

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

K #: K11-107

Date Opened: 8/10/11

Date Closed: 9/19/11

Name of Investigator: Manuel W. Diaz

A COE investigator uncovered information suggesting that the Mayor of the Town of Miami Lakes (Town), Michael Pizzi (Pizzi), may have violated Sec.2-11.1(t)(a) of the Miami Dade County Code, the Cone of Silence; when he served on an RFP evaluation and selection committee for a professional services agreement for the Town.

Applicable Legislation:

(a) "Cone of Silence" is hereby defined to mean a prohibition on: "(ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff;"

(b) *Procedure.*

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Manager or his or her designee shall provide for public notice of the Cone of Silence. The County Manager shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance. (ii) The Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be reimposed until such time as the Manager makes a subsequent written recommendation.

Background and Investigation:

Town of Miami Lakes RFP No. 2010-07

On November 16, 2010, the Town issued RFP No. 2010-07 for State Lobbyist Services (RFP). The closing date for the RFP was December 1, 2010.

At a special called meeting of the Town Council on December 14, 2010, Pizzi recommended to the Council that they approve the award of the RFP to The Fuentes Consulting Group (Fuentes).

Special Town Meeting, December 16, 2010

Summary of the discussion of the RFP award recommendation

During the meeting, Pizzi advised the council that he was involved in the selection process for the RFP. He advised of the selection criteria used by the committee. Pizzi discussed, in general terms, the cost to the Town of having a lobbyist in Tallahassee. He also clarified that he had discussed this cost with Alex Rey (Rey), the Town Manager.

At 7:20 mins. into the meeting, Pizzi advised again that he had discussed the fiscal impact with Rey and staff and had determined that funding is not available in the budget to fund two of the vendor proposals.

At 9:58 mins. into the meeting, Pizzi reiterated to the Council that he sat on the selection panel with staff members Rey and Tony Lopez (Lopez).

After a presentation by two of the vendors, Pizzi made a motion to award the contract to Fuentes. His recommendation was followed by a discussion by the Council. During the discussion, Pizzi's actions were criticized by some council members. They generally felt that even though the bidders made a presentation before them that Pizzi had additional information due to his being part of the selection committee. One Councilman referred to the process as "extraordinarily flawed." After the critique, Pizzi advised the Council that he would withdraw

the motion to award to Fuentes and make a new motion to defer the decision to award the RFP until January.

Special Town Meeting January 6, 2011

Summary of the discussion of the RFP award to Franco Governmental Relations Inc.

Pizzi deferred the State Lobbyist RFP to Rey. Rey announced that he had decided to waive the competitive bid process for the RFP. Rey recommended that the Council approve an amendment to an existing contract with Franco, an existing Town vendor. He explained that this would be “for the better of the Town.” A motion was read into the record waiving the competitive bid process and amending the contract with existing Town vendor Franco for expenditure of up to \$34,000.00. The Council voted in favor of the motion.

Interview:

Alex Rey, Town Manger, Town of Miami Lakes

Rey was interviewed on April 11, 2011 in his office. Rey provided a copy of a committee report memo to the Council. He advised that he prepared the recommendation to the Council for the Mayor.

When asked why Pizzi authored the memorandum to the council, Rey responded by citing the Town Charter, Article II. TOWN COUNCIL; MAYOR, Section 2.2 Mayor and Vice –Mayor (a) (v). According to Rey, the Article provides for the Mayor not the City Manger present such legislative items to the Council. Rey provided a copy of the Article. Section (a)(v) reads, “[t]he Mayor shall be the official designated to represent the Town in all dealings with other governmental entities.”

During the interview, Rey also clarified the authority of the Mayor to call a “Special Meeting.” Rey cited Article IV. LEGISLATIVE, Section 4.1 Council Meeting Procedure (a) Meetings, “[t]he Council shall hold at least 11 regular monthly meetings in each calendar year, at such times and places as the Council may prescribe. Special meetings may me held on the call of the Mayor or upon the call of four Councilmember’s upon no less that 48 hours notice to the

public or such shorter time as a majority of the Council feels necessary in case of an emergency affecting life, health property or public peace.”

Interview:

Tony Lopez, Director of Community and Leisure Services, Town of Miami Lakes

Lopez was subpoenaed and appeared on July, 14, 2011. He was represented by Jonathan Pasqual, Gonzalo Dorta, P.A. Gonzalo Dorta was present via telephone speakerphone. Also present was Michel Murawski, COE Advocate. The interview was recorded.

Lopez advised that he was the bid administrator for the RFP. He confirmed that he attended the Council meeting where the award of the RFP was discussed.

Lopez advised that Rey chose the members of the selection committee. The three members of the selection committee were Pizzi, Rey and himself. It was Rey’s decision to involve Pizzi in the selection process. Lopez advised that the members reviewed the RFP responses independently. He and Rey completed evaluation sheets, which were transmitted to Pizzi. He does not know if Pizzi completed a vendor evaluation sheet. Lopez advised that the selection of Fuentes was unanimous. According to Lopez, Pizzi’s staff prepared the written recommendation to be presented to the Council.

Lopez advised that Mitch Bierman, Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., was the Town Attorney during the RFP process. Lopez recalled discussing the matter of Pizzi making the recommendation to the Council with Rey. Rey told him that this had been done in the past, because the Mayor was the Town liaison in legislative matters. Lopez was not consulted concerning the makeup of the selection committee. Attorney Bierman was contacted. He did not recall ever discussing Pizzi’s presence on the committee with staff. In a subsequent communication however, Bierman recalled that Rey had advised him that it had been the Town’s practice in the past for the manager to make his recommendation to the mayor and for the mayor to present it to council. Bierman opined that the Town’s practice in this regard was not in conflict with the Charter.

Investigation revealed that in 2007 a similar procedure was followed in the RFP for lobbyist services. The mayor at that time, Wayne Slaton, served on the selection committee.

The following public records were obtained and made part of the investigative file:

1. December 8, 2010 Lopez sent a memo Rey advising Rey, that the committee for State Lobbying Services RFP# 2010-07 had evaluated the proposals and selected Fuentes as the highest ranked and most responsible proposer.
2. On December 14, 2010, Pizzi proposed to the Council that they approve a contract with Fuentes to conduct State Lobbying Services for the Town. In a memorandum Pizzi referred to Fuentes lowest priced proposal to the Town of \$20,000.00 versus a cost of \$90,000.00 for the highest proposer (Strategic Services).
3. On January 4, 2011, Pizzi advised the Council that, “after further review and discussion with the administrative staff,” he was rescinding his December 14, 2010 recommendation for the award of the RFP to Fuentes.
4. On January 4, 2011, Rey recommended that the Council approve an amendment to an existing agreement the Town had with Omar Franco Government Relations, Inc, (Franco), to include state lobbying services. Franco provides federal lobbying services to the Town. In the memorandum, Rey refers to Pizzi’s memorandum to the Council written on January 4, 2011, quoting Pizzi: “Based upon my revised recommendation memorandum issued on January 4, 2011, the Town Manger has decided to reject the Request for Proposal”.

Chronology RFP 2010-07

RFP issued	November 16, 2010
Closing Date	December 1, 2010

Selection Committee Meeting	December 7, 2010
Selection Memorandum to the Manager	December 8, 2010
Selection Memorandum from the Mayor to Council (Fuentes)	December 14, 2010
Special Meeting of the Town Council	December 16, 2010
(vendor selection deferred to Special Town meeting in Jan. 2011)	
Pizzi's Memorandum to Council Rey to waive competitive bidding)	
	January 4, 2011
Rey's memorandum to Council (waive competitive bidding and amend an existing contract)	
	January 4, 2011
Special Meeting of Town vote to amend Franco contract	January 6, 2011

Review and Analysis:

This investigation was predicated on information uncovered that the Mayor of Miami Lakes, Michael Pizzi, served on a selection committee for the Town's procurement of lobbyist services. It is highly unusual in Miami-Dade County for an elected official to serve on a selection committee for the procurement of goods and/or services. The Town of Miami Lakes has a Cone of Silence ordinance. The Cone of Silence is intended to limit the influence of elected officials on the procurement process. It generally restricts communication concerning the RFP between elected officials and members of the selection committee and between elected officials and the Town manager. The Town maintains that it followed a similar procedure in the past, with another RFP for lobbyist services however, there seems to be little, if any, notification to bidders that the procurement for lobbyist services was being performed differently than usual in this circumstance. Indeed, the RFP itself is replete with references to the fact that the Cone of Silence applied to this solicitation. In fact, one of the bidders commented at the December 16, 2010 council meeting that the process surrounding this RFP was "unusual." This sentiment was

echoed by at least one of the Council members who felt that the Mayor, because of his purported, active involvement in the procurement process, knew more about the bidders than the rest of the Council. The Town's reliance on an exceedingly broad, undocumented interpretation of a specific Charter provision is questionable. The Charter provision in question states: "The Mayor shall be the official designated to represent the town in all dealings with other governmental entities." While it may not be an entirely unreasonable stretch to interpret that provision to mean that the Mayor should serve on the selection committee for lobbyist services, it certainly pushes the boundary of creative interpretation. Furthermore, the Town could not provide any ruling, opinion, writing or document from its Town attorney supporting the interpretation. In fairness to the Town, Miami-Dade County has itself treated the procurement of lobbyist services differently than the normal procurement for goods and/or services. The County, by resolution, exempted these specific types of RFP's from the Cone of Silence provision thus allowing more participation by the elected officials in the process.

Unfortunately, the Town of Miami Lakes did not pass such a resolution. Instead, they seem to have adopted an informal, undocumented procedure that seeks to accomplish the same goal. The RFP issued in this case did in fact contain language that the Cone of Silence applied to this procurement. In effect, the Town was playing by one set of rules (i.e. no Cone of Silence) while the bidders were being put on notice that the Cone of Silence applied. Moreover, the reputed benefit to the Town by interpreting the Charter in such a fashion seems negligible at best. Purportedly, the reason for having the Mayor on the selection committee was to have him, rather than the Manager, make the recommendation to the Council. In practice however, the recommendation came from the Manager to the Mayor who then transmitted it to the Council. This occurred at the special called meeting on December 16, 2010. At the following meeting and

after the matter was deferred, all pretense of having the Mayor present to the Council seemed to have been forgotten and the Manager made the recommendation. It begs the question as to what was the point of having Pizzi supposedly sit on the selection committee in the first place.

Pizzi's proposed initial award was to Fuentes. The subsequent award of the lobbyist services contract, recommended by Town Manager Rey, was to Omar Franco through an amendment of Franco's existing contract with the Town. It was subsequently discovered that the Fuentes web site lists Omar Franco as an associate of the Fuentes Consulting Group. Curiously, Pizzi went out of his way to explain at the December 16 special called meeting that his recommendation of Fuentes was impartial; that Fuentes had not supported Pizzi's election for mayor. Yet, through the machinations of a procurement process referred to by a Town Councilman as "extraordinarily flawed" and based on an unsubstantiated, torturous interpretation of a Charter provision, it appears that even though the RFP was awarded to Franco, Fuentes still may have benefited from the contract.

This investigation is not able to conclude however, that the RFP in question was handled in a purposely nefarious manner. Evidence supports that there was, in fact, a previous RFP handled in a similar matter. What is clear from this inquiry is that the Town should formally adopt a policy, procedure or resolution that puts the public as well as prospective bidders on notice that RFP's for lobbyist services will be conducted in a manner different from other RFP's. The RFP issued in this instance specifically referenced the Cone of Silence and no doubt led bidders to believe that the protections to the procurement process afforded by the Cone of Silence applied in this instance. The Town should consider the efficacy of formalizing this exception for lobbyist services RFP's. It seems extraneous to depart from the normal RFP procedure for the sole, ceremonial purpose of having the Mayor present the recommendation to

the Council instead of the Manager. In closing, it should be noted that Mayor Pizzi was invited on several occasions, through his attorney, to offer his insight and comment on this inquiry but failed to respond by the October 1, 2012 deadline.