



CASE CLOSED
Date 3/18/2016

Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Sylvia Batista

Case: PI15-055	Case Name: City of Sweetwater,	<u>Date Opened:</u>	<u>Date Closed:</u>
Complainant(s): Millenium Travel & Tours, Inc.	Subject(s): Bid for Trolley Operations and Maintenance Services.	12/15/15	

Allegation(s):

The COE was contacted by Ricardo Maranon (Maranon), an employee of Millenium Travel & Tours, Inc. (Millenium). Maranon explained that he was in the process of preparing Millenium's bid in response to the City of Sweetwater's Invitation to Bid No. 2015-1.1 (ITB) for Trolley Operations and Maintenance Services. Maranon said that he attempted to submit Millenium's bid prior to the submission deadline which had been extended twice before, but was advised by Robert Herrada, who is in charge of the bidding process, that he could not accept the bid because the ITB had been cancelled.

According to Maranon, the City had previously amended the ITB and extended the submission dates at least twice before cancelling it days prior to the final submission date of 12/11/15. Maranon advised that the City had formed a Florida not-for-profit corporation named University City Transportation and Management Association of Sweetwater (UTMA), and was planning on awarding it with the contract for Trolley Operations and Maintenance Services. Maranon added that the registered agent of UTMA is Ralph Ventura, and the officers and directors are Mayor Orlando Lopez and Vice-Mayor Jose M. Diaz.

An inquiry was initiated by the COE to determine whether the City can legally form a not-for-profit listing City officials as its officers and directors, and award it with a contract for Trolley Operations and Maintenance services for the City. Complainant was concerned that the elected officials were attempting to contract with their own City for their own personal gain.

Relevant Law:

The COE's issue is related to a possible violation of the Conflict of Interest and Code of Ethics Ordinance, Sec. 2-11.1(g) Exploitation of official position prohibited.

No person included in the terms defined in Subsections (b) (1) through (6) and (b) (13) shall use or attempt to use his or her official position to secure special privileges or exemptions for himself or herself or others except as may be specifically permitted by other ordinances and resolutions previously ordained or adopted or hereafter to be ordained or adopted by the Board of County Commissioners.

Investigation:

Records Review:

Florida Department of State Division of Corporations detail report regarding **University City Transportation and Management Association of Sweetwater, Inc. (UTMA)**, shows that it is a Florida not-for-profit corporation formed on 05/29/15. Initially UTMA's Registered Agent was Ralph Ventura, who is the former City Attorney for Sweetwater, and initial officers and directors were Mayor Orlando Lopez (Lopez) as President and Director, Vice-Mayor Jose M. Diaz (Diaz) as Vice President, and Tom Gustafson, J.D. (Gustafson) as Secretary and Treasurer. Gustafson is the Director, Research Programs, Office of Finance & Administration at Florida International University (FIU).

The Annual Report on UTMA filed on 01/26/16 removed all previously named corporate officials and replaced them with Robert Herrada (Herrada) as Registered Agent and Secretary, and Amy Gonzalez-Hernandez (Gonzalez) as Chair. Herrada is Director of Operations and Senior Center Director for the City of Sweetwater.

10/27/15 – Invitation To Bid (ITB) No. 2015-1.1 Trolley Operations and Maintenance Services Addendum #7 extending the ITB submission date to 11/23/15. The previous submission date was 11/09/15;

11/12/15 – ITB No. 2015-1.1 Trolley Operations and Maintenance Services Addendum #8 extending the ITB submission date to 12/11/15. The previous submission date was 11/23/15;

12/02/15 – ITB No. 2015-1.1 Trolley Operations and Maintenance Services Addendum #9 cancelling the ITB.

08/13/15 – E-mail from Gustafson, Director, Research Programs, Office of Finance & Administration, FIU, to Marie Schmidt, City Clerk, and Carmen Garcia advising that he was asking others to speak on his behalf on the agenda matter to appoint the UTMA Board as nominated and suggested. The UTMA Board members are Raul Rodriguez (Rodriguez), Amy Gonzalez (Gonzalez), Robert Herrada (Herrada), Thomas Hartley (Hartley) and Philip Procacci (Procacci).

08/11/15 – E-mail from Gustafson to Gonzalez, Rodriguez, Herrada cc: Hatley and Procacci re. UTMA Board Appointments. This e-mail directed to the newly appointed UTMA Board explains the process of appointing the Board members, amending UTMA by dismissing all initial directors and officers (Mayor Lopez, Commissioner Diaz and Chief of Staff Ventura) and naming UTMA Board Members Herrada as Registered Agent and Secretary, and Gonzalez as Chair. The five UTMA Board members are in charge of all UTMA matters.

Undated e-mail from Gustafson to Ventura and Herrada with a cc: to Lopez, Diaz, Kenneth Jessell and Hartley attaching UTMA Board Appointments Membership Applications for Hartley. Hartley is the Executive Director of the FIU Department of Parking and Transportation and was nominated by FIU. Gustafson asks that the Mayor is asked to sign and date the UTMA membership forms unless Vice-Mayor Diaz has an objection to Hartley being an UTMA member. States that he has no objections to Harley being an UTMA member. E-mail also attaches the membership application of Procacci who is accepted by Mayor Lopez as an UTMA member. Gustafson asks that Procacci's membership be granted by the Mayor. States that Procacci qualifies as a person that the City Commission could appoint as a fifth member of the Board of Directors. Gustafson said he would be coming to City Hall to make an inquiry as to the three nominations being proposed by Mayor Lopez and suggests that whoever he picks provide a completed UTMA Membership Application form so they can be granted UTMA membership before their consideration and hopefully their appointment by the City Commission as the first three UTMA Board Members. A blank UTMA membership application is attached as well as the UTMA Membership Applications completed by Hartley, Herrada, Procacci, and Gonzalez-Hernandez.

08/13/15 Email from Gustafson to Herrada with copies to Rodriguez, Gonzalez, Hartley, Procacci, Mayor Lopez, Commissioner Diaz, Ralph Ventura, Guillermo Cuadra, Marie Schmidt, Carmen Garcia and Kenneth Jessell. Subject: Application Executed; Attached to the e-mail is Rodriguez's Executed Membership Application Transportation that needs the Mayor's signature. Gustafson asks that all five executed applications be returned to him. Suggests how to best move the matter forward. Gustafson also tells Herrada to tell the Mayor and City Commissioners that he will undertake to schedule the initial UTMA Board for meeting for next Tuesday morning or so as he works out an agreed upon date amongst the newly appointed UTMA Board members.

08/13/15 Email from Alissa Garcia to Gustafson with cc: to Rodriguez attaching the executed application from Rodriguez.

08/14/15 – E-mail from Herrada to Marie Schmidt attaching copy of UTMA@Sweetwater Articles of Incorporation and Bylaws attached to **06/01/15** e-mail from Gustafson to Hartley, Lissette Soto Hernandez, and Brenda Dome, cc: to Aime Martinez, Kenneth Jessell, Herrada, Ralph Ventura, Guillermo Cuadra, Mayor Lopez and Commissioner Diaz attaching UTMA@Sweetwater's Articles of Incorporation and ByLaws.

Gustafson advises that he dropped the \$500,000 FY2016-2017 FDOT Service Development Grant off with Ken and Brenda for review with Aime, Thomas, Lisette and anyone else that should provide input. This is a City of Sweetwater directed grant for UTMA@Sweetwater.

UTMA@Sweetwater Articles of Incorporation:

Its purpose is to develop, operate, and manage a smart parking and smart community transit system for all the UTMA@Sweetwater members (the Members) and other UniversityCity-related activities as approved by the Board of Directors of UTMA@Sweetwater within the City of Sweetwater (Sweetwater), at Florida International University (FIU), and at such

locations as are deemed useful to the Members.

UTMA@Sweetwater Articles of Incorporation describes the manner of election of its Board of Directors and lists the initial officers and directors as Mayor Orlando Lopez as President and Director, Sweetwater's Vice Mayor/City Commission President Jose Diaz as Vice President and Director, and Gustafson as Secretary/Treasurer and Director.

UTMA@Sweetwater's Bylaws describes its purpose as an effort to undertake activities that develop, operate and manage a system of smart parking and smart community transit to serve the needs of all Members and other related activities as referenced in the 2013 TIGER Discretionary Grant submittal entitled "University City Prosperity Project" that promote over the short term and long term:

- Prosperity for Sweetwater, FIU, and such other locations as the Board of Directors deems to be useful to Members;
- The well-being of each Member of UTMA@Sweetwater; and
- The general welfare of all members.

The UTMA@Sweetwater Bylaws describes its activities.

08/11/15 – 08/17/15 - E-mails regarding the UTMA Board Appointments. The five qualified to serve as UTMA Board Members are Rodriguez, Gonzalez-Herandnez, Herrada, Hartley and Procacci.

08/25/15 – E-mail from Gustafson to all Board members, Mayor Lopez, Commissioner Diaz, City Clerk, Ralph Ventura, Guillermo Cuadra, Carmen Garcia and Kenneth Jessell regarding the UTMA meeting notice and agenda for initial UTMA Board of Directors meeting set for **08/26/15** attaching UTMA agenda for 08/26/15 meeting.

09/08/14 – Resolution No. 3923 authorizing the City to request the FIU Board of Trustees to amend the UTMA project request for proposal package to adjust the description and location of the City of Sweetwater right-of-way to be transferred by donation through quit claim deed, easement, or other conveyance to the FIU Board of Trustees for the development of the memorial plaza in honor of the Brothers to the Rescue; the adjustment of dates for the City of Sweetwater payments to the FIU Board of Trustees for the City of Sweetwater expenditures associated with the UTMA Prosperity Project Community Transit improvements; the adjustment of dates for the City acceptance of ownership of small rubber tire hybrid-electric trolley and the adjustment of responsibilities to operate initially a 10-passenger FIU cats vehicle and subsequently the foregoing trolley on a community transit route between City Hall and the FIU Board of Trustees' Modesto A. Maidique campus destinations crossing US 41 at the intersection with SW 109th Avenue; (D) the adjustment of routes and operation by the City of Sweetwater of the FIU cats shuttle and Sweetwater trolley; and (E) the City of Sweetwater's analysis with Miami-Dade Transit, the FIU Board of Trustees, and other stakeholders of expanded City of Sweetwater circulator routes (MDT's Route #212) and stops and the formation of a University City Transportation Management Association to fully implement the University City Transit Proposal.

Schedule 1 – UniversityCity TIGER Award Agreement; USA U.S. Department of Transportation Federal Highway Administration Washington, DC 20590 – Grant Agreement Under the Consolidated and Further Continuing Appropriations Act, 2013 (Division F, Title I, Pub. L.113-6, March 26, 2013 for the National Infrastructure Investments Discretionary

Grant Program (FY 2013 TIGER discretionary grants) – The FIU Board of Trustees, University City Prosperity Project; FHWA FY 2013 TIGER Grant No. 12.

08/25/15 – E-mail from Gustafson to UTMA Board members, Lopez, Diaz, Ralph Ventura, City Attorney Cuadra and City Clerk Marie Schmidt regarding UTMA meeting notice and agenda for initial UTMA Board of Directors Meeting scheduled for 08/26/15.

08/26/15 – E-mail from Gustafson to UTMA Board members, Lopez, Diaz, Ralph Ventura, City Attorney Cuadra, City Clerk Marie Schmidt, Carmen Garcia and Kenneth Jessell regarding the UTMA meeting. Gustafson provides his resignation as initial UTMA Director and Officer. Offers to help UTMA Board in his continuing role at FIU, but his official duties and obligations for UTMA will end today (08/26/15).

09/04/15 – E-mail from Herrada to Lopez and Ralph Ventura re. TMA meeting set for 09/08/15.

09/10/15 – E-mail from Herrada to Marie Schmidt re. UTMA/Membership Applications attaching UTMA@Sweetwater¹ executed membership applications of Rodriguez, Gonzalez, Herrada, Hartley, and Procacci.

09/23/15 – E-mail from Gustafson to Marie Schmidt, Carmen Garcia, cc: Herrada re. UTMA Board meeting at 1:00 pm at City Hall attaching Agenda Notice to be posted at City Hall.

09/23/15 – Twitter from Gustafson notifying that he has worked on FIU matters all week and is now getting to the Agenda for the UTMA Board meeting. Gustafson suggest that they meet in City Hall one more time to better work out the arrangements with FIU and Hartley.

09/24/15 – Agenda of the 3rd UTMA Board of Directors meeting. Items on the agenda include liability insurance; initial officers and directors resignations; grants and budgets; and review of the ITPA-enabled smart and lower emission ten-vehicle fleet capital budget.

10/08/15 – E-mail from Herrada to Schmidt and Carmen Garcia requesting the commission chamber for 10/20/15 for a UTMA meeting.

10/09/15 – E-mail from Carmen Garcia to Herrada confirming availability of the commission chamber for the 10/20/15 UTMA Oct meeting.

11/18/15 - E-mail from Herrada to Schmidt and Carmen Garcia requesting the commission chamber for 11/24/15 for a UTMA meeting.

11/18/15 – E-mail from Herrada to Schmidt and Carmen Garcia requesting to confirm the commission chamber for 11/23/15 for a UTMA meeting rather than 11/24/15.

01/02/16 – E-mail from Ralph Ventura to Herrada cc: Lopez asking Herrada to see him re. officers of TMA and meeting with Gustafson.

Summary of City of Sweetwater Commission Meeting of 01/04/16 -

Guillermo Bersant, an attorney in private practice representing potential bidder, Millenium, appeared with employee Maranon at the commission meeting to discuss the cancellation of the RFP for Trolley Operations and Maintenance Services. Bersant explained that one evening his client Daniel Ingianna, President of Millenium, told him that the City of Sweetwater has put

¹ UTMA@Sweetwater is used interchangeably with UTMA.

out an RFP for a trolley system. They went on internet and found the RFP. Bersant said he called the City and spoke to Herrada. He called him 2 or 3 days before the bid was due. They worked on it diligently, but when they came to submission the notification on the internet said "cancelled." They never saw this situation. They want a bite of apple, the rug got pulled out and they did not know what to think.

Bersant said he contacted Herrada and he said come to the commission meeting. They wanted to present something that the City would benefit from. They just want a bite of the apple to present their proposal. They never had a chance or an explanation. Why invite and then shut the door without any explanation. Herrada said do everything through the internet, and they did.

Herrada said that there was more interest in the RFP, so they extended it. Herrada clarified that the RFP was cancelled 9 calendar days before the bid was due. Herrada said to counsel for Millenium, that they were not shutting a door, but rather the RFP is suspended for a while. The City has a right to accept, reject or cancel an RFP.

Herrada said, actually the issue has been debated publicly and he had a discussion with Maranon. The City is in a phase in the transit system where they have never been. The City and everything that surrounds it is phasing into something great, the Transportation Management Authority (TMA), which in a few months will govern transit so it's a matter of succession and that was explained to them. So we are going to work with the Mayor, the Commission and the City Attorney in a workshop because aside from this issue there will be other contracts. The TMA is independent from the City. The City is about to acquire a large number of vehicles in the TMA to show that this effort is really a success

Herrada continued to explain that for now the RFP is cancelled or suspended for a while. He said, I am on the board of the TMA. Why are we going to inherit a contract? We want to work together, the Commission and the TMA have an agreement. Page 5 of RFP document says that the City has the right to accept, reject, or cancel any bid at any given time.

Cuadra adds that the last directive from this board was the last resolution directing that they put out the ITB (RFP). A lot of time has transpired from the time that the initial request was made. At that time the TMA was not even an idea. That came to be in subsequent months. This ITD has taken some time. Now the TMA wants to engage this Commission to basically hash out details of what the contract is going to be since they are going to be the ones operating the transit system completely independent from the City. Yes, last directive was to advertise it and it was advertised now you have the reality of the TMA, and you have a crunch in time where this Commission may be entering into a contract that is going to be turned over to the TMA, and the TMA hasn't had any input and the TMA could dissolve in July.

In 5 months we could have saved \$500,000 to \$800,000. All these months have been lost. The TMA just got engaged and it's been a year and they know the rules. The TMA does not have the authority to decide whether to give out a contract. The TMA has no authority over the Commission. The TMA takes over the transit component in July. The City would be engaging the City's transit system, but the TMA could come and dissolve the contract. The TMA was taking over the date that the money would be changed was in September 2016. They've asked and spoken about this. If the contact is for 6 months everything would work out, but for

whatever reason the administration is not getting it done. Regardless of what TMA is doing, we can have this program to save some money, if someone is willing to do it for 6 months.

Cuadra continued to explain that the biggest factor is that the vendors bidding on this don't understand that the City created a not-for-profit partnership with FIU to be able to create a TMA so we cannot manage our transit system. So it is going to be similar to what the county has. The TMA is seeking federal funding. The City now has a one city circulator, but once it has been taken over, we are basically surrendering

The City decided to suspend the RFP because of the changes happening with the TMA. What is looks like it's going to be now would be the same in July. What they are talking about changed immensely. The door is not open now, but it will be. The contract has not been awarded to someone else.

Cuadra said that by the time that the TMA begins to operate our system, they will have to go through the procurement process, go before the Commission, be awarded and then prepare to provide the service. Too much time has transpired from the time that the City gave directive to get the service to now when the TMA will take over in ½ year. The scope of service has changed. What it boils down to is a missed opportunity, but the scenario changed when this commission approved the creation of the TMA.

Diaz explains that he thinks that the administration wasted time and there are certain provisions that sometimes City's cannot stop a bidding that goes over \$50,000 and I'm afraid that things could happen and we are liable for a legal suit. So, at this point, I want to sit down with you Guillermo, because I don't know if they are still willing to bid, and I don't know if the administration has the right to stop the bidding at any time. Actually, if you are going to have only a two-month contract it is not cost effective.

Cuadra adds that the TMA has a meeting tomorrow which I will be attending the meeting and don't intend to participate, but will be there to answer any questions regarding this ITB and Board Member Herrada will be there so that we can expedite the new version of the proposal. Are we going to be operating under the TMA for sure in July? Lopez replies that in July the TMA takes over. They will have to bid for equipment, etc.

Part of the grant from the Federal government is to run these rubber tire vehicles, the electric hybrids, and repair the existing vehicles. Part of the grant is that we will run the vehicles more efficiently. The City is getting vehicles from FIU. We'll have four of the City's vehicles that run, and six of FIU's. People are asking for a shorter trolley.

Herrada said that they are getting shorter vehicles from FIU. If we can get the communication going between the two boards we can get to where everybody wants to be. We are getting communicator types from FIU. There will be ten vehicles the first year. The TMA is a totally different ball game.

This TMA is an experimental not-for-profit corporation putting together the City and FIU. The City turns over its trolley system to the TMA in July. The TMA will be an independent body running the transit system. It has no ties to the City or FIU; it is a not-for-profit agency. The first RFP started before the TMA system. There were only two bidders initially. The TMA

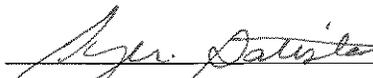
started during negotiations afterwards. The TMA was interested in getting a larger pool of bidders. They've never had a TMA, but they are moving forward.

Conclusion:

The filing of the not-for-profit corporation naming Mayor Lopez, the Mayor's Chief of Staff, Ralph Ventura, and Commissioner Diaz as its corporate officials, was done as part of a plan to form a transit system in the City of Sweetwater. In the first annual report filed after the not-for-profit was formed, all of the previous corporate officials were dismissed and replaced by Transit Management Authority Board members. This was a necessary step in the formation of the TMA.

There is no indication that the decision to create a Florida not-for-profit corporation was done to award it the ITB for Trolley Operations and Maintenance Services, or to benefit any one group or person over another or enrich the elected officials.

(Signature)

 3/21/14
Sylvia Batista, COE Investigator

Approved by:


Michael Murawski, Advocate

 3/18/15
Joseph Centorino, Executive Director