

OFFICE OF THE INDEPENDENT ADVOCATE
REPORT OF INVESTIGATION

K #:08-046

Date Opened: May 9, 2008

Date Closed: June 25, 2008

Name of investigator: Kennedy Rosario
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Allegation:

Miami-Dade County Department of Procurement Management (DPM), Solid Waste Management (SWM) personnel, and others, violated the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (the Code) as it pertains to Landfill Gas Utilization System (LFGUS) Invitation to Bid # 8578-0/23 (The Bid).

Specifically, a violation of section (t) (a) entitled *Cone of Silence* (COS) is alleged. The COS is defined as a prohibition on “(i) 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 including, but not limited to, the County Manager and his or her staff....”

This investigation was predicated on DPM Director Miriam Singer’s adherence to Miami-Dade County Administrative Order 3-27, General Procedures for Implementation and Administration of the Cone of Silence, part K, “any person who has personal knowledge of a violation of this administrative order shall report such violation to...the Miami-Dade County Ethics Commission.

Background and Investigation:

The issuing department on this solicitation was SWM.

The purpose of this **revenue producing** solicitation was to “establish a contract for the development of landfill gas utilization systems at the North Dade and South Dade Landfills”.

SWM estimated the annual revenue produced from this contract at \$500,000.00.

DPM determined the contract value to be \$1 as it would not incur any cost to the County.

The Invitation to Bid (ITB) was advertised on January 30, 2008, thus the COS went into effect at that time.

DPM Senior Procurement Contracting Agent Km! Ra is the designated contact person for the ITB.

Three bids/proposals were received in response to the solicitation; INGENCO, Ameresco, Inc. and Greenfield Energy, LLC.

On March 6, 2008 Km! Ra requested a legal opinion from Assistant County Attorney Oren Rosenthal as to the responsiveness and responsibility for both Ameresco and Greenfield Energy.

On March 10, 2008 A.C.A. Rosenthal rendered his opinion.

On March 28, 2008 DPM staff signed and posted the recommendation to award the solicitation.

DPM, under delegation of authority, can award competitive contracts valued up to \$500,000.00.

In a March 28, 2008 memorandum INGENCO was awarded the contract, Ameresco was deemed non-responsive and Greenfield was deemed non-responsive and non-responsive. Also noted in this March 28, 2008 memo was the following “[this memo] also serves to confirm the lifting of the Cone of Silence....”

No protests by Ameresco and Greenfield with in the three day posting period were received by DPM.

Subsequent to the lifting of the COS, Alexander P. Heckler (Heckler), an attorney with the law firm of Shutts & Bowen and a registered lobbyist for Ameresco, initiated communication “with County staff”. According to Heckler, “I had communications with County staff about the LFGUS procurement, including a meeting at the Department of Solid Waste on or about April 11, 2008.

SWM Deputy Director Chris Rose stated that he had a telephone conversation with Heckler, post March 28, 2008, followed by a brief conversation at a BCC meeting that eventually resulted in an April 11, 2008 meeting at SWM, in attendance were SWM Director Kathleen Woods-Richardson, SWM Deputy Director Chris Rose, SWM Assistant Director Asok Ganguli, SWM Administrative Officer Robert Menge and DPM Supervisor Mark Ripley, who attended at the behest of DPM Director Miriam Singer.. The agenda / purpose of the meeting were to hear Heckler's concerns regarding the decision to award INGESCO the contract.

According to Rose, Heckler's presentation did not alter / or change the decision to award the contract to INGESCO.

On May 13, 2008 Km! Ra, on advice of the Office of the County Attorney, released a memorandum to all interested parties rescinding the original recommendation to award the contract. The memorandum explains "the contract requires award by the Board of County Commissions. This revenue-generating contract has estimated annual revenue of \$500,000.00 with a contract term of 15 years. The estimated total revenue is \$7,500,000.00".

The May 13, 2008 memorandum re-instituted the COS "until the County Manager signs the recommendation to award".

DPM Director Miriam Singer, in a written response to the COE, explained:

On March 28, 2008, DPM staff signed and posted the recommendation to award the referenced solicitation to INGENCO, the responsive, responsible bidder offering the highest revenue to the County. After the three day posting period, no protests were received. Solid Waste staff invited DPM to an April 11, 2008 meeting with Mr. Heckler to hear his concerns regarding the award decision. I asked DPM Supervisor Mark Ripley to attend the meeting on my behalf. This meeting was not advertised as we were all under the impression that the Cone was off. Staff from both departments heard

Heckler's concerns. There were no changes to the recommendation to award following the meeting.

The recommendation to award was signed in DPM through an unintentional error as staff believed that the value of the contract was \$500,000 for the initial one year term. DPM has authority to award competitive contracts valued up to \$500,000 through delegation of authority. This award action was made in error as the initial contract term was actually 17 years and not one year. The value of this revenue contract is \$7.5 million, with no revenue to the county for the first two "build out" years, and \$500,000 in projected revenue, per year, in years three through seventeen. The error came to my attention when the referenced Ameresco representatives asked me when the award would be going to the Board for approval. I advised them that I thought the item was already awarded since I had been briefed by my staff that the protest period had passed and no protests were received. When I returned to my office that same day, I asked staff to show me the contract file in order to verify that the award was properly made under the DPM authority. Upon review of the file, I determined that the award was erroneously approved. Because the contract was valued over \$1 million, the item should have traveled to the County Manager's Office for approval to post the recommendation to award prior to posting with the Clerk of the Board. In addition, because of its actual value, the award of the contract must go to Committee and Board for approval. I immediately contacted the County Attorney's Office, and following consultation with Oren Rosenthal, on May 13, 2008, we rescinded the award recommendation. The rescission was issued to ensure all parties were notified that the Cone of Silence was on until the Manager signs an award recommendation, and to advise the participants in the competitive process that the recommendation would be forwarded for Board approval.

CONCLUSION:

The error occurred in the initial determination by DPM of this contract's value; the annual estimated revenue of \$500,000.00 as opposed to the estimated \$7,500,000.00 revenue generating value for the life of the contract.

DPM has in place a review procedure for solicitations (ITB) prior to their advertisement and once again prior to the awarding of the contract. This review procedure begins with the Procurement Contracting Agent (Km! Ra), his immediate Supervisor (Mark Ripley), Project Manager (Alicia Lafarga), and Division Director (Amos Roundtree) and DPM Director (Miriam Singer). However, this contract was not reviewed by Miriam Singer.

This review obviously failed to adequately determine the true value of this contract. The method in which the contract was awarded appears properly done. This error in the true contract value caused a breach in the COS; however, it is clear that the violation was inadvertent and unintentional, thus, no ethics complaint should issue.