



Memorandum



Miami-Dade County Office of the Inspector General
A State of Florida Commission on Law Enforcement Accredited Agency
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To: Honorable Chairwoman Rebeca Sosa
and Members, Miami-Dade Board of County Commissioners

From: Christopher Mazzella, Inspector General

Date: March 4, 2013

Subject: Proposed Resolution Approving the "MIA Business Venture Program" to
Provide Consulting Services to Foreign and Domestic Airports or Their
Contractors through a Consulting Services Corporation;
BCC Agenda March 5, 2013 Item 8(A)(1)

As part of our on-going oversight activities at the Miami International Airport, the Miami-Dade County Office of the Inspector General (OIG) reviewed and commented on the above-captioned proposed resolution. Our memorandum to the Director of the Miami-Dade Aviation Department (MDAD) sought a response to several inquiries and suggested that the proposed resolution be amended to include additional language that expressly provides for the OIG's continued oversight of the new Consulting Services Corporation's activities. (**Attachment 1**) We received a response from MDAD that addresses all of our inquiries. (**Attachment 2**) We appreciate MDAD's quick and thorough response.

Given that MDAD has no objection to the OIG's suggestion about our continued oversight, we request that the proposed resolution be amended to add a section that states:

"Provides that the new Corporation is subject to Section 2-1076 of the Code of Miami-Dade County."

We look forward to continuing our relationship with the Aviation Department and working on matters of mutual concern.

cc: Honorable Carlos A. Gimenez, Mayor, Miami-Dade County
Jose Abreu, Director, Miami-Dade Aviation Department
Robert A. Cuevas, Jr., County Attorney
Charles Anderson, Commission Auditor
Clerk of the Board



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To: Jose Abreu, Director, Miami-Dade Aviation Department

From: Christopher Mazzella, Inspector General

Date: February 25, 2013

Subject: Proposed Resolution Approving the "MIA Business Venture Program" to Provide Consulting Services to Foreign and Domestic Airports or Their Contractors through a Consulting Services Corporation

As part of our on-going oversight activities at the Miami International Airport, the Miami-Dade County Office of the Inspector General (OIG) has had an opportunity to review the above-captioned proposed resolution. This item (Legislative File No. 130230), which is scheduled for the Board of County Commissioners' (BCC) agenda of March 5, 2012, proposes to create a private corporation, wholly-owned by Miami-Dade County, and staffed by Miami-Dade Aviation Department (MDAD) employees. The new Consulting Services Corporation (new Corporation) will be initially capitalized with County funds up to \$30,000. Revenues made by the new Corporation will be remitted back to MDAD.

Because of the OIG's unique relationship with MDAD, based upon BCC Resolution 1203-99 and the Memorandum of Understanding between the OIG and MDAD, we believe it appropriate to include language in the proposed agenda item that expressly provides for the OIG's continued oversight activities. We suggest that an additional section be included in the enabling resolution that states:

"Provides that the new Corporation is subject to Section 2-1076 of the Code of Miami-Dade County."

In other observations, the OIG makes the following inquiries about the new Corporation's anticipated activities:

- Whether the time spent by MDAD personnel and County Attorney's Office personnel will be tracked and reimbursed by the new Corporation?
- Whether the new Corporation may have its own employees (i.e., not MDAD employees and not independent contractors)?
- Whether County travel and per diem policies will apply to travel undertaken by MDAD employees in performance of the new Corporation's activities?

- Whether County travel and per diem policies will apply to travel undertaken by the new Corporation's employees and/or independent contractors?
- Whether the "additional capitalization" referred to in Section 11 of the enabling resolution will require BCC approval as part of MDAD's operating budget?
- Whether the conduct of County personnel in performance of duties for the new Corporation is subject to the provisions of the County's Code of Ethics and Conflict of Interest Ordinance?
- Whether the Board of Directors' meetings and minutes are subject to Florida Statutes Chapter 286 (Sunshine Law) and whether the new Corporation's records are subject to Chapter 119 (Public Records Law), given that the new Corporation is created pursuant to Florida Statutes Section 125.012(26)?

We realize that this item is scheduled for March 5, 2012; however, we would appreciate a report at your earliest convenience on the questions posed above. Additionally, we would appreciate your reply to our requested amendment. This request is being made pursuant to Section 2-1076(d)(2) of the Code of Miami-Dade County.

cc: Honorable Carlos A. Gimenez, Mayor, Miami-Dade County
Honorable Chairwoman Rebeca Sosa
and Members, Miami-Dade Board of County Commissioners
Robert A. Cuevas, Jr., County Attorney
Charles Anderson, Commission Auditor

Memorandum

Date: February 28, 2013

To: Christopher Mazzella
Inspector General

From: José Abreu, P.E.
MDAD Director

Subject: Proposed Resolution Approving the "MIA Business Venture Program" to Provide Consulting Services to Foreign and Domestic Airports or Their Contractors through a Consulting Services Corporation

The information below responds to your memo of February 25, 2013, regarding the Aviation Department's proposed "MIA Business Venture Program."

MDAD has no objection to the notion that the new corporation—in whatever form it may take—is subject to Section 2-1076 of the Code and welcomes the oversight and review by your office of all of the corporation's activities, contracts, and letter agreements with airports or contractors acting on an airport's behalf.

While the Department had not planned to monitor by hours and minutes the amount of time spent on the Corporation by MDAD and County Attorney's staff members, we can provide reasonable estimates of time spent by those members. Incidentally, the airlines will be interested in exactly the same thing, so we'll be providing your office and the airlines with this periodic information.

MDAD does not plan to have the essential work of the corporation provided by corporation employees. All of that work will be performed by County personnel or contractors, as necessary. However, the agreements with foreign airports or their contractors will require the signature of an officer of the corporation. Therefore, the bylaws of the corporation will provide for a minimum number of officers that will be authorized to sign documents on behalf of the corporation, such as a President and probably a corporate secretary. Officers, of course, are employees of the corporation but we anticipate using only a few to satisfy signature requirements and any applicable state laws that require a certain number or type of officers.

County travel and per diem policies will apply to travel by County employees doing work for the corporation. As to contractors providing work for the corporation, some of the contractors may be major international companies that have their own travel and per diem policies, and therefore will not accept the County's policies. MDAD intends to apply the County's travel and per diem policies to the contractors to the extent MDAD can reasonably do so.

MDAD does not anticipate that any "additional capitalization" will be needed, but that may change depending on actual initial expenditures and how financial advisors suggest the corporation's activities be structured. For example, our advisors may recommend that a standard directors and officers insurance policy be obtained for the protection of the County employees who work on a corporate project, and the cost of such a policy may absorb a significant amount of the initial \$30,000 capitalization. As another example, if a particular project for a South American airport requires a fair amount of travel by MDAD employees before revenues are generated by that project, then it's possible that some additional capitalization would be required until revenues from the contract are received by the corporation. On this subject, however, be advised that both MIA's airlines and the Federal Aviation Administration will be vitally interested in the amount of MDAD funds used in support of the corporation.

ATTACHMENT 2

and both will be actively monitoring the level of any additional capitalization that may be required on a periodic basis.

The Department assumes that all work of County employees, whether done for MDAD or for a corporation wholly owned by the County, would be subject to the County's Code of Ethics and Conflict of Interest Ordinances.

MDAD has no objection to having the meetings and minutes of the Board of Directors subject to the Sunshine Law and the Public Records law; however, caution is necessary in one aspect. We anticipate that the bulk of the corporation's work will be done under an arrangement that calls for a simple reimbursement to MDAD for the cost of MDAD's and the corporation's expenses in providing the services, coupled perhaps with a modest multiplier to cover other indirect and administrative expenses. Certainly, the contracts and activities associated with these projects are subject to the Sunshine and Public Records laws.

There may be a relatively few number of agreements, though, that call for reimbursement in the form of a percentage of the foreign airport's revenues that result from the corporation's work. If MDAD ends up competing with other airport advisors on the same project, then the percentage bid by MDAD in relation to a competitor's becomes a sensitive item insofar as MDAD's ability to submit a successful bid. And, if the project is large enough that a general contractor is involved and is seeking the services of the corporation as a member of the overall team, the general contractor may declare its bid to be a trade secret or otherwise sheltered from public disclosure until the general contractor's bid is opened. Again, the bulk of the corporation's work is anticipated to be a straightforward reimbursement of expenses with a possible multiplier, and the work under the project and the revenues received for it will certainly be available for public scrutiny under applicable law. To the extent the corporation needs to shield a bid such as in the example given above, however, the corporation may need to resort to provisions in the state law that permit a temporary exemption from the Public Records law.

I trust the above provides adequate responses to your inquiries and believe these responses will not require any changes to the current resolution or Mayor's memorandum accompanying it. If you have any questions, you may contact me at 305-876-7077.

C: Carlos A. Gimenez, Mayor
 Jack Osterholt, Deputy Mayor
 R. A. Cuevas, Jr., County Attorney
 Miguel Southwell, MDAD Deputy Director