

OFFICE OF THE INDEPENDENT ADVOCATE
REPORT OF INVESTIGATION

K #: 07-118

Date Opened:

Date Closed:

Name of investigator: Kennedy Rosario

.....

Allegation:

Personnel of the Miami-Dade County Department of Procurement Management (DPM) violated the Conflict of Interest and Code of Ethics Ordinance as it pertains to the Code of Silence in regards to Infill Housing Developer Pool, RFQ N0. 95.

Background:

Miami-Dade County Administrative Order # 3-44, Infill Housing Initiative (IHI), ordered on January 25, 2007 and effective on February 8, 2007, directs the creation of the Infill Housing Program (IHP).

The IHP encourages the sale or transfer of County owned property to qualified developers. Developers are then required to build affordable homes for sale to low and/or moderate income persons.

The A.O. also directs the creation of the Affordable Housing Review Committee (AHRC) and the Affordable Housing Selection Committee (AHSC).

The AHRC is tasked with compiling a pool of qualified developers via developer submitted proposals.

The AHSC is then tasked with the evaluation and selection of the qualified developers through a competitive process.

RFQ No. 95, Request for Qualifications for Infill Housing Developer Pool, is the vehicle utilized by the DPM to solicit proposals for consideration by the AHRC.

Investigation:

DPM Director Miriam Singer is the complainant for this investigation.

On August 29, 2007 COE Investigators Breno Penichet and Kennedy Rosario met with Director Miriam Singer.

Ms. Singer expressed her concerns that members of her staff may have violated the County Code of Silence in the course of their duties pertaining to the RFQ 95 solicitation process.

DPM normally assigns a Contract Officer to their RFQ's and in this instance that duty was the responsibility of Senior Procurement Contracting Officer Norma S. Armstrong.

Ms. Armstrong's immediate supervisor is DPM Chief Negotiator Andrew Zawoyski.

Ms. Singer briefed the COE investigators as to the RFQ in question as well as personnel background information.

Ms. Singer further stated that the eventual goal of the IHP entailed the usage of County owned "irregular" lots for affordable housing. The lots, once identified and deemed "clean" as to title and environmental concerns, will be utilized via a competitive bid process by private developers to construct and/or make available affordable housing for low /moderate income persons.

A component of RFQ 95 is to have in place a "pool" of qualified, screened developers that can be drawn upon to then submit their proposals to build affordable housing on the irregular lots.

Ms. Singer, prior to this meeting, garnered information indicating that during the first stage of the RFQ and after a pool of twenty five developers had been selected by the AHRC (the individual developers had not as yet been notified) a fax communication from one of the pool developers, namely DFC Homes of Florida Inc., was received by Ms. Armstrong withdrawing their company / proposal from consideration.

Ms. Armstrong informed Mr. Zawoyski of the fax, Mr. Zawoyski soon thereafter instructed Ms. Armstrong to contact DFC Homes apparently to inquire into the reason for their withdrawal.

This communication, via telephone, while the Cone of Silence was in effect, between Ms. Armstrong and DFC Homes is the element of the Cone of Silence violation.

On August 30, 2007 DPM Chief Negotiator Andrew Zawoyski was interviewed by COE Investigators.

Mr. Zawoyski was asked to give an over view of his responsibilities and an accounting of his action material to this investigation.

Mr. Zawoyski acknowledged prior training and knowledge of the County Cone of Silence proviso.

Mr. Zawoyski admitted the in retrospect his actions in directing his subordinate, Ms. Armstrong, to communicate with a prospective vendor, not in writing, and with out duly recording the communication with the Clerk of the Court constituted a Cone of Silence violation.

Mr. Zawoyski agreed to memorialize his actions via a memo to the COE , said memo was received by Investigator Rosario and has been made a part of the investigative case file.

In explaining his actions Mr. Zawoyski wrote:

When I requested that the Employee call the Developer, I did not do so with the “thought” that I would be violating the Cone of Silence.

This is a new program with the County, and the County has a significant need to provide affordable housing to Miami Dade County citizens. I noticed that the Developer scored rather well in the evaluation (the Developer finished second among 56 proposers) and wanted to pursue the opportunity to keep this Developer in consideration. My sole intent was merely to sign on as many qualified responsive and responsible developers into the pool to better the opportunity to provide affordable housing to MDC citizens.

I do not know the Developer as an entity, nor do I know any owner, partner, president or any other officer or employee of the Developer.

I have not and do not stand to gain any economic benefit from my actions.

On September 6, 2007 Procurement Contracting Officer Norma Armstrong was interviewed by COE Investigators.

Ms. Armstrong related her personnel background that let her selection as the Contract Officer for this particular RFQ, one she describes as a “hybrid” in that the compiling of “pool” developers for subsequent inclusion in a competitive bidding process is an “unusual situation”.

Ms. Armstrong acknowledged receipt via fax of the DCF withdrawal communication on or about August 3, 2007.

Ms. Armstrong thought the withdrawal action was also “unusual” and sought guidance from Mr. Zawoyski as to how to handle the matter given that the RFQ required of all the “proposers” to remain in the selection process for a period of 180 days.

Ms. Armstrong was then directed by Mr. Zawoyski to contact DCF Homes simply to ascertain their reason for withdrawal, a task she completed by telephoning DCF Homes President /CEO Kenny M. Davis on or about August 16, 2007.

According to Ms. Armstrong, Mr. Davis’ explanation for the withdrawal was due to the lengthy process the County was engaged in bringing forth the IHP. Mr. Davis, having to let go of his Project Manager for financial reasons, decided to withdraw from the selection process.

Ms. Armstrong stated no other conversation regarding the IHP was had between them. It is to be noted however that Mr. Davis did reinstitute his proposal via a letter dated August 16, 2007 citing ‘after further consideration, we have decided that our application should remain with your office.....’

Ms. Armstrong also agreed to memorialize her actions via memorandum to the COE:

- On August 3rd the County received a fax from DCF Homes of Florida, Inc. requesting to be withdrawn from the pool.

- On approximately August 3rd the Contracting Officer contracted DCF to verify that the fax had come from their firm. DCF confirmed sending the fax. I ceased performing checks on DCF.
- On approximately August 3rd took a copy of the fax from DCF to my supervisor (Andrew Zawoyski) to request guidance.
- Prepared award recommendation memo for the RFQ, noting that DCF has requested to be withdrawn, because all proposers have to be accounted for.
- Forwarded memo for review to my supervisor, in reviewing the memo supervisor noted that there may be questions as to why DCF withdrew. On August 16th my supervisor requested that I call DCF to find out why they had withdrawn.
- I contacted DCF, as requested and spoke to Kenny Davis president of DCF. Mr. Davis advised that he had issues with finances and a Project Manager hired for the pool. Since the RFQ process had taken longer than expected and had not been completed; these were his reasons for withdrawing. The timeline for the project had been an issue. I noted that the process had taken longer than anticipated, but was nearing completion of the evaluation. Mr. Davis also noted that he would reconsider participating in the pool.
- On August 20th I received a letter from DCF requesting to retract the previous notice of withdrawal dated August 3rd. DCF requested to remain in consideration for the subject RFQ.

As noted above, I contacted DCF at the request on my supervisor; it was understandable to me that someone may question why a high ranked proposer (DCF) had withdrawn from the pool, as this is highly visible project in the community and the County government. There was no intention to violate the Cone of Silence.

I do not have any association with DCF Homes of Florida, Inc. in any manner and I will not gain any economic benefit from my actions.

Ms. Armstrong also acknowledged prior training as to the Cone of Silence.

In hindsight the method of communication she engaged in with Mr. Davis as well as a failure to advise the Clerk of the Court while the Cone of Silence was in effect was an error.

On September 14, 2007 DCF President Kenny Davis was interviewed by COE investigators.

Mr. Davis fully explained his reason for his initial withdrawal from the IHP selection process, an explanation that corroborated Ms. Armstrong's account of their conversation, namely his decision to let his Project Manager go.

Mr. Davis has never met Mr. Zawoyski or Ms. Armstrong stating "if they were to walk through that door now I would not know who they are".

Mr. Davis has no social or business association with Mr. Zawoyski or Ms. Davis.

Mr. Davis further stated that his reason for re-entering the selection process was due to his former Project Manager's, Mr. Clemens Fiagome, request for re-employment, a conversation that may have occurred the day before or just prior to Ms. Armstrong's telephone call.

A database search of both Ms. Armstrong and Mr. Zawoyski by the COE produced no business nexus with DCF.

CONCLUSION:

The Cone of Silence proviso of the Miami-Dade County Conflict of Interest and Code Of Ethics Ordinance prohibits "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" while the Cone of Silence is in effect.

The verbal communication between County professional staff and a potential bidder during the Cone of Silence is also prohibited.

It is also to be noted that any communication regarding an RFQ must be reported in writing to the Clerk of the Court.

Clearly the event that warranted this investigation by both Ms. Armstrong and Mr. Zawoyski was a violation of the County's Ethics Ordinance as it relates to the Cone of Silence.

Having said that, their action was neither in malice nor to gain a personal benefit.

Mr. Zawoyski assertion that his actions were only to determine how better to implement this RFQ by obtaining feedback from a potential withdrawn vendor is credible.

It is the recommendation of these investigators that additional training with specific emphasis on the Cone of Silence be given to both the parties involved.

It is also to be noted that given this particular RFQ, described as a "hybrid" and "unusual" be reviewed to ensure that similar RFQs fully address how the DPM can adequately and timely assess its ability to bring forth a product that will meet the stated goals.