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Miami-Dade County Commission on Ethics and Public Trust

Memo

To: Mike Murawski, independent ethics advocate
Cc: Manny Diaz, ethics investigator
From: Karl Ross, ethics investigator
Date: Nov. 14, 2007
Re: K07-097, ABDA/ Allapattah Construction Inc.

Investigative findings: Following the June 11, 2007, release of Audit No. 07-009 by the city of Miami's Office of Independent Auditor General, COE reviewed the report for potential violations of the Miami-Dade ethics ordinance. This review prompted the opening of two ethics cases – one leading to a complaint against Mr. Sergio Rok for an apparent voting conflict – and the second ethics case captioned above involving Allapattah Construction Inc., a for-profit subsidiary of the Allapattah Business Development Authority. At issue is whether executives at ABDA including now Miami City Commissioner Angel Gonzalez improperly awarded a contract to Allapattah Construction in connection with federal affordable housing grants awarded through the city's housing arm, the Department of Community Development.

ABDA is a not-for-profit social services agency, and appeared to pay itself as much as \$196,000 in profit and overhead in connection with the Ralph Plaza I and II projects, according to documents obtained from the auditor general. The city first awarded federal Home Investment Partnership Program (HOME) funds to ABDA on April 15, 1998, in the amount of \$500,000 in connection with Ralph Plaza phase II. On Dec. 17, 2002, the city again awarded federal grant monies to ABDA in the amount of \$730,000 in HOME funds for Ralph Plaza phase II. The city made a third funding allocation of \$815,000 in federal CDBG funds on Dec. 8, 2004. The city's housing audit was only able to partially account for these funds due to a lack of supporting documentation provided by ABDA in connection with the project.

Allapattah Construction Inc. was established in May 2000 to serve as the for-profit development arm of ABDA, according to state department records. Its officers are the same as those serving on ABDA's board of directors, records show. It should be noted that the city previously granted ABDA permission to award a construction contract to Allapattah Construction in a document dated Feb. 12, 2001, and signed jointly by ABDA's then executive director, Angel Gonzalez, and former CD Director Gwen Warren. The document, written by Gonzalez, stated the contract should be awarded to Allapattah Construction "in order to simplify the process and ensure that the work is completed on budget and in time [sic]." Allapattah Construction subsequently hired Delant Construction, an established firm, to complete the project.

The city of Miami audit concluded that the arrangement was inherently conflicted, stating: "Due to the fact that Allapattah Construction Inc. is a wholly owned subsidiary of ABDA, with all of the same officers and directors, ABDA had a direct financial interest in the contract awarded to Allapattah Construction Inc. and benefited accordingly." The audit cites as further evidence of this conflict, a letter dated Oct. 9, 2002, in which ABDA writes the city's Department of Community Development and acknowledges that Allapattah Construction was unable to obtain a construction bond for the Ralph Plaza project "due to the lack of an arm's length transaction." City auditors contend that city officials should not have disbursed funding as a result of this conflict. The audit further states that ABDA violated the U.S. Code of Federal Regulations (CFR), which holds that "... all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of [section] 85.36."

The city's former director of Community Development, Barbara Gomez, disputed many of the above findings in an inter-office memo dated May 8, 2007. Ms. Gomez was subsequently fired by the city manager for alleged mismanagement. In a formal opinion issued by the Miami City Attorney's Office on the same day, the city attorney found that a conflict with federal regulations did occur with regard to ABDA's use of CDBG funds but that a conflict did not occur with regard to ABDA's use of HOME funds. The opinion, prepared by then Assistant City Attorney Gail Dotson, cited differing regulations as they apply to each of the federal funding programs. Dotson, who at that time served on the county's ethics commission, also cited the county's Code of Ethics and Conflict of Interest Ordinance as being "worthy of note," but argued the county's ethics ordinance is superseded by federal regulations.

Conclusions and recommendation: The above summary represents the preliminary findings to date. Direction is sought as to whether 1.) The county's commission on ethics is the proper venue for reviewing ABDA's actions, and if so, whether 2.) Any violation occurred within the three-year statute of limitation for ethics cases, and finally whether 3.) The facts as provided by city auditors provide sufficient basis for an ethics determination, or whether further investigation is required. If further investigation by this agency is deemed appropriate, then it is suggested that ethics staff subpoena bank account records for Allapattah Construction Inc. and ABDA to determine whether ABDA improperly benefited from the seemingly

conflicted arrangement described above. If it is determined that ABDA, a not-for-profit, created a for-profit subsidiary for the sole purpose of diverting federal housing funds then it appears that ABDA's actions could be subject to criminal inquiry. This possibility has already been discussed with the Miami-Dade state attorney's office, and Assistant State Attorney Isis Perez has tentatively agreed to assist.