



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Sylvia Batista

Case No: C14-007/ K14-009	Case Name: Lopez v. Korn	Date Open:	Date Completed:
Complainant(s): Gilbert Lopez	Subject(s): Jason Hunter Korn c/o Cohen & Grigsby	01/21/14	02/28/14

Allegation(s):

Gilbert Lopez (Lopez) filed an ethics complaint against respondent Jason Hunter Korn (Korn) for allegedly lobbying Miami-Dade staff and officials on behalf of Oxford Electronics, Inc. d/b/a Oxford Airport Technical Services (Oxford) without being registered to lobby. The alleged unregistered lobbying activity involves RFP No. MDAD-06-01 for Baggage Handling System Operation and Maintenance at Miami International Airport (the RFP).

In support of the complaint, Complainant attached three letters from Korn—two directed to Pedro Betancourt, MDAD Sr. Procurement Contract Officer, and one to Mayor Carlos Gimenez. The letters are written by Korn on behalf of Oxford in connection with the RFP. Complainant further alleges that Oxford is in violation for failing to file the affidavits required from principals.

Complainant Lopez is the Regional General Manager of JBT AeroTech Airport Services (JBT). JBT is the second ranked proposer under the RFP. Korn, an attorney with the law firm Cohen & Grigsby, represents Oxford, the highest total ranked proposer under the RFP.

Relevant Law:

The 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 three (3) business days of being retained as a lobbyist or before engaging in any lobbying

activities, whichever shall come first. . .

Sec. 2-11.1(s)(2)(c) –

Prior to conducting any lobbying, all principals must file a form with the Clerk of the Board of County Commissioner, signed by the principal or the principal's representative, stating that the lobbyist is authorized to represent the principal. The principal and the lobbyist must also submit a joint affidavit stating that the principal has not offered and the lobbyist has not agreed to accept any contingency or success fees as defined in subsection (s)(7). Failure of a principal to file the required forms may be considered in the evaluation of a bid or proposal as evidence that a proposer or bidder is not a responsible contractor. . .

Sec. 2-11.1(s)(5) –

Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee, shall list on an affidavit provided by the County, all individuals who may make a presentation. . .

Document/Audio/Video Review:

The complaint attached three letters authored by Korn. Two letters to Pedro J. Betancourt (Betancourt), Aviation Sr. Procurement Contract Officer for MDAD, dated 04/09/13 and 12/16/13, and a third letter to Mayor Carlos Gimenez dated 12/19/13. Each letter references the RFP and may be considered as efforts made by Korn to influence decisions made or waiting to be made in connection with the RFP.

Reviews of the Miami-Dade County lobbyist registration database made on 02/20/14 and 02/25/14 erroneously reflected that neither Korn nor principal, Oxford, had registered to lobby in Miami-Dade County. Subsequent information provided by Korn revealed that he had in fact registered to lobby on behalf of Oxford on 08/09/13.

In response to the allegations brought against him by Lopez, Korn provided the following e-mails:

02/26/14 – Korn provided to the COE an e-mail wherein he states that his representation relating to the RFP is as attorney for Oxford, and provides proof that he filed his lobbyist registration on 08/09/13. Korn further provides a copy of his 02/25/14 letter to Claude Francis (Francis), Lobbyists Registrar with the Clerk of the Board, attaching his 2013 Annual Lobbyist Registration, Lobbyist Activity Authorization on behalf of Oxford, and Joint Contingency Fee Affidavit signed by Korn and Oxford. Korn also provided copies of his 2014 Annual Lobbyist Registration form, and a check in the amount of \$490. In his letter to Francis, Korn asks that he confirm in his records and on the website that his lobbying registration is effective as of 08/09/13.

02/26/14 – Korn’s follow-up to the above e-mail enclosed an e-mail received by him from Francis enclosing file-stamped copies of his 2013 Annual Lobbyist Registration, Joint Contingency Fee Affidavit and Lobbyist Activity Authorization and Official Receipt. The date on the three documents and receipt is 08/16/13. However, Korn disputes the date stating that the forms were delivered by e-mail to Francis on 08/09/13.

02/26/14 – A third e-mail from Korn explains that his 04/09/13 letter to Betancourt was sent following his discussion with Assistant County Attorney David Murray (Murray) on 04/05/13. Korn’s says that his discussion with Murray was regarding the RFP procedure. Korn states that there was no requirement for lobbyist registration at that stage of the RFP due to the exemption for attorneys. Korn cites Miami-Dade Code Section 2-11.1(s) (1) (b) and explains that it applies because Section 2.7 of the RFP invoked the “Cone of Silence” which prohibits exparte communications. Korn said that he sent an e-mail on 04/05/13 to Murray following their discussion about the process, which was to send the letter to Betancourt with a copy to Murray and the Clerk of the Board. Korn attached a copy of his memo to Murray dated 04/05/13 in which he advises that, “as discussed, I will be forwarding a letter to Mr. Betancourt, with a copy to you and the Clerk of the Board.” The letter that Korn is referring to is his 04/09/13 letter to Betancourt.

Korn further states that his 04/09/13 letter to Betancourt is a legal argument in support of his client’s responsiveness and a reply to Murray’s legal opinion on the issue dated 02/19/13. Subsequent to Murray’s 02/19/13 memo stating the reason why Oxford has been deemed unresponsive, Murray issued an opinion on 04/26/13 retracting his previous opinion and declaring Oxford responsive. Copies of Murray’s opinions are attached to Korn’s memo.

The following is a timeline of activities in connection with the RFP:

DATE	FROM	TO	DESCRIPTION
06/21/12			RFP No. MDAD-06-11 is issued.
02/19/13	Murray	Betancourt	Memo stating legal opinion as to Oxford’s responsiveness. Concludes that because Oxford does not possess the required license, it is non-responsive.
04/09/13	Korn and David Lupo, Esq.	Betancourt	Letter in response to Murray’s 02/09/13 legal opinion arguing that the determination is in error and that Oxford is a responsive proposer to the RFP.
04/26/13	Murray	Betancourt	Memo stating that his office has issued a memorandum retracting his opinion of 02/19/13 with respect to Oxford’s responsiveness and declaring that Oxford is a responsive bidder.
08/09/13	Korn	Claude Francis	Korn’s 2013 Annual Lobbyist

			Registration; Lobbyist Activity Authorization signed by Oxford naming Korn as its lobbyist in connection with the RFP.
08/15/13	Korn	Claude Francis	Joint Contingency Fee Affidavit signed by Oxford and Korn.
12/16/13	Korn	Betancourt	Letter with exhibits responding to Richard Perez, Esq.'s letter of 10/10/13 on behalf of his client JBT AeroTech Airport Services, and providing additional information regarding Oxford and the RFP.
12/19/13	Korn	Mayor Carlos Gimenez	Letter enclosing 12/16/13 letter addressed to Betancourt with recommendation letters from various airlines.
02/25/14	Korn	Claude Francis	2014 Annual Lobbyist Registration.

To date, there has been no recommendation made by Mayor Gimenez on the subject RFP.

Investigation:

Interviews/Contacts

02/25/14 – Jason Hunter Korn, Respondent –

Korn was contacted by the COE in connection with the subject matter. Korn advised that he was surprised to see the ethics complaint for unregistered lobbying because he had registered to lobby on behalf of Oxford on 08/09/13.

Korn said that he spoke to Claude Francis about his lobbyist registration and asked why it did not appear on the database. Francis said he did not know why the registration was not on there. Francis sent him the proof of his registration by e-mail which he provided to us.

Korn said that he e-mailed his registration on behalf of Oxford to the Clerk on 08/09/13. However, due to complications, he e-mailed his registration to Francis on 08/15/13.

Korn was asked about the letters that he sent to Pedro Betancourt and Mayor Gimenez. Korn acknowledged that he lobbied in the two letters that he wrote in December of 2013, but does not agree that his letter dated 04/09/13 is lobbying.

Korn explained that his letter dated 04/09/13 to Betancourt resulted from Murray's determination that Oxford was not a responsive proposer (see Murray's 02/19/13 memo). Murray subsequently retracted that opinion in his memo of 04/26/13.

Conclusion(s):

The matter is turned over to the Advocate for a Probable Cause recommendation.