



**Miami-Dade Commission on Ethics & Public Trust**

**Report of Investigation**

**Investigator: Sylvia Batista**

<b>Case:</b> K15-033	<b>Case Name:</b>	<b><u>Date Opened:</u></b>	<b><u>Date Closed:</u></b>
<b>Complainant(s):</b> Fred Shields, M-D Transit Special Projects Administrator.	<b>Subject(s):</b> Cone of Silence Violation re. RFP-00096 Compressed Natural Gas Program for M-D Transit Department	05/21/15	<b>CASE CLOSED</b>  Date: 7/21/2015

**Allegation(s):**

The OIG referred a matter to the COE involving a potential Cone of Silence violation in connection with RFP-00096. RFP-00096 is an open procurement for a Compressed Natural Gas Program (CNG) for Miami-Dade Transit (MDT), (the RFP). The RFP includes a component for a manufacturing facility of the natural gas powered buses.

Proposals were submitted by Trillium CNG (Trillium), Clean Energy d/b/a Clean Energy CA Corp. (Clean Energy) and Nopetro-Miami LLC (Nopetro). Trillium and Clean Energy's proposals list its CNG powered bus manufacturers as Gillig Corporation (Gillig), and New Flyer; and Nopetro lists projected bus manufacturer Karsan U.S.A. (Karsan) in its proposal.

According to the information provided by the OIG, Investigator Peter Liu was contacted by Sandy Amores (Amores), Chief, Transit Maintenance and non-voting member of the RFP's Technical Committee, about information provided to him by Fred Shields, MDT Special Projects Administrator and Technical Committee Member (Sheilds) on the RFP. Amores said that Shields had called him to make him aware of certain comments made by Butch Sibley (Sibley), a Gillig Corporation representative. The comments were made while both attended the American Public Transportation Association's Bus & Paratransit Conference in Ft. Worth, TX, on May 3-6, 2015 (the trade show). According to the OIG memorandum and reports, Shields had a conversation with Sibley about previously purchased Gillig hybrid-drive buses recently delivered to MDT that were not operational. Shields relayed to Amores that during the

conversation Sibley raised certain issues and asked certain questions in connection with the RFP which may be a Cone of Silence violation. Examples of the comments and questions posed by Sibley were:

- Why is it taking so long to evaluate the RFP? It should be easy and simple.
- Is it [the delay] to give time for Karsan to meet the “Buy American Act” standards?
- Did you see the Karsan bus? It is so boxy and high. Our buses are so much nicer. There aren’t any being used in the US.
- He [Sibley] heard that Amores will be working for Karsan next year. Is he going to be working for Karsan?

Shields said that during the conversation with Sibley, he was encouraging Sibley to come to Miami to resolve the problems with the new buses that were not operational. Shields advised that he did not respond to Sibley’s questions and comments, but rather advised Sibley that they should not be having the conversation, or that he could not talk to him about that. In response to Sibley’s comments about Amores, Shields told Sibley that “if you are making innuendos or have evidence, you should report it.”

As noted in the OIG memo, Shields is a Technical Committee Member on the RFP, and thus could qualify as being a member of the “County’s professional staff.” Moreover, Gillig, the bus manufacturer, is a critical component of the scope of services qualifying as a “potential vendor.”

This investigation was initiated by the COE to determine whether the communication that occurred between Shields and Sibley meets the level of a “Cone of Silence” violation.

### Relevant Law:

#### Section 2-11.1(t)1: *Cone of Silence-*

- (a) “Cone of Silence” is hereby defined to mean a prohibition on: (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant **and** the County’s professional staff including, but not limited to, the County Manager and his or her staff. . .(iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant **and** any member of the election committee therefor...
- (b) *Procedure:* (i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid...(ii) the Cone of Silence shall terminate at the time the County Manager makes his or her written recommendation to the County Commission
- (c) *Exceptions:* (i) The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communications in writing at any time with any County employee, official or

member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board who shall make copies available to any person upon request.

According to the RFP bid documents, the Cone of Silence is defined as a prohibition on any oral communication regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Mayor and County Mayor's staff, County Commissioners or their respective staffs;
- the County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the County Mayor and County Mayor's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Procurement Agent or Contracting Officer provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response is necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at [clerkbcc@miamidade.gov](mailto:clerkbcc@miamidade.gov).

All requirements of the Cone of Silence policies are applicable to this Solicitation and must be adhered to. Any and all written communications regarding the Solicitation are to be submitted only to the Procurement Contracting Officer with a copy to the Clerk of the Board. Proposers are hereby notified that direct communication written or otherwise, to Selection Committee members or the Selection Committee as a whole are expressly prohibited. Any oral communications with Selection Committee members other than as provided in Sec. 2-11.1 of the Miami-Dade County Code are prohibited.

The Cone of Silence shall not apply to oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting or communications in writing at any time with any county employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The Proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

**Investigation:**

***Records Review:***

A review of the proposals submitted in response to the RFP confirmed that Clean Energy and Trillium offered New Flyer and Gillig as the two proposed CNG bus manufacturers which would work in partnership with each proposer. Nopetro offered Karsan USA as its sole partner in the manufacturing of the CNG buses. Thus, Gillig may be a potential vendor and/or service provider on the RFP.

***Interviews:***

**05/12/15 – Sandy Amores, Chief, Transit Maintenance Control and a Technical Advisor –**

Amores explained that the bus contract is to change the Miami-Dade County infrastructure from diesel to CNG buses. It is RFP-00096, which is currently under the Cone of Silence. The contract requires CNG buses. Three proposals have been submitted in response to the RFP. The proposers are Clean Energy, Trillium and Nopetro. In their bids they quoted on how much it would cost to supply 300 buses and which manufacturer of buses would potentially be used. In early May, MDT had staff at the trade show being held in Ft. Worth, Texas. During the trade show, Amores called a transit employee who was in attendance, Shields, who told him that there was a bus representative from Florida named Sibley who is with a bus manufacturing company named Gillig, which recently sold and delivered buses to MDT on a separate contract. Amores said that Shields told him that Sibley had made a comment that Amores is delaying the RFP in order to provide time for Nopetro to meet “Buy American Act” standards. “Buy American” is a federal requirement that a percentage of the buses built using federal dollars must be built in America. Amores advised that the allegation made by Sibley is that Amores was delaying the RFP to give bidder Nopetro the opportunity to meet all the requirements, and that Amores had signed a contract to go work for Karsan. Amores said that he called the OIG’s office and spoke to Peter Liu to tell him

about the allegation.

**06/29/15 – Butch Sibley, Florida Representative for Gillig Corp. (Cell: 510-589-9430) –**

Sibley was advised of the reason for the inquiry, and initially said that the trade show in question took place a long time ago and perhaps his recollection might not be very good. He said that he has often spoken to Shields at trade shows and to many people who are in the business, so to be exactly on point as to what he said, or what Shields said to him he would have to dig deep into the archives of his memory. Sibley was told that the conference in question was held in May of this year, which was not so long ago.

Sibley said that he does not remember exactly how the conversation between him and Shields started, but he knows Shields as someone knowledgeable in the field. Sibley acknowledged that Gillig has an ongoing contract with MDT. Gillig recently sold 35 busses to MDT, and is currently in the process of selling them another five. Sibley explained that in his contracting activity with MDT, he most often deals with Shields, Carlos Delgado and Jesus Lee. He does not deal with Amores at all.

Sibley advised that he is aware of the Cone of Silence and was very cognizant that it was in place at the time that he made the comments to Shields at the trade show. Sibley said that he has dealt with RFPs all his life and is very aware of what he can and cannot say.

Sibley said that he would not have commented that Amores was delaying the RFP to give Karsan time to meet the “Buy American Act” standards because he did not feel that the RFP was delayed, and he has no knowledge of Karsan’s status on meeting the “Buy American” standards. Sibley said that he recalls asking Shields in a laughing manner whether he knew that Amores planned to go work for Karsan after he leaves MDT. Sibley said that Shields replied that he had not heard this. Sibley did not associate this information with any delay in the RFP, because he did not see a delay in the RFP—he feels the RFP is progressing right on schedule. Sibley said that he would not have associated any delay to efforts by Amores to give Karsan time to meet the “Buy American Act” standard because he does not have any knowledge of whether Karsan has met the standard or not. The comment makes no sense at all and he would not have said something that he has no knowledge of.

Sibley said that he did ask Shields whether he had heard that Amores was going to work for Karsan. Sibley said that at the trade show former MDT director Harpol Kapoor told him that Amores was planning to work for Karzan after his retirement from MDT. Sibley did not know this, but when he saw Shields he asked him whether he knew about it. Harpol Kapoor now works for a consultant in the private sector. Sibley said that it is worrisome that Amores felt it was necessary to go to the Commission on Ethics with this information if it is not true.

As to his comments about the Karsan bus, Sibley said at the trade show he may have asked Shields whether he had seen the Karsan bus, and may have made some comment about it. Sibley explained that at the trade show there was a side street about ¼ mile long and all bus manufacturers’ buses were parked there. Sibley recalls that Karsan’s bus was a little paratransit looking mini bus, and he may have asked Shields whether he had seen it. He also may have commented to Shields about another vendor’s bus that was converted to all electric like the Gillig bus uses. Sibley said that he had a general conversation with Shields about the

different buses and the new technology being presented at the trade show, but nothing that would rise to the level of breaching the Cone of Silence on the RFP.

Sibley said that he does not know Gillig's capacity in the RFP, whether they are a subcontractor, potential vendor, or service provider. Sibley said that he is certain that Gillig is not a prime contractor on the RFP, something that Gillig has always been, but not in this case. Perhaps Gillig is a subcontractor. He is not sure. Sibley said that this will be determined in the negotiations of a Master Development Agreement. Gillig's agreement would be with the prime contractor, not directly with MDT. Sibley said that the RFP is ambiguous in this regard. Gillig is not the company which would negotiate the Master Development Agreement. Gillig's role would depend on how MDT wants to deal with the bus procurement, but it would be through the prime contractor.

Sibley said that he has no idea whether the proposer awarded the contract would pick the bus manufacturer it wants to work with, or whether this would be decided by MDT. Gillig is so far removed from this RFP. Gillig is no different from a manufacturer which would provide the materials for a project. He does not know where Gillig falls in the pecking order. Sibley said that the Cone of Silence should be between the proposer and MDT.

Sibley said that he did not discuss the RFP with Shields and is certain that what was discussed between them was not a Cone of Silence violation.

**07/01/15 - Fred Shields, MDT Special Projects Administrator and Technical Committee Member on the RFP –**

Shields was contacted and provided additional information involving his conversation with Sibley at the trade show. Shields said that he talks to Sibley on a regular basis on bus procurements that are already awarded by MDT. Shields said that at the trade show Sibley was telling him how great his bus is and why it is the best in the market. After some discussion on that, Sibley asked whether he had seen the Karsan bus on display. Shields said he replied that he had, and that it was a small bus and that there might be an issue with a bus that size and the number of seats. Shields said he didn't think the bus was useful.

Shields said that Sibley then said something to the effect of, "how can Karsan provide a bus that meets "Buy American" standards when they have never built a bus in the United States?" Shields said that he does not believe this was a Cone of Silence violation, but it should not happen again. Sibley should be cautioned not to make such comments. Shields said that their conversation on the topic of "Buy American" went something like, "how can they meet the "Buy American" standards when they have never built in the USA." Shields said his response was, "all bus specifications, including the current contracts that they have, must meet Altoona Testing standards." Altoona Testing is a federal requirement that if federal funds are being used, the buses must go through certain requirements as developed in Altoona, PA.

Shields said that Sibley was talking in general terms regarding Karsan, but he knows that one of the proposers was proposing a Karsan bus. When Sibley said something regarding "Buy American" or Altoona, he responded that it is a requirement that all of their buses pass those requirements prior to paying federal dollars, but that is something that when a manufacturer tells you that they are going to meet the requirements, you don't have the authority to question

when they are going to do it.

Sibley questioned why it was taking so long, is it because Amores is going to work for Karsan? Sibley said something to that effect, or, why is it taking so long? "Is it so they can get the Altoona test done?" Sibley asked, "is Sandy going to work for Karsan when he retires?" Sibley may have just asked him that. Shields said that he cautioned Sibley that they cannot talk about this because of the Cone of Silence, and this is an area that we cannot talk about. Shields explained that "Buy American" would not delay a procurement because that is not done until there is a recommendation for the award. Meeting Altoona requirements must be done before MDT pays for the buses. Sibley may have asked about Altoona and "Buy American", but neither would come into play because in truth the RFP requires compliance after receiving the award.

Shields explained that "Buy American" standards must be met once the recommendation goes before the Board of County Commissioners. A pre-award audit is then done, but the BCC will not authorize the expenditure until there is a recommendation for award. If the audit comes back that they meet the requirement, it goes before the BCC, if not, they would be removed from the competition. As far as Altoona requirement, bidders must submit the report that they have met the requirement with their submittal, but it is clear in the federal requirement that they allow the award of a contract, but do not allow any federal dollars to be expended until they meet the Altoona requirement. Under the Altoona requirement, it would not prevent the award, but it would have to be completed before they can accept any of the buses.

Shields said that he is a member of the Technical Advisory Committee on the RFP. Shields advised that he made it known that he did not feel comfortable being on the selection committee because he is very close to these bus manufacturers and is actually friends with one of the people named in the proposal. Although he has sufficient distance from him, he feels that someone might say the appearance of impropriety is there. Shields said that he told his department that he did not want to be on the selection committee because all employees on it have a high level of responsibility with the county and he is not at that level of responsibility. He thought that there were other people in MDT that would be better suited. Shields said that he is not in the selection committee, not even as an alternate.

Shields said that he told the OIG that he didn't know whether there was a rumor going around regarding Amores. Shields told the OIG that he did not believe there was an actual violation of the Cone of Silence. Shields said that as far as the rumors about Amores, he doesn't know one way or another. Amores is in the drop, but he doesn't know if he would go and work for Karsan, how the regulations for the retirement system would play in. Shields said that the main question should be what can happen if he goes work for Karsan at a later date. Amores is in the Technical Advisory Committee, the same as he is.

Shields said that his concern is that he does not want to be in a position where someone starts talking regarding something that is under the Cone of Silence, and this is something that he does not want to talk about. Sibley might have heard a rumor and wanted to see if he (Shields) had heard it and wanted to confirm it.

Shields said that the other issue of concern is that, if you are a lobbyist you need to register as a lobbyist. In this RFP the bus manufacturer would be picked during the negotiation. All three

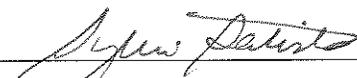
bus manufacturers have offered buses that should meet "Buy American" standards and comply with bus testing. There are concerns regarding a new bus made by a huge manufacturer that they have never used before. They have worked with both, Gillig and New Flyer, and they are both good buses. The majority of the MDT fleet is New Flyer. Shields said that when it comes down to selecting one, the committee needs to look at cost, time frame and whatever other commitment they want to consider. From a technical point of view, Karsan could be picked if they went with the Karsan bus.

Shields said that he does not think there was a violation of the Cone of Silence, and he does not want there to be one.

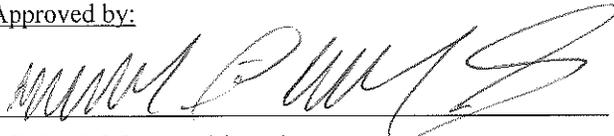
**Conclusion:**

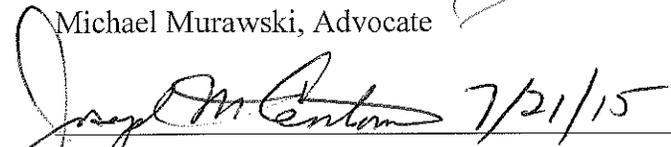
After review and consideration of the aforementioned statements made to the COE, the statements made by Sibley do not rise to the level of a Cone of Silence violation. The intent of the Cone of Silence is to provide transparency and limit the influence of lobbyists and elected officials on the procurement process. Although the better practice would be to refrain from even casual conversation about an RFP that is under the Cone of Silence, innocuous statements about "How's the RFP coming along?" that are not intended to influence the process cannot be said to constitute a violation.

(Signature)

  
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Sylvia Batista,  
COE Investigator

Approved by:

  
\_\_\_\_\_  
Michael Murawski, Advocate

  
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Joseph Centorino, Executive Director