



## Miami-Dade Commission on Ethics & Public Trust

### Investigative Report

**Investigator:** Robert Steinback

<b>Case K-13-086</b>	<b>Case Name: RFP 852/Dell</b>	<b>Date Open:</b> May 31, 2013	<b>Date Closed:</b> July 10, 2013
<b>Complainant(s):</b> Beth Goldsmith Miami-Dade County ISD	<b>Subject(s):</b> Julio Campa		

#### Allegation(s):

On May 30, 2013, Dell account representative Dawn Herrera (Herrera) e-mailed Beth Goldsmith (Goldsmith), Procurement Contracting Officer 2, Procurement Management Services for the Miami-Dade County Internal Services Department (ISD). Dell was a direct bidder on County RFP 852 (852), a computer hardware contract. In the e-mail, Herrera stated, "I heard today that Dell did not bid direct on the recent IT Hardware bid #852 for Miami-Dade County. This got me nervous as we did bid direct... Can you please confirm that you all have our direct bid and have reviewed the proposal?" [Emphasis in original message.] The RFP committee review process was under way, and thus the entire exercise was governed by the "cone of silence."

Complainant Goldsmith contacted the Commission on Ethics (COE), concerned that Herrera appeared to have acquired information about the status of the Dell direct bid while the cone of silence was in effect. This investigation was initiated to determine if a cone breach had occurred, and if so, who was responsible for it.

According to Goldsmith, Herrera should not have been in possession of any information regarding the status of the 852 bids, but Herrera's e-mail strongly indicates that she was. Note that the information Herrera had acquired was literally incorrect: Dell had bid direct on the contract, but the contract was rejected by county procurement attorneys as non-responsive. The fact that there was no direct Dell bid before the 10 bid review committee members would have been known only to the committee members and the county's ISD and legal staffs, all of whom are subject to the cone of silence. However, only the county staffers – not the committee members – would know *why* there was no Dell bid under consideration. The relevance of this will be explained presently.

The question is: How did Herrera find out that the Dell bid was not being considered by the

selection committee *before* making her e-mail inquiry to ISD?

**Relevant Ordinances:**

This investigation was initiated to determine if a violation occurred of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance Sec. 2-11.1 (t) Cone of Silence.

**Investigation:**

*Interviews*

Interview with **Dawn Herrera**, Account Executive – Local Government and Education, Large Institutional Sales Department.

Wednesday, June 12, 2013, by telephone

In a brief conversation, this investigator asked Herrera how she had heard that Dell's direct bid was not under consideration by the 852 bid committee. She said that she heard it from a colleague at Dell. She would not reveal that colleague's name, but said that she would ask that person if he would be willing to talk with the COE investigator.

Subsequent to the conversation, Herrera contacted Dell's legal department, prompting a call to COE from Dell staff attorney Sommer Coutu.

Interview with Dell staff attorney **Sommer Coutu**  
Thursday, June 13, 2013, approximately 3:50 p.m. by telephone  
512-728-8072, [sommer\\_coutu@dell.com](mailto:sommer_coutu@dell.com)

Sommer Coutu (Coutu), from Dell Legal department, responding to my call.

Coutu said that Herrera had heard from a colleague at Dell that Dell's bid apparently had not been received. According to Coutu, that colleague had been in contact with a county employee on an unrelated matter, and was asked by that person, "Why didn't Dell submit a bid" directly for the bid in question.

Coutu was cooperative and promised to call back the following day, Friday, and set up a three-way conversation with this other Dell employee during which we presumably will discuss the leak and where it came from.

\* \* \*

Follow up conversation, Friday, June 14, 2013 by telephone.

Coutu identified Herrera's Dell colleague as Greg Kaufman (Kaufman), a sales representative. Coutu described a routine meeting between Kaufman and one of his customers, Julio Campa (Campa), Library Systems Manager for Miami-Dade Public Library. Campa also is a technical (non-voting) member for the RFP 852 bid review committee. Out of the blue, Coutu said, Campa made the comment noted above to Kaufman.

Coutu said Kaufman did not work on the 852 bid, but after his conversation with Campa, told Herrera about the apparent Dell direct non-bid.

Coutu did not facilitate the promised three-way conversation with Kaufman, but said that he would be made available for an interview in Miami with Dell counsel present.

Interview with **Julio Campa**, Library Systems Manager for Miami-Dade Public Library 305-375-5006, in person, 10:45 a.m. June 17, 2013; recorded.

Campa told this investigator that Kaufman approached him during a technical presentation on digital library computer storage systems on May 30, 2013, a session entirely unrelated to RFP 852. “He asked me about the RFP, and I said ‘I am in the cone of silence.’” Campa said Kaufman “asked him specifically” about the 852 bid. Campa himself would contradict this statement before the end of the interview.

Campa could not recall how the mention of RFP 852 came up between him and Kaufman, who was not involved with the 852 bid. Campa said that as a standard procedure, he would tell account reps that he could not discuss anything related to any bid. This investigator told Campa that somehow, Kaufman came away from that contact believing that Dell had not bid directly on 852 – which is the precise misunderstanding that Campa had, because Campa did not know that Dell’s bid was, in fact, received but deemed non-responsive and thus rejected.

Told that Kaufman had testified through Dell attorney Coutu, that he, Campa, had asked Kaufman, “Why didn’t Dell submit a bid?” Campa responded, “That’s not what I said.” Of note, Campa stated as a fact in this interview that “Dell didn’t submit a bid,” meaning a direct bid, clarifying that Dell hardware had been offered by two other companies that bid on 852. [Campa did not know, and apparently still did not know at the moment of this interview, that Dell had, in fact, submitted a direct bid.]

Campa at one point surmised that Kaufman “got scared because he thought they [Dell] had been rejected. But I didn’t say anything about that.” Campa offered no foundation for this assertion.

“I specifically told him that I am in the cone of silence. I cannot say anything about the bid,” Campa said. “I am not on the voting committee but I am on the technical committee and that’s what I said. And he was scared...” Campa repeated his speculation that Kaufman was “scared” to discover that Dell had not bid direct on the 852 contract. Campa’s testimony thus alternates between Kaufman knowing that Dell had bid but been rejected, and Kaufman being “scared” to discover that Dell had not bid.

Note that in any case, it would be an odd circumstance for Kaufman to initiate a conversation about the 852 contract, yet not be aware that Dell had, in fact, submitted a bid. Furthermore, if Kaufman knew Dell had submitted a bid, and given that the bid review process was still underway, he would have had no reason to question why – or even fear that – Dell’s bid had been rejected.

Told that Kaufman came away from the conversation believing that no bid was submitted [which reinforces the notion that Kaufman had no substantive prior knowledge of the 852 bid], Campa said, “I didn’t...I don’t recall that I gave any information saying that it was submitted or not.” The switch to “I don’t recall” is worth noting. Campa goes on to say it would be “stupid” for him to say that Dell didn’t bid because they submitted bids for Dell hardware through two other companies. [This is off the point, since the breached information was the

erroneous belief that Dell had not bid directly.] Clearly, Campa was aware that two other companies, which he named, had submitted bids using Dell equipment, and so it would follow that he could have mistakenly assumed Dell did not bid directly, since he had never seen Dell's direct bid. Campa said again, "I did not say specifically that they were not in the bid process."

Told by this investigator that the Dell bid was, in fact, deemed non-responsive, Campa was momentarily lost for words. He claimed that ISD staffer Santiago Pastoriza, a colleague of Goldsmith, had mentioned something about Dell not wanting to sign some legal documents [this seems at odds with the actual reason the bid was considered non-responsive. See Dep. County Attorney's opinion, in file.]

It was Campa's erroneous notion that Dell had not bid directly on 852 that wended its way back to Herrera, who then asked Goldsmith in ISD about "why the Dell contract had not been received."

Campa repeatedly stated that he could not have known anything about Dell's direct bid because he had not seen a bid from Dell. During the interview, it took several reiterations of the evidence for Campa, in this investigator's opinion, to finally realize that it was the fact that Dell's direct bid had not been seen by the review committee that was the substance of the breach – because Kaufman comes away with the same misinformation that Campa had, which strongly suggests a substantive communication between the two.

Without prompting, Campa started speculating about Kaufman's motives. "He's a sales guy," he said. "He's not the rep from Dell to the county. He's only selling things to us [the library]." Later: "He's a sales guy like any sales guy and that's why he panicked and talked to this person" [meaning Herrera].

Campa also wavered when this investigator pointed out that Campa absolutely must have known that a direct bid from Dell was not among the bids he had seen. He first claimed that he hadn't actually read through all of the documents he had been given by ISD, then said he was aware that Dell wasn't on the list, but that he didn't mention that to Kaufman – who nevertheless comes away with that very belief.

Though Campa said on a number of occasions that he could not remember how the conversation with Kaufman about 852 began, he did eventually affirm, after this investigator pressed the question, that Kaufman did not explicitly approach him and ask about the 852 bid (see recording at 26:30). But then Campa reiterated that he didn't remember exactly how the conversation came up. Also, when asked how Kaufman even knew that Campa was on the 852 review committee, a very long pause ensued. Campa then said, "I don't know how he knew, I have to look and see if I placed any orders with the RFP – a separate order (with the library)." This investigator considers this answer entirely non-responsive.

Campa confirmed that he and Herrera don't know each other, and so she couldn't be how Kaufman knew Campa's committee role [or, alternatively, additional evidence that he couldn't have known.]

After this investigator pressed the point several times, Campa conceded that he must have mentioned that he was on the 852 committee (see recording at 28:50) to Kaufman at some other moment, and possibly also to a Cisco company representative. The explanation for this was convoluted and disjointed, in this investigator's opinion. After several tries, Campa speculated that, at some other point in time, during a discussion with Kaufman, "probably I said I was on the technical committee to prevent that he asks me" anything about the bid the committee was handling. Again, after going around the issue several times, Campa admits that he did say to Kaufman that he was on the technical committee for the 852 contract (see recording at 32:10).

At the 37:30 mark of the recording, Campa says he doesn't remember if he saw that Dell had not bid directly or not – changing his story once again

Interview with **Greg Kaufman**, Dell sales representative, Tuesday, July 2, 2013, 2:55 p.m. in person at COE office. (Also present: attorney for Dell Joe Lawrence, COE Advocate Mike Murawski, and this investigator. Recorded.)

Kaufman stated that on a day he believes was May 30, he was attending a technical presentation at the Miami-Dade library regarding digital storage. He took an open seat next to Campa, with whom he had been acquainted about five years through their mutual interest in computers.

Kaufman: "Julio just said to me, 'Dell no-bid the contract.' I wasn't sure if there was another request for bid from his office. 'What contract?' [I asked.] 'The Miami-Dade contract. . . .' Speaking out loud, I said, 'I wonder if we bidded with a partner?' He said, 'No bid.' And I said, 'I'm going to call Dawn Herrera to see what's going on.'"

Kaufman couldn't recall whether the conversation took place at the table or in the hall. He said no one else would have been privy to the exchange regarding the contract.

Kaufman denies ever bringing up the 852 contract. He said he had had some awareness of it from "a while back," but wasn't thinking about it since it was not in his area of responsibility, and the immediate presentation had nothing to do with 852.

In direct response to this investigator's question, Kaufman said that he did not initiate the conversation regarding 852.

Kaufman said he believes his comment, "I have to ask Dawn about this," was heard by Campa. He said he does not remember Campa expressing any alarm or concern about the fact that he intended to call Herrera about the 852 bid.

Kaufman said he could not speculate on why he believed Campa put forth the comment about the apparent no-bid. "To me it was just a very matter-of-fact [comment]."

Kaufman said that prior to the exchange, he didn't know that Campa was playing any role at all in the 852 bid. He also said Campa did not explain his connection with the 852 bid (i.e., that he was on the committee).

He called Herrera right after leaving the meeting. He believes that he told Herrera that he heard the news from Campa.

This investigator related to Kaufman that Campa had intimated that he, Kaufman had brought up the 852 bid and that he, Campa, had said that he could not discuss the matter because of the cone of silence. Asked if that rang true, Kaufman said, "No sir."

In this investigator's opinion, Kaufman's account was cogent and reasonably precise.

### **Conclusion(s):**

It is evident that Dell large accounts executive Herrera became privy to information about an aspect of an ongoing county bid review process for contract RFP 852, information that filtered out despite the "cone of silence." Herrera knew that someone within the county's bid review process was under the impression that Dell had not bid direct on 852. Knowing of course that Dell had submitted a direct bid, Herrera became alarmed that her company's bid had somehow been sidetracked or lost in transit and thus never reached the county. She sent an e-mail to the ISD department, received by Goldsmith, saying that she "had heard that Dell had not bid" directly, and was trying to determine what had happened to the bid package she knew Dell had sent.

Herrera's information was literally incorrect: Dell's direct bid on 852 had been received, but was subsequently deemed non-responsive by the county's procurement legal staff. But this rejection of Dell's bid would have been unknown to anyone other than the county's legal and ISD bid review staffs; the 10 voting and technical bid review committee members knew only that three responsive bids (none of them directly from Dell) had reached them for consideration. They could not have known if any additional bids ever existed – and could easily have assumed, wrongly, that since they didn't see a bid from a particular company, that the company never submitted one. Some person inside the 852 bid process, seeing no bid from Dell, assumed Dell hadn't bid, and disseminated that information in violation of the cone of silence. Though the assumption that Dell had not bid was wrong, the revelation that no bid from Dell was under consideration was substantive.

Interviews revealed that the information was passed to Herrera from another Dell representative, Kaufman, who in turn heard it from 852 technical committee member Campa. It appears (1) that the only possible transmission route for the breached information was Campa to Kaufman to Herrera, and (2) that no third party was witness to the conversation between the two men, who have offered conflicting accounts of who did and said what.

The accounts do align in one key respect: Both Kaufman and – after a considerable amount of conversational contortion – Campa, agree that Kaufman did not initiate the conversation about 852. This squares with Kaufman’s circumstances: 852 was not his account; he knew close to nothing about it; he encountered Campa during an event entirely unrelated to 852; and, most significantly, he did not know that Campa was even on the technical committee for 852 and would have had no reason to question him about it. In addition, even if Kaufman somehow *was* monitoring the progress of 852, he would have had no reason to assume Dell’s bid had been rejected because the bid review process was still under way, and the fact of the rejection was not hitherto known outside the bid cone of silence.

Kaufman’s account – that Campa, on his own initiative, asked why Dell didn’t bid directly on the county hardware contract (852) seems by far the simplest and most persuasive one. Again, even though Campa’s information was incorrect, it was his incorrect understanding that found its way to Herrera, via Kaufman.

However the conversation between the two men actually unfolded, it seems incontrovertible that Campa was, in fact, the source of the information that reached Herrera. No other possible transmission figures have emerged from this investigation.


Several additional points must be made. No evidence has been uncovered that the cone breach in any way adulterated the bid process. The breach does not appear to have led to any untoward lobbying by Dell or any other person outside the cone. It does not appear that Campa had any conscious intent to befoul the bid process (although it remains an open question why he would make any mention of the 852 bid to Kaufman at all). And ISD’s Goldsmith notes that had Herrera asked about the status of Dell’s bid on her own initiative without being propelled to do so by Kaufman’s revelation, she would have been told what she eventually learned anyway, because ISD is allowed to give bid status updates when asked.

In sum, there appears to have been, in fact a cone of silence breach on the part of Campa, but there is no evidence that it was motivated by nefarious intentions, nor that it resulted in any dire consequences -- in this instance. This should not imply, however, that such a breach of this sort could not have led to dire consequences in a different situation, and thus should not be dismissed as trivial. However, it is the opinion of the COE advocate that the filing of an ethics complaint is not warranted.

In an effort to assure that steps are taken to insure that the Cone of Silence is not violated again in a similar fashion, COE recommended that Campa attend a Procurement training class offered by COE, which included presentations on the Cone of Silence, Government in the Sunshine and Public Records, scheduled for Monday, July 15, 2013. In order to facilitate Campa’s attendance despite short notice, Campa was notified by e-mail of the results of this investigation and of the recommended action.

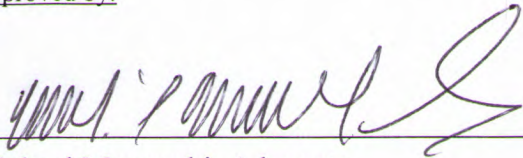
COE has verified that Campa attended the 2 p.m. Procurement training class on July 15, 2013.



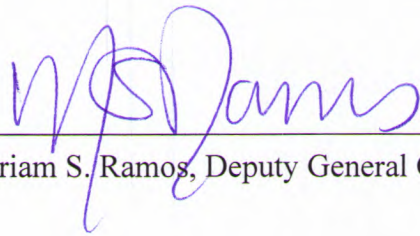


Robert Steinback, COE Investigator

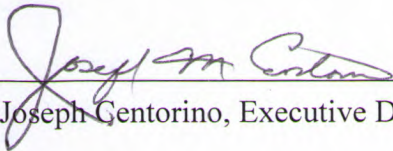
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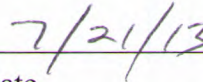
Michael Murawski, Advocate



Miriam S. Ramos, Deputy General Counsel



Joseph Gentorino, Executive Director



Date