



Miami-Dade Commission on Ethics & Public Trust

Report of Investigation

Investigator: Sylvia Batista

Case: K 17-33	Case Name: Darlene M. Fernandez,	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): OIG	Subject(s): Reverse two-year rule.	07/06/17	CASE CLOSED

Date: 8/24/17

Allegation(s):

This matter was referred to the COE by the OIG on 06/30/17. While reviewing a recommended bid waiver, the OIG encountered evidence of an alleged violation of the reverse two-year rule. The employee involved is Darlene M. Fernandez (Fernandez), who was hired as Assistant Director of the Department of Transportation and Public Works (DTPW) on 10/22/15. Fernandez is a former employee of Atkins North America, Inc. (Atkins), a contractor for DTPW listed in the County's Equitable Distribution Program (EDP).

The OIG provided the COE with a copy of a work order authorization for Atkins signed by Fernandez on 05/27/16 on behalf of DTPW.

An investigation was initiated by the COE to determine what, if any, violation of the Conflict of Interest and Code of Ethics Ordinance was committed.

Relevant Law:

Conflict of Interest and Code of Ethics Ordinance, Section 2-11.1(x) *Prohibition on County employees and departmental personnel performing contract-related duties.*

"No person included in subsections (b) (5) [departmental personnel] and (b) (6)

[employees], who was previously employed by or held a controlling financial interest in a for-profit firm, partnership or other business entity shall, for a period of two years following termination of his or her prior relationship with the business entity, perform any County contract-related duties regarding the business entity...”

Investigation:

Interviews:

07/28/17 – Alice Bravo, Director of the Department of Transportation and Public Works-

Alice Bravo (Bravo) met with the COE investigator and provided information as to Fernandez’s hiring and work duties at DTPW. Bravo said that she is aware of the reverse two-year rule. Bravo explained that she hired Fernandez and works closely with her. Fernandez has two deputies under her and is usually in meetings all day dealing with all transit issues.

Bravo said that Fernandez is an Assistant Director. Each Assistant Director supervises a unique area. Fernandez’s unique area is traffic, engineering, signage and signalization. Fernandez also deals with anyone who wants to pull a permit. One of the groups under her reviews the plans and reviews the traffic studies. Fernandez handles that type of duty.

Atkins was contracted through the Equitable Distribution Program (EDP). The EDP list includes engineering firms that are registered with the county and can be awarded small contracts (under \$200,000). The County devised the system in order to be more efficient. Atkins is registered under their area of expertise, which can be more than one area.

Bravo and Fernandez worked at DOT together approximately 15 years ago. Bravo said that she thought it was very favorable that Fernandez had worked in a municipality before and knew the ins and outs of government. Fernandez is a very valued employee and has breathed new life in areas that were previously stagnant.

Fernandez’s position was not advertised, and it is unclassified.

08/03/17 – Darlene Fernandez, Traffic Assistant Director –

Fernandez appeared at the COE to provide her statement as agreed. Fernandez said that she is aware of the focus of this investigation. Fernandez said that she has been with the County since October 2015, which is almost two years ago. Fernandez said that she worked for the City of Miami Beach before going to Atkins. She was a junior engineer when she worked for the DOT.

Atkins was selected from the EDP. The EDP is a pool of contractors which can provide engineering services on projects that are under \$200,000. Atkins does design, traffic, engineering and architecture. Atkins was selected to provide its services for DTPW in May of 2016, several months after Fernandez had commenced her employment with DTPW. Fernandez said that she was not involved in the selection process or the award of the contract to Atkins.

Fernandez said that she was approached by Bravo to fill an Assistant Director position over Signals, Signs and Traffic engineering. The DTPW maintains the DOT and municipal signals as well.

Fernandez said that her duties at the DTPW do not involve Atkins. Fernandez was a project manager at Atkins. While at Atkins she had no work with the DTPW. When Fernandez started with the DTPW, Atkins did not have a contract under her division. Several months after commencing her employment with the DTPW, the County made a decision about the Project. It was decided that they needed someone to implement it. They put the EDP together to deal with the ins and outs of the Project. Atkins' contract did not exceed \$200,000. When the work order to Atkins was being circulated, she did sign as part of the process only. Once the contract was awarded, it was under her divisions, but she did not have involvement with it on a day-to-day basis.

Fernandez said that Atkins has completed the Project. Fernandez said that she does many other tasks none of which are related to Atkins. Fernandez said that she did not know what Atkins's project for the County consisted of. Fernandez said that now she knows that she cannot sign the work order which she thought she could sign by process.

Fernandez was told that she would receive a copy of the RQO opinion, which will be issued by the COE staff following its approval of same at the August COE meeting regarding the reverse two-year rule. The opinion will make clear the broad limitations of the two-year rule, including the type of activity in which she has been involved with Atkins.

08/10/17 – Darlene Fernandez, Traffic Assistant Director –

At the COE's request, Fernandez provided information and documentation in connection with the EDP and Atkins's selection from the EDP for the Project.

Fernandez said that the original resolution establishing the EDP was passed on 12/06/01 (AO-3-33) and superseded in 2003 by AO 3-39. Fernandez informed that Atkins, formerly known as PBS&J, was included in the EDP pool since its inception in 2001 and was given its first contract with the County in February 2003. Fernandez provided a copy of the latest agreement that Atkins has through the EDP process dated 06/23/14, and explained that the agreements are renewed every three (3) years for all companies in the EDP pool. The renewal process is required to continue updating the contract terms for all vendors in the program.

Fernandez explained that Atkins was selected through the EDP process by Nahum Fernandez, the project manager. Frank Aira is the designated point of contact on the Project. Fernandez said that the Project was assigned to Atkins in February 2016 and the work order was approved in June 2016. The Project is the only project assigned to Atkins under the several divisions overseen by Fernandez.

08/18/17 – Frank Aira, Traffic Signals and Signs Division Chief and Nahum Fernandez, Traffic Signs and Signs Project Manager –

Frank Aira (Aira) and Nahum Fernandez (NF) agreed to meet with this investigator on the issue of the selection of Atkins from the EDP.

Aira advised that no one said, "let's pick Atkins." Aira explained that prior to the merger of the solid waste and public works departments there wasn't a restriction on picking consulting

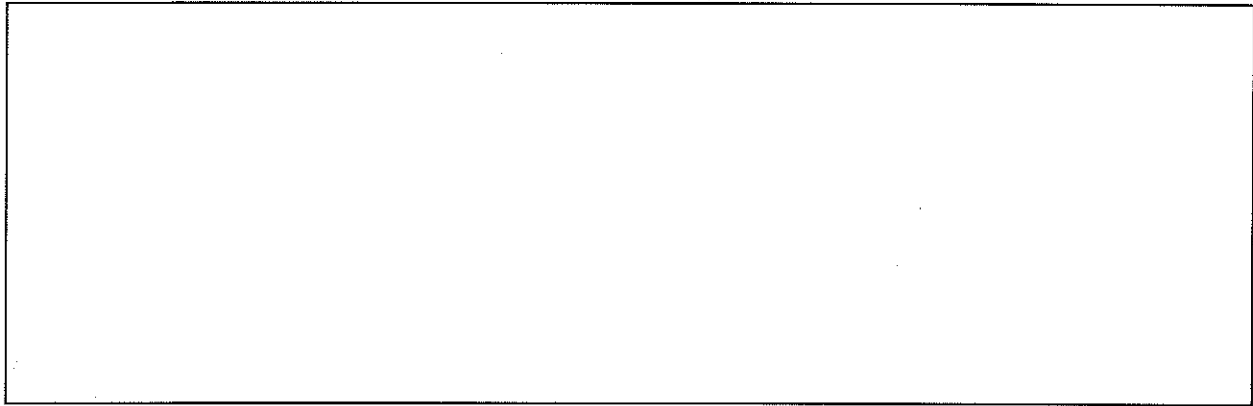
work, but there was a reluctance to hire consulting service providers for the kind of work that they do. When Bravo was brought in and the department merged while looking at the next generation of traffic controllers, it became clear that's what they wanted to get done. Their division has always been understaffed. They made the argument that their staffing level was too low to keep up with their projects.

Aira said that they have been using a Model D170 at every signalized intersection in the County. This was introduced in the 1980s. Now they were facing the prospect of the equipment becoming obsolete. There is a 5-6 year window for changes to take place. Aira said that they had embarked on researching a new system before Bravo came on board. From their research, the Model 2070LX class of controllers was identified as the best upgrade alternative for the County. Ecolite was identified as the only manufacturer of the new 2070LX controller approved by FDOT for use in Florida at that time. This model was picked because it is the next generation of controllers approved by CALTRAN (California Transportation). The FDOT controller specifications adopts the CALTRAN's 2070 specifications by reference. Much in the market as far as new technology is not guided by the standard for the CALTRAN, which developed their 2070LX standard that meets current ATC (Advanced Transportation Controller) standard. The Model 2070LX controller is CALTRAN's effort in the ATC market. They had been researching this change as part of their day to day duties, but it was not progressing. When Bravo and Fernandez, who came in later, became involved, they brought on a push to implement the technology and be more aggressive to get things done, however, they could not find the funding to do it.

In September 2015, the County's contract was with Kinley Horne (KH). KH had met with Bravo and offered to provide new tools to implement better traffic solutions. As they were negotiating with KH, they saw that their pricing was too high. The change order, which was the fourth one, was in the \$8-\$9 million range. They did not agree with it because from a business model perspective it was more effective to look into the next generation of technology rather than making a huge investment in the old system which would give them limited returns. From September 2015 to December 2015 they were deciding regarding the new technology and bringing in consultants. No one said, "let's use Atkins." Fernandez and Bravo said let's get consultants and use the funding and the EDP. The EDP lists mostly consultant engineer services. They decided the EDP was the way to go. They gave them the ok as to what the plan would be going forward. Aira said that NF helped him in getting it done. They spoke to Elizabeth Zabowski (Zabowski) of ISD about it. Zabowski asked for the consultant technical certifications.

They went to Zabowski and she sent them a list of consulting companies. The only consultant they asked to be removed from the list was KH since it would be a conflict for them to pick their replacement. Zabowski sent them the list of the top three (3) in the rotation. The rotational list was updated to remove KH. Aira and HF communicated with all of them and they submitted their presentations. They created a Scope of Work and sent it to the consultants on the list. Zabowski had sent 3 choices. They asked questions and the consultants sent responses, and that is how they ultimately reached the selection of Atkins. They engaged the consultants directly on different issues regarding the Work Order and Scope of Work. The process was done by Arias and HF. They were cognizant that Fernandez had worked for Atkins and made certain that she had no impacted nor influence on the process.

Aira said that looking for consultants was secondary. In order to expedite the project, they wanted to have a consultant come on board. With the EDP, once they gave Zabowski a general idea of what they wanted to do, they would get the names of the consultants to pick from.



Document(s) Reviewed:

06/23/14 – EDP Continuous Professional Services Agreement between the County and Atkins.

02/03/16 – Model 2070LX Traffic Controller Pilot-Scale Evaluation

03/07/16 – EDP Project Assignment Form assigning Project to Atkins. The DTPW project manager is Nahum Fernandez and the Department Designee contact person is Frank Aira.

06/01/16 – Work Order for Engineering Services to Atkins for Model 2070LX Traffic Signal Controller Project in the amount of \$197,721. - This form is approved by Traffic Signals and Signs officials, including Fernandez.

EDP Consultant Services Model 2070LX Traffic Controller Pilot-Scale Evaluation Scope of Services;

Letter dated 06/02/16 from Frank Aira, Division Chief, to Atkins and to the DTPW regarding Notice to Proceed for Work Order #1; EDP-PW-DTPW-S-20160029 Model 2070LX Signal Controller Project;

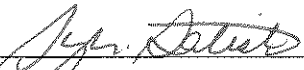
Letter dated 12/16/16 from Frank Aira to Atkins and to the DTPW regarding Task 6 of Work Order #1; EDP-PW-DTPW-S-20160029 Model 2070LX Signal Controller Project with attached Scope of Work; and

Letter dated 01/27/17 from Frank Aira to Atkins approving its request for a reasonable extension of time to complete the work remaining under Tasks 2 and 6 of the Work Order. The approved change is for time only with no changes to the maximum total Work Order amount.

Conclusion:


This investigation revealed that Fernandez was involved in oversight, enforcement or administration of the contract between Miami-Dade County and Atkins to the limited extent that her signature appears on one work order which Fernandez explained was signed as a ministerial act and part of the chain of command. The time period under which Fernandez is bound by the reverse two-year rule will expire in about two months, and Atkins does not presently have any contracts with Miami-Dade County with which Fernandez has any involvement. Fernandez will be provided with a copy of the most recent RQO issued by the Ethics Commission concerning the restrictions under the reverse two-year rule and a copy

will also be provided to her supervisor, Alice Bravo. Accordingly, this matter should be closed with no further action.

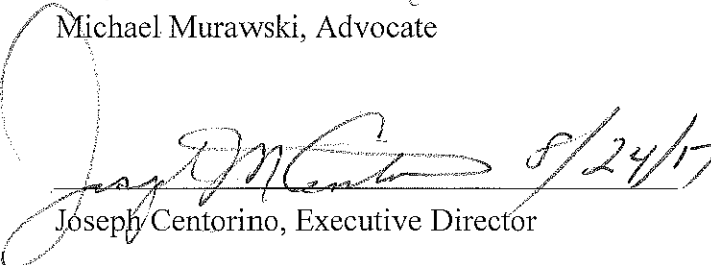


Sylvia Batista, COE Investigator

Approved by:



Michael Murawski, Advocate



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