

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



REPORT OF INVESTIGATION

K #: 12-072

Date Opened: 4/17/12

Date Closed: 5/10/12

Name of Investigator: Manuel W. Diaz

Allegation:

Hector Mirabile (Mirabile), City Manager of the City of South Miami (SM), Florida, filed COE Complaint C12-25 alleging that Commissioner Bob Welsh (Welsh) contacted a SM vendor during a "Cone of Silence" (Cone) period in violation of Miami-Dade County Conflict of Interest and Code of Ethics Ordinance

Historical:

SM issued a Request for Proposals for Design/Build of Murray Park Community Pool (RFP) on August 9, 2010. The return date for the proposals was September 3, 2010. Mirabile made his recommendation to the SM Commission at the meeting of April 17, 2012. (A copy of the audio of the recommendation has been made part of the file.)

Applicable Legislation:

Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, Sec. 211-1.1 of the Miami Dade County Code:

(t) Cone of Silence.

(a) "Cone of Silence" is hereby defined to mean a prohibition on:

(v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; ...

Investigation:

COE Complaint:

As the basis for his complaint, Mirabile provided an email from the SM Purchasing Manager which is dated April 10, 2012. The email advises Mirabile of the following:

1. On April 4, 2012, SM Central Services received a telephone call from Di Pompeo Construction (DPC), one of the responders to the RFP, advising that Welsh had contacted a DPC sub-consultant, Aquadynamics Design Group (ADG) concerning the RFP.
2. On April 5, 2012, SM Central Services contacted ADG and confirmed that Welsh had contacted them and wanted input on a pool design.
3. On April 9, 2012, at a SM Community Redevelopment Authority (CRA) meeting, Welsh introduced a letter prepared by Corzo, Castella, Caraballo, Thompson, Salman, P.A., on behalf of an employee of C3TS. C3TS is an architecture and design firm that also responded to the RFP and submitted a proposal for a pool design. The letter from the C3TS employee is listed as #8 in the Mirabile COE Complaint. (Copy in file)

Interviews:

Steven P. Kulick (Kulick), SM Purchasing Manager

Kulick was interviewed at SM City Hall. He advised that he had been contacted by John Di Pompeo (Di Pompeo) of DPC. Di Pompeo advised that Welsh had contacted John Waller (Waller) from ADG, a member of the Di Pompeo Design/Build services team, to discuss the cost of an engineering study for a pool.

Kulick provided copies of the SM Bid Opening Reports (BOR) for the RFP. According to Kulick, there were two BOR's; September 17, 2010 and November 4, 2010. The September 17th, BOR reflected bids made by four (4) respondents to the RFP. After the initial bid was opened, SM reduced the funding available and the four (4) respondents were asked to submit new bid costs reflecting the new available balance. For the November 4, 2010 BOR, only two (2) bidders responded DPC and Recreational Design and Construction, Inc. (RD&C).

John Di Pompeo, DPC

Di Pompeo was contacted on April 21, 2012. He confirmed that Waller had contacted him to discuss his (Waller's) contact with Welsh. Di Pompeo advised that Welsh never contacted him.

John Waller, ADG

Waller was contacted on April 22, 2012. He advised that Welsh had initially contacted him via email to request information concerning an engineering fee for a pool. Waller did not respond. Shortly after Welsh sent the e-mail, he called ADG and asked to speak to Waller. Again, Waller did not respond. The day after the call Welsh went to ADG and personally contacted Waller. Welsh never advised Waller that he was a SM Councilman. According to Waller, Welsh advised him that he was referred to ADG by a friend who owned a pool company, Star Pools. Welsh showed him a hand drawn diagram of the pool referred to in the RFP and requested a price for the engineering fee (engineering study). Welsh did not advise Waller how he obtained the diagram. Waller advised that Welsh did not have sufficient information on the diagram to provide a cost.

According to Waller, ADG is a subcontractor to both DPC and RD& C.

Eddie Lamas, Associate Director of Architecture, C3TS

Lamas was interviewed via telephone on April 24, 2012. He advised that Welsh contacted him sometime in early April and asked about C3TS's bid proposal. Lamas confirmed that he (Lamas) and Welsh discussed a previous C3TS agreement to reduce the C3TS bid by changing the engineering scope of services. Welsh advised Lamas that he was not able to find a copy of the agreement by researching the files maintained by SM. After the meeting, Lamas emailed Welsh a copy. (Previously referred to as #8 in the Mirabile COE Complaint. Lamas confirmed that C3TS was a sub-contractor for Link Construction Inc. (Link) in the RFP response.

Robert Welsh, Commissioner, City of South Miami, Florida

On April 27, 2012, Welsh made an unannounced visit to the COE and met with COE Advocate Michael Murawski. During the meeting, Welsh confirmed that he had contacted Waller and explained that he had the plans before being elected and called to see if they could be used. Welsh was also furnished with a copy of the complaint.

Welsh was contacted by this writer and asked for a date and time where he could be interviewed. He advised that he would need to contact an attorney prior to making any statement to the COE.

Mark Goldstein, Esq. contacted the COE via email and advised that is representing Welsh. Goldstein was given until Wednesday May 9, 2012, by the COE Deputy General Council to make a determination as to whether Welsh would give a statement. As of the date, Goldstein had not responded to the COE.

E-mail:

In an e-mail from Welsh to Murawski dated April 23, 2012, Welsh requested information concerning the Mirabile COE complaint and advised that he (Welsh) had contacted Eddie Lamas (Lamas) at C3TS for information. (Copy in file)

RFP issued	Bids Opened (2)	Manager Recommendation to Commission
August 9, 2010	Sept 17, & Nov. 4, 2010	April 17, 2012
"Cone" in effect		"Cone" lifted

Summary of Facts:

1. Mirabile filed a COE Complaint against Welsh, alleging that he contacted a RFP respondent in violation of Sec. 2-11.1(t) of the Miami-Dade County Code, Cone of Silence.
2. SM issued a Request for Proposals for Design/Build of Murray Park Community Pool RFP No. SM-PW2010-10 (RFP) in 2010.
3. The return date for proposals was September 3, 2010.
4. There were two Bid Opening Reports for the RFP.
 - a. September 17, 2012: CMGC/Portland In Association with M.C. Harry Associates.
 - b. November 4, 2010: Di Pompeo Construction, Link Construction, Recreational Design and Construction, Inc.
5. The process was delayed by SM until Mirabile's recommendation to the City Commission on April 17, 2012.
6. Early in April 2012, Welsh contacted Lamas from C3TS a subcontractor for Link Construction. The "Cone" was still in effect at the time of the contact.
7. Early in April 2012, Welsh contacted Waller from Aquadynamics, a subcontractor for both Di Pompeo Construction and Recreational Design and Construction Inc. The "Cone" was in effect at the time of the contact.
8. Welsh was not interviewed.
8. An Attorney, representing Welsh was given the opportunity to present his client

for an interview with the COE. The Attorney did not respond.

CONCLUSION

Case closed and submitted to Advocate for PC determination.