



Miami-Dade Commission on Ethics & Public Trust

Report of Inquiry

Investigator: Sylvia Batista

Case No: K14-013	Case Name: ISD Security Employees	Date Opened:	
Complainant(s): N/A	Subject(s): Gabriel Laracuenta, Robert Perez, Joaquin Miranda, Mario Perez, Scott Wacholtz, Robert De Jesus, Frantz Laguerre, and Jose Ubieta,	01/30/14	CASE CLOSED Date: <u>5/27/14</u>

Allegation(s):

On or about 01/29/14 the COE received an anonymous e-mail in connection with the hiring of seven (7) security inspectors by the Miami-Dade County Internal Services Department (ISD). The new hires are allegedly former employees of private security vendors which currently hold portions of the security contract overseen by ISD. The employees' jobs are alleged to include assisting in the oversight of security vendors who are their former employers. The vendors are McRoberts Security (McRoberts), Feick Security (Feick), and Allied Barton Security (Allied).

Additionally, the source alleged that Jose Ubieta (Ubieta), a former employee of ISD went to work for Allied immediately after separating from Miami-Dade County. In his position with Allied, Ubieta, who was in charge of supervising the security contract while he was a county employee, was directly involved with the county security contract. Lastly, the source alleged that Allied has obtained two additional sectors to their contract since Ubieta's hiring, indicating that Ubieta has shared inside knowledge of operations and procedures giving his new employer an unfair advantage over other security companies currently on the contract.

Relevant Law:

Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1(x) *Prohibition on County employees and departmental personnel performing contract-related duties.*

“No person included in subsections (b)(5) [departmental personnel] and (b)(6) [employees], who was previously employed by or held and controlling financial interest in a for-profit firm, partnership or other business entity shall, for a period of two years following termination of his or her prior relationship with the business entity, perform any County contract-related duties regarding the business entity, or successor in interest, where the business entity is a County bidder, proposer, service provider, contractor or vendor. As used in this subsection (x), “contract-related duties” include, but are not limited to, service as a member of a County certification, evaluation, selection, technical review or similar committee; approval or recommendation of award of contract; contract enforcement, oversight or administration; amendment, extension or termination of contract; or forbearance regarding any contract.”

Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1(h) *Prohibition on use of confidential information.*

“No person included in the terms defined in Subsections (b)(1) through (6) and (b)(13) shall accept employment or engage in any business or professional activity which he or she might reasonably expect would require or induce him or her to disclose confidential information acquired by him or her by reason of his or her official position, nor shall he or she in fact ever disclose confidential information garnered or gained through his or her official position with the County, nor shall he or she ever use such information, directly or indirectly, for his or her personal gain or benefit.”

Investigation:

Document Review and Research -

04/24/14 – Review of Ubieta’s personnel file reveals that Ubieta was hired by the County as a Security Supervisor for ISD on 02/18/08 and voluntarily separated from the County on 02/27/09. Immediately prior to commencing employment with the County in 2008, Ubieta had worked for Allied as an Operations Manager. Ubieta’s stated reason for leaving Allied was to work for the County. Although this record reveals a possible violation of Sec. 2-11.1(x), the statute of limitations has expired.

04/25/14 – Review of the County personnel data for the seven (7) individuals alleged to have been hired in violation of Sec. 2-11.1(x) reflect that six of the seven individuals were hired directly from security vendors Allied, McRoberts and Feick. The seventh individual was hired from 50 States Security, which was not alleged to be a security contractor by the source.

Please see the attached chart for a detailed job description of the employees’ new positions with the County and each of their prior positions with the respective security contractors.

05/09/14 – Review memorandum from Daniel J. Payne (Payne) dated 05/09/14 responding to the allegations brought herein and enclosing the following:

1. Response letter to Weiser Security from Procurement Officer Lydia Osborn (Osborne)

- regarding Weiser's e-mail requesting that their contract not be extended;
2. Extension of contract ITB 8773-2/15 letter from Osborn to Weiser Security;
3. Price comparison for security services spread sheet from Osborne;
4. Supplemental Agreement No. 7, reassigning Sector 1-A from Weiser to Allied; and
5. Deputy Chief David Thibaudeau's (Thibaudeau) memorandum regarding the Security Inspectors' work schedule.

The above mentioned items produced by Payne involving the Ubieta allegation reflect that on 10/04/11, Weiser Security (Weiser), which had been awarded contract 8773-2/15 for security guard services to Sector 1A, Tier 1, requested that the County not exercise the option-to-renew the contract. In its e-mail, Weiser stated that the volume of service in Sector 1A, Tier 1, which included posts for the Miami-Dade Water and Sewer Department and various locations for the department formally known as GSA, had been cut 45% making it highly unprofitable. Weiser further explained that the loss of volume created a deficit because the overhead for the contract is amortized over 45% less revenue than anticipated. This, together with the complexity of the contract and the drain in Weiser's resources has made the contract a detriment to Weiser's presence in Miami.

To ensure continuity of services, the County reviewed the prices offered by the other security firms providing the same services under Contract No. 487A and 487B. Procurement chose Allied who offered the lowest price, and added the services for Sector 1A to Allied's contract effective 03/01/12. This occurred three years after Ubieta's departure from the County.

Interviews:

05/06/14 – Daniel J. Payne, Chief of Security –

Daniel J. Payne (Payne), Chief of Security at GSA Security Management, was told about the matter at issue and asked to come to the COE to give his statement.

Payne began by explaining the events involving Ubieta's separation from the county. Payne said that Ubieta left the County several years ago (2009) after having been employed for a short period of time. Immediately after leaving the County, Ubieta went to work for Allied. Allied is a security firm which had been awarded a contract under RFP 487 A and B. The contract was awarded to Allied while Ubieta was still working for the County.

Subsequent to Ubieta's departure from the County, another security contractor, Weiser Security (Weiser), asked to be released from the contract. Payne said that Weiser was having performance issues and they agreed to release them from the contract and awarded it to Allied. The contract was for Sector 1A. Ubieta was with Allied at the time, but he was not instrumental in effecting this change. Weiser's contract was awarded under an ITB, Invitation to Bid, intended to be awarded to small businesses. Allied is not a small business. The procurement contract person can answer any additional questions about awarding the contract to Allied. Her name is Lydia Osborne (305) 375-1291.

Payne advised that presently Allied has Sector 1A, which began after Ubieta left the County,

Sector 1B, and Sector 3A. Sector 1C was awarded to Security Alliance, 1D to Delad Security, Sector 1E to Feick Security, Sector 2A to 50 State, and Sector 2B to McRoberts Security.

Payne explained that the security inspectors have no supervisory authority. They inspect and report any violations to the Security Supervisor and the Security Supervisor decides whether to cite the vendor. Payne said that upon hiring the security inspectors, they made certain that they would not be inspecting the work of their former employers. Roberto De Jesus (De Jesus), who was formerly employed by Allied, was reassigned from MIA to the general post in the County. The daily work being done by the inspectors is listed in an activity log. The assignments of the posts are made by Deputy Chief Thibaudeau. Payne stated Thibaudeau could tell the COE how the security inspectors are given their posts. Payne explained that it is a blanket rule that employees hired from a contractor cannot oversee their former employers. The other hired security inspector who came from Allied was Frantz Laguerre (Laguerre). Laguerre has also been reassigned and is no longer working at MIA.

05/07/14 – David Thibaudeau, Deputy Chief, General Services Administration, Security Management -

Thibaudeau, Deputy Chief of Security at GSA Security Management, was contacted and provided his explanation on the subject matter.

Thibaudeau explained that while doing ethics training online he saw the portion of the code which deals with the two-year rule and reverse two-year rule (Sec. 2-11.1(x)). He did not know about the rule and was shocked when he realized that they may have a problem in the hiring of the seven (7) security inspectors, even though the new hires do not have supervisory authority. Thibaudeau said that he recognized the situation as a potential problem and spoke to Payne. They met with the Division Director, Jerry Hall (Hall), who forwarded the information to the Department Director, Lester Sola. Thibaudeau said he wanted to make sure they were on the right page before a complaint was filed, but one had already been submitted.

Thibaudeau said that at the meeting with Hall they decided to prepare a document advising the new hires of the restructuring and took the necessary steps to ensure that they did not interact with their former employers. Laguerre and De Jesus came from Allied. Allied specifically worked at MIA. Allied also has two other sectors (1B and 3A). Laguerre and De Jesus were instructed not to check any posts, or locations, or any guards who work for Allied. They were instructed to stay away from those guards and those sectors. The only time they could have contact would be to respond to an emergency such as a bomb scare or another emergency situation. The new hire formerly with Feick, Scott Wacholtz (Wacholtz), was instructed and knows that he cannot work at any posts where Feick is unless it is an emergency situation. Depending on the situation, they would not respond to those posts. Thibaudeau said that he sent an e-mail to staff and it was outlined in there as well. He will send us a copy. The e-mail basically outlines that the new hires are not to be dispatched to their prior locations. The instructions were structured in a way that they can do what they were hired to do, but not interact with their former employers or co-workers. Thibaudeau said that they had a meeting before circulating the memo which they all attended and were instructed accordingly. He had met with them before and they had discussed this. He put out the memo on 02/12/14.

Thibaudeau explained that upon first being hired the new hires checked locations where they came from, but since the instructions were given, this practice has stopped. During the first month of the group's employment they were doing training and getting their equipment so they were not out there yet doing their jobs, but when they did start going out in the field, it became necessary to restructure the post assignments. The decisions on how to restructure the post assignments are made by Payne or himself. The security inspectors drive from location to location and check to see that everything is okay and that someone is there doing what they are supposed to do. Should there be an issue, the inspector notifies the security supervisor who would handle any issue based upon their investigation. Security inspectors are not assigned to one specific post. They're structured in this manner as a cost reduction for the County because the positions that they held with their respective former employers were costing the County money. Thibaudeau explained that it seemed better to create County positions to fill so that they could supervise them better. The security inspectors also have administrative duties that they have to do during the day. At night they mostly respond to alarms and check on people to make sure that they are okay.

On the Ubieta issue, Ubieta was working for the County. When the RFP awards were made Ubieta was concerned about being laid off. Ubieta was told that things are "tight" and they could not guarantee him that there would not be a lay off. Ubieta left the County when he got an offer from Allied as a district manager. He was not affiliated with the new contract, although they probably picked his brain. The County has a liaison who deals with Allied.

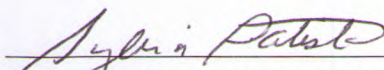
Thibaudeau explained that the new contract awarded to Allied had been originally awarded to Weiser. Weiser had seriously underbid the contract. When they bid on it they wrote a proposal based on services at Government Center alone. Weiser was told that they would have multiple buildings aside from the Government Center. Weiser said they understood that, but by their poor performance they did not. Weiser requested to be removed from the contract, so the County put a "best and final offer" to the vendors already existing on the contract. Osborne was the contract administrator who handled the change. This switch probably happened in 2011, after Ubieta left the County.

Thibaudeau said that the hiring of the security inspectors makes sense because they know the job. Prior to the interviews, they met with HR or ERD to discuss the new hiring process because "Dan" wanted to be sure that they were doing things correctly. In the ratings of the applicants, they added veterans' preference points even though they were told that you only add these if there is a test involved. They took the points away. Thibaudeau said that the new inspectors were hired to do the same thing that they did before for the companies they worked for. They had numerous applicants. They felt sympathy for the guys who were about to lose their jobs. In a conversation with "Dan" they agreed that it was the best option.

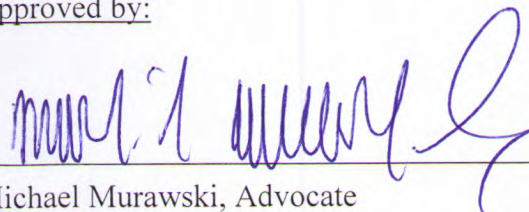
Thibaudeau advised that there will be oversight as to what the new inspectors are doing. The inspectors have to fill out daily activity logs where they report what they did and where. For instance, Wacholtz who worked for Feick responded to go to the Miami Beach courthouse. When he arrived, he saw Feick officers so he called and was told to leave. Thibaudeau said that he felt comfortable that the person called him.

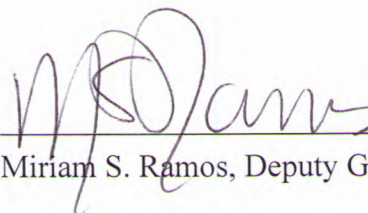
Conclusion(s):

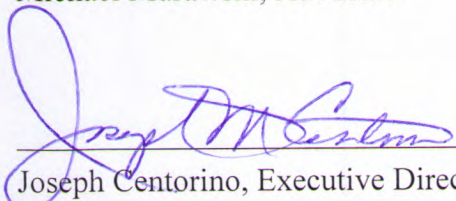
The investigation did not reveal a "Reverse Two Year Rule", section 2-11.1(x) of the Ethics Code which prohibits County employees from performing "contract related duties" involving their former employers. In this case, it does not appear that any of these employees are in a position where they serve on a selection committee or approve or recommend the awarding of contracts. Furthermore, these employees have been assigned specifically so as to avoid any oversight over the contracts the County has with their previous employer. Similarly, the investigation did not reveal any evidence that Ubieta violated the prohibition on disclosing confidential information, Sec. 2-11.1(h) in order to procure a contract for Allied. In fact, the contract was already in place when Ubieta went to work for Allied. Therefore, the instant case should be closed without further action.

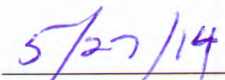

Sylvia Batista, COE Investigator

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Date