



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Robert Steinback

Case No.: K13-103/ C13-018	Case Name: Melton v. Bierman	Date Open:	Date Closed:
Complainant(s): Eston "Dusty" Melton III	Subject(s): Mitchell A. Bierman	8/1/13	8/16/13

Allegation(s):

Complainant Eston "Dusty" Melton (Melton) argues that the subject, Mitchell A. Bierman (Bierman) engaged in lobbying related to Miami-Dade County's ITB MDAD 04-12 Automated People Mover contract without being properly registered with the county as a lobbyist for that particular client and project bidder, Mitsubishi Heavy Industries America (MHIA).

Relevant Ordinances:

Complainant alleges a violation for the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance Sec. 2-11.1 (s) 2: *All lobbyists shall register with the Clerk of the Board of County Commissioners within five (5) days of being retained as a lobbyist or before engaging in any lobbying activities, whichever shall come first...* "

Investigation:

Interviews

Friday, August 2, 2013 – Telephone conversation with **Melton**, with COE Investigator Larry Lebowitz present.

Complainant Melton described for the COE investigators the sequence of events related to the MDAD 04-12 Invitation to Bid (ITB), a contract to build an Automated People Mover system at Miami International Airport.

Melton explained that the Miami-Dade Aviation Department (MDAD) received three bids by the March 1, 2013, deadline. A consortium headed by the Beauchamp Construction Co. (Beauchamp), submitted the lowest bid, approximately \$75.9 million. Melton is a consultant for Beauchamp. The second-lowest bid was submitted by MHIA, at approximately \$84.9 million. In an ITB, the county is obliged to take the lowest responsive bid.

Through the efforts of lawyers Stuart Sobel (see related case K13-104) and Bierman, MHIA challenged aspects of the Beauchamp bid, arguing that the latter's bid should be deemed non-responsive. Specifically, Sobel addressed two letters to MDAD administrators, one on June 7, 2013, and the other on June 25, 2013. Bierman addressed a letter to administrators on July 25, 2013. All three letters explicitly argued against the county's acceptance of the Beauchamp bid. Melton provided copies of the letters, which are in the file. Bierman's letter was stamped 'received' by the MDAD director's office the same day, July 25, 2013.

Melton also provided copies of Bierman's Miami-Dade County Lobbyist Activation Authorization, and his Joint Contingency Fee Affidavit, both required for registration as a lobbyist. The first document, representing the moment MHIA authorized Bierman to lobby for this project, was signed July 24, 2013, and stamped 'received' by the Miami-Dade County Clerk of the Board on July 29, 2013.

The second document was signed by MHIA principal Dann Friedman and notarized on July 24, 2013. It was 'signed' by Mitchell A. Bierman and notarized on July 29, 2013. (Bierman later admitted in conversation with this investigator that he did not actually sign this document, and that his secretary signed it, and that he was in fact in New York when the document was created and submitted. The signature on this document clearly does not match the signature on Bierman's letter, nevertheless, the signature is notarized.)

Tuesday, August 6, 2013 –Meeting at the office of **Keith Knowles**, Senior Miami-Dade County Commission Clerk (Knowles), and Claude Francis, Miami-Dade County Commission Clerk III and Lobbyist Registrar (Francis). COE Investigator Lebowitz was also in attendance.

Knowles and Francis verified that the proper date of lobbyist registration would be the date the application documents were stamped ‘received’ by the Clerk of the Board’s office, and not the date the document was signed. So, July 29, 2013 would be the effective registration date for Bierman. Knowles and Francis also verified that the copies of Bierman’s lobbyist registration forms submitted to COE by Melton are authentic.

Tuesday, Aug. 13, 2013 – Telephone conversation with **Bierman**. Bierman stated that he believed that he was not in violation of lobbyist ordinances because he was acting as an attorney representing his client before county administrators. At the same time, Bierman acknowledged the facts of the case and essentially conceded that if his July 25, 2013, letter were to be regarded as an act of lobbying, he could not contest those facts.

“I think that my letter and Stu’s [Sobel’s] letters are letters from lawyers to people at the county. Letters from lawyers are not necessarily lobbying. I could write a cease and desist letter [for example]. ... that’s not lobbying.”

Bierman acknowledged that he has had substantial experience as a lobbyist in Miami-Dade County and in fact intended all along to register for this client. He explained that part of the immediate problem was that he was in New York at the moment his lobbying documents needed to be filed. “I intended to look to register I didn’t sign the letter, my secretary signed it for me.” He acknowledged, “To the extent that I do need to register before sending a legal type of letter. I did register late.” He called it a “de minimus violation, which doesn’t undermine the purpose” of the lobbying registration requirement. He said that “Dusty Melton intended to exploit” what Bierman described as a minor infraction.

Bierman described his letter as simply “a head’s up that we’re going to protest, that we’re going to do something about it [the bid results]. I know... I would always register out of caution. Stuart never does. I don’t know that he has ever had any lobbyist registration. It was always my intention to get registered, because I knew in any case that eventually I’d have to get registered.”

Document/Audio/Video Review:

Through a public records request made on August 8, 2013, this investigator obtained from MDAD a July 16, 2013, e-mail from Bierman to Lenora Allen-Johnson of MDAD, requesting copies of certain documents related to the Automated People Mover ITB. Of note in this document is that Bierman wrote, “We represent Mitsubishi with respect to the above-referenced ITB.” By “we,” he appears to be referring to himself and his law firm, Weiss Serota Helfman Pastoriza Cole & Boniske. This e-mail message is dated nine days before the date of signing of the Lobbyist Activity Authorization form between MHIA and Bierman.

Conclusion(s):

Evidence reveals that Bierman filed his lobbyist registration papers with respect to his role with MHIA and MDAD’s Advanced People Mover bid on July 29, 2013. This was within five days of being retained as a lobbyist by MHIA as evidenced by the Lobbyist Activity Authorization form, signed by MHIA principal Darn Friedmann on July 24, 2013.

However, in addition to allowing five days after retention for a lobbyist to register, the ordinance specifies that the lobbyist must be registered before engaging in lobbying activity, “whichever shall come first.”

It is difficult to make any interpretation of Bierman’s July 25, 2013 letter to MDAD

administrators other than that it was an attempt to influence and alter the county's evaluation and imminent acceptance of the lowest bid received in response to the ITB MDAD 04-12 Automated People Mover contract, that being the Beauchamp bid, to the benefit of MHIA. The letter thus should be considered an act of lobbying on the part of Bierman.

Evidence thus indicates that Bierman did engage in lobbying prior to being properly registered as a lobbyist for MHIA. It should be noted that Bierman was aware of the need to register, and on his own did make an effort, though belated, to comply with the ordinance.

This report was forwarded to the Advocate for further action regarding a probable cause determination in the pending complaint.