County Attorneys (ACAs) Eduardo Rodriguez, Monica Rizo, Hugo Benitez, and Oren Rosenthal to learn of their involvement in the RFQ/RFP process, their prior knowledge of Bilzin's representation of the Clerk's Office, and how they came to learn of Bilzin's involvement with courthouse proposer M-S-E.

IV. BACKGROUND

A. Clerk of Court Representation by Bilzin

The Bilzin law firm began representing the Clerk starting on or about March 31, 1998 (as memorialized in an engagement letter dated August 26, 1998). Bilzin attorney, Eileen Mehta was the lead attorney on the engagement. In fact, the OIG learned that Ms. Mehta had represented the Clerk for many years preceding her employment with the Bilzin firm, while at two other firms. Ms. Mehta's professional relationship with the Clerk dates back to when the Clerk was a Commissioner for Miami-Dade County and Ms. Mehta was an Assistant County Attorney.

Bilzin represented the Clerk in his "capacity as Clerk of the Circuit and County Courts, regarding general representation and litigation matters." In September of 2010, Bilzin and the Clerk renewed the engagement in a letter referenced as a "Continuation of Services Regarding General Legal Matters of the Clerk of the Court." The scope of the engagement was defined as "...respond[ing] to the day-to-day general legal matters as

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they arise.” Further, the letter noted that the “engagement specifically excludes litigation, legal research and opinions, special projects or other similar matters, which are opened and handled as separate engagements.”

One of the specific separate engagements entered into by Bilzin and the Clerk concerned “the Repair and/or Replacement of the County Courthouse” (courthouse engagement) (Exhibit 1) This engagement, which was entered into on October 28, 2014, was defined as providing “legal advice regarding the repair and/or replacement of the County Courthouse, as said issues may affect the operations and employees of the Clerk of the Court, and to review and analyze certain environmental reports regarding the County Courthouse.” At the time, due to the age and condition of the civil and probate courthouse, there were serious concerns affecting the health and safety of the employees occupying the building. Based upon the OIG’s review of emails and invoices concerning the courthouse engagement, we determined that the bulk of the work took place during 2014 and 2015. Very little work appears to have been done on this specific engagement from 2016 to 2018. The work centered on the physical condition of the existing courthouse, specifically asbestos issues, remediation work, mold issues, and personnel issues, including re-location of employees due to health/environmental concerns.

Aside from the courthouse engagement, there were numerous other specific engagements. Over the 21 years, Bilzin had 105 separate specific engagements. Ms. Mehta had almost daily interaction with the Clerk’s Office. In particular, General Counsel Luis Montaldo and paralegal Lourdes Arruza had a very close working relationship with Ms. Mehta. In addition, numerous other attorneys from the Bilzin firm assisted Ms. Mehta during the various specific engagements according to their expertise. Mr. Montaldo referred to Ms. Mehta as his “partner” and described that they could have multiple conversations about varying matters on a daily basis.

B. M-S-E Judicial Partners, LLC Representation by Bilzin

Through interviews and review of documents provided by Bilzin, the OIG learned that Bilzin hired attorney Andrej Micovic to join its project development and finance team in the fall of 2017. Mr. Micovic had a pre-existing relationship with Meridiam Infrastructure North America (Meridiam) at his predecessor law firm. Following Mr. Micovic’s employment, Meridiam and Bilzin began discussions regarding a potential engagement for a P3 project.

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According to Bilzin General Counsel David Trench—as supported by documents reviewed by the OIG—a conflicts review was conducted. Bilzin determined that the parties on the new courthouse project, for purposes of its conflict analysis, were Miami-Dade County and M-S-E. Bilzin attorneys concluded that they were not aware of any matter that they were involved in that created a conflict of interest with respect to the engagement of M-S-E. Although Bilzin attorneys did not consider the Clerk's Office a party that would have an adverse interest in the firm's representation of M-S-E, Bilzin, nevertheless, undertook an effort to prevent communications regarding the new courthouse by anyone working on matters for the Clerk.

As explained to the OIG by Mr. Trench, the conflicts review was conducted prior to any representation of M-S-E; however, the engagement letter with M-S-E was prepared and signed months after the representation had commenced. According to both Mr. Micovic and Mr. Jonathan Dingle of M-S-E, Bilzin's representation commenced in January 2018, but the engagement letter was not finalized and signed until September 26, 2018 (the day before the responses were due on RFP-00953 – Phase 1).

V. OIG VERIFIED TIMELINE

Based on documents obtained from all parties and the interviews conducted, the OIG was able to establish a chronology of events relating to the matter under review.

January 11, 2018 – The County receives an unsolicited proposal to design, build, finance, operate, and maintain a new civil courthouse from New Flagler Courthouse Development Partners, LLC, an affiliated entity of Florida East Coast Industries (FECI).

January 31, 2018 – The County issues a Request for Qualifications, RFQ-00820, to design build, finance, operate, and maintain a new civil and probate courthouse.

February 8, 2018 – ISD's Small Business Development staff advise the following Clerk's Office personnel: Luis Montaldo, General Counsel; Michael Henderson, Chief of Staff; and Melissa Adames, Courts Project Manager, that they had been recommended to participate in the Competitive Selection Committee (CSC) for RFQ-00820. After said notification, Mr. Montaldo calls Ms. Mehta to advise her that he was being considered for the CSC for the new courthouse project.

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Ms. Mehta sends Bilzin's Managing Partner-Elect, Mr. Al Dotson, an email regarding Mr. Montaldo's disclosure that he would be on the CSC.

Ms. Mehta sends an email to Mr. Montaldo and Ms. Arruza. She then called and had a follow-up conversation with Mr. Montaldo.

February 9, 2018 – Bilzin attorneys hold an internal meeting regarding the firm's representation of the Clerk and M-S-E. It was agreed to advise both clients of the two representations.

Ms. Mehta calls Mr. Montaldo to disclose Bilzin's representation of a proposer for the new courthouse. Mr. Micovic speaks to Mr. Jonathan Dingle of M-S-E to disclose the firm's representation of the Clerk's Office.

February 21, 2018 – Members of the CSC are officially appointed pursuant to a memorandum issued by the Mayor. Mr. Montaldo was appointed as a voting member. Mr. Henderson and Ms. Adames were appointed as non-voting, technical advisors.

April 30, 2018 – A kickoff meeting and training is held for the CSC members. Ms. Rita Silva, the Point of Contact and Non-voting Chair of the Selection Committee, prepares a comprehensive training manual, which was provided to all CSC members with instructions for their review. CSC members also receive training on the Conflict of Interest and Code of Ethics Ordinance and specifically, the Cone of Silence, by Mr. Joseph Centorino, the then Executive Director of the Commission on Ethics.

May 2, 2018 – Responses to the RFQ are received from Fengate Capital Management, Ltd. (Fengate); M-S-E Judicial Partners, LLC (M-S-E); Plenary Group USA Concessions, Ltd. (Plenary); and Sacyr Infrastructure USA, LLC (Sacyr).

May 10, 2018 – CSC members, including Mr. Montaldo, begin receiving all the proposals for their review.

May 16, 2018 – During a CSC meeting, Ms. Silva collects the Neutrality Affidavits from the CSC members.

June 5, 2018 – The BCC, through Resolution No. R-533-18, rejects the RFQ and directs the County to issue a hybrid P3 solicitation for the Civil and Probate Courthouse Project. Members of the CSC are advised that the County would issue the new procurement

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shortly, and that the CSC members for the new procurement would remain the same. The Cone of Silence that had been in place for the RFQ is lifted.

July 2, 2018 – The same CSC members are appointed to the new courthouse procurement (RFP-00953).

August 1, 2018 – Mr. Montaldo receives an email from lobbyist Mr. Eric Zichella requesting a meeting with him and the Clerk regarding the courthouse procurement. Mr. Montaldo forwards the request to the County Attorney's Office and to Ms. Silva.

RFP-00953 Phase 1 was issued – Cone of Silence goes into effect.

September 27, 2018 – Responses to the RFP Phase 1 are received from Fengate, M-S-E, Plenary, Sacyr, and Hunt Companies, Inc. (Hunt).

The CSC kick-off meeting, which includes training for CSC members, takes place.

October 4, 2018 – CSC members begin receiving proposals to review prior to completing the Neutrality Affidavits.

October 25, 2018 – The first evaluation meeting of the CSC takes place, and CSC members are asked to turn in their completed Neutrality Affidavits.

November 16, 2018 – The second evaluation meeting of the CSC takes place, wherein the CSC members score the proposals and decide to request oral presentations from the top four proposers based on the preliminary scores.

December 10, 2018 – The third evaluation meeting takes place wherein proposers Plenary, M-S-E, Hunt, and Sacyr make oral presentations to the CSC. The CSC members re-score the proposals based on the evaluation criteria in the RFP. Based on this second scoring, the CSC recommends that the three highest-ranked proposers (M-S-E, Plenary, and Sacyr) continue to the second phase of the procurement.

December 31, 2018 – The County issues a draft version of the RFP Phase 2 document (containing the technical and financial provisions) to the three shortlisted proposers.

February 6, 2019 – The County, its advisors, and stakeholders participate in a series of negotiation sessions with each of the proposers and their team members to review the

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draft Phase 2 document and consider any adjustments to be made to the final RFP Phase 2 documents. The first negotiation session with Plenary is held.

February 7, 2019 – The first negotiation session with Sacyr is held in the morning and with M-S-E in the afternoon.

March 7, 2019 – The second negotiation session with Plenary is held in the morning and with M-S-E in the afternoon.

During the afternoon session with M-S-E, ACA Rizo and Ms. Saboya-Fernandez of the Clerk's Office notice Bilzin attorneys representing M-S-E.

March 8, 2019 – The second negotiation session with Sacyr is held.

During a break in the meeting, ACA Rizo and Ms. Saboya-Fernandez discuss their observations from the day before concerning Bilzin's representation of M-S-E, as both are aware of Bilzin's on-going legal representation of the Clerk's Office. ACA Rizo advises that her office will call Ms. Mehta. Ms. Saboya-Fernandez, upon returning to her office, advises Ms. Arruza of this matter.

VI. FACTUAL FINDINGS

In addition to a timeline of the procurement events, the interviews and documents reviewed resulted in the following factual findings:

A. Bilzin's Client Engagement Related to the New Courthouse Procurement

The OIG learned that Bilzin had performed work for Florida East Coast Industries (FECI) on its All-Aboard Florida and Brightline projects. Ms. Mehta has been a part of Bilzin's representation of FECI for many years. Bilzin's relationship with FECI, according to Ms. Mehta, is almost as long as her relationship with the Clerk. After the failure of a 2014 County referendum to raise taxes for a new courthouse, there was interest by All-Aboard/FECI in a courthouse project.

This potential business was, according to Mr. Trench, communicated to the firm's lawyers in order to prevent any potential conflicts in representation. On May 8, 2017, Bilzin General Partner, Al Dotson, advised in an email "[b]ecause of our involvement in Miami-Dade County's selection of a developer and development plan for a new civil courthouse, please speak with me before you accept any role related to the courthouse or discuss

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with any developer pursuing the civil courthouse development.” (Exhibit 2) Ms. Mehta and Mr. Trench stated that the firm avoided any discussions about the new courthouse with any attorneys that had worked on Clerk matters. Mr. Trench stated that although there were discussions over a long period of time with All-Aboard (FECI), those never materialized into a legal engagement related to a new courthouse.

As earlier discussed in Section IV. (B) of this report, Bilzin was engaged by M-S-E in January 2018 related to the new courthouse project. Mr. Micovic told the OIG that he met with Mr. Jonathan Dingle of M-S-E who had expressed an interest in the County's courthouse project prior to the RFQ being issued. In light of this interest, Mr. Micovic requested that his firm conduct a conflict review prior to any formal engagement with M-S-E.

Ms. Mehta conducted the initial conflict review. She advised that under the Florida Constitution, the County is the only party responsible for the construction of a courthouse. The Clerk cannot procure the construction of a courthouse. As such, the determination was made that an attorney/client conflict did not exist with the representation of both M-S-E and the Clerk.

Mr. Micovic explained to the OIG that while there was no attorney/client conflict, the firm did consider its client, the Clerk, as a stakeholder. As such, Bilzin wanted to make sure that anyone who worked on Clerk matters was aware of the law firm's representation of M-S-E and did not discuss the new courthouse project. Ms. Mehta was asked to identify those attorneys working on Clerk matters. Bilzin provided the OIG with an email from Ms. Mehta identifying some of the attorneys that had worked on Clerk's Office matters. Mr. Micovic told the OIG that he had intended on sending an email to all, but instead had individual discussions with each of the attorneys. He requested that those attorneys refrain from any conversations about the new courthouse with any Clerk's Office personnel.

Again, as earlier described in Section IV. (B), the representation agreement between Bilzin and M-S-E was formally executed on September 26, 2018, even though the engagement started in January 2018. According to those interviewed by the OIG and our review of the agreement, the engagement specifically excludes representing M-S-E in any court proceedings, bid protests, or any post-award disputes or transactions, other than project financing. As explained to the OIG, these areas were specifically excluded because—while Bilzin's legal conflict analysis concluded no actual conflict—there was the remote possibility that in a bid protest situation, a conflict could emerge. Although Bilzin felt that P3 procurements did not have a high risk for protests, they specifically

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excluded that type of legal service from the engagement letter. The engagement letter also included written disclosures of Bilzin's representation of the Clerk and FECI.¹

B. Disclosures and Discussions Regarding Mr. Montaldo's Prospective Appointment to the New Courthouse Procurement's Competitive Selection Committee

Hours after being notified by ISD on February 8, 2018, that he was being recommended for appointment to the new courthouse CSC, Mr. Montaldo called Ms. Mehta to advise her of his prospective appointment. Ms. Arruza confirms the conversation, as she was present in the room and participated on the call. According to both Mr. Montaldo and Ms. Arruza, they were aware that Bilzin represented All-Aboard. Although they did not know if All-Aboard would be a proposer, the call was to put Ms. Mehta and Bilzin on notice that the Clerk was a stakeholder in the new courthouse project and Mr. Montaldo would be a member of the CSC. Both maintain that Mr. Montaldo told Ms. Mehta that he would be under the Cone of Silence and, as such, Ms. Mehta would have to handle any issues related to the courthouse and communicate directly with Ms. Arruza.

Mr. Montaldo equivocated with regard to whether he asked Ms. Mehta to handle issues regarding the RFQ/RFP process or not. He finally stated that he was not asking Ms. Mehta to assist Ms. Arruza on any issues regarding the RFQ/RFP process "because I don't think Lourdes would be involved with the RFP and RFQ procurement process." Mr. Montaldo thought it important for Ms. Arruza to have a backup person to speak with if it became necessary. Ms. Arruza also stated that Mr. Montaldo needed Ms. Mehta to supervise her if something came up while he was under the Cone of Silence or while he was out of the office.

According to Mr. Montaldo and Ms. Arruza, after the February 8 conversation with Ms. Mehta, they did not discuss the new courthouse procurement at all. Mr. Montaldo explained that although he was not already bound by the restrictions in the Cone of Silence, his approach was to "put the hatches down" and not speak with anyone. Both

¹ The OIG was informed that Bilzin was unaware that FECI through an affiliate, New Flagler Courthouse Development Partners, LLC, (NFCDP) had presented the County with an unsolicited proposal for a new courthouse in January 2018, just prior to the RFQ being issued. Bilzin provided an email string between FECI's CEO, Jose Gonzalez, and Mr. Dotson. In June 2018, after the RFQ and the unsolicited proposal were rejected, FECI requested that Bilzin undertake representation of NFCDP. Mr. Dotson wrote: "I also appreciate you understanding that we cannot undertake the representation of NFCDP and sharing that you did not object to our representation of M-S-E Judicial Partners, LLC." Mr. Gonzalez replied: "Al, I have no issue with your representation of MSE Judicial Partners."

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Mr. Montaldo and Ms. Arruza advised the OIG that—except for the new courthouse—they did discuss other on-going matters.

Ms. Mehta was interviewed by the OIG. She affirmed that on February 8, 2018, Mr. Montaldo called about his impending appointment to the CSC and that he asked her to handle any legal matters in his absence. However, she denied being asked to represent the Clerk on matters related to the RFQ and the new courthouse. Ms. Mehta recalled that Mr. Montaldo needed her to be available to assist Ms. Arruza with any issues that may arise should he not be available, as she had done numerous times in the past when he was out of the office. Ms. Mehta explained to the OIG that the specific courthouse engagement with the Clerk did not cover the procurement of a new courthouse.

Bilzin provided the OIG with Ms. Mehta's cellphone records showing an incoming call from Mr. Montaldo on February 8 at 1:07 p.m. Ms. Mehta advised her firm of Mr. Montaldo's disclosure that he would be on the CSC. The OIG reviewed an internal email from Ms. Mehta on February 8 at 2:45 p.m. to Bilzin's then Managing Partner-Elect, Al Dotson, stating: "I have just been advised by Luis Montaldo, counsel for the clerk, that he has been appointed to the evaluation committee. I do not think that I should be the one giving conflicts advice on this. I think we need to ask David to get involved." Mr. Dotson replied within a few minutes, at 3:01 p.m., and asked her, "Which evaluation committee? For which project? New or old courthouse or review of unsolicited proposal?" (Exhibit 3) Later that afternoon, at 5:40 p.m., Ms. Mehta emailed Mr. Montaldo and Ms. Arruza and asked, "Is the matter we discussed today for the proposed new courthouse by the children's court?"

The Clerk's Office provided the OIG the same February 8 email from Ms. Mehta. (Exhibit 4) Both Mr. Montaldo and Ms. Arruza told the OIG that they did not reply to the email. Ms. Arruza told the OIG that she and Mr. Montaldo had a conversation wherein he questioned whether he had made himself clear to Ms. Mehta—that even though he wasn't under the Cone of Silence, he would not be discussing anything about the process from then on. Ms. Arruza agreed, and she was directed by Mr. Montaldo not to respond to the email. Mr. Montaldo maintained that once he had the initial conversation on February 8, he did not respond to Ms. Mehta because "once again, once in the cone, I'm not going to be out of the cone until it's done." The OIG notes that Mr. Montaldo, while informed about his impending appointment to the CSC, had not been actually appointed and, as such, was not yet under the Cone of Silence.

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The OIG learned that Ms. Mehta spoke to Mr. Montaldo again, later that day and confirmed he was selected for the new courthouse CSC. Ms. Mehta's phone records show an outgoing call to Mr. Montaldo at 5:40 p.m., which is around the time that she sent the follow-up email question. Several minutes later, at 5:58 p.m., Ms. Mehta replied to Mr. Dotson's email stating: "For the new courthouse RFP – not the unsolicited proposal because, I believe, the County has not yet made a decision on proceeding with that one, but I assume they will soon." Mr. Montaldo did not recall having this follow-up conversation with Ms. Mehta on February 8.

After learning Mr. Montaldo would be on the CSC, and per Ms. Mehta's email suggestion "to get David [Trench] involved," Bilzin attorneys reviewed the conflict again in light of Mr. Montaldo's participation in the CSC. Mr. Trench conducted the conflict review; although the determination was the same, it was decided that disclosures would be made to both the Clerk's Office and M-S-E.

On the morning of February 9, Ms. Mehta met with Mr. Dotson, Mr. Eric Singer, and Mr. Micovic. She was informed that, although it had been determined that there was no conflict regarding the firm's representation of the Clerk's Office and M-S-E, it was agreed that they would advise both clients of the representations.

Ms. Mehta told the OIG that she spoke with Mr. Montaldo on February 9, and informed him that Mr. Dotson had a client that planned to submit a proposal in response to the County's courthouse solicitation.² Ms. Mehta told him that the firm would be unable to represent the Clerk in any matter involving the new courthouse. This was done to guard against the possibility, although remote, of emerging conflicts with the Clerk's Office. According to Ms. Mehta, Mr. Montaldo said that it was a shame he would not be able to consult with the firm in connection with the courthouse project because he did not have experience with P3s. According to Ms. Mehta, he also understood it was an important client and he did not want to stand in Mr. Dotson's way. The OIG has reviewed Ms. Mehta's phone records showing a call to Mr. Montaldo on February 9 at 9:47 a.m.

Bilzin has provided documentation showing a call between Mr. Micovic and Mr. Jonathan Dingle of M-S-E shortly after the internal meeting on the morning of February 9. Mr. Micovic stated to the OIG that he told Mr. Dingle of Mr. Montaldo's impending appointment to the CSC and discussed Bilzin's analysis regarding any potential conflict. According to Mr. Micovic, Mr. Dingle had no reservations about the issue. The OIG also spoke with Mr. Dingle who confirmed Mr. Micovic's account. Mr. Dingle had no problem with Mr.

² Ms. Mehta was unsure whether she had also mentioned these details during her second conversation with Mr. Montaldo on February 8.

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Montaldo's role on the CSC or Bilzin's representation of the Clerk's Office. Mr. Dingle recalled Mr. Micovic explaining that the County—not the Clerk's Office—was responsible for the procurement and that they did not perceive any conflict.

During the OIG's interview of Mr. Montaldo, he did not initially mention any conversation with Ms. Mehta wherein she disclosed that her firm, Bilzin, was (or would be) representing an entity that would be submitting a proposal for the new courthouse. When asked hypothetically what he would have done if Ms. Mehta had made a disclosure during their February 8 conversation, Mr. Montaldo then recalled a subsequent "private" phone conversation with Ms. Mehta. He believed the conversation was a couple of days later and before his formal appointment to the CSC. He recalled Ms. Mehta stating something to the effect of: "I think we may be, for example, getting into some kind of work, maybe involving the courthouse," and that her "firm was thinking of taking on potential work related to the courthouse." Mr. Montaldo recalled his response being: "well I'm sure you will govern yourself accordingly."

Mr. Montaldo stated to the OIG that he would have remembered if Ms. Mehta told him that her firm was actually representing a proposer—as opposed to "thinking about taking on potential work related to the courthouse." He also did not recall having a significant discussion with Ms. Mehta on February 9. Mr. Montaldo stated that that he did not question Ms. Mehta further, and did not disclose Bilzin's "potential work related to the courthouse" to the Clerk. Other than the first conversation on February 8, Ms. Arruza had no knowledge of any subsequent conversations between Mr. Montaldo and Ms. Mehta related to the new courthouse.

Mr. Montaldo repeatedly expressed to the OIG that Bilzin should have made disclosures to all parties, the County and the Clerk. In fact, he assumed that Bilzin had made such disclosures and obtained any necessary waivers but was unaware of what Bilzin had done because he was under the Cone of Silence. In addition, he advised that ISD and the County Attorney's Office, who reviewed the materials, should have been aware of Bilzin's relationship with both the Clerk and M-S-E.

C. Events Occurring During the Procurement Process Resulting in the Clerk's Actual Knowledge of Bilzin's Representation of M-S-E

For both the RFQ and RFP, Ms. Rita Silva was the designated Procurement Point of Contact and Non-Voting, Chairperson of the CSC. She explained the initial review process of the proposers' submittals for responsiveness and how the proposals are eventually distributed to the CSC members. For both the RFQ and the RFP, she and her

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team reviewed the proposals and brought any questions or issues needing legal guidance to the County Attorney's Office. In the case of both the RFQ and the RFP, she met with ACA Hugo Benitez seeking his legal review. ACA Benitez confirmed that he reviewed the issues brought to his attention in order to make a determination of responsiveness. His review during the RFQ and RFP did not require a consideration of all the documents. Once ACA Benitez determined that the proposals were responsive, Ms. Silva distributed copies either electronically or in paper form to the CSC members.

Beginning on May 10, 2018, ISD distributed the RFQ submissions to the CSC members. Ms. Silva told the OIG that she advised the CSC members to review the proposals carefully prior to filling out the Neutrality Affidavits. All the submissions were voluminous; M-S-E's response was approximately 287 pages.

As to M-S-E's submission and the document's identification of Bilzin, the OIG notes that Mr. Dotson's participation is listed in several places. M-S-E's Executive Summary (Section A-2), under the title "Leadership Team," contains a photograph of Albert Dotson with a brief synopsis of his background. Specifically, it states "Albert Dotson, Managing Partner-Elect at Bilzin Sumberg, is a local P3 expert who brings local legal expertise to the Project Team...." Within the Organization Charts section of the submission, there are three charts that denote Mr. Dotson's role on the project team.³

During the May 16, 2018, CSC meeting, Ms. Silva collected the completed Neutrality Affidavits from the CSC members. Ms. Silva told the OIG that during a break, prior to collecting the Neutrality Affidavits, Mr. Montaldo approached her to discuss a matter. According to Ms. Silva, Mr. Montaldo stated that Bilzin was listed (in the proposal) and they are the Clerk's attorney. As explained to the OIG, it was clear to Ms. Silva that he was looking for guidance; and believing, albeit mistakenly, that Bilzin represented the Clerk in a personal capacity, Ms. Silva inquired of Mr. Montaldo if he felt he had a conflict.⁴ According to Ms. Silva, Mr. Montaldo replied that he did not have a conflict and it didn't affect him. Ms. Silva assured the OIG that, had she thought Bilzin represented the Clerk's Office and not the Clerk in his personal capacity, or had Mr. Montaldo expressed any reservations, she would have brought the issue to the County Attorney's Office for its

³ M-S-E's proposal for the RFP Phase 1 was approximately 323 pages, and contained the same references to Bilzin's representation.

⁴ Ms. Silva advised the OIG that many years prior to this discussion, she had attended a meeting at the Clerk's Office and Ms. Eileen Mehta had been introduced to her by the Clerk, Harvey Ruvin, as "my attorney." She mistakenly took that to mean his personal attorney since she knew he had a General Counsel and also knew that the County Attorney's Office assisted the Clerk with matters.

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review. Accepting Mr. Montaldo's answer that he had no conflict, she moved on from that conversation and collected Mr. Montaldo's Neutrality Affidavit.

During Mr. Montaldo's initial interview, he did not mention any such conversation with Ms. Silva about Bilzin. Mr. Montaldo advised that while he reviewed the voluminous submissions from all the proposers, he may or may not have seen Dotson's photograph. According to Mr. Montaldo he was focused on the proposers and their key team members, such as the builder, architect, engineer and others.

Mr. Montaldo stated, "the first time Mr. Dotson really stood out to me, to be honest with you, was at the oral presentation, which is the last meeting." That was the third and last meeting of the CSC where the shortlisted proposers made an oral presentation, and the CSC members conducted their final evaluations. Even though Bilzin's participation was clear at the oral presentation, Mr. Montaldo had no further discussions with Ms. Silva, nor did he speak to anyone at the County Attorney's Office, the OIG, or the COE about Bilzin's involvement. Mr. Montaldo stated, "I assume, as I assume now, that everything was above board and that anything that had, you know paperwork, you know forms, everything had been vetted and that's why Mr. Dotson was there." Mr. Montaldo reiterated that he assumed the proper disclosures were made and, as such, he did not give any thought to speaking to anyone to make sure there had been any disclosure. According to Mr. Montaldo, when Mr. Dotson walked in the room, he assumed everything was "kosher, everything is above board and there's no impediment to them being there and I assume that to this moment."

The OIG also interviewed Mr. Michael Henderson, the Clerk's Chief of Staff, who was a non-voting technical advisor on the CSC. Mr. Henderson acknowledged receiving all the proposers' submission materials. Mr. Henderson was also in attendance during the December oral presentations. He acknowledged seeing Mr. Dotson make part of the oral presentation on behalf of M-S-E, but as explained to the OIG, he didn't make the connection between Mr. Dotson and Bilzin. According to Mr. Henderson, he only made the connection after the Clerk himself learned of it.

The OIG re-interviewed Mr. Montaldo and asked him about the CSC meeting on May 16, 2018, when the Neutrality Affidavits were turned in, and whether he recalled a conversation with Ms. Silva about Bilzin. Mr. Montaldo stated that he did not dispute Ms. Silva's statement about the conversation, but he did not recall it, and had no explanation why he would have made such a statement.

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After the oral presentations and the final evaluation by the CSC members, the three highest ranked proposers were provided with draft copies of the technical and financial specifications of the RFP (Phase 2). ISD sought their input on the draft specifications, and this resulted in a series of one-on-one sessions with each of the three proposers. It was not until March 7, 2019, during the second negotiation session with M-S-E, that the County Attorney's Office realized that Bilzin represented M-S-E and that there was a potential for a conflict.

The first negotiation session with M-S-E was on February 7, 2019. In addition to County and Clerk's Office staff (non-CSC members) and the County's P3 consultants, ACA Hugo Benitez was present. That session involved 21 representatives from the M-S-E team. Mr. Micovic from Bilzin was one of them, but he did not have a prominent speaking role during the session. According to ACA Benitez, the fact that a lawyer from Bilzin was present did not register as a problem at that time. Also present at the session was Ms. Liza Saboya-Fernandez, Director of Strategic Management and Budget for the Clerk's Office. She recalled someone introducing himself as being from Bilzin, which she thought was odd because the Clerk's Office had used Bilzin as its outside counsel for many years. According to Ms. Saboya-Fernandez, she did not know why the person from Bilzin was there as the Bilzin representative did not engage in the presentation that day.

At the second negotiation session with M-S-E, on March 7, 2019, after an initial general discussion, the attendees, including County and stakeholder representatives, were split into two working groups—one to discuss the design components of the project and the other to discuss the financial components. One group was attended by ACA Rizo, Ms. Saboya-Fernandez and by Bilzin attorney Mr. Micovic. Both ACA Rizo and Ms. Saboya-Fernandez advised the OIG that Mr. Micovic took a prominent role in the presentation.⁵ Although ACA Rizo raised the concern with ACA Rodriguez, who was also present at the meeting, she did not, on that day, approach Mr. Micovic.⁶

The meeting ended very late, and as the ACAs walked back to their office with Ms. Silva and Mr. Chatlos, the Project Manager, they raised the issue.⁷ It was clear to both ACAs that Ms. Silva did not truly grasp the relationship between Bilzin and the Clerk's Office.

⁵ According to Ms. Saboya-Fernandez, while she was uneasy about Bilzin's participation on the M-S-E team, given Bilzin's long-standing relationship with the Clerk's Office, she did not alert anyone that evening to what she had just learned. The meeting ended late and she did not go back to her office that night.

⁶ ACA Rizo also advised the OIG that she had, previous to the negotiation session, run into another attorney from Bilzin. During casual conversation he mentioned working on the P3 courthouse project. The encounter, according to ACA Rizo was spontaneous and the conversation was short and casual. It did not register with her at the time as an issue to be reviewed.

⁷ Mr. Chatlos advised the OIG that he was not aware that Bilzin represented the Clerk's Office.

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Upon appreciating the situation at hand, Ms. Silva recounted to the ACAs her brief conversation with Mr. Montaldo months earlier that Bilzin represented the Clerk, and how she was under the impression that the legal representation was personal and not of the Clerk's Office. Later that evening, ACA Rizo informed her fellow ACAs of Bilzin's representation of proposer M-S-E. It was decided that the matter needed to be reviewed and that they would contact Ms. Mehta and discuss the matter.

The next morning, on March 8, 2019, both ACA Rizo and Ms. Saboya-Fernandez were present for a negotiation session with proposer Sacyr. During a break, they spoke about Bilzin's participation in the M-S-E meeting the day before. Ms. Saboya-Fernandez advised the OIG that she told ACA Rizo "she was very surprised to see Bilzin there." According to ACA Rizo, Ms. Saboya-Fernandez stated that she did not believe the Clerk was aware that Bilzin was involved in the courthouse procurement. ACA Rizo told Ms. Saboya-Fernandez that she and ACA Oren Rosenthal would call Ms. Mehta.

Upon returning to her office, Ms. Saboya-Fernandez advised Ms. Arruza of the matter. Ms. Arruza stated that she too would reach out to Ms. Mehta, which she did later that day. By the time Ms. Arruza called, Ms. Mehta had already spoken to the Assistant County Attorneys. According to Ms. Arruza, Ms. Mehta stated she did not think it was a good idea for Bilzin to get involved with the new courthouse, and stated that Bilzin's General Counsel, David Trench, would be reaching out to the ACAs to explain their conflict analysis. Ms. Mehta also told Ms. Arruza that Bilzin was not representing the Clerk in the matter involving the new courthouse, which Ms. Arruza contested because of the existing engagement regarding the repair and replacement of the existing courthouse.

The OIG learned of the conversation that took place between the County Attorney's Office and the Bilzin attorneys. ACA Rosenthal recalls that Ms. Mehta stated she had disclosed the representation to Mr. Montaldo prior to the Cone of Silence going into effect. ACA Rosenthal also had a discussion with Mr. Dotson and Mr. Trench regarding Bilzin's internal conflict analysis.

On March 13, 2019, according to Ms. Saboya-Fernandez, she and Ms. Arruza advised the Clerk of Bilzin's representation of M-S-E. The Clerk, who was unaware of the representation, called Ms. Mehta. On March 20, 2019, the Clerk and Ms. Arruza met with Ms. Mehta. According to Ms. Arruza, during that conversation, Ms. Mehta did not mention the previous disclosure to Mr. Montaldo. Ms. Mehta, however, maintains that she did mention her prior disclosure to Mr. Montaldo during that meeting.

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The Clerk, upon notification of Bilzin's representation of a proposer, was concerned about any potential conflict. He was also concerned about the perception of conflict. As stated by the Clerk in a letter to Bilzin dated June 5, 2019, "[t]he Clerk must preserve and protect its ministerial neutrality, and the perception thereof, which is necessary to maintain public confidence in its role as custodian of records...." As he was unable to discuss the matter with his General Counsel, the Clerk hired supplemental outside counsel to advise him as to his next steps.

On June 5, 2019, while the OIG review was on-going, the Clerk terminated his legal engagement with Bilzin. On June 18, 2019, the Clerk sent a letter to the Mayor withdrawing all his personnel from participating on the CSC for the prospective Phase 2 portion of the RFP.

VII. ANALYSIS OF POTENTIAL CONFLICTS AND POSSIBLE VIOLATIONS OF THE COUNTY'S CODE OF ETHICS AND PROVISIONS GOVERNING THIS PROCUREMENT

The OIG's review started at the request of the Clerk who feared that there might be a conflict of interest, which might adversely affect the procurement of the new civil courthouse, due to his lawyer's representation of a proposer. The Clerk requested the OIG's review in an effort to ensure transparency and accountability. The OIG's review focused on determining whether there were any conflicts, pursuant to the Rules Regulating the Florida Bar and various provisions of the County's Conflict of Interest and Code of Ethics Ordinance (Code of Ethics) that could affect the County's procurement process. The OIG also examined various procurement-related authorities, including provisions in the bid documents, to assess if any prohibited actions occurred. Our review concluded that none of the below identified authorities were violated.

A. Rules Regulating the Florida Bar (Rules 4-1.7 - Conflict of Interest; Current Clients and Rule 4-1.10 Imputation of Conflicts of Interest; General Rule)

Attorneys are governed by the Rules Regulating the Florida Bar (Bar Rules) concerning conflicts of interest when seeking to represent clients. Lawyers owe a duty of loyalty, independent judgment, and confidentiality to clients. Bar Rule 4-1.7 provides that a conflict may occur when a lawyer represents a client whose interests are directly adverse to that of another client or if the representation will affect or limit the lawyer's responsibilities to another client. In some cases, a lawyer can accept representation if each affected client waives the conflict by providing informed written consent. Bar Rule 4-1.10 provides that "[w]hile lawyers are associated in a firm, none of them may knowingly

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represent a client when any 1 of them practicing alone would be prohibited from doing so by rule 4-1.7..." Therefore, if a conflict exists under Rule 4-1.7, it would preclude not just Ms. Mehta from representing M-S-E, but all the attorneys at Bilzin, including Mr. Micovic and Mr. Dotson.

Mr. Trench, Mr. Micovic, and Ms. Mehta stated that the firm performed an internal conflict check and determined that there was no conflict. The OIG was provided documentation relating to their internal conflict review. Bilzin's review included an analysis of the parties to the procurement transaction. The procurement is between the County, which is constitutionally mandated to provide a courthouse, and the potential bidders. Because the Clerk is not a party to the procurement transaction, Bilzin determined that no conflict existed.

Bilzin's determination that no actual conflict existed meant the firm did not need to obtain the written consent of the Clerk to proceed with the representation of M-S-E. Bilzin indicated that it had nevertheless decided to advise all clients. Ms. Mehta called Mr. Montaldo, the Clerk's General Counsel, to advise that Bilzin represented a proposer. Mr. Micovic also had a conversation with his client. Bilzin's engagement letter with M-S-E contained a conflict analysis section and a disclosure section. These disclosures, according to Mr. Trench, were in the M-S-E engagement letter because M-S-E was a new client. Disclosures to current clients were less formal. Ms. Mehta admits the disclosure was to Mr. Montaldo and not directly to the Clerk. She stated that she regrets not having had a personal conversation with the Clerk. Perhaps, given the long-standing relationship with the Clerk, it would have been advisable. Ms. Mehta, however, told the OIG that she fully expected Mr. Montaldo to pass along her disclosure to the Clerk.

The ACAs advised the OIG that they undertook an independent conflict analysis. Their analysis determined that any question about whether or not there was an actual conflict must be addressed between Bilzin and the Clerk, and not the County. The OIG agrees. Whether there was a legal conflict of representation pursuant to Bar Rules is a matter between the Clerk and his former attorneys, Bilzin, and not within the purview of the OIG.

B. Miami-Dade County Conflict of Interest and Code of Ethics Ordinance

1. Section 2-11.1(v) of the Code of Miami-Dade County - Voting Conflicts

Mr. Montaldo, as a voting member of the CSC, is governed by the prohibitions in Section 2-11.1(v) of the Code of Ethics. A voting conflict would exist if Mr. Montaldo would be "directly affected by the action of the CSC and had a relationship as: officer, director,

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partner, of counsel, consultant, employee, fiduciary, or beneficiary with any person or entity appearing before the CSC.” A prior advisory opinion from the Commission on Ethics (COE) is instructive in this regard.⁸

In June 2018, retired Chief Judge Farina, another voting member of the same CSC, sought guidance from the COE. Judge Farina was concerned about a potential voting conflict due to a colleague's position as a consultant for one of the proposers in the procurement. The consultant was a lawyer with whom Judge Farina had worked for many years and would be working alongside again in the near future (both as independent contractors for the same mediation firm). The COE opined that Judge Farina did not have a conflict that would prevent him from serving on the CSC. Specifically, the COE's advisory opinion explained that the consultant's “connection to one of the competing teams and her simultaneous involvement . . . as an independent contractor . . . does not involve any relationship that would raise the possibility of a voting conflict of interest, nor does it create any personal interest on [the CSC member's] part in the selection process that would be necessary for a voting conflict to arise under that section.”

Notwithstanding Bilzin's representation of the Clerk's Office at the same time it represented M-S-E in the procurement, it does not appear, from the OIG's review, that Mr. Montaldo has any of the enumerated employment or financial relationships with either M-S-E or Bilzin that would give rise to a voting conflict. Moreover, Mr. Montaldo's day-to-day interaction with Ms. Mehta, in his capacity as General Counsel and in her capacity as outside counsel, does not create any personal interest on Mr. Montaldo's part in the selection process that would give rise to a voting conflict under the Code of Ethics.

2. Section 2-11.1(t) of the Code of Miami-Dade County - Cone of Silence

In that same advisory opinion requested by Judge Farina, the COE warned against any communications about the new courthouse that would be prohibited under the Cone of Silence (Section 2-11.1(t) of the Code of Ethics). The Cone of Silence begins upon the advertisement of a procurement and ends upon the Mayor's written recommendation to the BCC regarding the procurement's award. When the Cone of Silence is in effect, certain classes of persons—namely Selection Committee members—are prohibited from communicating about the procurement with other persons—namely proposers.

⁸ See COE INQ 18-130.

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The OIG found no evidence of any communications between Mr. Montaldo and Ms. Mehta, or any of the Bilzin attorneys, about the new courthouse procurement. The communications that took place on February 8 – 9, 2018, about Mr. Montaldo's impending appointment to the CSC, were **not** under the Cone of Silence. Even though the RFQ had already been advertised, because Mr. Montaldo had not been appointed yet to the CSC, there could be no violation.

While the Cone of Silence was in effect, we did find three email communications from Ms. Mehta to Mr. Montaldo inviting him to a local conference hosted by Bilzin. The one-day conference, titled the South Florida Redevelopment Conference, took place on October 5, 2018, at the Four Seasons Hotel on Brickell Avenue. There was no fee to attend this event. Invited conference guest speakers included Miami-Dade County Mayor Gimenez, Miami-Dade Transportation and Public Works Director Alice Bravo, and ISD Assistant Director Jose Galan.⁹

The first email, sent on September 6, 2018, to Mr. Montaldo was the email invitation to the event. The second email, sent on September 12, 2018, was a follow-up to the invitation. Ms. Mehta wrote: "Luis, I think we sent an invitation to you and Harvey for our redevelopment conference on 10/5. Although it is not what you do, I wanted you to know about it because it will have a P3 component that you may find helpful. I have been told the panelists will not be talking about the courthouse. I don't expect you to have time for it, but I did want you to know about the P3 session." The third email from Ms. Mehta was addressed to Ms. Arruza, with a copy to Mr. Montaldo. This message confirmed Mr. Montaldo's registration for the conference, invited him to a welcome reception the evening before the event, and provided information on accessing conference materials electronically.¹⁰

Mr. Montaldo attended the conference on October 5, 2018. According to Mr. Montaldo, Ms. Mehta, and Mr. Micovic, the conference had nothing to do with the new courthouse procurement. The OIG has reviewed the agenda for the conference and found nothing related to the new courthouse procurement. None of these communications, nor Mr. Montaldo's attendance at the Redevelopment Conference, violated the Cone of Silence.

⁹ These were the Miami-Dade County officials listed on the emailed conference brochure. Other public officials from Broward County and the City of Miami, along with several private company executives, were listed as guest speakers.

¹⁰ Mr. Montaldo did not attend the evening reception.

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Mr. Montaldo explained that even during the time (between the RFQ and RFP) when the Cone of Silence was lifted, he did not have any discussions about Bilzin's involvement, and felt that any discussions about the courthouse procurement during that time would have tainted the whole process. He felt it important to remain under a self-imposed Cone. He stated repeatedly that he had no conversations with anyone about the new courthouse procurement. Ms. Arruza advised the OIG that she did not even share with Mr. Montaldo conversations between herself and Ms. Mehta about the existing courthouse in an abundance of caution.

Ms. Arruza told the OIG that she did not have any conversations with Ms. Mehta about the new courthouse. The two did confer, about the existing courthouse, in June or July 2018, when asbestos was found in the executive offices and they had to evacuate. Ms. Arruza stated that Ms. Mehta had never discussed the new courthouse procurement with her, and she would not have raised it with Ms. Mehta since she avoided the issue. In March 2019, when Ms. Arruza first found out that Bilzin represented M-S-E, she had a conversation with Ms. Mehta questioning the M-S-E engagement and potential conflict, but not the procurement. Ms. Mehta, according to Ms. Arruza, repeatedly stated that Bilzin did not represent the Clerk in the matter involving the new courthouse.

Ms. Mehta explained that once she became aware that Mr. Montaldo would be serving on the CSC, she had no discussions with anyone in the Clerk's Office about the new courthouse. The fact that following those early February communications, there were no further communications about the new courthouse between Ms. Mehta, Mr. Montaldo, and Ms. Arruza, is one of the few facts about which all three are in complete agreement. The OIG found nothing to suggest a Cone of Silence violation by Mr. Montaldo or Bilzin attorneys as representatives of the proposer M-S-E.

Aside from Bilzin, the OIG also found an email communication from lobbyist Eric Zichella¹¹ to Mr. Montaldo and the Clerk on August 1, 2018. Mr. Zichella requested a meeting to discuss the new courthouse procurement. Mr. Montaldo forwarded the request to ACA Rosenthal and to Ms. Silva. Mr. Zichella sent another message a few hours later stating: "After the time I made this request, the RFP for this project was advertised, and is now under the Cone of Silence. It is unclear to me whether you are covered by the cone at this time, so I will leave it up to you whether you would be willing to accommodate such a meeting....I have copied the clerk on this communication out of an abundance of caution." The OIG verified with Ms. Silva that the RFP had been issued

¹¹ In March 2018, Mr. Zichella registered to lobby on behalf of Meridiam Infrastructure North America and Ellis Don Capital (two of the principal members of M-S-E).

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after Mr. Zichella's original email. Upon receiving the second email, Mr. Montaldo directed Mr. Zichella to contact Ms. Silva. Even though Mr. Montaldo, as a CSC member, and covered by the Cone of Silence immediately upon the release of the RFP,¹² the OIG does not believe that the second email request by Mr. Zichella rises to the level of a Cone violation.

The OIG's analysis of the Cone of Silence included an analysis of similar prohibitions on communications pursuant to RFQ/RFP Section 4.5 and Section 7.2. The OIG did not find any additional communications that fit solely under either Section 4.5 or 7.2 that would violate the contract restrictions.

C. Miami-Dade County Implementing Order (IO) 3-34 and Neutrality Affidavit

IO 3-34 states in part that "[e]ach individual appointed to a selection committee shall sign an affidavit attesting to his/her neutrality and assuring that his/her service on such committee shall be in compliance with the Conflict of Interest and Code of Ethics Ordinance (Sec. 2-11.1)." The OIG reviewed the Neutrality Affidavit signed by Mr. Montaldo. The affidavit form has a series of attestation statements and three specific questions all dealing with potential conflicts between the CSC member, or his/her immediate family, and the proposers including the proposers' owners, officers, employees, affiliates and subcontractors.

The OIG has closely examined the Neutrality Affidavit and finds the relationship between Bilzin, as a representative of the proposer, and Bilzin's working relationship with Mr. Montaldo, is not enumerated in the affidavit as a disclosable relationship. As a result of this finding, the OIG made a recommendation to ISD, prior to the issuance of Phase 2 of the RFP, to revise the Neutrality Affidavit. The goal of the recommendation is to capture additional relationships in order to ensure transparency and provide the County an opportunity to make an informed decision about CSC membership.

D. RFQ & RFP Provisions

1. Section 1.6 - Communications with Stakeholders

Both the RFQ and the RFP contained a unique provision that identified non-County, public officials (the judiciary and the Clerk of Courts) as key stakeholders of the project. Section

¹² The reappointment of the RFQ's CSC members to the new RFP was made several weeks before the RFP was actually released. Thus, unlike the timing with the RFQ, the Cone of Silence for the CSC members went into effect immediately.

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1.6 provides that “[r]espondents and all firms or members of the Project Team (“Team Members”) shall refrain from communications with key stakeholders. All proposed communications and questions to key stakeholders shall be submitted in writing to the County’s contact person for this RFQ (“Procurement Manager”).... A communication in violation of this Section, which is determined by the County, in its sole discretion, to constitute an attempt to obtain an unfair competitive advantage may result in the disqualification of the Respondent.”

Project Team is defined as – “All Team Members proposed by a Respondent in the response to this RFQ for the design, construction, financing, operating, maintaining and any other services required for the Project.”

Team Member is defined as – “Any entity that is a member of a Project Team and is listed on Respondent’s Form D which has been submitted in the Statement of Qualifications in response to this [RFQ/RFP].”

Respondent is defined as – “Any member of the Project Team acting on behalf of the Project Team that submits the Statement of Qualifications in response to this [RFQ/RFP]. The Respondent must be a person or legal entity capable of undertaking obligations in the State of Florida at the time of SOQ submittal.”

As discussed previously, it is clear from the statements provided to the OIG that Clerk of the Courts employees went out of their way to ensure that no discussions or communications were had with anyone about the new courthouse procurement outside of the allowed communications during duly noticed CSC and negotiation sessions. As such, there is no evidence to suggest a violation of the Section 1.6 – Key Stakeholder provisions found in both the RFQ and the RFP.

However, there were several observations worth noting from the OIG’s review. Ms. Mehta and Mr. Micovic advised the OIG that internally, Bilzin attorneys had analyzed Section 1.6 and determined that Bilzin did not meet the definition of Team Member for purposes of the prohibition against communicating with stakeholders. A similar conclusion was reached by the ACAs interviewed by the OIG. Although, the OIG found no communications that could arguably violate the spirit of Section 1.6, the OIG recommended that Section 1.6 be revised to include all representatives of a proposer, whether or not they fit into the definition of a “Team Member.” The OIG asked that Section 1.6 be amended prior to the release of the Phase 2 RFP document, which it was.

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Moreover, in interviewing Ms. Arruza and Ms. Saboya-Fernandez, the OIG learned that they, as “key stakeholder” employees, were not aware of the prohibition. The OIG will also recommend that ISD provide more notice and training to key stakeholders of this provision.

2. Section 7.3 - Organizational Conflicts of Interest and Advance Restrictions Policy

The purpose of this section is to “identify, analyze and address organizational conflicts of interest that might otherwise exist in order to maintain the public’s trust in the integrity and fairness of the County’s contracting for the Project and to protect the business interests of the County thereby safeguarding public dollars.” Specifically, Section 7.3 provides that: “An organizational conflict of interest is a situation in which a person . . . (b) would have an unfair competitive advantage in a County competitive solicitation as a result of having performed work on a County contract that put the person in a position to influence the result of the solicitation.”

The OIG’s review focused on whether Bilzin’s longstanding representation of the Clerk provided M-S-E with an “unfair competitive advantage” such that it would place Bilzin or M-S-E in a position to influence the result of the solicitation. The OIG did not find any indication that Bilzin’s decades long relationship with the Clerk, and more so, the specific courthouse engagement that was entered into in 2014, gave the M-S-E team an unfair competitive advantage in the procurement thus far (Phase 1).

The OIG examined invoices and email correspondence related to Bilzin’s work on the specific courthouse engagement. In addition, the OIG was provided, by the Reyes Law Firm, with a letter identifying dates and times of interactions between Clerk’s Office personnel and Bilzin related to the courthouse engagement. In our interviews with Mr. Montaldo, Ms. Arruza, and Ms. Mehta, we specifically inquired about the legal representation and work performed pursuant to this particular engagement.

The OIG determined that the bulk of the work concerned the physical condition of the existing courthouse and the impact on employees. Issues involving asbestos and mold remediation were extensively discussed between Bilzin and the Clerk’s Office, and there were at least three meetings, with representatives of ISD and the Courts, to discuss these matters.

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Issues relating to employees due to the deteriorating condition of the current courthouse were discussed several times. It appears from both the emails and invoices that during 2014 and 2015 there were numerous discussions regarding the state of the current building, the effect on employees' health, and the movement of employees. There appear to be no billings or emails related to the courthouse engagement in 2016. In 2017, there is one email sent by Ms. Mehta to Mr. Montaldo regarding recently enacted sunshine law and procurement decisions.¹³ In July 2018, Bilzin and the Clerk's Office again resumed work billed under the courthouse engagement regarding asbestos remediation of the 2nd floor executive offices.

Throughout our interviews of Clerk's Office employees, we repeatedly asked if there was any information that Bilzin attorneys may have learned regarding the Clerk's needs or requirements for a new courthouse. According to Mr. Montaldo, although Ms. Mehta was in meetings with the Clerk's Office and the Administrative Office of the Courts (AOC), she was not privy to specifics of what the Clerk's Office was looking for in a new building. Ms. Mehta's work involved problems in the existing building and issues affecting the employees. For example, Ms. Mehta was involved in contingency planning in case employees required relocation. Mr. Montaldo stressed that these discussions were limited to the existing courthouse and not about future needs with respect to a new building.

As it related to the bond referendum for a new courthouse, Mr. Montaldo explained that there were some strategy discussions, involving Ms. Mehta, on the Clerk's position regarding the referendum. There were internal discussions with Ms. Mehta about what, if any, public statements to make regarding the bond initiative.

After the bond issue failed, as evidenced by the billing records, Mr. Montaldo stated that he and Ms. Mehta discussed the need for a replacement of the courthouse. According to Mr. Montaldo, these discussions, however, were more akin to strategy sessions focusing on employee issues. Mr. Montaldo could not recall any meetings Ms. Mehta attended in which discussions were held about a preferred location for a new courthouse. The meetings that Ms. Mehta attended were a mix of issues dealing with the existing courthouse and strategizing on a potential replacement.

¹³ Ms. Mehta explained to the OIG that the Clerk under Article V of the state constitution has the ability to conduct certain procurement. The email related to a matter regarding state procurement, and an entity at the state level that provided services to various Clerk's Offices.

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When questioned on this topic, Ms. Arruza could not specifically say what subjects or information may have been shared with Bilzin attorneys. Ms. Arruza did state that Ms. Mehta was not part of any meetings regarding the development of the courthouse Master Plan. Ms. Arruza explained that Ms. Mehta was involved in meetings about potentially moving personnel, and in that context, she would have learned what type of space was necessary, but it would be hard to say if it was information related to the new courthouse. Ms. Arruza recalled some discussions, back in 2014 with Ms. Mehta present, when the desire to house the executive and legal units on the same floor was discussed. There were also general discussions about the desire to have a functioning building. Ms. Arruza indicated Ms. Mehta was part of internal discussions about things the Clerk's Office may want in a new building. When asked for specific examples, the example provided centered on how to accommodate employees who were threatening litigation and where they could be relocated.

The OIG also interviewed Ms. Mehta about her work on the courthouse engagement. According to Ms. Mehta, that specific engagement stemmed from the state of disrepair in the existing courthouse, including problems with mold, broken pipes, air-conditioning and a very serious issue with asbestos. Bilzin's environmental department was asked to review consultants' reports on the asbestos problem and remediation efforts to determine whether or not the County's approach was adequate. There were also concerns about potentially having to evacuate the courthouse and how to disperse the Clerk's personnel to various sites. Some of these meetings included generic discussions about the number of personnel needed, but the need to relocate never materialized.

The replacement portion of the engagement, according to Ms. Mehta, dealt with relocating the existing facilities elsewhere and the November 2014 ballot referendum for the new courthouse. Ms. Mehta indicated that the Clerk was thinking that if the referendum passed there would be further discussions about a new facility. There were no specific discussions about what Bilzin would do had the referendum passed. Ms. Mehta stated that she would not have contemplated procurement issues to be included in the specific engagement because the Clerk would not handle the procurement of a new building. Court facilities are the responsibility of the County, not the Clerk.

Ms. Mehta did not recall any specific discussions in 2014 regarding what the Clerk wanted in a new building. She did recall the possibility that certain personnel within the Clerk's Office may have had to relocate to the library, but that was a generic conversation, there were no specific discussions. Ms. Mehta also remembered attending a meeting called by the Administrative Judge where representatives from ISD and the Clerk's Office met to discuss asbestos, mold, structural and other issues with the existing courthouse. When

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the referendum failed in 2014, Ms. Mehta doesn't recall any effort from within the AOC or the Clerk's Office to find another solution for a new courthouse. Although, she recalls Mr. Montaldo advising her that someone had spoken to the Clerk with an idea to build a courthouse across from the existing courthouse on the south side of Flagler Street.

The OIG was not able to find any indication that Bilzin's representation of the Clerk, although lengthy, provided M-S-E with an unfair competitive advantage in the County's competitive solicitation that would place Bilzin/M-S-E in a position to influence the result of the solicitation.

Even if one were to maintain that Bilzin's relationship to one of the voting CSC members gave M-S-E an advantage, Mr. Montaldo's scoring of M-S-E proves otherwise. In the first evaluation, Mr. Montaldo scored M-S-E fourth out of the five proposers. In the second evaluation, Mr. Montaldo did not change his scores and M-S-E remained fourth.

VIII. CONCLUSION & RECOMMENDATIONS

Miami-Dade County's policy as described in Implementing Order IO 3-34 is to "endeavor to utilize selection committees that are fair, impartial, objective and qualified in the subject matter area in competitive procurement processes for the evaluation of offers, proposals or quotes submitted by individuals and firms seeking contract award." It was clear to the OIG at the outset of this review that the Clerk was concerned that the process for procuring a courthouse for the citizens of Miami-Dade County be transparent and fair. The Clerk requested that the OIG independently review the matter and wishing to "hold [his] office to the higher standard of avoiding even the perception of conflict in all cases" in a letter to the Mayor, withdrew his employees from the CSC.¹⁴

The Clerk's reasoning in reaching the decision to withdraw his employees and terminate Bilzin's representation is clearly stated in his letter to the Mayor dated June 18, 2019. He writes "...it only recently came to my attention that my then-outside counsel was also representing one of the proposers in the courthouse selection process. Never having been notified, much less asked for my waiver of this potential conflict issue (or at the very least—the perception of one), I terminated that firm's representation of the Clerk's Office and replaced them with new outside counsel." While it appears that the Clerk was unaware of Bilzin's representation of a proposer, the OIG's review determined that Ms. Mehta disclosed to the Clerk's General Counsel, Mr. Montaldo, that her firm, Bilzin, was

¹⁴ Clerk's letter to the Mayor dated June 18, 2019. The original contained emphasis that has not been applied in this report.

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representing a proposer on the new courthouse procurement—even though the name of the proposer was not disclosed.

It is clear that Mr. Montaldo was aware of the potential of Bilzin's representation of a proposer even before his appointment to the CSC. Both Mr. Montaldo and Ms. Arruza acknowledge that they were aware of Bilzin's long-term representation of All-Aboard (FECI). By February 8, 2018, a group led by FECI had submitted an unsolicited proposal to the County to build a new civil courthouse. In fact, one of his stated reasons for contacting Ms. Mehta on February 8 was because Mr. Montaldo knew that Bilzin represented All-Aboard. Certainly, by February 9, 2018, Mr. Montaldo was put on notice that Bilzin represented a proposer. Although, Mr. Montaldo's recollection differs from Ms. Mehta's, he acknowledges that prior to his appointment Ms. Mehta advised him that the "firm was thinking of taking on potential work related to the courthouse."¹⁵ Even if there was no meeting of the minds between Ms. Mehta and Mr. Montaldo on what was actually communicated—actual representation vs. potential representation—Mr. Montaldo, in his position as General Counsel to the Clerk, should have informed the Clerk, even if only to advise him of Bilzin's potential representation of a proposer. Bilzin also could have either memorialized the disclosure, or given its long standing relationship, advised the Clerk directly.

There was also a missed opportunity in May 2018 to clear the air on this potential conflict when the Neutrality Affidavits for the RFQ were turned in. Mr. Montaldo advises the OIG that he has no recollection of his disclosure to Ms. Silva. His lack of recollection prevents a meaningful discussion of his actions at the time. However, accepting Ms. Silva's account, Mr. Montaldo's assurance that he had no conflict was a missed opportunity to consult the OIG¹⁶ or COE, and if need be, obtain an advisory opinion from the COE.

A third missed opportunity occurred in December 2018, when Mr. Henderson also observed Mr. Dotson make the presentation and did not make the connection that the Clerk's attorney was representing a proposer on the courthouse procurement. While Mr. Henderson did not make the connection, Mr. Montaldo assumed that all disclosures or necessary waivers had been made. Mr. Montaldo does not confirm his assumption with anyone from ISD, the County Attorney's Office, the OIG or the COE. He also does not advise the Clerk. If he questioned whether the Cone of Silence prevented him from speaking to the Clerk, he could have easily gotten an answer to that question from any one of the four entities named above. Instead, Mr. Montaldo repeatedly contended that

¹⁵ The OIG notes that by February 2018, Bilzin already represented M-S-E, and had already conducted a conflict review.

¹⁶ An OIG Contract Oversight Specialist was present at the meeting.

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both ISD and the County Attorney's Office should have flagged Bilzin's involvement in the M-S-E proposal, in light of their "institutional knowledge" that Bilzin was the Clerk's attorney. The various assertions that others should have acted while claiming he had no duty or responsibility is concerning for an attorney in his position, as is his assertion that "I'm not the gatekeeper of information to this office." Mr. Montaldo's failure to notify the Clerk in a timely manner deprived the Clerk of the opportunity to make an informed decision about his employee's representation as a CSC member and to discuss any reservations he may have had with Bilzin's involvement in the procurement process.

It is unfortunate that thirteen months pass before the Clerk is actually notified that his attorney, Bilzin, also represents one of the proposers, M-S-E. It is also unfortunate that this late discovery gave rise to a perception that there was a conflict of interest. Based on our review, the OIG is confident that no procurement rules were broken nor was the County's Code of Ethics breached.

On June 5, 2019, the Clerk terminated its relationship with Bilzin, based in part on Bilzin's failure to notify the Clerk of its involvement in the courthouse procurement. On June 18, 2019, the Clerk withdrew all three of his employees from participating on the CSC (Mr. Montaldo as a voting member, and Mr. Henderson and Ms. Melissa Adames as technical advisors).

Notwithstanding our conclusion, the OIG has the following recommendations, some of which have already been made and incorporated by ISD prior to the issuance of Phase 2 of the RFP:

1. Revise Section 1.6 – Key Stakeholder Section of the solicitation documents to ensure that all representatives of a proposer, whether they fit into the definition of a "Team Member" or not, are prohibited from direct, undocumented, communications with key stakeholders. ISD was provided this recommendation prior to the issuance of Phase 2 of the RFP and made the suggested revisions.
2. ISD, in addition to notifying all identified key stakeholders of the Section 1.6 – Key Stakeholder Section in the solicitation documents, should require written confirmation from each key stakeholder's representative that they have advised their employees of the provision and prohibitions it contains. This will ensure that there are no inadvertent violations.

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3. ISD should revise the Neutrality Affidavit to ensure that the County standards under Implementing Order IO 3-34, of fairness and impartiality are enhanced. The goal of the recommendation is to capture additional relationships in order to ensure transparency and provide the County an opportunity to make an informed decision about the CSC membership. ISD is currently working with the OIG to make impactful changes to the Neutrality Affidavit.
4. ISD should consider enhancing the training of CSC members, and/or reminding CSC members at each meeting, that communications with the County Attorney's Office, the Office of the Inspector General, and the Commission on Ethics are exempt from the Cone of Silence. ISD should also avail themselves of the resources of the COE and OIG in order to ensure a fair, accurate, and transparent procurement process.

IX. RESPONSES TO THE DRAFT REPORT AND OIG COMMENTS

This report, as a draft, was provided to the Clerk, Harvey Ruvin; Mr. Montaldo, General Counsel for the Clerk's Office; ISD; and Ms. Mehta for their review and the opportunity to provide a written response. The OIG has received responses from all, and they are attached as **Appendices A – D**.

The response from the Honorable Harvey Ruvin, attached as **Appendix A**, accepts the OIG's findings and conclusions. In addition, Clerk Ruvin notes that the recommendations are "constructive and worthy of thoughtful consideration."

The response from Mr. Montaldo, the Clerk's General Counsel, contained in **Appendix B** also accepts the OIG's findings and conclusions. Mr. Montaldo reiterates that upon being notified of his impending participation on the CSC, he placed himself "in a self-imposed cone of silence." Mr. Montaldo also "incorrectly assumed that [Bilzin] directly contacted, discussed with, disclosed and/or obtained a waiver from Clerk Ruvin regarding any potential conflict issues with their involvement in the procurement of a new courthouse." Mr. Montaldo concludes that the "OIG's eventual finding of no conflict makes [his] actions or inactions moot." The OIG notes, that although no conflict was found, Mr. Montaldo failed to fulfill his duty as general counsel to inform his employer, Clerk Ruvin, of Ms. Mehta's disclosure that Bilzin would be representing a party on this procurement. His inaction prevented Clerk Ruvin from making an informed decision about the participation of his personnel in the procurement process.

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Appendix C contains the response submitted on behalf of Ms. Mehta by Bilzin's General Counsel, Mr. David Trench. Mr. Trench, asserts that Bilzin does "not take issue with the conclusion", although "...we do not agree with all of the comments and statements made by others as set forth in the Report." Mr. Trench did address three points: First, Mr. Trench asked the OIG to clarify that Bilzin's 2014 specific engagement to handle "the Repair and/or Replacement of the County Courthouse" did not relate to the new courthouse project. The clarification was requested because the report states that "[t]he majority of the work centered on the physical condition of the existing courthouse..." Based on the OIG's review of billing records, emails, and the interviews conducted, the OIG found that the 2014 specific engagement did not relate to the new courthouse project.

Mr. Trench also pointed out that Ms. Mehta believed Mr. Montaldo to be "her point of contact" within the Clerk's Office. "The third and final point is the Report's use of the interchangeable use of the terms "Clerk" and "Clerk's Office" and a request to distinguish throughout the report references to the Clerk as an individual and the office, particularly regarding the references to Bilzin's notice of its representation of M-S-E. The OIG believes that the report is clear that the Honorable Harvey Ruvin, did not know of Bilzin's representation of M-S-E until March of 2019 more than a year after the Clerk's Office, through its General Counsel Montaldo, had been advised of the representation by a Bilzin attorney.

Finally, **Appendix D** contains the response from ISD. ISD is in agreement with the recommendations in the report. As noted in the report, ISD is working with the OIG on many of the recommendations. ISD's response also contains two requests regarding the report. First, ISD requests that the OIG delete references to "first/second tier" evaluations as they are not technically correct terms for this type of procurement. The OIG agrees and the terms have been corrected in this final report. ISD's second and final request is that ISD's conversation with the CAO and the COE regarding a potential conflict be added to the Timeline section. The OIG was advised that ISD and the CAO had a conversation with the COE, and that no formal opinion was requested. The requested entry was not added because the OIG timeline is a snapshot of key events leading up to the review of the potential conflicts and not an exhaustive list of all the events resulting in this review. It remains available as part of ISD's response in Appendix D.

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The OIG appreciates the cooperation of the Clerk's Office, the Internal Services Department, the County Attorney's Office, and Bilzin Sumberg throughout this entire review. Although our review, which took place in the middle of an active procurement process, was time consuming for those individuals interviewed, the process was crucial in order to ensure a fair, impartial, and transparent procurement. We look forward to our continuing work with ISD on the specific recommendations, and will continue to provide additional assistance in the form of contract oversight in the ongoing procurement for the new courthouse.

Miami-Dade County Office of the Inspector General

Exhibit 1

Courthouse Engagement 10/28/14
(2 pages)

OIG Case No. 19-0006-O

October 28, 2014

VIA E-MAIL
PERSONAL AND CONFIDENTIAL

Honorable Harvey Ruvin, Clerk of Court
73 West Flagler Street
Room 242
Miami, FL 33130
Attn: Luis Montaldo, Esq.

Re: Engagement of Counsel Pertaining to Issues Concerning the Repair and/or Replacement of the County Courthouse

Dear Mr. Montaldo:

Thank you for the opportunity to represent the Honorable Harvey Ruvin, Clerk of Court. This letter, together with our Standard Terms of Representation previously sent to you identifies our client and sets forth the scope and the terms of our engagement.

Client: As indicated above, in this engagement, the Firm's client is the Honorable Harvey Ruvin, Clerk of Court, (the "Clerk") and not any affiliated or related entities.

Scope of Services: We have been engaged to provide legal advice regarding the repair and/or replacement of the County Courthouse, as said issues may affect the operations and employees of the Clerk of the Court, and to review and analyze certain environmental reports regarding the County Courthouse (the "Matter"). Our engagement is limited to that scope of services, and we will not represent the Clerk for any other services unless there is another written agreement from us describing those other services.

Fees for Services: Our fees will be determined by the amount of time we devote to this Matter. We will compute our fees by multiplying the time our lawyers and legal assistants spend on this matter by their hourly rates. I will coordinate the legal services for the Clerk. I will call upon other lawyers and paralegals whom I believe have the ability to serve the Clerk as efficiently and effectively as possible. Our hourly billing rates for our partners on this matter are \$450.00, for senior associates, \$400.00 per hour, and for junior associates, \$300.00 per hour. Time devoted by legal assistants is charged at rates of \$215 to \$235 per hour depending upon the experience of the legal assistant.

We are committed to providing efficient, effective legal services and it is important to us that you be satisfied with our services. Please let me know promptly if you have any suggestions about how we can better serve the Clerk in this matter.

Conflicts of Interest: We depend on you to help us identify, both now and during the course of this engagement, persons or entities that may be in a position adverse to the Clerk's interests. We also depend on you to help us identify those who are likely to be adversely affected by our representation of the Clerk and other firm clients whose representation might adversely affect our ability to represent the Clerk in this Matter.

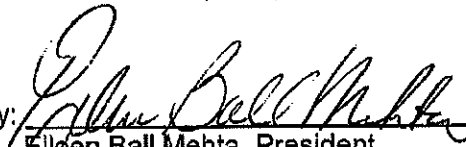
Based on the information you provided to us and a computerized name check we performed against our records, we are not aware of any matter in which we are involved that creates a conflict of interest with respect to this engagement.

We appreciate your confidence in us and look forward to a long and mutually rewarding relationship. If the Clerk agrees to our terms in this letter, please sign and return to us a copy of this letter in order to confirm that it accurately reflects the scope, terms and conditions with respect to this engagement. However, please note that your instructing us or continuing to instruct us on this matter will constitute the Clerk's full acceptance of the terms set out above and attached. If you would like to discuss any of these matters, please give me a call.

Very truly yours,

Bilzin Sumberg Baena Price & Axelrod LLP

By: Eileen Ball Mehta, P.A., a Partner

By: 
Eileen Ball Mehta, President

EBM/eo

MIAMI 4383169.1 73433/10533



**Miami-Dade County
Office of the Inspector General**

Exhibit 2

Mr. Dotson's Email to Firm 5/8/17
(1 page)

OIG Case No. 19-0006-O

David W. Trench

From: Albert E. Dotson, Jr.
Sent: Monday, May 8, 2017 6:53 AM
To: PARTNERS
Subject: Civil Courthouse

Because of our involvement in Miami-Dade County's selection of a developer and development plan for a new civil courthouse, please speak with me before you accept any role related to the courthouse or discuss with any developer pursuing the civil courthouse development.

Bilzin Sumberg

Albert E. Dotson, Jr.
Attorney at Law
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
www.bilzin.com

Tel 305.350.2411
Direct Fax 305.351.2217
adotson@bilzin.com

**Miami-Dade County
Office of the Inspector General**

Exhibit 3

Mr. Dotson – Ms. Mehta Email 2/8/18
(1 page)

OIG Case No. 19-0006-O

Eileen Ball Mehta

From: Eileen Ball Mehta
Sent: Thursday, February 8, 2018 5:58 PM
To: Albert E. Dotson, Jr.
Cc: Eric Singer; David W. Trench
Subject: Re: Courthouse Project

For the new courthouse RFP - not the unsolicited proposal because, I believe, the County has not yet made a decision on proceeding with that one, but I assume they will soon.

Sent from my iPhone

On Feb 8, 2018, at 3:01 PM, Albert E. Dotson, Jr. <adotson@bilzin.com> wrote:

Which evaluation committee? For which project? New or old courthouse or review of unsolicited proposal?

<image001.png>

Albert E. Dotson, Jr.
Attorney
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
www.bilzin.com

Tel 305.350.2411
Direct Fax 305.351.2217
adotson@bilzin.com

From: Eileen Ball Mehta
Sent: Thursday, February 08, 2018 2:45 PM
To: Eric Singer; Albert E. Dotson, Jr.
Cc: David W. Trench
Subject: Courthouse Project

I have just been advised by Luis Montaldo, counsel to the clerk, that he has been appointed to the evaluation committee. I do not think that I should be the one giving conflicts advice on this. I think we need to ask David to get involved.

<image001.png>

Eileen Ball Mehta
Attorney
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
www.bilzin.com

Tel 305.350.2380
Direct Fax 305.351.2240
emehta@bilzin.com

Miami-Dade County Office of the Inspector General

Exhibit 4

Email from Ms. Mehta to Mr. Montaldo and Ms. Arruza 2/8/18
(1 page)

OIG Case No. 19-0006-O

From: [Eileen Ball Mehta](#)
To: [Luis Montaldo \(COC\)](#)
Cc: [Lourdes C. Arruza](#)
Subject: Courthouse RFP
Date: Thursday, February 08, 2018 5:40:35 PM

Is the matter we discussed today for the proposed new courthouse by the children's court?

Sent from my iPhone

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail or reply to info@bilzin.com, and delete the message. Thank you very much.

Miami-Dade County Office of the Inspector General

Appendix A

Response of the Honorable Harvey Ruvlin 8/8/19
(4 pages)

OIG Case No. 19-0006-O



**HARVEY RUVIN
MIAMI-DADE CLERK
COURTS • COMMISSION • RECORDER • FINANCE**

Telephone: (305) 349-7333
Fax: (305) 349-7403
E-Mail: clerk@miami-dadeclerk.com
Web Site: <http://www.miami-dadeclerk.com>

DADE COUNTY COURTHOUSE
ROOM 242
73 West Flagler Street
Miami, FL 33130

August 8, 2019

Inspector General Mary T. Cagle
Office of the Inspector General
601 NW 1st Court, South Tower
22nd Floor
Miami, Florida 33136

Re: Response to Draft Report (IG-19-006-O)

Dear Madam Inspector General:

Thank you for your office's investigation of potential Conflicts of Interest in the selection process for the critically needed New Civil and Probate Courthouse. As stated in the Report, the Clerk's Office brought the matter to your attention in order to bring "transparency and accountability" to the process. I believe the Report seeks to do just that.

The Report concludes that there are no actual Conflicts of Interest, nor any breaks of the Cone of Silence. Importantly, your conclusions allow the process to continue without delay.

I appreciate the Report's noting that, once advised of the potential for conflict, I took timely and appropriate steps by withdrawing the Clerk's Office appointments to the Competitive Selection Committee, thereby avoiding even the appearance of conflicts. (See attached letter to Mayor Gimenez dated June 18, 2019.)

Maintaining the public's confidence in the Miami-Dade Clerk's Office as a trusted, unbiased, ministerial custodian of the public records (Courts, Property, County Commissioners, etc.) is paramount to me and my dedicated coworkers, of whom I remain proud.

In closing, I find the Report's recommendations to be constructive and worthy of thoughtful consideration.

Inspector General Mary T. Cagle
August 8, 2019
Page 2

Again, thank you for your efforts overseeing legal and ethical government in Miami-Dade County.

Sincerely and Respectfully,

A handwritten signature in blue ink that reads "Harvey Ruvin". The signature is fluid and cursive, with the first name "Harvey" and last name "Ruvin" clearly distinguishable.

HARVEY RUVIN
Miami-Dade Clerk of Courts
Eleventh Judicial Circuit, State of Florida

Attachment



**HARVEY RUVIN
MIAMI-DADE CLERK
COURTS • COMMISSION • RECORDER • FINANCE**

Telephone: (305) 349-7333
Fax: (305) 349-7403
E-Mail: clerk@miami-dadeclerk.com
Web Site: <http://www.miami-dadeclerk.com>

DADE COUNTY COURTHOUSE
ROOM 242
73 West Flagler Street
Miami, FL 33130

June 18, 2019

Dear Mayor Gimenez,

Thank you again for seeking my suggestions, as a stakeholder, for your appointments to the selection committee for the proposed new Civil and Probate Courthouse (RFP No. 00953). This long awaited and critically needed legacy project may be the most significant one the County presently has on the drawing board. As you know, I complied by furnishing my choices for one voting member and two advisory members.

Subsequent events now compel me to withdraw those names and decline any further involvement in this process.

As we have discussed in the past, I view my central role as the custodian of the public record (property, court, and county commission records) as nearly a sacred responsibility.

To carry out that function effectively, it is essential that the public regard the Clerk's Office as a completely neutral, even-handed, ministerial party. Anything less would undermine public confidence in the validity and/or accuracy of these critically important public assets.

I MUST THEREFORE HOLD MY OFFICE TO THE HIGHER STANDARD OF AVOIDING EVEN THE PERCEPTION OF CONFLICT IN ALL CASES.

So—it only recently came to my attention that my then-outside counsel was also representing one of the proposers in the courthouse selection process. Never having been notified, much less asked for my waiver of this potential conflict issue (or at the very least—the perception of one), I terminated that firm's representation of the Clerk's Office and replaced them with new outside counsel.

After thoughtful review of the history and circumstances of this complex, sensitive issue, I directed my new outside counsel to advise both the Miami-Dade County Commission on Ethics and Public Trust (COE) and the Miami-Dade County Office of the Inspector General (OIG) of these facts for their review and consideration.

Mayor Gimenez
June 18, 2019
Page Two

Again—this withdrawal of the Clerk's Office participation in the selection process is fully for the reasons above stated. It is independent of any findings or recommendations which may or may not be made by either the COE or the OIG.

Taking this action now permits the process to continue without delay by your appointing the alternates already in place.

My earnest desire is to one day share a ribbon-cutting with you and the Honorable Bertila Soto. It will be an historic moment for the people of Miami-Dade County, and I want to ensure that the Clerk's Office does everything possible to make that a reality.

Sincerely,



HARVEY RUVIN
Miami-Dade Clerk of Courts
Eleventh Judicial Circuit, State of Florida

cc:

Honorable Bertila Soto, Chief Judge of the Eleventh Judicial Circuit of Florida
Abigail Price-Williams, Miami-Dade County Attorney
Mary Cagle, Inspector General, Office of the Inspector General
Jose Arrojo, Executive Director, Commission on Ethics
Tara C. Smith, Director, Internal Services Department
Rita Silva, Chief, Policy, P3 and Innovative Procurement, Internal Services Department

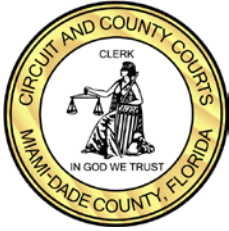
Miami-Dade County Office of the Inspector General

Appendix B

Response of Mr. Luis G. Montaldo, Esq., 8/8/19
(1 page)

OIG Case No. 19-0006-O

HARVEY RUVIN
CLERK OF THE CIRCUIT AND COUNTY COURTS
Eleventh Judicial Circuit
Miami-Dade County, Florida



LEGAL DIVISION
General Counsel
Dade County Courthouse
73 West Flagler Street
Room 200
Tel. (305) 349-7395

August 8, 2019

Mary T. Cagle, Inspector General
601 NW 1st Court, South Tower, 22nd Floor
Miami, Florida 33136

Re: Response to OIG Report IG-19-0006-O

Dear Ms. Cagle,

I appreciate the hard work and dedication of my colleagues at the Office of the Inspector General, Internal Services Department, and County Attorney's Office. Any and all actions that I took during my tenure as a member of the courthouse selection committee were to ensure that the courthouse selection committee process and the citizens of Miami-Dade County received the equity, transparency, and fairness they deserve. In support of this approach, I held myself to a higher standard and placed myself in a self-imposed cone of silence the moment I was advised that I was a candidate for the selection committee so that I would avoid any "inadvertent Cone violation, or *any public perception of a violation.*"¹

Within hours of being notified by Clerk Ruvin and ISD that my appointment as a voting member to the courthouse selection committee was imminent—in order to safeguard the process and ensure any and all fairness and transparency—I timely disclosed to Clerk Ruvin's former outside counsel that I would be a voting member of the committee and would be in a cone of silence. Therefore, any subsequent conversations regarding this matter could and/or should have taken place with our respective client and key stakeholder, Clerk Ruvin. I incorrectly assumed that the Clerk's former outside counsel directly contacted, discussed with, disclosed and/or obtained a waiver from Clerk Ruvin regarding any potential conflict issues with their involvement in the procurement of a new courthouse. I apologize if these actions inadvertently caused any unnecessary distress to the parties involved.

Notwithstanding the above, it should be noted that the OIG's eventual finding of no conflict makes my actions or inactions moot.

Sincerely,

Luis G. Montaldo, Esq.
General Counsel to Harvey Ruvin,
Miami-Dade Clerk of Courts

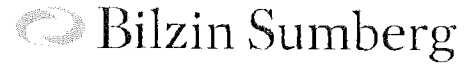
¹ Please see COE Opinion INQ 18-130.

Miami-Dade County Office of the Inspector General

Appendix C

**Response of Bilzin Sumberg's General Counsel,
Mr. David Trench, Esq., 8/8/19
(3 pages)**

OIG Case No. 19-0006-O



David W. Trench
Tel 305-350-2359
Fax 305-351-2261
dtrench@bilzin.com

August 8, 2019

VIA ELECTRONIC MAIL

Mary T. Cagle, Inspector General
Miami-Dade County
Office of the Inspector General
601 NW 1st Court
South Tower, 22nd Floor
Miami, FL 33136

Re: OIG Draft Report of Review of Potential Conflicts Relating to the County's P3
Solicitation to Design, Build, Finance, Operate, and Maintain a New Civil and
Probate Courthouse -- IG-19-0006-O

Dear Ms. Cagle,

I send this letter in response to your letter to Eileen Mehta of July 24, 2019 that enclosed a copy of the draft report (the "Report") of the Office of Inspector General ("OIG"). As you may be aware, I am a partner of Bilzin Sumberg Baena Price & Axelrod LLP ("Bilzin Sumberg") and serve as its General Counsel. I was one of those interviewed by Ozzy Romero and Marie Perikles as part of the investigation conducted by your office with respect to the preparation of the Report. Mr. Romero and Ms. Perikles interviewed Eileen Mehta and Andrej Micovic of Bilzin Sumberg as well, and Jeffrey Snyder, a partner and deputy General Counsel attended each of those interviews.

At the end, the Report states it is provided to the Clerk, Mr. Ruvin, Mr. Montaldo, ISD and Ms. Mehta for review and an opportunity to provide a written response. Ms. Mehta, and the rest of us at Bilzin Sumberg who have been involved in the process, have read the Report and do not take issue with the conclusion. To be clear, we do not agree with all of the comments and statements made by others as set forth in the Report. We do not wish to respond to each third-party statement (and I note that the testimony of Ms. Mehta already reflects much of our disagreement on those points). However, we do wish to provide some additional comments on certain points, with the ultimate goal of greater clarity in the final Report.

One point arises in the discussion of a specific legal engagement of Bilzin Sumberg regarding “the Repair and or Replacement of the County Courthouse.” On page 4, the Report states that the majority of our work on that engagement centered on the physical condition of the existing courthouse. While that is certainly true, that conditional language may cause some readers to infer that a minority of our work involved the new county courthouse project. It did not, and we would like the Report to include that statement. We understand that OIG obtained from the Clerk and reviewed Bilzin Sumberg’s invoices and narrative time entries pertaining to this engagement and, if there are any remaining gaps in those records, we would be pleased to provide copies for OIG’s review. If the authors of the Report are nevertheless unable to affirmatively confirm that none of our work on this engagement related to the new county courthouse project, we ask that the Report include a statement indicating that Ms. Mehta has confirmed that none of the work involved in that engagement related to the new courthouse project, and that the billing records that you reviewed did not reflect any work relating to the new courthouse.

A second point involves Ms. Mehta’s point of contact with the Clerk and the Clerk’s Office. Ms. Mehta viewed Mr. Montaldo, the Clerk’s General Counsel, as her primary point of contact with the Clerk and the Clerk’s Office. He alone assigned legal work to her and supervised that work. While that may be implied by the Report, we believe it should be expressly stated so there is no doubt about it. At the very least, the Report should state that Ms. Mehta believed Mr. Montaldo, the Clerk’s General Counsel, was her point of contact.

The third and final point is the Report’s use of the terms “Clerk” and “Clerk’s Office.” While our legal engagements are with the “Honorable Harvey Ruvin, Clerk of Court” (i.e., an office, and not an individual), we sometimes referred to our client either as the “Clerk” or “the Clerk’s Office.” The Report does the same thing. *See, e.g.*, references on pp. 3, 5, 8, 9, 12, 16, 17, 20 and 28. Ordinarily, the interchangeable use of those terms would not be a cause of any confusion. However, there is a point in the Report when a distinction between Harvey Ruvin, the individual officeholder, and our client, the office, is necessary.

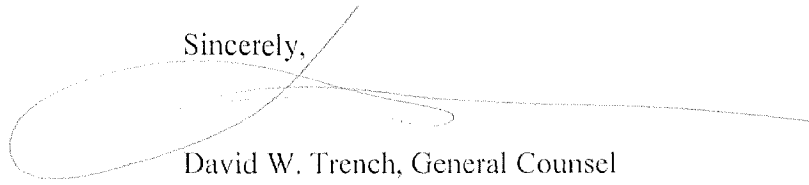
In February of 2018, Ms. Mehta told Mr. Montaldo that Bilzin Sumberg had a client that planned to submit a proposal in response to the County’s solicitation for a new civil courthouse. *See*, page 12 of the Report. While Ms. Mehta reported that fact to Mr. Montaldo, our client’s general counsel and point of contact, neither Ms. Mehta nor Mr. Montaldo reported that fact to Harvey Ruvin, the individual officeholder. Thus, the office was aware of the issue, but Mr. Ruvin was not. Although we frequently used the term “Clerk” as a synonym for the office, a reader may conclude that Clerk refers to Mr. Ruvin as an individual. To avoid possible confusion, I suggest that Mr. Ruvin be referred to by his name when speaking of him specifically, and that the office be referred to as either the Clerk or the Office of the Clerk, as a defined term that is used consistently.

August 9, 2019

Page 3

On behalf of Bilzin Sumberg, thank you in advance for your consideration of these comments and for OIG's continued efforts and professionalism in this important matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "David W. Trench", is written over the word "Sincerely,". The signature is fluid and extends to the right.

David W. Trench, General Counsel

cc: Eileen Mehta, Esq. (via e-mail)
Marie Perikles, Esq. (via e-mail)
Patra Liu, Esq. (via e-mail)

Miami-Dade County Office of the Inspector General

Appendix D

Response of Internal Services Department, 8/7/19
(1 page)

OIG Case No. 19-0006-O

Memorandum



Date: August 7, 2019

To: Mary T. Cagle
Inspector General

From: Tara C. Smith
Director
Internal Services Department

A handwritten signature in blue ink, reading "Tara C. Smith", written over the printed name and title.

Subject: Response to OIG Draft Report on Potential Conflicts Relating to the County's P3 Solicitation to Design, Build, Finance, Operate and Maintain a New Civil and Probate Courthouse – IG-19-0006-O

Thank you for your efforts to review the potential conflict that is the subject of the referenced draft report. We appreciate the Office of the Inspection General's (OIG) participation in this important process for a new Miami-Dade County Civil and Probate Courthouse. In response to the draft report that you shared with the Internal Services Department (ISD), please take the below comments into consideration.

On Page 7 of the draft report refers to a "Tier 2" evaluation. In County procurement, Tier 2 refers to a specific evaluation process used for Architectural/Engineering services. There is no such tier process in Request for Proposals (RFP)-00953. The sentence referencing Tier 2 in the report should be replaced with: "The CSC members re-score the proposals, based on the evaluation criteria in the RFP." Likewise, the references to "first tier" evaluation and "second tier" evaluation in the second paragraph on Page 28 should be corrected to be consistent with the RFP evaluation process. This can be accomplished by removing the instances of the word "tier" from that paragraph.

In Section V, OIG Verified Timeline, an important date that ISD staff shared with your office during the interview process should be included regarding notification to the Commission on Ethics (COE) of the potential conflict. The requested addition to the timeline is as follows:

"March 22, 2019 – ISD held a conference call between Dan Chatlos, Rita Silva, Oren Rosenthal, Monica Rizo and Jose Arrojo, Executive Director of the COE, to report the information about Bilzin representing the Clerk of Courts and to seek guidance. The County Attorneys on the call informed ISD that they would manage the discussions with Bilzin regarding professional conflicts. Jose Arrojo indicated that it did not appear to constitute a conflict under the ethics legislation which the COE would have jurisdiction over."

ISD is in agreement with the recommendations provided in this report and have been addressing them accordingly. I hope you know the extent to which ISD has availed ourselves of the resources of the COE and OIG, having worked extremely closely and cooperatively together over the past year on this complex and critical project. It has been a true collaboration amongst top professionals and ISD greatly appreciates everyone's efforts to ensure a transparent process.

Should you require anything further or need any additional information, please contact me at 305-375-5893.

c: Edward Marquez, Deputy Mayor