

**MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST**



LETTER OF INSTRUCTION

**To:** Miami-Dade County Internal Services  
Procurement Management

**From:** Miami-Dade County Commission on Ethics and Public Trust

**Re:** Ethics Complaint C13-042

**Date:** May 2014

---

On November 26, 2013, Eston E. Melton III (Melton) filed an Ethics Complaint against an attorney who represented two potential bidders for a Miami-Dade Aviation Department Request for Proposal. The complaint alleged that the attorney sent written correspondence to County personnel pertaining to the bid without registering as a lobbyist, in violation of Section 2-11.1(s), entitled *Lobbying*, of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (the Ordinance).

On April 16, 2014, the Ethics Commission held a probable cause hearing and found that there was insufficient evidence to substantiate the claim of unregistered lobbying and, therefore, no probable cause was found. Consequently, the Ethics Commission dismissed the Complaint and ordered this Letter of Instruction be issued to the Miami-Dade County Procurement Department.

WHEREFORE, the Miami-Dade County Commission on Ethics and Public Trust hereby issues this Letter of Instruction to the Miami-Dade County Procurement Department.

Investigation into the facts of this case revealed the following:

-Sometime around March 2012 and before June 2012, the attorney was hired by bidder A to prepare a response to the Miami-Dade Aviation Department bid, give an oral presentation to the selection committee and negotiate the lease agreement.

-The attorney filled out Appendix D “Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation” on July 2, 2012 (Exhibit A).

-Between April 2013 and October 2013 the attorney authored four (4) letters<sup>1</sup> to County officials regarding the bid. The attorney relied on the language regarding lobbying in Appendix D and in the solicitation document (Exhibit B) and consequently did not separately register as a lobbyist prior to sending the letters.

-The attorney registered to lobby on October 2, 2013, when she was preparing to appear in front of the Board of County Commissioners of behalf of the bidder.

### ANALYSIS

Appendix D states in pertinent part, “[o]ther than for oral presentation, Proposers who wish to address the **county commission, a county board or county committee [emphasis added]** concerning any action, decision or recommendation of county personnel regarding this solicitation MUST register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.”

Section 3.2 of the solicitation document states in pertinent part, “NOTE: Other than for oral presentation, Proposers who wish to address the **county commission, a county board or county committee [emphasis added]** concerning any action, decision or recommendation of county personnel regarding this solicitation MUST register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.”

Section 2-11.1(s) (Lobbying), of the Ordinance, states in pertinent part:

“(b)... ‘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 Commissioner; (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 [emphasis added]** during the time period of the entire decision-making process...”

Both Appendix D and the solicitation document fail to state that communication with **County personnel** regarding the solicitation is considered lobbying. The attorney’s reliance on the erroneous language in those documents was the reason no probable cause was found in the instant complaint.

---

<sup>1</sup> The April 8, 2013 letter was sent to the Miami-Dade Aviation Department Senior Procurement Contract Officer. The June 24, 2013 and August 30, 2013 letters were sent to the Miami-Dade Aviation Director. The October 1, 2013 letter was sent to Miami-Dade County’s Mayor.

We hereby instruct and advise the Miami-Dade Procurement Department to correct both Appendix D and the language in all solicitation documents to accurately reflect the exact language of Sec. 2-11.1(s)(b) of the Ordinance, so as to avoid a similar situation occurring in the future.

**EXHIBIT A**

**APPENDIX D  
AFFIDAVIT OF MIAMI-DADE COUNTY  
LOBBYIST REGISTRATION FOR ORAL PRESENTATION**

(1) Project Title: \_\_\_\_\_ Project No.: \_\_\_\_\_  
 (2) Department: \_\_\_\_\_  
 (3) Firm/Proposer's Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Business Telephone: \_\_\_\_\_

(4) List All Members of the Presentation Team Who Will Be Participating in the Oral Presentation:

NAME	TITLE	EMPLOYED BY	TEL. NO.

(ATTACH ADDITIONAL SHEET IF NECESSARY)

The individuals named above are Registered and the Registration Fee is not required for the Oral Presentation ONLY. 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 must be listed on an affidavit provided by the County. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for additional team members added after submittal of the proposal with the Clerk of the Board at least two (2) days prior to the oral presentation. Any person not listed on the revised affidavit may not participate in the oral presentation.

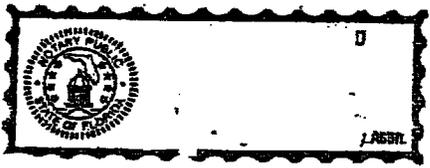
Other than for the oral presentation, Proposers who wish to address the county commission, a county board or county committee concerning any action, decision or recommendation of county personnel regarding this solicitation **MUST** register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 STATE OF \_\_\_\_\_  
 COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is \_\_\_\_\_ (Individual, Officer, Partner or Agent) (Sole Proprietor, Corporation or Partnership) personally known to me or who has produced \_\_\_\_\_ as identification and \_\_\_\_\_ not take an oath.

Signature of person taking acknowledgement: \_\_\_\_\_  
 (Name of Acknowledger typed, printed or stamped)  
 (Title or Rank) \_\_\_\_\_ (Serial Number, if any) \_\_\_\_\_



**EXHIBIT B**

3. Scrutinized Companies for Activities in Sudan List or Iran Petroleum Energy Sector List Affidavit

The Successful Proposer shall submit, as a condition of award, an executed Scrutinized Companies for Activities in Sudan List or Iran Petroleum Energy Sector List Affidavit. By executing this affidavit through a duly authorized representative, the Proposer certifies that the Proposer is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes.

3.2

**LOBBYIST REGISTRATION FOR ORAL PRESENTATION**

In accordance with Section 2-11.1(s) of the Code, the attached Lobbyist Registration for Oral Presentation Affidavit (see Appendix D) must be completed, notarized and included with the proposal submission. Lobbyists specifically include the principal, as well as any employee whose normal scope of employment includes lobbying activities.

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 this affidavit all individuals who may make a presentation. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for any additional team members with the Clerk of the Board at least two (2) days prior to the oral presentation. Any person not listed on the revised affidavit or who is not a registered lobbyist will not be permitted to participate in the oral presentation.

**NOTE:** Other than for the oral presentation, Proposers who wish to address the Board of County Commissioners, or a County board or committee concerning any actions, decisions or recommendations of County personnel regarding this RFP must also register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.

In accordance with 2-11.1(s) of the Code, prior to conducting any lobbying, all principals must file a form with the Clerk of the Board of County Commissioners, signed by the principal or the principal's representative, providing that the lobbyist is authorized to represent the principal. Failure of a principal to file the form required by the preceding sentence may be considered in the evaluation of this Proposal as evidence that a Proposer is not a responsible Proposer.

The County's Ethics Commission has also adopted rules delineating the responsibilities of lobbyists and County personnel in implementing the requirements of the lobbying section of the Conflict of Interest and Code of