FLORIDA
COMMISSION ON ETHICS
MAR 23 2022
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BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS

In re: Keith James,

Respondent. **Complaint No. 19-180**

_____/

ADVOCATE'S MOTION TO DISMISS COMPLAINT

COMES NOW, Advocate for the Florida Commission on Ethics (Commission), and moves the Commission to Dismiss the pending complaint and as good grounds states:

1. Keith James (Respondent) serves as the Mayor of the City of West Palm Beach (City).

2. The case involves a no-bid contract for security services awarded to Professional Security Consultants (PSC) after the existing contract for such services with Giddens Security Corporation (Giddens) was terminated.

3. Respondent is alleged to have violated Section 112.313(6), Florida Statutes, by urging the award of a no-bid security contract to PSC because the company is operated by one of his friends.

4. In early 2019, under Mayor Jeri Muoio, the City issued two solicitations. One Request for Proposal (RFP) was for "Roving Security Ambassador Services" and the second was for "Unarmed Security Guard Services."

5. On April 4, 2019, Respondent took office as the newly elected West Palm Beach Mayor and Chief Executive Officer.[1] Upon assuming office, Respondent appointed a new police chief.

[1] Prior to being elected Mayor for a four-year term, Respondent had served as a City Commissioner since 2011.

6. Then-City Administrator Jeff Green and Respondent agreed to allow Frank Adderley, the newly hired police chief, to evaluate the City's security services process.

7. With that in mind, on April 15, 2019 at the direction of City Administrator Green, the City's Procurement Director, Frank Hayden, sent a letter to six of the proposers, including PSC, stating that they were "disqualified from the award process" for failure to meet one of the minimum requirements and the two RFPs were cancelled. On April 18, 2019, Procurement Director Hayden sent another letter to "All Proposers" advising that the City was cancelling both RFPs but intends to re-issue a solicitation in the near future; however, the process never resumed.

8. After consultation with Respondent, Chief Adderley, and the deputy police chief, City Administrator Green concluded it was best for the City to have one security firm oversee all areas of the City, rather than the existing arrangement of contracting with multiple firms. Having multiple security firms caused problems, inconveniences, and was confusing to the residents, the City, and the police. Additionally, the City was not satisfied with the current services provided by Giddens, whose contract was to expire on September 30, 2019.

9. City Administrator Green opined that having cohesive security services throughout the City with a single firm would be cost effective.

10. Respondent denied playing an active role in the discussions regarding security guard services.

11. On August 26, 2019, Procurement Director Hayden terminated all agreements with Giddens, effective September 30, 3019.

12. At the September 9, 2019 City Commission meeting, Procurement Director Hayden gave a PowerPoint presentation titled, "Benchmark Study," regarding security services, and following extensive discussion and public comments, City Commissioners voted

unanimously to approve Resolution No. 290-19 which, "grants a waiver of the Procurement Code requirements and approves a Security Services Agreement with Professional Security Consultants for a term of three years, with an option to extend for an additional two years." Respondent did not vote on the Resolution; however, he spoke in favor of awarding the contract to PSC and recommended that the Commissioners vote to approve the Resolution.

13. Respondent, City Administrator Green, Police Chief Adderley, and Commissioner Joe Peduzzi socialize with PSC Senior Regional Director Willie Perez. All recommended hiring PSC to handle security City-wide.

14. On September 19, 2019, Giddens filed a lawsuit against the City claiming, among other allegations, bias, favoritism, collusion, and/or other unethical or illegal activity by the City through its staff, Mayor, and/or Commissioners. *Giddens Security Corporation vs. City of West Palm Beach*, 50-2019-CA-011890. Numerous individuals were implicated along with Respondent.

15. Shortly thereafter, Giddens filed the instant complaint with the Commission on Ethics and a complaint with the Palm Beach County Office of Inspector General.

16. In the civil lawsuit, the City identified the procurement officer/director, Hayden, as the driving force behind PSC being chosen. According to the City's response to Gidden's Motion for Temporary Injunctive Relief, "the procurement official [Hayden] determined that it was in the best interest of the City to use PSC because only PSC could provide cohesive security services throughout the City." PSC was "already in contract with the Downtown Development Authority...."[2] The City continued, "[t]he Procurement Official chose to use the process" and "[t]he procurement official presented his recommendation to the City Commission and noted that

[2] Defendant, City of West Palm Beach's Response to Plaintiff's Motion for Temporary Injunctive Relief, pp. 3, 4.

prior RFPs for security guard services had been withdrawn to allow the new City Chief of Police to review overall security for the City."[3]

17. Sworn affidavits from Police Chief Adderley and Procurement Director Hayden were filed with the Court as part of the City's response to the lawsuit. Chief Adderley stated, "the contract with PSC will aid the Police Department in providing security and safety to the public." Exhibit "A."

18. In his sworn affidavit, Hayden, former-Director of Procurement, stated, PSC is "the only company practicable that could meet the City's needs because PSC was already under contract..." and "the contract with PSC will provide cohesive security services throughout the City. The contract with PSC is in the best interests of the City and is both equitable and economical." Exhibit "B."

19. Subsequent to the civil lawsuit being filed, the contract with PSC was rescinded and the matter put out for competitive bid.

20. Respondent directed the newly appointed City Administrator Faye Johnson to study the matter. Respondent explained the situation as follows:

> "New information obtained by Interim City Administrator Faye Johnson leads me to believe that we need to take a fresh look at the process for selecting the security provider and put the contract out to bid. The public's trust and confidence in the contract selection process and in their city government is paramount. I look forward to the process playing out, in the interest of full transparency and to ensure the contract is above reproach. I am genuinely grateful to Ms. Johnson for her review."

21. Once the bidding process began, the Inspector General closed its complaint on the matter without investigation.

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[3] *Id.*

22. On September 27, 2019, the Court denied the Motion for Temporary Injunction, without prejudice.

23. On August 25, 2020, Giddens voluntarily dismissed its lawsuit against the City.

24. Around or on November 17, 2020, the West Palm Beach City Commissioners voted 4-to-1 to approve the contract with PSC.

25. Respondent's overall concerns appeared to be first and foremost how best to protect the public's safety through the collaboration and cooperation of its security services. Notwithstanding an acknowledged friendship between PSC Director Perez and Respondent, the facts support PSC being best suited and the sole source to provide security services for the City of West Palm Beach, through an existing contract with another entity.

26. Numerous City officials and employees were involved one way or another in the contract award to security company PSC: Respondent, Police Chief Adderley, Purchasing Agent Josephine Grosch, Procurement Director Hayden, City Procurement Supervisor Nathaniel Rubel, City Attorney Kimberly Rothenburg, Deputy City Attorney Urcheck, then-City Administrator Green, current-City Administrator Johnson, and five City Commissioners.

27. Based on the Commission's Report of Investigation, the Advocate recommended a finding of no probable cause to believe that Respondent violated Section 112.313(6), Florida Statutes, by urging the award of a no-bid security contract to a company operated by one of his friends. The Commission rejected Advocate's recommendation and issued an Order Finding Probable Cause.

28. For a violation under Section 112.313(6), Florida Statutes, it must be established that Respondent *corruptly* used his public office to secure a special privilege, benefit, or exemption

for himself or others. In other words, Respondent's actions must have been done with a wrongful intent which was inconsistent with proper performance of his public duties. §112.312(9), Fla. Stat.

29. To prepare the case for a final hearing at the Division of Administrative Hearings, the Advocate spoke with potential witnesses who would be called to testify at the final hearing: the West Palm Beach Inspector General, West Palm Beach City Commissioners Kelly Shoaf and Joe Peduzzi (members who were serving at the time), Administrator Johnson, and Police Chief Adderley. In addition, the Advocate read all the documents filed in the civil lawsuit.

30. The witnesses' comments to Advocate included, but are not limited to, "the optics looked bad and the situation could have been handled differently." Shoaf, Peduzzi, and Adderley supported the decision to award the contract to PSC and are pleased with the services being provided to the City. None of the potential witnesses expressed that Respondent acted improperly. Commissioner Peduzzi stated that he would have filed an ethics complaint himself if there had been anything inappropriate about Respondent's actions or the process.

31. Administrator Johnson was the most vocal critic of the situation. She advised the Advocate that she was new to the job. Even though she had 13 years of experience in county government administration and 17 years in city government, she was not yet familiar with the City's procurement process. In that context, she advised, "I questioned the process" and whether the contract had "to go out to bid." When asked if Mayor James influenced the decision to give a no bid contract to PSC due to certain friendships, Administrator Johnson answered emphatically, "absolutely not."

32. Some of the information provided herein is newly discovered, while some clarifies what was in the Report of Investigation.

33. None of the potential witnesses say that Respondent's conduct was done with wrongful intent or that the act or omission was inconsistent with the proper performance of his public duties. *Blackburn v. State Commission on Ethics*, 589 So. 2d 431 (Fla. 1st DCA 1991).

34. In sum, there is no evidence of wrongdoing by Respondent and the Advocate found no witnesses who believed Respondent misused his public office.

35. It would not serve the public's interest to prosecute this case.

WHEREFORE, it is respectfully suggested that, in light of the potential testimony, the ethics complaint against Respondent be dismissed. This motion is made in good faith after due diligence to ascertain the evidence.

RESPECTFULLY SUBMITTED the 23rd day of March, 2022.

Elizabeth A. Miller
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Commission on Ethics
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Elizabeth.miller@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document has been sent to Counsel for Respondent, Ronald G. Meyer, Esquire, Meyer, Blohm and Powell, P.A., Post Office Box 1547, Tallahassee, Florida 32302, rmeyer@meyerblohmlaw.com, via email only, on the 23rd day of March, 2022.

Elizabeth A. Miller
Elizabeth A. Miller

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

GIDDENS SECURITY CORPORATION, CASE NO. 50-2019-CA-011890

Plaintiff, DIVISION:

vs.

CITY OF WEST PALM BEACH,

Defendant.
_____/

NOT A CERTIFIED COPY

AFFIDAVIT OF FRANK ADDERLEY

STATE OF FLORIDA }SS:
COUNTY OF PALM BEACH }

I, FRANK ADDERLEY, being duly sworn, depose and state the following:

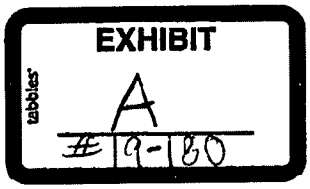
1. I am over 18 and have personal knowledge of the facts stated in this affidavit.

2. I am Chief of the Police Department for the City of West Palm Beach, Florida, and am authorized to make this Affidavit.

3. Security is important to the Police Department, the safety of residents, and the public interest.

4. A security services company is necessary to aid the Police Department in providing security and safety to the public.

5. Having cohesive security services with a unified chain of command throughout the areas set forth in the contract with Professional Security Consultants ("PSC") and the areas covered by the Downtown Development Authority ("DDA") is important to the Police Department.



6. Having a uniformed group of security guards throughout the City is important to the Police Department.

7. Having a unified security process and communication system is important to the Police Department.

8. The Police Department will rely on the security services company selected by the City to provide additional "boots on the ground" and enforce curfews in both the area covered by the DDA and the areas identified in the City contract with PSC.

9. The contract with PSC will aid the Police Department in providing security and safety to the public.

10. It is important to the City of West Palm Beach Police Department that a contract for security services goes into effect on October 1, 2019.

FURTHER AFFIANT SAYETH NAUGHT.

FRANK ADDERLEY
Chief of Police
City of West Palm Beach, Florida

The above Affidavit was sworn to (or affirmed) and subscribed before me this 26th of September, 2019, by FRANK ADDERLEY, Chief of the Police Department of City of West Palm Beach, Florida, who is personally known to me.

Notary Public, State of Florida

My Commission Expires:

Notary Public State of Florida
Sigrid M Vegas
My Commission GG 101019
Expires 08/20/2021

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

GIDDENS SECURITY CORPORATION, CASE NO. 50-2019-CA-011890

Plaintiff, DIVISION:

vs.

CITY OF WEST PALM BEACH,

Defendant.
_____/

AFFIDAVIT OF FRANK HAYDEN

STATE OF FLORIDA }SS:
COUNTY OF PALM BEACH }

I, FRANK HAYDEN, being duly sworn, depose and state the following:

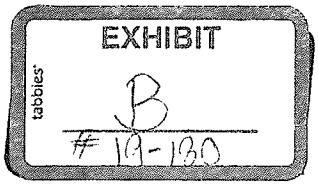
1. I am over 18 and have personal knowledge of the facts stated in this affidavit.

2. I am Director of the Office of Equal Opportunity for the City of West Palm Beach, Florida, and am authorized to make this Affidavit.

3. My previous role was Director of Procurement for the City of West Palm Beach, Florida.

4. A Request for Proposal was previously issued for security guard services in City Hall, the Photographic Museum building, City Plaza, Mandel Public Library, City parking garages, City Municipal Complex, the Water Treatment Plant, the Wastewater Plant, Currie Park, and other City Parks and Youth Empowerment Centers.

5. A Request for Proposal was previously issued for unarmed roving security ambassador services in the Northwood District.



6. Both Requests for Proposals were cancelled to allow the new Chief of Police, Frank Adderley, to review the City's overall security.

7. Based upon an evaluation of the City's overall security needs, the City requires a security services company that can provide cohesive security services throughout all areas of the City of West Palm Beach in which contracted security services are provided.

8. The Downtown Development Authority ("DDA") has already entered into a contract with Professional Security Consultants through September 2022 to provide security services in certain portions of the City.

9. In order to achieve cohesive security services in the remaining areas, the City determined that Professional Security Consultants ("PSC") was the only company practicable that could meet the City's needs because PSC was already under contract with the DDA through September 2022.

10. The procurement department conducted a process to ensure competitive pricing for a contract with PSC by reviewing the DDA's competitively procured contract with PSC, reviewing a competitively procured contract by Pompano Beach CRA with PSC, and examining hourly rates offered by PSC and its competitors.

11. The contract with PSC is the best value for the City and its rates are competitive.

12. The contract with PSC will provide cohesive security services throughout the City.

13. The contract with PSC is in the best interests of the City and is both equitable and economical.

14. The Procurement Code at Section 66-94(a)(3) allows the City Commission to approve contracts that do not otherwise follow other methods specifically set forth in the Procurement Code.

15. I determined that the most open and transparent method for approval of the PSC contract would be the method contained in Section 66-94(a)(3), approval by the City Commission.

16. On September 20, 2019, I executed a single source justification statement to reduce my findings to writing. (Ex. A)

FURTHER AFFIANT SAYETH NAUGHT.

FRANK HAYDEN
Director, Office of Equal Opportunity
City of West Palm Beach, Florida

The above Affidavit was sworn to (or affirmed) and subscribed before me this 26TH of September, 2019, by FRANK HAYDEN, Director of the Office of Equal Opportunity, City of West Palm Beach, Florida, who is personally known to me.

Notary Public, State of Florida

Notary Public State of Florida
Sigrid M Vegas
My Commission GG 101019
Expires 08/20/2021

My Commission Expires: