



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator:

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| Case K16-011 | Case Name: Eduardo Vega | <u>Date Open:</u> February 12, 2016 | <u>Date Closed:</u> CASE |
| Complainant(s): James Moye on behalf of Odebrecht-Lanzo Joint Venture | Subject(s): Eduardo Vega | | CLOSED Date: 4/31/2016 |

Allegation(s):

Complainant alleges that Eduardo Vega, who had been the Assistant Director for Engineering for the Miami-Dade Water and Sewer Department (WASD) until his retirement November 30, 2015, and subsequently being hired by APCTE, a Doral construction contracting firm, on January 4, 2016, violated the County Ethics Code by being present at a bid committee review meeting for a water line construction project within the two-year lobbying exclusion period, such presence, allegedly constituting an effort to influence the outcome of the bid in favor of his new employer, which was a finalist in the bid competition.

Relevant Ordinances:

Complainant alleges that Vega violated the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance Sec. 2-11.1 (q), which states in relevant part that "*No person who has served as ... department director, departmental personnel or employee shall, for a period of two (2) years after his or her County service or employment has ceased, lobby any County officer, departmental personnel or employee in connection with any judicial or other proceeding, application, RFP, RFQ, bid, request for ruling or other determination ... in which Miami-Dade County or one (1) of its agencies or instrumentalities is a party or has any interest whatever,*

whether direct or indirect.”

Investigation:

Interviews

Monday, March 14, 2016 – Telephone conference call with **Stephen Pickert** (Pickert) and **Tony Kovalcek** (Kovalcek), partners for Moye, O’Brien, Pickert and Dillon (Maitland, FL, law firm) and, from their client the Odebrecht Co., **Brad Rinzler** (Rinzler), senior project manager, **Gustavo Lazaro** (Lazaro) project manager, and **Saide Rangle** (Rangle), scheduler.

Rinzler gave a general explanation of the WASD project for which Odebrecht, as part of OLJV (Odebrecht-Lanzo Joint Venture), and Garney/APCTE, bid. It is a contract to install about seven miles of 48-inch water main. The County generally sought to install the pipeline along a north-south route following either Southwest 117th or 127th Avenues. The exact best route was part of the bid.

According to Rinzler, the county determined through its own consulting engineering firm which helped set the bid standard, CDM Smith, that SW 127th Avenue was the route best suited for the project. OLJV submitted several alternatives, but none using SW 117th Ave. Garney/APCTE also submitted several alternatives, including two, options no. 6 and 7, that did anticipate using SW 117th Ave.

The bid selection process involved two steps: A Step One hearing in April 2015, which winnowed all the initial bidders down to three finalists, and a Step Two hearing in October 2015 meant to select a winner. [The deadline for Step Two technical submissions was ultimately moved to November 6, 2015.] The committee hearing on Feb. 5, 2016, was for the purpose of choosing the winning bid.

Rinzler said that Vega worked as the head of engineering for WASD all during the Step One process, and during the initial stages of the Step Two process. As such, “He had access to all technical proposals. He had access to all bidders’ submissions,” Rinzler said.

Rinzler also pointed out that Vega worked alongside two WASD staffers who would sit on the selection committee. They are Miguel Pichardo (Pichardo) and Daniel Matthews (Matthews).

Rinzler said when the Step Two hearing was held, the 117th Avenue alternative was suddenly back under consideration, even though the county had “all but ruled out” 117th Avenue following the report of its consultant.

At one stage of the hearing, the committee asked for a “preferred route.” Garney/APCTE

recommended 117th Avenue.

At this point, Rinzler said, "I knew more than a year before Eduardo Vega retired that he was going to go to APCTE." He called it an "open secret."

[The investigator subsequently asked Moye by e-mail for any evidence or possible witnesses who could corroborate what Rinzler described as "an open secret" regarding Vega's employment plans. Moye replied that his clients could not provide any corroborating details.]

Rangle was present for the APCTE presentation to the committee. She said when the committee asked for alternatives, the APCTE team began discussing alternative no. 7, but Vega directed members of the APCTE team to put alternative 6 up on the projection screen instead. She said, "Eduardo Vega got very agitated, wanted to talk to his team members." She said he started making gestures to his team members to put up alternative no. 6.

Rinzler said Vega's comments were audible to people in the front of the room and to the committee members, but apparently not loud enough to be picked up by the audio recording equipment.

Rangle said the board members were asking questions about Alternative no. 7 and didn't appear to like it. In response to their skepticism, Vega directed his team to go to alternative no. 6. That proposal seemed to satisfy the committee.

Rinzler said that during OLJV's presentation, Vega was present. As the committee members questioned OLJV's representatives, Rinzler said Vega, through his body language (shaking his head, etc.), was expressing frustration or implicitly expressing his negative opinions about what he was hearing.

Lazaro, who was also present, confirmed that while Vega didn't speak, his body language was animated and apparent.

Rinzler said that in the end, the committee members went with APCTE's alternative no. 6 – the one Vega seemed to be promoting.

Rinzler said the two staff committee members never brought up the CDM analysis that had apparently ruled out SW 117th Ave.

Rinzler said, "I was shocked... we relied on the WASD proposal." OLJV did not present a SW 117th Ave. alternative.

He said, "If you ask me, they [the committee members] knew more about the 117th Ave. alternative than anyone else in the room." He added, "There is no doubt in my mind that the process was influenced by Eduardo Vega – his superior knowledge of our product, his significant relationship [with at least two committee members]." Rinzler said Vega "steered" the alternative to 117th Ave. "The only reason was I believe he had prior conversations with the board members.

Lazaro said that after the presentations, Vega went to the back of the room to talk with some WASD staff members, but not the two committee members.

Rangle, recounting the story, said she heard the committee members talking about APCTE's alternative no. 7, then switch to alternative no. 6. APCTE presented first, then OLJV. A third qualifier, Ric-Man International (Ric-Man), was rejected as non-compliant.

Rinzler said Vega shouldn't have been present to influence the panel.
END MOYE CONFERENCE CALL

Monday, March 21, 2016 – Meeting with **Miguel DeGrandy** (DeGrandy), **Alex Heckler** (Heckler) and **Michael Llorente** (Llorente) at offices of Holland and Knight (DeGrandy's firm).

Heckler and Llorente represent Garney Construction, in business 50 years, described as the No. 1 water and wastewater contractor in the country. (Garney's website says "one of the biggest.")

DeGrandy said that APCTE's part of the contract in question was less than 10 percent.

Heckler said that the county will spend \$12 billion on infrastructure over the next 10 years.

Heckler gave a description of "design-build" contracts, formally called "requests for design-build services" which are governed by state law. It is a two-step process. Step one is where firms must be evaluated as qualified to bid. Step two evaluates both the qualifications to do the job and the price. State law requires there be a minimum of three bids. Step 2 is a technical proposal. It typically allows for alternatives to be offered to the base bid.

Heckler said that in the case of the county's consultant, CDM, the consultant sets the design criteria for about 30 percent of the project, leaving the rest of the design to the bidders. Heckler described CDM's role as, "Here is the base project – use your imagination to come up with alternatives."

Heckler said the Step 1 stage shortlisted three firms. On July 1, CDM put out its design criteria package. That started a four-month clock for Step Two, due Nov. 6. County budget was set at \$60 million.

DeGrandy said the procurement itself called for and allowed alternatives.

Heckler said Garney produced seven alternatives to the base bid, including nos. 6 and 7, which utilized SW 117th Ave. The seven bids utilized a total of 26 bid combinations, each with its own bid envelope. The aim is the highest technical score with lowest price.

Heckler said OLJV submitted only two alternatives, none on 117th Avenue.

On November 6, the bids were submitted. On November 30, Eduardo Vega retired from the County -- after all the company bid information had been submitted. Heckler later said that

Vega actually left three weeks before that, and utilized three weeks' vacation.

DeGrandy states that had 117th been absolutely prohibited by the CDM specifications, those bid proposals by Garney would have been deemed non-responsive and thrown out.

Heckler said Vega received an employment offer letter from a company called 300 Engineering (copy provided), on Dec. 7, and did not take it.

Heckler joined APCTE on January 4, 2016. Heckler said he believed APCTE offered Vega the job Christmas week.

Step 2 oral presentations were held on February 5, 2016.

DeGrandy stated that the only time during the committee hearing that Vega's voice can be heard on a cell phone video of the meeting was at the very end, when Vega calls out, "Can you read that back?" after not hearing the committee's decision. DeGrandy said that if Vega had said something to the effect of "put up slide 6" during the Garney presentation, the cell phone should have picked it up.

Heckler said the alleged shout-out didn't make the recording.

Heckler said that during the presentation, Garney reps said they favored option no. 7, but that the committee itself initiated and led the discussion about Option no. 6. He said CDM rejected both of OLJV's proposals.

Heckler explained that the committee's job is first to score the "base bid." Then they look at alternative bids. He points out that Garney's alternatives 6 and 7 had a completion date 300 days faster than OLJV's proposal, resulting in less impact on traffic, and was \$10.5 million cheaper.

Llorente said that nobody consulted with Vega before submitting their options. Also, once submitted, no changes could be made.

DeGrandy said that the premise of OLJV's complaint is that CDM "must be right" about using 127th Ave. But in a design-build scenario, he said, "it is expected that we [the County] are buying your expertise," and are open to considering if a bidder comes up with a superior alternative plan.

DeGrandy said that the slide presentation was already set before the hearing, implying that Vega would not have been able to interrupt and change it while it was in progress.

Heckler said that the technical proposals are NOT closed, but are reviewed by CDM prior to the bid presentations. The bid prices, however, are not disclosed until the bids are opened.

Thursday, March 24, 2016 – Met with **Miriam Singer** and **Curt Williams** of Miami-Dade County Procurement. Williams is Manager of the Architectural Engineering Unit.

Singer suggested that I would need to speak with Lester Sola and Doug Yoder of WASD.

Singer and Williams explained that there are three primary areas where a person in Vega's position could influence the award of a contract if he knew in advance that he would be working with a bidder. These would be:

- (1) Shaping the technical certification categories for the project. In order to compete for a government contract you must hold the proper licenses, and also show that you have done projects demonstrating your experience. The County technically certifies each contractor. So, you could plan a contract in such a way that your favored company had the best specific history of experience in that type of work;
- (2) Identifying what technical categories apply to the contract; or
- (3) Establishing minimum experience requirements.

Williams explained that there are four standards of experience that state law requires by code, but which could be adapted and made tougher – for example, the contract could also add standards for minimum safety requirements. A department director like Vega would have the power to make these changes; people below him could recommend, but Vega would have a lot to do with varying the standards if they did. Either he or J.C. Arteaga (Arteaga), who has also left the County.

Singer said that Vega would have been a participant in the effort to shape the contractor criteria. "We see him often as part of the team assembling the contract." Singer said.

Curt said that Vega had a tendency to want to skip the bar mandated by the Cone of Silence against anyone outside the procurement staff (of which he was not technically part) inquiring too closely of the procurement staff about progress, etc. Williams said, "I had to ask him [Vega] to back off at times" for fear that Vega was edging too close to violating the Cone of Silence. He said the main contact person was Patty Palomo, procurement director for WASD. Williams described Vega as "a bit of a nag."

Singer said, "On occasions, Curt would have to say, 'Ed, this is under the Cone.' An assistant director shouldn't be calling my coordinator."

Williams said, "I have no problem saying he was annoying." But Williams said this was just Vega's personality, not something he spotted as unusual regarding this contract. Williams said Vega would just get stressed out, and he would have to tell Vega to go through proper channels to communicate with staff.

Williams remembers that about two months before Vega retired, he heard that Vega would be going to one of the companies bidding. But Williams said he didn't know which one until he recalled seeing Vega at the Feb. 5 meeting.

Williams said that he queried his people, and none remembered Vega saying anything aloud. "They did not hear a peep out of him," Williams said.

Speaking generally of design and build contracts, Singer and Williams said that CDM designed the basic criteria for the project, but left much of the planning to the creativity of the bidding companies. The bidders must bid on that part of the project. Beyond that, Williams said, "We encourage firms to come up with different strategies" by submitting alternate proposals. The alternatives MUST save money.

Therefore, there was nothing inappropriate about a bidder presenting alternatives on SW 117th Ave.

However, Williams said, it would not be uncommon for prospective bidders to ask questions about the upcoming project, even before the Cone of Silence is imposed, and that it would be possible for a person in the right place to informally discourage a company from wasting its money on alternatives he knows won't be considered – or, to let one company know it might be worthwhile to prepare a bid for SW 117th Ave. and not let the other bidders know that that could be a favorable alternative. Williams said an advantage could theoretically be gained simply by listening to the questions key players ask, without overtly saying, "You should propose this."

The question, Singer asked, is that while it may look bad, is it contrary to law?

Both Singer and Williams said it was Vega's habit to be physically demonstrative and to gesticulate. Singer said the question is whether such gesticulations, if they happened, be enough to uproot the whole process as tainted?

Singer and Williams confirmed that the layout of the room would place Vega behind the committee members, and thus not in their normal direct sight.

Vega was also present at a second hearing on another project for which APCTE was bidding. In that case, Williams said Vega did ask questions, but to his knowledge did not "lobby" in favor of any contractor.

Tuesday, March 28, 2016 – Met with **Douglas Yoder**, WASD Deputy Director for Operations, and **Lester Sola**, WASD Director, at their office.

Sola said that he and the department had been copied with the complaint. He said that when he was informed, he called Human Resources director Arlene Cuellar. He asked her if there was any problem caused by Vega going to APCTE, and she said no.

Sola then went to Miriam Singer in County Procurement, who related that Vega was alleged to have spoken in passing to some committee members during the selection hearing. Sola said he asked Singer how Vega had access to the presenters, and was advised that their room layout was open. But Sola said that after speaking with Singer, it was his understanding that there was never any allegation that Vega spoke aloud or addressed the committee at all.

Sola asked his department to determine how many APCTE contracts were underway, and stopped work orders on them for about 2-3 weeks. Sola used the time to meet with everyone who had worked with Vega, and asked them all if Vega had ever asked them to choose or favor APCTE, and the answer was no.

Sola and Yoder said Vega was in a position to sign off on task authorizations, and that almost anyone with a prior bias could use that process to steer a contract toward a favored bidder (by manipulating minimum qualifications, for example). But, Sola pointed out, someone else made the selection, and Vega merely signed off on the authorizations.

Yoder pointed out that this particular contract is “not exotic work,” but rather ranks as rather routine. This would make it difficult for someone to slant a contract in favor of one company “for what is basically just putting pipe in the ground.”

Sola said the basic complaint of the number two firm (Odebrecht) was that Vega had improper communications with the committee members, and was the only issue.

Sola confirmed that Vega had completed the 5-year DROP program, so everyone knew he was retiring. Sola said he and Vega never had a conversation about where he was going afterward. Yoder said he did not learn of Vega’s plans until a couple of weeks after Vega left.

Sola said Vega reported to the Deputy Director of Capital Improvements, which was J.C. Arteaga until summer of 2015, then Hardeep Anand afterward.

March 28, 2016 – Telephone conversation with **Julie Whiteside** of Miami-Dade County ISD, who served as the non-voting chair of the Feb. 5, 2016, committee hearing.

Whiteside said that she was aware that one of the firms had lodged a complaint following the bid award.

Whiteside said that she is not acquainted with Eduardo Vega.

Whiteside said she remembers “nothing out of the ordinary” occurred regarding any member of the audience doing anything that could be regarded as drawing attention.

Whiteside described the layout of the room, which she identified as Training Room 156A at WASD headquarters. She described her location as on one leg of an “L” shaped table arrangement, where the voting committee members sat with their backs to the audience, and she sat at a right-angle to them. Whiteside said the room was full, and about 30 rows deep. [The investigator, in viewing the room personally, doubts that even with the temporary walls retracted, there would be room for 30 rows of seats; something in the vicinity of 20-25 seems more reasonable.]

Whiteside said Garney/APTCE presented first, followed by Ric-Man, then OLJV.

Whiteside stated that the county's base bid specifications (compiled by CDM) did not preclude any bidder from presenting alternatives as long as the requirements of the base bid are met. The alternatives are evaluated for technical competency and compliance by the county's technical staff both prior to the meeting and during the presentations. Price, however, is NOT revealed until the bid is opened. The alternative price must save the county money.

Whiteside said the Ric-Man bid was disqualified for non-compliance with the base bid before the final winner was chosen.

On Tuesday, March 29, 2016 – telephone conversation with **Mallika Muthiah**. She is chief for Air Quality Management division of RER for Miami-Dade, and served on the Step Two Committee Hearing on Feb. 5, 2016.

Muthiah said she knows Eduardo Vega. They both used to work together for the former Department of Environmental Resources Management, although in different areas, as she was in air quality and he was in water.

Muthiah saw Vega at the committee hearing. "He said 'Hi' to me. I know him. He came and gave me a big hug. Then he mentioned that he had retired. He said he was working for a company, APCTE."

Muthiah said she initiated the conversation, asking him what he was doing now. She said that when he told her, she replied that she thought he had to wait a year [before taking a position with a county contractor]. "He said, 'No, that's not true, but we can't lobby.'"

Muthiah said that at first she didn't recognize the APCTE name because the company was only a subcontractor for Garney, the main bidder. She did realize the connection during the presentations, however. Muthiah said Vega never mentioned Garney.

She said, "At the end of the meeting, he came and looked happy. He came and gave me a big hug, and said 'bye' and left."

Muthiah said the room was full, and laid out as others have described, with the panelists' backs to the audience.

Muthiah said she did not remember any particular audience voice calling out anything regarding the presentations. She acknowledged that she might not have been able to pick out Vega's voice if he had done so. She didn't remember any presenter interrupting himself or seeming to look to the audience for guidance.

Muthiah said that early in the meeting there was a pre-discussion of alternatives, including a matrix provided by staff of its technical analysis of the alternatives. The committee was then able to formulate questions and ask them of the presenters.

April 11, 2016 – Telephone conversation with **Miguel Pichardo**, construction manager, WASD, and a member of the Feb. 5 hearing committee.

Pichardo said that while both he and Vega worked in WASD, he, Pichardo, was construction manager, who reported to George Aguiar. Vega was in the engineering division, which is a separate arm of the management hierarchy. Pichardo said he has been in his current position since December 2014; prior to that, he was in the New Business Division, handling developers. His job was essentially to inspect their work.

Of Vega, Pichardo said, "We work together. We are not friends. I have never been to his house."

Pichardo remembers seeing Vega at the Feb. 5 hearing. Pichardo said, "I did not have time to say hello. I was concentrating on my duties. [In addition,] I was told I cannot have contact with anyone."

Pichardo said he recalls that Vega was in the audience but "I don't remember that he was in the front." He also said he recalls no disruptive behavior from anyone in the audience.

Pichardo said he was impressed by the Garney/APCTE presentation, which he called "very dynamic." Pichardo said the company went "to talk to a lot of agencies, like DOT – they got letters saying they would be allowed to do the work." Pichardo also said he was impressed by the traffic effects of the APCTE proposal, in part because he lives in the area. "They did a traffic study," he observed.

Pichardo said it was immaterial to him who might have been working for the company.

Telephone conversation with **Jose Barrera**, senior project manager, consultant management, Florida Department of Transportation, District Six. Barrera was a committee member for the Feb. 5 hearing.

Barrera said he knows Vega "on a professional level only," primarily through meetings DOT has had with WASD. Barrera said he wasn't aware of Vega's presence in the audience at the hearing. He said he doesn't remember anything that drew attention to any audience member.

Barrera said his selection was influenced primarily by the effect the project would have on traffic.

Barrera said he did not greet Vega at any time during the hearing. He had met him previously only in professional surroundings. "I know who he is. I am not his friend."

April 11, 2016 – Met with **Antonio Acosta** (Acosta) and **Carlos Gil-Mera** (Gil-Mera), principals of A&P Consulting Transportation Engineers (APCTE), at the company's office in Doral. Following, met with Eduardo Vega.

Acosta said Vega was sitting in the back of the hearing room, and did not say anything. He called the idea that Vega was waving his hands and gesturing "ridiculous." Acosta said, "for six months we worked for that contract. We made our decision to hire him after we handed in

our proposal.”

Acosta said Vega was hired in the middle of December, 2015, to start work on Jan. 4, 2016. The proposals were handed in on Nov. 6, 2015.

Acosta said Vega’s voice can be heard on the audio recording once. “We had already won [the bid]. He asked, ‘Can you repeat that?’”

Acosta said they had known for years that Vega was retiring because he was in the DROP program. They learned he was available in a meeting with 300 Engineering Group, which was working as a subcontractor on a particular job. “We learned that they were going to make him an offer.”

Acosta noted that his company is primarily a roadway engineering firm, and they sought Vega’s experience to help them with water contracts. He said Vega’s primary focus would be the extensive water-related projects coming up in Miami Beach. “Our idea was to use him mostly in the City of Miami Beach.” Gil-Mera said, “I’ve been doing projects on the Beach since 2004.”

Gil-Mera said another company, MCM Construction Corp., also had an interest in hiring Vega. MCM has also worked with APCTE. “Tony and I said, ‘What if we consider it?’ And we did.”

Regarding the Feb. 5 meeting, Acosta said they “didn’t even think about” whether it was appropriate for Vega to attend “because we had seen it before,” that is, former WASD employees or management immediately attending public meetings as newly hired employees of bidders. In any case, Acosta said, Vega “didn’t add anything [to the meeting]. He was just sitting there.” Acosta mentioned two examples, Carlos Bonzon, former interim aviation director for Miami-Dade County, and Vicente Arrebola, a former WASD assistant director, when asked for examples.

Gil-Mera said that his company “won by \$10.5 million, and we won with all five committee members.”

Eduardo Vega

Vega said that when he joined APCTE “I was talking to other companies. I always said I had some restrictions on what I could do – the famous two-year rule.”

Vega said he had consulted the Ethics Commission website. He said he clearly understood the limitations on his participation in the process, and knew that he was “exercising his right” to be present at the committee hearing.

Vega said that during the hearing he said he was sitting next to an employee of DMSI – David Mancini and Sons Inc. – named Cris Lazzeri. DMSI had put together a team with APCTE. Vega said he was sitting in the second row behind the committee members.

Vega said that “I am the type of person – maybe I am a little animated. I was commenting to Cris [privately]. I would have been thrown out of the process [had I been talking loudly]. Being in the audience, you have to respect the entire process.”

Vega remembered commenting to Lazzeri that APCTE’s presentation was moving along at a satisfactory pace given that the team had been given only 45 minutes for its presentation. Vega said he may have made a few other comments but didn’t recall them. Aside from Lazzeri, Vega said he was surrounded by “mostly Odebrecht people.” Later in the hearing, Vega said that he moved to another seat.

Referring to the committee members who work for WASD, Vega said that Pichardo “was not directly under my supervision. I was assistant director of engineering. Pichardo was under the construction management division, and reported to George Aguiar.

Vega said Dan Matthews worked in Water operations, which was not under Vega. Vega said, “I knew all of the people on the committee. I know the whole industry.”

Regarding his interaction with the Committee members, Vega said, “I think I bumped into Matthews. He is about to retire in May. We had a simple conversation. I told him in addition to retirement from FRS, you get a little money for health. I said I had received that payment. He said, ‘Yes, I heard about that.’”

Vega said he also recalled speaking to Muthiah. He asked her about her recent vacation to India. Vega said Muthiah told him she didn’t know he had retired.

Vega stated that three firms, the Odebrecht joint venture, the Garney/APCTE team and Ric-Man International had qualified as finalists for the job. He said that in the design-bid process, bidders submit sealed bids. By selection day, in this case Feb. 5, 2016, the bidders can neither change the bid price or the technical aspects of their proposals. Vega said that, “When I retired, [the bids] were already in.”

Vega said that in design-build bidding, the consultant prepares a matrix for committee members to discuss. The consultant reviews the technical aspects of the base bid and the alternatives, and makes a recommendation. Vega said CDM only recommended the APCTE proposal. Vega said all of the other potential bidders had an opportunity to access CDM base bid specifications. Vega said Ric-Man also offered alternatives on Southwest 117th Avenue.

Vega said CDM initially felt Southwest 117th Avenue was a riskier route because of the problem caused by bridges and traffic, and also involved going underneath a railroad track. The Southwest 127th Avenue route was a mile longer, but involved less risk. Vega said the department’s general philosophy was to stay away from risk. Design and build contracts, however, transfer risk to the bidder – if they overrun their budget or if the engineering fails for some reason, the contractor is responsible for absorbing the cost of making everything right. So bidders may offer a less expensive but riskier alternative to the base project.

Vega stated that the only time he spoke aloud during the hearing was at the end, when the

scores of the winning bid were announced. He asked, "Can you repeat that number again?"

Vega said it was rare for a bidder to receive all five committee members' votes. He said his company won the bid by \$10.5 million. He said, "They [Odebrecht] are doing everything they can to throw this out and get another bite of the apple."

April 19, 2016 – Daniel Mathews (Mathews), WASD Chief of Water Distribution, and a member of the Feb. 5, 2016, Selection committee.

Mathews said he is well acquainted with Vega, who was assistant director for engineering while Mathews was on the construction side. They would often attend the same meetings. "I know him fairly well. He was in a totally different division." Mathews did not work under or over Vega on the supervisory flow chart.

Mathews said he dealt more often with Vega's staff than Vega himself. Mathews said his area's primary role was to maintain the operational soundness of the water distribution system. Sometimes this involved replacing old sections of pipe, and then they would work with the engineering section to accomplish that.

On Feb. 5, Mathews said he did see Vega in attendance for the selection committee hearing. After the meeting, Mathews said Vega "came up and shook my hand, that's about it." Mathews said they didn't carry on a conversation, and certainly never talked about the project up for bid that day. Mathews said he is well-acquainted with Cone of Silence rules. "Any project under the cone, I don't talk about."

Mathews said he had no recollection of any audience-sourced disruptive behavior. Such committee hearings are typically run "very tightly," he said. Mathews said for every selection committee on which he has ever served, the audience was instructed that "You are not here to participate. You can't ask questions. All you can do is watch."

Mathews said he recalled that the committee went with Garney/APCTE's alternative No. 6 rather than No. 7, as the bidder advocated, because of concern about whether the company's plan to insert a pipe within an existing pipe was advisable. Alternative No. 6 was considered safer, although it would be more expensive, Mathews said.

Mathews said he recalled the presentations as being "down pat," and at no time did it appear any presenters were taking cues from the audience. "I don't remember any talk at all from the audience," Mathews said. "All [the committee members'] eyes were on the presenters."

Document/Audio/Video Review:

Received from complainant's law firm Moye, O'Brien, Pickert & Dillon LLP:

- Letter of complaint to COE, dated March 1, 2016.
- Copy of the Final Technical Memorandum, Alternative Route Analysis for Area N 48-inch and 36-inch Diameter Water Transmission Main, prepared by CDM Smith
- Event Timeline
- Copy, County audio recording of the Feb. 5, 2016, hearing.
- Copies of the lobbyist registration forms for the Feb. 5, 2016, hearing.

Received from Llorente and Heckler P.A. and Miguel deGrandy:

- Letter to Harvey Ruvlin, Clerk of the Board of County Commissioners, responding to OLJV's bid protest, including score tabulation sheet for the Feb. 5, 2016, bid review hearing.
- Copy of the employment offer letter from 300 Engineering

Received from Miami-Dade County WASD:

- Eduardo Vega, Personnel Change Document 12/08/2015 from HR personnel file.
- Eduardo Vega, DROP Termination Notification, indicating final date of employment as Nov. 30, 2015.
- Listing of committee members for hearings attended by Eduardo Vega

(Description of item reviewed including date)
Summary of findings

Analysis

Respondent Vega was not precluded from attending the Feb. 5, 2016, selection committee hearing for this construction contract, as it was a public meeting. The two-year lobbying exclusion would preclude Vega from taking any action to influence any county official with a decision making role in the awarding of a contract involving his new employer during that span. The central question at issue is whether Vega did any act while attending the Feb. 5 hearing that could be interpreted as an attempt to influence the outcome of the bid award procedure.

The Odebrecht representatives argue that Vega audibly gave direction to the joint venture's

presentation staff during their presentation to the committee. There is no audio evidence of an interruption of the sort described either on the county's official audio recording or in the unofficial cellphone video and audio recording provided by APCTE. To be heard by the presenters, Vega's alleged comment would necessarily had to have been heard by the committee members, who were positioned between them, yet none reported hearing any such comment from the audience, nor could recall any indication that the presenters were taking cues from the audience. It is not credible that Vega could have made a comment loud enough to be heard by the presenters, yet not heard by the committee members nor picked up by audio recording devices.

The Oderbrecht representatives assert further that Vega exerted influence over the proceedings by displaying animated body language. This account is undermined by the layout of the hearing room: The five voting committee members had their backs to the audience, where Vega was sitting, and could not have directly observed his "body language" without overtly turning around, a disruption that many witnesses would have noticed. The investigator heard no such account from any witness interviewed. None of the four committee members interviewed by the investigator remembered any such audience comment or audience-sourced disruptive behavior occurring.

Furthermore, the non-voting committee chairperson, Julie Whiteside, who was sitting at a right angle to the voting committee members and thus could have more easily observed the audience, similarly offered no account of a disruption of such noticeable magnitude from any member of audience.

The argument offered by Odebrecht's representatives that something untoward occurred when the committee chose a bid option using Southwest 117th Avenue even though the County's engineering consultant recommended using Southwest 117th Avenue is not credible. The County affirms that "design and build" contracts allow for, and in fact, invite, variations from the base bid, with the financial and engineering risks of such alternatives borne by the bidder. Nothing in the process discouraged Odebrecht from offering alternatives using Southwest 117th Avenue. Indeed, the third bidder, Ric-Man International, also suggested options using Southwest 117th Avenue.

The County's top procurement officers, Singer and Williams, acknowledge that hypothetically, an official in Vega's former position could, if he were so inclined, design bid specifications tailored to fit a particular company's expertise. Working against this possibility in this specific case is the observation by Yoder that this project was not "not exotic work," that is, not especially difficult or unique from an engineering standpoint, and so it would have been very difficult to craft bid specifications that favored APCTE over other contractors. In any case, Odebrecht did not lose the bid because of an inability to meet the bid specifications; it lost primarily because it failed, by its own choice, to consider proposing an alternative using Southwest 117th Avenue.

The investigator did not find any direct evidence that Vega knew, before his retirement, that he would be working for APCTE afterward. The existence of a letter of invitation from a rival company dated after his retirement lends support to the likelihood that, at the date of his retirement, Vega had not yet made firm plans for future employment. Curt Williams said he

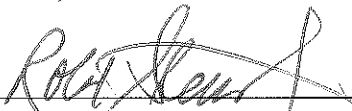
believed he had heard that Vega had identified his future employer "about two months before" his retirement, but Williams himself could not corroborate that recollection after inquiries of other employees.

The fact that all five committee members voted in favor of the Garney/APCTE bid undermines the complainant's argument that Vega's alleged influence over the committee members affected the outcome.

Conclusion(s):

It is understandable that concerns about the fairness of a County procurement process would be raised by the presence of a recently-retired WASD employee, who had been involved prior to his retirement during the early stages of a project, would be hired to work for and become part of the team of one of the respondents to the project. However, current provisions of the County Ethics Code do not address this concern, and only prohibit lobbying within two-years of retirement and the dissemination of confidential information. No evidence of such prohibited actions was revealed in this investigation. After discussion with the Ethics Commission Advocate it was determined that this investigation would be closed with no further action. It should be noted, however, that the COE at its April Commission meeting, endorsed the County's adoption of an ordinance that would prohibit an employee engaged in contract-related duties from soliciting or negotiating with a contractor for employment, and would also prohibit a contractor from offering employment to such an employee.

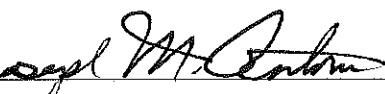
(Signature)



Robert Steinback, COE Investigator

Approved by:

 4/21/16

Michael Murawski, Advocate 4/21/16

Joseph Centorino, Executive Director