



Miami-Dade Commission on Ethics & Public Trust

Investigative Report

Investigator: Larry Lebowitz

Case: PI 17-16 (INQ 17-59)	Case Name: Carlson/M.C. Harry Associates	<u>Date Open:</u>	<u>Date Closed:</u>
Complainant(s): Willy A. Bermello	Subject(s): Thomas Carlson	March 2, 2017	CASE CLOSED Date: <u>4/18/17</u>

Allegation(s):

Cone of Silence violation alleged in the midst of a Miami-Dade Aviation selection process for AOC [Aviation Operations Center] Design Services at Miami International Airport. Complainant Bermello, chairman of Bermello, Ajamil & Partners, and Subject Carlson, a principal at M.C. Harry Associates, were vying for the contract with other firms.

Relevant Ordinances:

The Miami-Dade Code of Ethics and Conflict of Interest Ordinance, Section 2-11.1(t) prohibits any communication regarding a particular bid between a potential vendor, service provider, bidder or consultant and the County's professional staff regarding a particular bid. Several exceptions are defined at 2-11.1(t)(1)(c)(i).

Investigation:

Interviews

At the instruction of the Advocate and the Staff Attorney, this investigator conducted preliminary interviews, and requested relevant documentation from:

- Miriam Singer, assistant director for procurement, Internal Services Department (ISD);
- Pablo Valin, A/E Consultant Selection Coordinator, ISD, non-voting chair of the selection committee

Document/Audio/Video Review:

See initial letter from Complainant Bermello to COE Executive Director Joseph Centorino dated March 1, 2017 and 17-page pdf file attachment, including an email, dated Feb. 7, 2016 from Respondent Carlson addressed to Valin, the Clerk of the Board of County Commissioners (COBCC) and two employees of the Miami-Dade Aviation Department procurement office: Amelia M. Cordova-Jimenez and Marie Clark-Vincent.

The essence of Bermello's complaint: Carlson should have addressed the email only to Valin and copied the COBCC; because he also included Cordova-Jimenez and Clark-Vincent on the email, he has violated the Cone of Silence. [Neither Cordova-Jimenez nor Clark-Vincent are members of, nor are they technical advisory staff to, the selection committee governed by the Cone]

See 14-page pdf file attached to an email sent to Investigator Lebowitz by Valin in response to a request for additional information. The Advocate was specifically looking for the relevant pages in the NTPC documents outlining who could and could not be contacted under the Cone. See Sections 1.12 CONE OF SILENCE and 1.13 COMMUNICATIONS AND SUBMITTAL OF ADDITIONAL INFORMATION (on pgs. 6-9 of the pdf file, or pgs. 10-13 of the original NTPC document). See the Advocate's response to Complainant Bermello for further information.

Email dated March 9, 2016, from Advocate Michael Murawski to Complainant Bermello detailing the Advocate's position

Conclusion(s):

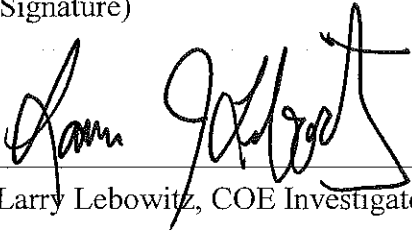
The Advocate's findings are detailed in the above-referenced email to Complainant.

It is relevant to note here that at the time the complaint was registered, the Complainant and the Respondent and at least two other firms were still vying for the contract.

Shortly thereafter, but before this inquiry began, the selection committee conducted a Tier 2 review including oral presentations from all of the competing firms. After that review, the Complainant's team was ranked third and the Respondent's team was ranked second. ISD and MDAD will be seeking to complete negotiations with an entirely different firm that was ranked No. 1.

Request to close the file with no further action.

(Signature)

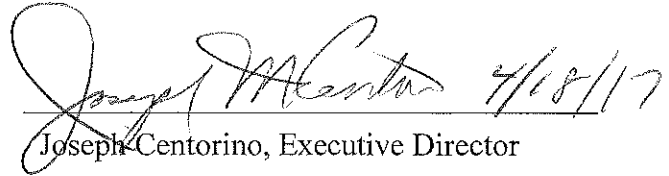


Larry Lebowitz, COE Investigator

Approved by:



Michael Murawski, Advocate



Joseph Centorino, Executive Director

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, March 15, 2017 9:59 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: INQ17-59 A16-MDAD-01 - Conflict of interest AMENDED

Addendum to INQ 17-59

From: Willy A. Bermello [mailto:WBermello@bermelloajamil.com]
Sent: Wednesday, March 15, 2017 9:16 AM
To: Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>
Cc: Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Lebowitz, Lawrence (COE) <Lawrence.Lebowitz@miamidade.gov>; Janeen Skelly <JSkelly@bermelloajamil.com>; Carlos Bonzon <CBonzon@bermelloajamil.com>; Steve Pynes <SPynes@bermelloajamil.com>; Tere Garcia <TGarcia@bermelloajamil.com>
Subject: RE: INQ17-59 A16-MDAD-01 - Conflict of interest AMENDED

Dear Michael,

Thank you for getting back to us; and, since the actual phrase “specifically prohibited” was not part of the RFP, the cone of silence did not apply to written communications with County employees. I am copying key personnel in our company, so that they are informed.

Warmest regards,
Willy

.....
Willy A. Bermello
Bermello Ajamil & Partners, Inc.
.....

CONNECT WITH US ON:



From: Murawski, Michael P. (COE) [mailto:Michael.Murawski@miamidade.gov]
Sent: Thursday, March 09, 2017 11:05 AM
To: Willy A. Bermello <WBermello@bermelloajamil.com>
Cc: Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Lebowitz, Lawrence (COE) <Lawrence.Lebowitz@miamidade.gov>
Subject: FW: INQ17-59 A16-MDAD-01 - Conflict of interest AMENDED
Importance: High

Dear Mr. Bermello:

You had asked about the interpretation of the Cone of Silence provisions as it relates to Solicitation A16-MDAD-01. Specifically, you asked if the instruction in the bid documents stating that, “All project specific questions and/or requests

for public documents shall be addressed, in writing, to the A/E Consultant Selection Coordinator, referenced above (Mr. Valin), with a copy to the COB" amounted to a "specific prohibition" that would preclude communications in writing with "any County employee, official or member of the Board of Commissioners" pursuant to Section 2-11.1 (t)(1)(c)(i) of the Conflict of Interest and Code of Ethics ordinance entitled, "Exceptions" (to the Cone of Silence).

As I indicated to you, the Cone of Silence at Section 2-11.1 (t)(1)(c)(i) lists certain *Exceptions*. These exceptions were also spelled out in the bid documents. They provide, among other things, that: "The provisions of [the Cone of Silence] shall not apply to...communications in writing at any time with any County employee... The bidder or proposer shall file a copy of any written communication with the Clerk of the Board." Consequently, written communications with County employees are permitted under the Cone of Silence as long as the bidder/proposer has contemporaneously filed the communication with the Clerk of the Board. The *exception* is not permitted if the communication is "specifically prohibited by the applicable RFQ or bid documents."

I have reviewed the language in the bid documents and, again, I cannot conclude that there was any "specific prohibition" in Solicitation A16-MDAD-01 that would preclude written communication to any County employee as long as it was filed with the Clerk of the Board. The instructions in the bid documents are sufficiently ambiguous to allow for reasonable doubt as to whether a "specific prohibition" was imposed.

Please be advised that this opinion only concerns Solicitation A16-MDAD-01 . If any of these facts change or if you have questions about the Cone of Silence or Cone of Silence language in future solicitations, please contact the Ethics Commission for a separate opinion.

Sincerely,

Michael P. Murawski

From: Willy A. Bermello [<mailto:WBermello@bermelloajamil.com>]
Sent: Wednesday, March 01, 2017 5:20 PM
To: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>
Cc: Carlos Bonzon <CBonzon@bermelloajamil.com>; Singer, Miriam (ISD) <SINGER@miamidade.gov>
Subject: A16-MDAD-01 - Conflict of interest
Importance: High

Dear Mr. Centorino,

Kindly refer to the letter and attachments.

Regards,

.....
WILLY A. BERMELLO
Chairman of The Board

2601 S. Bayshore Drive, Suite 1000
Miami, FL 33133

305.860.3701 – Direct
305.859.2050 – Main
www.bermelloajamil.com



Bermello Ajamil & Partners, Inc.

CONNECT WITH US ON:



Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Wednesday, March 15, 2017 9:54 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: INQ17-59 A16-MDAD-01 - Conflict of interest AMENDED

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Chairman of The Board

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