



## Miami-Dade Commission on Ethics & Public Trust

### Investigative Report

Investigator: Sylvia Batista

Case:	Case Name:	<u>Date Open:</u>	<u>Date Closed:</u>
K14-077			
Complainant(s): Berman Hopkins Wright & LaHam, CPAs and Associates, LLP,	Subject(s): Michael Dietz, In-House Counsel for CohnReznick, LLP.	08/28/14	<b>CASE CLOSED</b>

Date: 9/17/14

### Allegation(s):

Attorney William Riley of Gray-Robinson filed a formal Bid Protest on behalf of his client, Berman Hopkins Wright & LaHam, CPAs and Associates, LLP (Berman Hopkins) in connection with RFP-00025 for External Independent Auditing Services for Public Housing and Community Development (the "Contract"). The bidder being recommended for award of the Contract is CohnReznick, LLP (CohnReznick).

In its Bid Protest, Berman Hopkins argues that CohnReznick's proposal should be deemed non-responsive and be rejected because it is incomplete and replete with material irregularities thereby failing to meet the requirements set forth in the RFP. One of the reasons cited by Berman Hopkins in support of its claim is that CohnReznick's Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation (the "Affidavit") lists partner Allan C. Kitchen (Kitchen) as the only member of its presentation team. However, during CohnReznick's 07/23/14 negotiating meeting with the County, its in-house counsel, Michael Dietz (Dietz), participated in the negotiation, allegedly making repeated references to the bid and attempting to influence the County's decision. Dietz did not at any time register as a lobbyist with the County.

### **Relevant Law:**

The Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1 (s) *Lobbying definition, requirements regarding registration and disclosure of expenses.*

### **Investigation:**

#### ***Interviews/Contacts***

#### **08/29/14 – Miriam Singer, ISD Assistant Director, Amos Roundtree, ISD Purchasing Director, and Celeste Walker, ISD Procurement Contracting Manager -**

Miriam Singer (Singer), Amos Roundtree (Roundtree), and Celeste Walker (Walker) were asked about RFP No. 00025. Singer explained that at present there is pressure to start the next audit cycle and they are late in picking the next external auditor. The subject RFP is for external independent auditing services for programs administered by the Public Housing and Community Development Department (PHCD). Berman Hopkins has provided these services to the County for the past several years.

Singer explained that the County was in the process of negotiating the best deal, and they wanted to pick the best firm and to bring down the price as much as possible. As in-house counsel for CohnReznick, Dietz is permitted to take part in negotiations with the County, which is what he did at the 07/23/14 meeting. They have never required that a lawyer under such circumstances be registered as a lobbyist. During oral presentations, they do not allow anyone to speak who is not listed on the Affidavit, or who has not registered as a lobbyist. The negotiations with CohnReznick resulted in an even lower price than what they quoted in their initial bid.

Singer and Roundtree explained that the biggest problem with Berman Hopkins' bid was that they qualified their proposal for 90 days from the proposal opening rather than for 180 days as was clearly required in the solicitation. A proposal may be awarded only if it complies in all material aspects with the terms of the solicitation.

#### **09/08/14 – Michael Dietz, Esq., - In-House Counsel in General Counsel's office of CohnReznick –**

Dietz was asked about his position with CohnReznick. Dietz explained that he is In-House Counsel in the General Counsel's office of CohnReznick. His only involvement is from the perspective of providing legal support in support of the firm's efforts to get business. Dietz said that he does not lobby, or try to get business for CohnReznick. Kitchen, who is a partner, is the person interested in the business aspect of CohnReznick.

Dietz explained that Kitchen is heavily involved with housing authority audits. Kitchen has twenty-plus other housing authorities that he contracts with. Dietz said that his role with government contracts is to review the contracts Kitchen has asked him to review and has instructed him to do this or that. Dietz said that his role is to give legal advice to his employers. He was brought to the meeting to give legal advice to the partner who has

government clients. Dietz said that he does not negotiate price, although there was discussion on price at the meeting with the county, but the decision on price is entirely Kitchen's. Dietz said that his position with CohnReznick is as a member of its in-house legal staff. He was not hired to lobby. Dietz has never lobbied on behalf of CohnReznick.

*Document/Audio/Video Review:*

**08/29/14 – Review of Miami-Dade County Registrations by Lobbyist reveals that neither Kitchen, Dietz nor principal, CohnReznick, registered with the Clerk of the Board to lobby in Miami-Dade County. However, Kitchen is listed on the Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation filed pursuant to Sec. 2-11.1(s)(5).**

**09/02/14 - Memorandum dated 07/15/14 to ISD Director Lester Sola from Lydia Osborne, Procurement Contracting Officer and Chairperson, Evaluation/Selection Committee (Osborne) thru Singer, setting forth the Report of Evaluation/Selection Committee (the Committee) for RFP No. 00025 External Independent Auditing Services**

- Sec. 4.03(G) of the Dade County Home Rule Charter requires an audit by an independent CPA of the accounts and finances of the County for each fiscal year.
- Any entity receiving federal funds of \$500,000 or more must have an annual audit prepared by an independent CPA.
- One of the four proposers to the solicitation, Fallon & Larsen, LLP, did not meet the minimum qualification requirement in that the CPA license provided in its proposal was from the State of New Jersey. Fallon & Larsen, LLP was deemed non-responsive.
- Proposer Ivy Accounting Tax & Advisory provided the submittal form, affidavits and price, but no technical proposal. The firm was no longer under consideration.
- Proposer and Bid Protester Berman Hopkins included a qualification in their proposal that conflicted with a requirement in the solicitation, and thus were deemed non-responsive.
- The Committee recommended that the County enter into negotiations with CohnReznick.
- CohnReznick meets the requirements to provide external independent auditing services for PHCD and have a proven track-record of performing large housing authority audits.
- CohnReznick's proposal provided a well-developed and task appropriate approach which ensures a close working relationship with the County.
- CohnReznick's price is competitive for this market and will be negotiated.
- Osborne and Gerald Farr (Farr), Accounting Chief, PHCD, will participate in the negotiations.

**09/02/14 – Review of the 07/23/14 negotiation meeting between CohnReznick and ISD staff in connection with RFP-00025 –**

- The Evaluation/Selection Committee (Committee) chaired by Osborne recommended that the County enter into negotiations with CohnReznick.
- This is negotiations for RFP #00025, External Independent Auditors Service for PHCD.
- This is a publicly noted meeting and as such any information could be subject to a public records request.
- Present to participate in the negotiations with CohnReznick was Osborne and Farr.
- Negotiations will be held on the phone with Kitchen, partner of CohnReznick, and Dietz.
- Kitchen introduces himself and explains that Dietz is with the in-house legal counsel at CohnReznick. Dietz reviews contracts.
- Dietz joins the conference call.
- Osborne and Farr introduce themselves. Osborne explains that her agenda is to talk to him about the exceptions that he listed in the solicitation when CohnReznick filled it in. Osborne said she would go in the order listed by Dietz.
- Osborne told Dietz that he asked them to consider the exceptions, but some of these things are basic language of the County's contract, their terms and conditions, but will go through them with him.
- Dietz and Kitchen confirm that they have the exceptions in front of them to follow while Osborne talks.
- They go to the page that talks about the exceptions and requested changes to the contract.
- Osborne said that she is going to lift the changes that they have and go to the County attorney after this meeting. She will later send them the Contract with what changes are approved or not approved and their legal department can review it again.
- Continued discussion with Dietz as to the changes to the Contract requested.
- Discussion with Dietz regarding the right to maintain the audit documents and regarding the correctness of the information provided to CohnReznick by the County.
- The Contract will take precedence over the attachments and the engagement letter and representation letter.
- Dietz explained that they would like to make sure that there is nothing in the Contract that would supersede the basic requirements of an effective audit and that they would not use a term that would invalidate certain representations made in order to make that audit a valid one.
- Osborne asks for some suggested language which Dietz agrees to provide re. Article 21 of the Contract.
- Dietz will draft language to reflect what they want as opposed to deleting it entirely.
- Continued discussion of the proposed changes to the Contract.
- Discussion between Farr and Kitchen on the scope of the Contract.
- Discussion regarding the term of the Contract and renewal periods.
- Discussion regarding the insurance requirement and other requirements.
- The Contract was to start on July 1, but that date has passed. Osborne reminds them

that this is an expedited project.

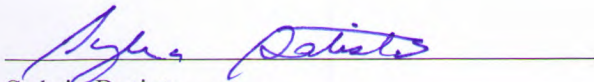
- Discussion regarding the finalization and execution of the Contract.
- Osborne explains that in order for the Mayor to sign and expedite this project, the Contract must be below \$1 million. If it is over, the Contract will have to go to Committee and because the BCC does not meet in August it will go to Committee in September and maybe to the BCC in October.
- Osborne asks for a reduction in the price given by CohnReznick for the three years so that it is at or below \$500,000. That would be \$166,667 per audit year.
- Kitchen remarks that they are at \$585 right now--\$85,000 less!
- Negotiation on the total price of the Contract continues with Kitchen.
- Osborne offers them time to make a decision, but advises that regardless of the time frame, she still needs to get a reduction on the price.
- At the end of the 3 years, PHCD will let her know if they want to exercise the option to renew. She is asking the Mayor up front to approve the options to renew. This burdens the County.
- This is a bid request so they may take some time to decide this while she discusses the changes to the terms of the Contract with the County Attorney.
- Kitchen asks how much did the County pay the previous auditors.
- Discussion on renewing the Contract for the additional 3 years.
- Dietz makes a suggestion as to loading the sums differently to look for some reduction, but again he said that he is just involved with the legal aspect and maybe speaking outside his role of responsibility, as an idea.
- Kitchen said that he would think about the price reduction and get back to Osborne later on today.
- The County needs the total to be under \$1 million, including the 6 years.
- When they send the price, Osborne will provide the changes to the Contract to Dietz.
- Osborne said she would then need to know that Dietz reviewed the contract again for the legal issues, and sign it if it is acceptable.
- Dietz asks whether the County will be open-minded about their changes if they lower the price.
- Dietz direct line is (973) 403-7993.
- Osborne closed the meeting by agreeing that she will work on the changes and Kitchen will work on reducing the amount of the Contract to under \$1 million.
- Osborne advised that after a 3-day protest period barring no protest, they should get this done within the next couple of weeks.

**Conclusion(s):**

There is no violation of the lobbyist registration requirement, and this matter should be closed. Dietz serves as in-house counsel to CohnReznick. Section 2-11.1(s)(1)(b) of the Miami-Dade County Conflict of Interest and Code of Ethics specifically provides that the terms "Lobbyist" excludes. . . "Employees of a principal whose normal scope of employment does not include lobbying activities." As in-house counsel for CohnReznick, Mr. Dietz was not employed as a lobbyist and lobbying is not within his normal scope of employment. What he did in this situation was to provide legal advice on behalf of his employer regarding technical legal issues during the negotiation session. Mr. Kitchen, the person representing CohnReznick, handled the portion of the negotiations that would more properly be considered lobbying.

This conclusion is consistent with RQO08-41, in which the Commission on Ethics found that a Chief Financial Officer involved on a negotiating team was not a lobbyist because his normal scope of employment did not include lobbying activity pursuant to Section 2-11.1(s)(1)(b).

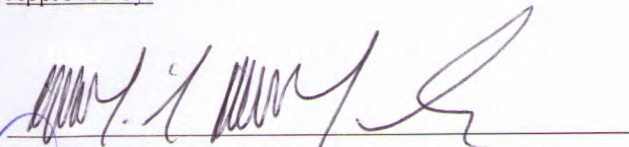
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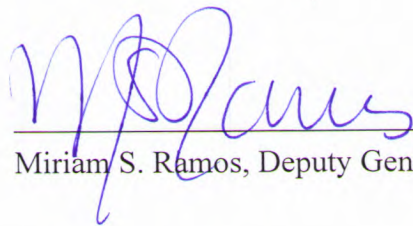
Sylvia Batista,

(Investigator's name), COE Investigator

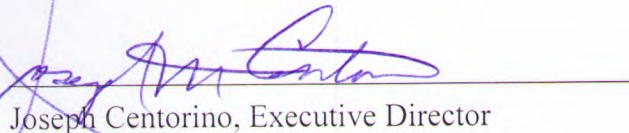
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