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Miami-Dade County Commission on Ethics and Public Trust

Memo

To: File

From: Karl Ross, ethics investigator

Date: July 15, 2011

Re: K11-051 BioResponse Corp.

Background: On or about March 2011, COE opened an inquiry at the request of Walter Phillbrick, president of International Protective Services Inc. (IPS), a bio-hazard clean-up and decontamination service that previously held contracts with Miami-Dade County, Miami Beach and Miami. Mr. Phillbrick alleged that he had had his contracts "stolen" from him by a competitor, BioResponse Corp., and he provided records obtained from the City of Miami Beach to substantiate his claim.

Findings: COE shared Mr. Phillbrick's concerns with the Miami Beach Police Department Internal Affairs Office and with the director of the city's Procurement Department, Gus Lopez. Internal Affairs declined to participate in the investigation; however, Mr. Lopez did examine the information submitted by Mr. Phillbrick and, based on this review and additional inquiry, was able to determine that the awarding of work to BioResponse by the Police Department on a trial basis in 2007 and 2008 did not follow due procedure. As a result, Mr. Lopez advised that he was going to rescind whatever contract or agreement was in place and re-issue an RFP through the city's procurement office to ensure that the contract is fairly awarded. Mr. Lopez also stated that he would investigate allegations that BioResponse overbilled the city for services provided through what was described as "out of agreement" rates. He said the city would seek to recover any funds it might be entitled to, as well.

COE did speak to a former Miami Beach police budget analyst, Bill Gonzalez, who advised that, based on his recollection, the work was assigned to BioResponse instead of incumbent firm IPS mainly a result of performance issues. He said

BioResponse replaced IPS because "the cops were happy" with the job the firm was doing and because of savings he contended the department was receiving. He said he had no reason to suspect that his predecessor, Ingrid Carries, displayed favoritism or gave preferential treatment to BioResponse. (He advised that Carries left the department and returned to her home town of New Orleans.)

COE also spoke to procurement officials involved in awarding similar contracts once held by IPS in the city of Miami and Miami-Dade County. Miami's senior procurement specialist, Terry Byrnes, advised that the city's contract was properly awarded and that BioResponse simply underbid IPS by \$1 per incident. "That's the way the bids came in. That's the way I awarded them." He further advised that the bids are "locked down" electronically and cannot be opened until the pre-specified bid opening time. He said he personally oversaw the contract award. He noted that the scope of services for the contract had been expanded following discussions by end-users with the police and fire departments. He did say that the contract for decontamination services was awarded on a "combined basis," meaning that user departments were free to select either BioResponse or IPS to provide services. He agreed that IPS's rates are favorable to those submitted by BioResponse for certain types of jobs, and added that given the city's budgetary crisis and the scarcity of funds, end-users would be well-advised to use whichever company offers a lower rate.

Lastly, COE contacted Miami-Dade Procurement Director Miriam Singer, who referred COE to Aylin Borrego, the procurement officer in charge of the contract presently held by BioResponse. Borrego advised that the contract was first awarded to BioResponse in September 2006 and that IPS, the incumbent vendor, did not submit a bid. She advised that the contract is now in its final renewal phase, and that it will be coming up for bid again in March of 2012. She said, in fact, that she is currently preparing a bid so that the contract can be awarded in a timely manner. With respect to the circumstances surrounding the 2006 contract award (EPP #6035) to BioResponse, she noted that IPS did claim it was not properly notified about the bid and therefore was deprived of an opportunity to maintain its contract. She said that IPS filed a bid protest and that the protest was heard before the County Commission on Feb. 20, 2007 (agenda item 801A), but that commissioners rejected the protest and awarded the contract to BioResponse (Resolution #176-07).

Conclusion: Based on the inquiry conducted by COE, it does appear that any work or agreement awarded to BioResponse by Miami Beach police officials was inconsistent with the city's procurement rules. The city's procurement director has advised the city will take appropriate action by re-issuing the contract through the procurement office – as opposed to the user department – and efforts will be made to recoup any taxpayer monies lost through overbilling. The COE inquiry did not find similar irregularities in either Miami-Dade County or Miami, except as noted by the county's procurement officer that a bid protest was filed by IPS contending the firm was not notified at the time the contract was re-bid in 2006. She further advised that this matter was submitted before the Miami-Dade County Commission and that IPS was accorded due process, under the county's procedures for handling bid protests.

It should further be noted that any violations of the Miami-Dade County ethics ordinance – i.e. unregistered lobbying, exploitation – could not be addressed at this time because any alleged misconduct would have occurred more than three years ago and, as a result, could not be subject to a formal complaint. Accordingly, this case is being closed at the direction of the Ethics Advocate and COE will continue to monitor any new developments that may be brought to its attention.

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