

The COE received information from Jose Smith (Smith), City Attorney for the City of North Miami Beach (NMB), of a possible Cone of Silence violation in connection with RFP 2014-08 Solid Waste Collection and Recycling Services (the RFP). No formal complaint was filed. According to Smith, the RFP was advertised on 08/25/14, and five (5) proposals were filed with the NMB Procurement Division by the RFP's due date of 10/15/14. One proposal was considered non-responsive, and the Review Committee consisting of seven (7) City employees and a union representative met on three occasions to evaluate the four (4) responsive proposals. Smith informed that the Review Committee ultimately ranked Waste Management as number one, Waste Pro as number two, and Southern Waste Systems as number three. The Review Committee further voted to recommend to the City Manager that NMB proceed with contract negotiations with Waste Management and negotiate with Waste Pro if negotiations with Waste Management were unsuccessful.

On or about 01/06/15, prior to the City Manager making a recommendation to the City Council, Waste Pro e-mailed a letter dated 12/22/14 to Brian K. O'Connor (O'Connor), Chief Procurement Officer for NMB and City Manager Ana Garcia (Garcia). In its letter, an original of which was hand-delivered on 01/07/15 to O'Connor and Garcia, Waste Pro requests that the RFP process be thrown out and a new process be initiated. Smith informs that although Waste

Allegation(s):

Case Name: Waste Pro of Florida, Inc.	Case Number: K15-004	Complainant(s): Jose Smith, City Attorney City of North Miami Beach	Subject(s): Cone of Silence Violation	Date Opened: 01/14/15	Date: 2/26/2015 CASE CLOSED
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Investigator: Sylvia Batista

Report of Investigation

Miami-Dade Commission on Ethics & Public Trust



Pro's letter indicates that a copy was delivered to the City Clerk, the City Clerk did not receive a copy of the letter by e-mail or hand-delivery.

Smith informs that the bid documents prohibit any communication regarding the bid between a bidder and the City's professional staff and that all communications must be sent in writing to the Procurement Management Division at bids@citynmb.com.

According to Smith's memorandum, the bid documents provide the following language:

During Cone of Silence the following is prohibited: Any communication regarding this bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the City's professional staff including, but not limited to, the City Manager and his or her staff. All communication regarding this bid should be sent in writing only to the Procurement Management Division at bids@citynmb.com."

An investigation has been initiated by the COE to determine whether Waste Pro violated the Cone of Silence by submitting a written communication regarding the RFP to members of NMB's professional staff while the Cone of Silence was still in effect, and not providing a copy of the written communication to the City Clerk as required by the Cone of Silence.

Relevant Law:

The COE's issue is related to a possible violation of the Conflict of Interest and Code of Ethics Ordinance.

Section 2-11.1(a): *Cone of Silence*-

"Cone of Silence" is hereby defined to mean a prohibition on: (1) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and the [City's] professional staff including, but not limited to, the [City Manager] and his or her staff. . .

Section 2-11.1(t) (1) (c) (i) - *Exceptions*.

The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the [City Council] during any duly noticed public meeting or communications in writing at any time with any [municipal employee], official or member of the [City Council] unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the [City Clerk].

Interviews:

01/22/15 – Guerlin Escar-Mangos, Municipal Marketing, Waste Pro of Florida, Inc. –

Escar explained that on or about 01/06/15 she hand delivered an envelope containing an original plus two copies of the letter from Waste Pro in reference to the RFP. She also e-mailed the letter to O'Connor and Garcia on the same date. The original of the letter was for O'Connor, one copy for Garcia and the other copy was intended for the City Clerk. She gave the envelope with the letters to a person sitting at a table next to the elevator. Escar does not know the name of the person. The person did not sign a receipt for the envelope. Escar did not deliver the copy intended for the City Clerk to the Clerk's office.

Escar explained that the reason the letter was dated 12/22/14 is because that was the original date the letter was drafted. It was simply an oversight that the date of the letter was not changed to reflect the actual delivery date.

Records Review:

Investigation:

E-mail dated 01/06/15 from Guerlin Escar-Mangos, Municipal Marketing, Waste Pro of Florida, Inc. (Escar) to O'Connor and Garcia attaching the subject letter from Waste Pro. The e-mail was addressed to O'Connor at O'Connor@cityymb.com and to ana.garcia@cityymb.com. There is no indication that a copy was e-mailed to the City Clerk. The e-mail states that the letter will be hand delivered in the afternoon. The e-mail was not delivered to Procurement Management Division at bids@cityymb.com as instructed in the bid documents.

Original of the letter with stamped delivery date of 01/07/15 – the subject letter from Waste Pro dated 12/22/14 is addressed to O'Connor and indicates that a copy was delivered to Garcia and the City Clerk, Pamela Latimore (Latimore). The letter requests that the City throw out the proposals submitted in the RFP and commence a new RFP process due to defects in the ranking conducted by the Review Committee.

02/06/15 – the RFP 2014-08 bid documents state that:

... during the Cone of Silence any communication regarding this bid between a bidder and the City's professional staff, including, but not limited to, the City Manager, is prohibited. Furthermore, all communication regarding this bid should be sent in writing only to the Procurement Management Division at bids@cityymb.com.

01/29/15 – Pamela Latimore, Clerk, City of North Miami Beach –

Latimore was asked whether she received a copy of the subject letter from Waste Pro. Latimore explained that a couple of weeks ago she was shown a letter from Waste Pro by O'Connor which may be the letter in question, and asked whether she had received a copy of it. She had not seen the letter before and advised O'Connor of this. Latimore was advised that the bearer of the letter had stated that she delivered a copy of the letter intended for her to a person sitting at a table next to the elevator. The bearer of the letter did not know the name of the person who received the letters. Latimore agreed to look for the letter in her office correspondence files.

On the following day, 01/30/15, Latimore advised that she did not find a copy of the letter in her office correspondence and does not believe that she received it. Latimore said she had asked her staff, but no one in the Clerk's office remembers receiving the letter. Latimore explained that the table by the elevator belongs to the Procurement Department and is on the third floor. The Clerk's office is not at that location.

02/05/15 - Brian O'Connor, Chief Procurement Officer, Procurement Management Division –

O'Connor was asked about the letter that he received from Waste Pro. O'Connor explained that he had received an e-mail attaching a copy of the letter and received the original plus several copies soon thereafter. He said that all of the letters were addressed to him, but acknowledged that the letter indicated on the second page that a copy would go to Garcia and to the City Clerk, Pamela Latimore. O'Connor explained that he did not feel it was his duty to distribute the copies of the letters, and added that the letter had been e-mailed only to him and to Garcia. O'Connor said that he took the original and the copies of the letter which had been hand-delivered and gave them to the City Attorney (Smith). O'Connor said that the bid documents give explicit instructions on written communications during the Cone of Silence which Waste Pro did not comply with.

02/05/15 – Amy Tingley, Esq., Attorney for Waste Pro –

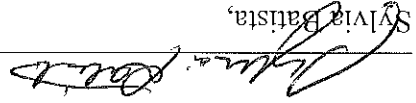
Amy Tingley (Tingley) contacted the COB in connection with delivery of the letter from her client, Waste Pro. Tingley said that Waste Pro's IT department had searched its e-mail records to determine whether Escar had e-mailed a copy of the subject letter to the City Clerk, but such e-mail was not located. Tingley stressed that Escar's lapse was not intentional and that she is very upset about it. Tingley said that they would send the letter to the Clerk now even though it may be too late.

02/25/15 – Russell Mackie, Regional Vice President, Waste Pro of Florida, Inc. –

Mackie stated that he was not fully aware of the Cone of Silence requirements, but has become aware in the process. Mackie said that he instructed Guerlin to send the letter to O'Connor and the City Clerk, but due to things happening in a way not intended, the Clerk may not have received a copy. It was completely inadvertent. Waste Pro has been involved in the process of the City's privatization of its solid waste and recycling services for almost three

(Investigator's name), COE Investigator

Sylvia Batista,



(Signature)

It appears that Waste Pro failed to act in accordance with the bid instructions when it copied the written communication in question to the City Manager in addition to the Chief Procurement Officer, O'Conner.

The Cone of Silence imposes on the bidder or proposer, in this case Waste Pro, the burden of filing any written communication with the Clerk. It is not incumbent on City personnel to deliver an extra copy to the Clerk. However, it seems clear that the violation of the Cone of Silence in this case was wholly inadvertent. Waste Pro staff claims she mis-delivered the Clerk's copy of the correspondence resulting in the Clerk never receiving a copy.

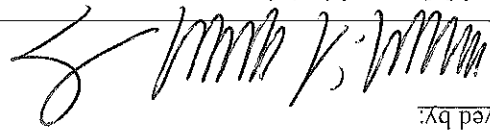
The testimony of Russell Mackie corroborates that of Guerlin Escar. A copy was prepared to be delivered to the Clerk but due to an administrative snafu, never was. Accordingly, since the inadvertence of the violation seems legitimate, it does not warrant the filing of a formal complaint. The City may consider Waste Pro's failure to follow the bid instructions in whatever way it deems appropriate. This case is closed with no further action.

Conclusion:

years. There was no intent on the part of Waste Pro to circumvent the system. Mackey maintained that he asked Guerlin to send a copy of the letter to the Clerk, and she swears that she attempted to do so. A copy was sent to the Purchasing Department as was instructed.

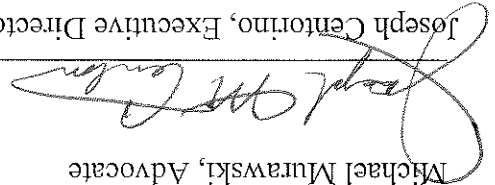
Waste Pro takes the rules seriously and has built a reputation for doing things the right way. This was a situation that it didn't happen the way that it was intended. He apologizes for that, but it wasn't intentional.

Approved by:



Michael Murawski, Advocate

Joseph Centorino, Executive Director



Date Closed:

2/25/15