

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST



LETTER OF CLARIFICATION

**To:** Miami-Dade County Aviation Department  
**From:** Miami-Dade County Commission on Ethics and Public Trust  
**Re:** Ethics Complaint C13-042  
**Date:** August 2014

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On November 26, 2013, Eston E. Melton III (Melton) filed an Ethics Complaint against an attorney who represented two potential bidders for a Miami-Dade Aviation Department Request for Proposal (RFP). The complaint alleged that the attorney sent written correspondence to County personnel pertaining to the bid without registering as a lobbyist, in violation of Section 2-11.1(s), entitled *Lobbying*, of the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance (the Ordinance).

On April 16, 2014, the Ethics Commission held a probable cause hearing and found that there was insufficient evidence to substantiate the claim of unregistered lobbying and, therefore, no probable cause was found. Consequently, the Ethics Commission dismissed the Complaint and ordered a letter be issued to the department that issued the RFP.

WHEREFORE, the Miami-Dade County Commission on Ethics and Public Trust hereby issues this Letter of Clarification to the Miami-Dade County Aviation Department.

Investigation into the facts of this case revealed the following:

-Sometime around March 2012 and before June 2012, the attorney was hired by bidder A to prepare a response to the Miami-Dade Aviation Department bid, give an oral presentation to the selection committee and negotiate the lease agreement.

-The attorney filled out Appendix D “Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation” on July 2, 2012 (Exhibit A).

-Between April 2013 and October 2013 the attorney authored four (4) letters<sup>1</sup> to County officials regarding the bid. The attorney relied on the misleading language regarding lobbying in Appendix D and in the solicitation document (Exhibit B) and consequently did not separately register as a lobbyist prior to sending the letters.

-The attorney registered to lobby on October 2, 2013, when she was preparing to appear in front of the Board of County Commissioners of behalf of the bidder.

### ANALYSIS

Appendix D states in pertinent part, “[o]ther than for oral presentation, Proposers who wish to address the **county commission, a county board or county committee [emphasis added]** concerning any action, decision or recommendation of county personnel regarding this solicitation MUST register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.”

Section 3.2 of the solicitation document states in pertinent part, “NOTE: Other than for oral presentation, Proposers who wish to address the **county commission, a county board or county committee [emphasis added]** concerning any action, decision or recommendation of county personnel regarding this solicitation MUST register with the Clerk of the Board (Form BCCFORM2DOC) and pay all applicable fees.”

Section 2-11.1(s) (Lobbying), of the Ordinance, states in pertinent part:

“(b)...’Lobbyist’ means all persons, firms, or corporations employed or retained by a principal who seeks to encourage the **passage, defeat, or modifications of** (1) ordinance, resolution, action or decision of the County Commissioner; (2) any action, decision, recommendation of the County Manager [now County Mayor] or any County board or committee; or (3) **any action, decision or recommendation of County personnel [emphasis added]** during the time period of the entire decision-making process...”

Both Appendix D and the solicitation document fail to state that communication with **County personnel** regarding the solicitation is considered lobbying. The attorney’s reliance on the misleading language in those documents was reasonable and led to no probable cause being found in the instant complaint.

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<sup>1</sup> The April 8, 2013 letter was sent to the Miami-Dade Aviation Department Senior Procurement Contract Officer. The June 24, 2013 and August 30, 2013 letters were sent to the Miami-Dade Aviation Director. The October 1, 2013 letter was sent to Miami-Dade County’s Mayor.

In an e-mail sent in 2005, Ardyth Walker, former Staff General Counsel for the Commission on Ethics, approved the following language to be included in Form A-2 titled, "Affidavit of Miami-Dade County Lobbyist Registration for Oral Presentation."<sup>2</sup>

"Other than for the oral presentation, Proposers who wish to address the county commission, county board or county committee concerning any actions, decisions or recommendations of county personnel regarding this solicitation MUST register with the Clerk of the Board and pay all applicable fees."

Thus, it appears that leaving out the language in Section 2-11.1(s)(b)(3), was an oversight on the part of all those involved in the process of establishing boiler-plate language to be included in Aviation Department procurement documents. Therefore, we hereby advise the Miami-Dade Aviation Department to clarify both Appendix D and the language in all solicitation documents to accurately reflect the exact language of Sec. 2-11.1(s)(b) of the Ordinance, so as to avoid a similar situation occurring in the future. At a minimum, the language shall state that all lobbyists, as defined in the Code, shall comply with the requirements of Section 2.11.1(s) of the Miami-Dade County Code.

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<sup>2</sup> Appendix D seems to have replaced Form A-2 as they both have the same title and accomplish the same purpose.