



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Manuel W. Diaz

Case K14-023	Case Name: AECOM Hernandez	<u>Date Open:</u> March 7, 2014	
Complainant(s): Albert Dotson	Subject(s): Unregistered Lobbying		

Allegation(s):

Albert Dotson Esq. (Dotson) of the law firm Bilzin Sumberg Baena Price & Axelrod LLP, alleged, that Pete Hernandez, VP AECOM Technical Services, Inc. failed to properly register as a lobbyist for ISD Project No. E13-WASD-OIR.

Dotson, sent two letters to the Miami-Dade County (MDC) Commission on Ethics (COE), giving examples of Hernandez' alleged lobbying activities:

Hernandez gave testimony before the COE on November 14, 2013.

Hernandez gave testimony before the COE on December 12, 2013.

Hernandez sent written communication to MDC Internal Services Division (ISD) employee Amelia M Cordova-Jimenez on January 7, 2014.

Hernandez sent written communication to MDC-ISD employee Faith Samuels on January 21, January 27, February 6, and February 11, 2012.

Hernandez participated in oral presentations before an MDC evaluation committee without registering as a lobbyist.

Hernandez may have lobbied Deputy Mayor Jack Osterholt on behalf of AECOM.

Relevant Ordinances:

Miami Dade County Code

Section 2.11.1 Code of Ethics and Conflict of Interest Ordinance

(s) Lobbying

(1) (b) As used in this section, "Lobbyist" means all persons, firms, or corporations employed or retained by a principal who seeks to encourage the passage, defeat, or modifications of (1) ordinance, resolution, action or decision of the County Commission;...

(2) any action, decision, recommendation of the County Manager or any County board or committee; or (3) any action, decision or recommendation of County personnel during the time period of the entire decision-making process on such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission, or a County board or committee. "Lobbyist" specifically includes the principal, as well as any employee whose normal scope of employment includes lobbying activities.

The term "Lobbyist" specifically excludes the following persons: attorneys or other representatives retained or employed solely for the purpose of representing individuals, corporations or other entities during publicly noticed quasi-judicial proceedings where the law prohibits ex-parte communications;

(5) Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the County, all individuals who may make a presentation. The affidavit shall be filed by staff with the Clerk's office at the time the proposal is submitted. For the purpose of this Subsection only, the listed members of the presentation team shall not be required to pay any registration fees. No person shall appear before any committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph or unless he or she is registered with the Clerk's office and has paid all applicable fees.

2.10.4(6) Competitive negotiations.

(a) The County Mayor or County Mayor's designee shall appoint a negotiation committee who shall attempt to negotiate a professional services contract for each project or planning or study activity required to be publicly announced under subsection (2) of this Section with the firm which he has ranked first for a compensation which the negotiation committee has determined to be fair, competitive, and reasonable. In arriving at a compensation figure the negotiation committee shall conduct a detailed analysis of the cost of the professional services required, and shall give full consideration to the extent and complexity of the services required. For all lump sum or cost plus a fixed fee contracts in which the fee will exceed fifty thousand

dollars (\$50,000.00), the County will require the firm receiving the award to execute a truth-in-negotiation certificate as required by Chapter 287, Florida Statutes.

(b) Should the negotiation committee be unable to negotiate a satisfactory contract with the firm that has ranked first at a price which the negotiation committee believes to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The negotiation committee shall then undertake negotiations with the firm which the County Mayor or County Mayor's designee ranked second. Failing accord with this firm, such negotiations shall terminate, and negotiators shall then undertake negotiations with the firm ranked third by the County Mayor or County Mayor's designee.

(c) Should the negotiation committee be unable to negotiate a satisfactory contract with any of the selected firms, additional firms shall be selected in accordance with the procedure set forth herein. Negotiations shall continue in accordance with this section until an agreement is reached. The negotiated agreement shall be presented to the Board of County Commissioners for approval.

Investigation:

Interviews

Albert Dotson, Esq.

Dotson was contacted and provided the COE with the written correspondence between Hernandez and Faith Samuels and Hernandez and Amelia M. Cordova – Jimenez. (Copies in file)

Dotson also provided a portion of an Office of the Mayor Visitors Log-In sheet where Hernandez signed to see Osterholt. The topic to be discussed was CEHM. (Copy in file)

Faith Samuels (Samuels) - Sr. A/E Consultant Selection- ISD Procurement Management.

Samuels was interviewed. She advised that the Hernandez e-mails, referred to in the Dotson letter, were of an administrative nature; requesting information or providing information. The MD Clerk of the Board was copied on the e-mails.

Samuels provided copies of the Negotiations Meetings Sign-In Sheets for August 28, 2013 and January 14, 2014. Samuels advised that Hernandez attended the meetings. Both documents were filed with the MD Clerk of the Board prior to the meetings. (Copy of sheet in file)

According to Samuels the Mayor had selected AECOM as the #1 ranked responder to the RFP and authorized negotiations with the company. (Copy of memorandum in file)

Pete Hernandez (Hernandez) VP AECOM Technical Services.

Hernandez was interviewed via telephone. He was informed as to the allegations. Hernandez advised that he complied with the Miami-Dade County Ethics Code when representing AECOM in the RFP process. He noted that all correspondence referred to in the complaint was copied to the Clerk of the Board. He added that he was listed on the ISD Forms - Lobbyist Registration for Oral Presentation.

Concerning his meeting with Deputy County Mayor Jack Osterholt, Hernandez advised the following: The meeting was held to discuss a County feasibility study for a location of a Cuban Exile History Museum (CHEM). The museum may, in the future, be located on public land. There has been no proposed legislation to date. He added that he scheduled the meeting with Osterholt as a private citizen.

Jack Osterholt (Osterholt) Deputy Mayor Miami-Dade

Osterholt was interviewed via telephone. He did not recall meeting with Hernandez concerning the CHEM. He added that he was never lobbied by Hernandez on behalf of AECOM.

Documents reviewed.

Copy of Mayors Visitor's log provided by Dotson

The copy of the visitors log provided by Dotson attached to his March 7, 2014, letter has two entries for Hernandez; first on 1/24/14 and a second on 2/5/14. For the 1/24/14 visit, Hernandez visit listed "AECOM" on the log as the purpose of the visit. A visual inspection of the copy indicates that Hernandez crossed out the AECOM entry and replaced it with CHEM.

The second visit, on 2/5/14 indicated that the topic to be discussed was CHEM.

Copies of e-mails between Hernandez and Cordova-Jimenez

The e-mails were administrative in nature and were copied to the Clerk of the Board.

Copies of e-mails between Hernandez and Samuels

All e-mails were administrative in nature and were copied to the Clerk of the Board.

ISD Form NO.5 Lobbyist Registration for Oral Presentation (August 28, 2013 and January 14, 2014) Copy in file.

Hernandez name appears on both forms. Both forms were filed with the Clerk of the Board.

**Memorandum from Samuels to Lester Sola, Director ISD.
Subject: Negotiations Authorization**

Advising that the Mayoral Advisory Committee has completed the evaluation of the responses received ISD Project No. E13-WASD-01R. Copy in file.

Negotiations Meeting Sign-In Sheet (February 4, 2014)

Hernandez name appears on the sheet
Copy in file

Miami-Dade County – Internal Services Division Architect Engineer, Letter of Qualifications

Hernandez is listed as the AECOM Technical Services, Vice President and the contact person. Copy in file.

AECOM (in association with Parsons) Submission to ISD Project No. E13-WASD-OIR submission 1(June 28, 2013) and AECOM (in association with Parsons) Project No. E13- WASD- OIR submission 2 (December 13, 2013).

Both documents identify the Team Members for the project. Hernandez is identified as the AECOM VP, PCM Project Director. Copy in file.

Analysis and Conclusions:

Dotson alleged that Hernandez failed to register as a lobbyist on several occasions.

Hernandez appeared before the Ethics Commission and spoke with regard to a complaint that he had filed. No lobbyist registration was required for Hernandez to address the Ethics Commission. The Ethics Commission serves as a quasi-judicial body and has never required parties to a complaint to register as lobbyists.

The written communication between Hernandez and Cordova-Jimenez and the e-mails between Hernandez and Samuels were administrative in nature. The majority of these communications consisted of process and procedure questions and clarifications of information and do not fall within the parameters of communications that constitute lobbying.

Hernandez' name appeared on the lobbyist list for oral presentations.

The Mayor of Miami-Dade County authorized negotiations with AECOM.

Hernandez's name appears on the sign-in sheet for negotiations.

Section 2-11.1 (s)(5) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance provides that:

"Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the County, all individuals who may make a presentation...No person shall appear before any committee on behalf of an individual or firm unless he or she has been listed as part of the firm's presentation team pursuant to this paragraph **or** unless he or she is registered with the Clerk's office [as a lobbyist.] (emphasis added)

Hernandez advised that he did not lobby Osterholt concerning AECOM.

He stated that he met with Osterholt and with some other County Commissioners to discuss a County feasibility study for a location of a possible Cuban Exile History Museum.

Osterholt advised that Hernandez did not lobby him with reference to AECOM.

Conclusions:

None of the communications provided by Dotson constitute lobbying by Hernandez such that it would require Hernandez to be registered as a lobbyist. Hernandez' participation in negotiation meetings is covered by the fact that his name appears on the affidavit as a representative of AECOM.

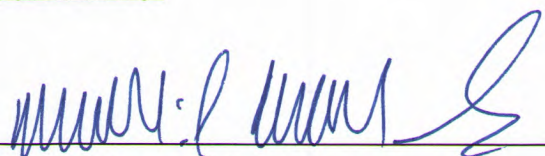
No activity was identified which would constitute unregistered lobbying by Hernandez. Accordingly, this matter is closed with no further action.

(Signature)

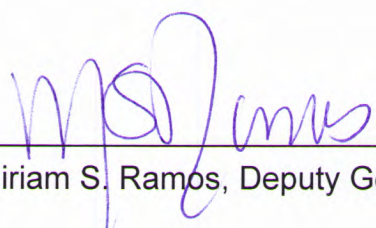


Manuel W. Diaz, COE Investigator

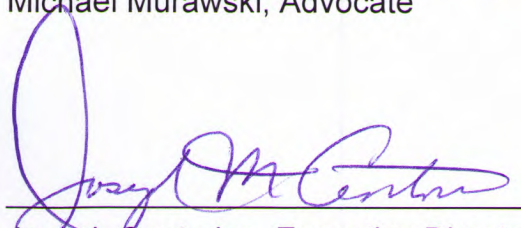
Approved by:



Michael Murawski, Advocate



Miriam S. Ramos, Deputy General Counsel



Joseph Centorino, Executive Director

3/25/14

Date Closed

**CASE
CLOSED**

Date: 3/25/14