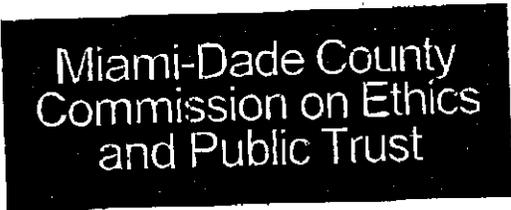

*** TX REPORT ***

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| RESULT | OK |

Biscayne Building
19 West Flagler Street
Suite 220
Miami, Florida 33130
Phone: (305) 579-2594
Fax: (305) 579-2656



Fax

To: Raul Aguila From: Robert Meyers

Fax: (305) 673-7002 Pages: 3 , including cover sheet

Phone: _____ Date: 3/14/02

Re: Cone of Silence Issue CC: _____

Urgent For Review Please Comment Please Reply Please Recycle

Raul -

I'm not certain this will help,
but it's the best I can do under
the circumstances.

Call me if you wish to discuss.

Thanks,



INQ 02-11

March 14, 2002

ETHICS COMMISSIONERS

Kerry E. Rosenthal, Chairman
Gail Dotson
Guillermo Grenier
Elizabeth M. Iglesias
Robert H. Newman

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

Raul J. Aguila, Esq.
First Assistant City Attorney
City of Miami Beach
1700 Convention Center Drive, Fourth Floor
Miami Beach, FL 33139

Re: Cone of Silence

Dear Mr. Aguila:

Thank you for your letter dated March 1, 2002. I consulted with the Commission's staff general counsel and I would respond as follows. The Ethics Commission can issue opinions based on information a requester brings forward or it may conduct an investigation based on allegation(s) of wrongdoing. In cases where requests for opinions are submitted, the Commission tends to accept the facts presented by the requester when staff prepares a draft opinion for review by the full Commission. It is not unusual, however, for staff to seek additional information from the relevant parties, if our office questions some of the representations made in the request for opinion. Once a draft opinion is prepared, the matter is presented to the Commission at one of our regular meetings and the Commission will issue its opinion, which is memorialized in writing and mailed to the requester. The requester and other interested parties may appear at the meeting and provide testimony to the Ethics Commission.

The other process by which the Ethics Commission may take up a matter is when our office has reason to believe ethical transgressions have occurred that are within our jurisdiction. Under this scenario, our office will conduct an investigation and our advocate will determine whether such behavior should result in the filing of a complaint. If a complaint is filed, the Ethics Commission is obligated to determine legal sufficiency and probable cause. These findings are made at two separate meetings. If probable cause is found, the matter is scheduled for a public hearing. Please understand that the Ethics Commission may at any stage of the proceeding dismiss any complaint when it appears that the alleged violation was inadvertent, unintentional or insubstantial. Generally, a letter of instruction will be issued for complaints that are dismissed for these reasons.

Based on the information you have provided me, I would agree with your conclusion that the Cone of Silence was violated. I respect your opinion that the violation appears to be a technical, inadvertent one, but our office would have to conduct its own investigation before reaching the same conclusion. Even if our staff were to arrive at the identical finding, our advocate would be compelled to bring this case to the Ethics Commission for a determination. Under the circumstances, I am not certain that availing yourself of our processes in the instant case makes sense. The City wants to resolve this matter quickly and the earliest I can get this to the Ethics Commission is April 17th.

I wish I could offer you more guidance but I have not been delegated the authority to give you a specific recommendation about the appropriateness of the sanction(s) you choose to impose or not impose in a given case. Our office would readily render an opinion about whether the ordinance in question was violated, but not whether your city has administered a suitable penalty.

If I can be of further assistance, please contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

Robert Meyers
Executive Director

Biscayne Building
19 West Flagler Street
Suite 220
Miami, Florida 33130
Phone: (305) 579-2594
Fax: (305) 579-2656

Miami-Dade County
Commission on Ethics
and Public Trust

Fax

To: Raul Aguila From: Robert Meyers
Fax: (305) 673-7002 Pages: 3, including cover sheet
Phone: Date: 3/14/02
Re: Cone of Silence Issue CC:

Urgent For Review Please Comment Please Reply Please Recycle

Raul -

I'm not certain this will help,
but it's the best I can do under
the circumstances.

Call me if you wish to discuss.

Thanks,
Robert

The information contained in this facsimile message is **CONFIDENTIAL** information intended only for the use of the individual or entity named above. If the reader of this message is not the recipient you are hereby notified that any dissemination, distribution or copy of this communication is strictly **PROHIBITED** and will be considered as a tortious interference in our confidential business relationships. Additionally, unauthorized dissemination of this confidential information subjects you to criminal and civil penalties. If you have received this communication in error, please immediately notify us by telephone and return the original to us at the above address via the U.S. Postal Service.

OFFICE OF THE CITY ATTORNEY

City of Miami Beach

F L O R I D A



MURRAY H. DUBBIN
City Attorney

Telephone: (305) 673-7470
Telecopy: (305) 673-7002

March 1, 2002

Robert Meyers
Executive Director
Miami-Dade Commission on Ethics
and Public Trust
19 West Flagler Street., Suite 220
Miami, Florida 33130

Re: City of Miami Beach Bid No. 02-01/02 - Construction of the City of Miami Beach
Regional Library / Cone of Silence Issue

Dear Mr. Meyers:

Thank you for meeting briefly with City Manager Jorge Gonzalez and me following your attendance at the City's Community Affairs Committee Meeting on January 29, 2002. At that time, the City Manager and I indicated that the City Administration had recently become aware of an inadvertent oral communication between a bidder and a City employee and a City consultant/independent contractor, respectively, which may have raised a possible issue pursuant to the City's Cone of Silence Ordinance, as codified in Section 2-486 of Division IV of Article VII of Chapter 2 of the Miami Beach City Code (a copy of which is attached for your reference as Exhibit "A" hereto). The foregoing facts relative to what transpired and the subsequent evaluation and recommendation of the City Attorney's Office is herein submitted for your consideration and, as you may deem necessary, further recommendation.

I. BACKGROUND/FACTS

The City of Miami Beach's Cone of Silence Ordinance (the City Ordinance) was adopted by the Mayor and City Commission on January 6, 1999. The City Ordinance was patterned after similar legislation passed by Miami-Dade County (the County Ordinance), but does not contain the most recent limited exceptions to the County Ordinance, pursuant to Administrative Order No. 3-27,

which became effective on February 8, 2002¹.

On November 2, 2001, the City issued Invitation to Bid No. 02-01/02 for Construction of the City of Miami Beach Regional Library (the Bid); said work consisting of a new two-story library building of approximately 42,000 square feet and two adjacent surface parking areas (the Library Project). Bids were received and opened by the City on December 19, 2001. To date, the City is still in the process of evaluating bids and the City Manager has not presented his written recommendation for award of the Bid to the Mayor and City Commission².

On January 2, 2002, a construction sub-committee of the Collins Park Cultural Center Oversight Committee met in a duly noticed public meeting to discuss the bids received on December 19, 2001. The Collins Park Cultural Center Oversight Committee is a City ad-hoc committee which was created by motion of the Mayor and City Commission with the charge of serving as an advisory board to the City Commission relative to the Library Project. The construction sub-committee was created by the Oversight Committee, not as a selection committee to evaluate and recommend the successful bidder(s) pursuant to the Bid, but to keep the Committee advised of construction issues related to the Project (so that the Committee, in turn, could properly advise the City Commission).

The City's Senior Capital Projects Coordinator, and supervisor for the Library Project, Jorge Chartrand, and Juan Poleo, an employee of URS Corporation, which has an agreement with the City for program management of certain City construction projects, including this Project, presented the sub-committee with an overview of the apparent three lowest bidders pursuant to the Bid: (1) Regosa Engineering, Inc.; (2) SFCS, Inc.; and (3) The Tower Group. It was also indicated that Regosa had, among the three, submitted the lowest price pursuant to the Bid, with a total lump sum bid, in the amount of \$6,895,993.51; almost \$104,003.49 lower than the second lowest bidder, and \$299,075.40 lower than the third lowest bidder.

During the course of the meeting, the Library Project budget was reviewed, in relation to the bids received. Certain line item prices, for specific costs, as set forth in the Bid Schedule of Values, were evaluated and compared for the three respective bidders. Based on the sub-committee's review, some line items were questioned with regard to Regosa's bid that could not be answered by City staff. The Committee requested that Mr. Chartrand and Mr. Poleo contact Regosa and clarify the following items in its bid:

1. Masonry - clarification on submitted line item price to determine whether what was included in the price conformed to the Bid Specifications and Project Budget.

¹ These exemptions are neither relevant nor applicable to the instant inquiry.

² Pursuant to the City's Ordinance, the Cone is lifted upon the City Commission's acceptance of the City Manager's written recommendation.

2. Doors and windows - because the line item price was lower than the estimate in the Project Budget, clarification as to what was included.
3. Mechanical/Electrical/Plumbing (MEP) - whether Regosa would do the work or subcontract it.
4. Special construction - clarification on what the line item price included, as price in bid was significantly higher than the same line item for the other two bidders.
5. Where was the cost for the decorative fountain indicated in the bid?
6. As Regosa's listed project manager (PM) for the Project was also currently working on another City project, there was concern regarding availability of the proposed PM to the Library Project.
7. Special Finishes - in which line item were these included?

Following adjournment of the meeting, that same day in the afternoon, on or about 4:00 p.m., Mr. Chartrand and Mr. Poleo met with Mr. Jose Gomero, vice-president of Regosa Engineering, to obtain answers to the clarifications requested by the sub-committee. The contact was initiated by telephone, from the aforesaid individuals to Mr. Gomero, and a meeting was held in the City's Public Works Department Conference Room. The meeting was not publicly noticed. In response to the issues raised, Mr. Gomero indicated the following:

1. Masonry - the work included under the line item price only included Concrete Morter Units (CMU's).
2. Doors and windows - the doors and windows would be subcontracted. The price shown in the line item for doors and windows was provided by a subcontractor and reviewed by Mr. Gomero and included everything required in the Bid.
3. MEP - Regosa Engineering would perform the electrical work; mechanical and plumbing work would be subcontracted.
4. Special Construction - Line Item No. 13 was "high" because it also included work related to fire alarm installation and irrigation, which is normally not included within this line item.
5. The price for Line Item No. 10, entitled "Specialties", included the work for the new water fountain.
6. New Project Manager - a new project manager would be hired specifically for the Library Project.

7. Line Item price, No. 9, entitled "Finishes", included the special finishes such as keystone and terrazzo.

According to Mr. Chartrand and Mr. Poleo, Mr. Gomero verbally provided satisfactory answers to the above-referenced clarifications. No line item price in Regosa's bid, nor any other term of its bid, was in any way changed, altered, or supplemented from what was submitted. The extent of the conversation and interaction among the parties was for the purpose of clarifying and answering questions raised by the sub-committee. In my interview of Mr. Chartrand and Mr. Poleo for the purpose of ascertaining the facts and issues pursuant to the preparation of this letter, both individuals informed me that Regosa did not initiate the contact with the City, and that the contact was made by the City in the interest of expediting the Bid process and obtaining complete information prior to making a recommendation to the City Manager with respect to the Bid, and to the City Commission. The only questions posed to Mr. Gomero were those relating to the clarification of the aforementioned line items in the bid, in order for the sub-committee and City staff to fully and completely understand the issues that were bid.

Prior to adjournment of the meeting, Mr. Gomero volunteered that Regosa Engineering's bonding capacity was \$10 million dollars. The meeting was adjourned. It should be noted, that bonding capacity is not an issue that is taken into consideration by the City for the purpose of determining the lowest responsive bidder. Rather, the issue of bonding capacity arises after the lowest responsive bidder has been recommended and contract negotiations commence.

II. EVALUATION

The City's Cone of Silence Ordinance provides that any person who has personal knowledge of a violation of the Ordinance shall report such violation to the City Attorney's Office³ or the State Attorney's Office and/or may file a complaint with the County Ethics Commission. In this case, members of the City's administrative staff, through the Office of the City Manager, upon learning of the facts that transpired, voluntarily came forward and contacted the City Attorney's Office with respect to a possible violation of the Ordinance. The City Attorney's Office then met with the City Manager; the Assistant City Manager supervising the Regional Library Project; the Special Assistant to the City Manager; and the Procurement Director. Additionally, as stated, this Office also met with Mr. Chartrand and Mr. Poleo.

The City's Ordinance, like the County Ordinance, defines the "Cone of Silence" to mean a prohibition on any communication regarding a particular Request for Proposals, Request for Qualifications, Request for Letters of Interest, or Bid between a potential vendor, service provider,

³ In an amendment to the City Ordinance, the Mayor and City Commission deemed that it would be in the best interest of the City that the City Attorney's Office be included, in addition to the State Attorney's Office and the County Commission on Ethics, with respect to reporting Ordinance violations.

bidder, lobbyist, or consultant, and the City's administrative staff, including, but not limited to, the City Manager and his or her staff.⁴

Under a literal interpretation of the City Ordinance, it would appear that Mr. Chartrand, a City employee, did have a prohibited communication with the apparent low bidder, Regosa, since it was conducted outside of a public meeting, was not in writing, and did not fit within any of the other permitted exceptions under said Ordinance. Mr. Poleo, however, who is employed by URS Corporation, an independent contractor doing program management work for the City, is not within the jurisdiction of the Ordinance, as he is not a member of the City's "administrative staff"⁵. The County has never clarified in its Ordinance whether its term, "professional staff", includes consultants to the County. Under the City Ordinance, therefore, Mr. Poleo could conceivably have met with Regosa without Mr. Chartrand; asked the identical questions that were asked by both he and Mr. Chartrand; and a violation of the Ordinance would not have occurred.

More importantly, at issue is the spirit of the Cone of Silence Ordinance. Quoting from Administrative Order No.3-27, with respect to the policy by which the County's Cone of Silence Ordinance was established,

"The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award" [emphasis applied].

Under the facts presented to the City Attorney's Office, and as set forth in this letter, the intent of the City staff member in question was in no way to exercise any kind of undue influence over the bidder (Regosa) or over the competitive selection process. The intent was to respond (perhaps too over-eagerly and without adequate forethought) as quickly as possible to issues raised by a City sub-committee in a public meeting; regarding simple clarifications of line items in a bid. Staff in question did not engage in editorializing; made no recommendation; but rather only engaged in simple fact finding and reporting. The call to Regosa could arguably have been made during the public meeting of the sub-committee, and a violation of the Ordinance would not have occurred.

Based upon my review of the facts, and of both the intent of the County and City's respective Cone of Silence Ordinances, there is no evidence to show any intention on the part of the City

⁴ The City's Cone of Silence Ordinance was also amended to change the term "professional staff" to "administrative staff", marking a departure from the terms of the County Ordinance in this respect.

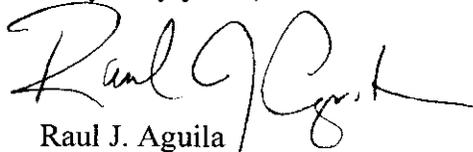
⁵ The City has interpreted the term "administrative staff" to only include City employees, although City consultants and independent contractors who are involved with or otherwise advising the City on matters that anticipate competitive bidding are urged to voluntarily subject themselves to and abide by the City's Ordinance.

employee in question to unduly influence the competitive process. Additionally, given the strict penalties for violation of the Cone of Silence -- rendering a bid award to a bidder void, and subjecting the City staff member in question to disciplinary action, up to and including dismissal -- it is clear that the Ordinance was created to address much stricter violations. At issue here is, concededly, by the City's admission, an inadvertent "technical" violation of the Ordinance; not an intentional violation designed to influence the process; the latter of course meriting the severe penalties that the Ordinance envisioned. As the County's Cone of Silence legislation, like the City's, is codified within those respective entities' ethics legislation, it is even more persuasive that the intent of these ordinances is to prohibit intentional offenses which would unduly sway the competitive bid process.

It is therefore this Office's opinion, pursuant to its findings, as contained herein, that the single communication that took place here was an inadvertent violation of the Cone of Silence Ordinance; was not made for the purpose of unduly influencing the competitive bid process herein; and, following a public meeting, was made solely for the purpose of obtaining simple, straightforward clarifications to line items in a particular bid. The City's Ordinance also seems to suggest that if the conversation at issue were held between the bidder and the City's consultant, as opposed to a City employee and the City's consultant, there would be no violation. For this reason, the City Attorney's Office believes that no further action is necessary, and that Regosa's bid should not be voided, nor should the subject City employee be sanctioned for any further disciplinary action based upon the facts which have been found.

Notwithstanding the City Attorney's opinion and recommendation with respect to the Bid, as requested by the City Manager and as provided by the Ordinance, the facts at issue are herein brought to the attention of the Dade County Ethics Commission for its recommendation and, perhaps, for any clarification your office may have as to the handling of any future alleged Cone of Silence issues. If, following your review of this letter, you concur with the City Attorney's opinion, the City may then proceed with the Bid process at issue.

Very truly yours,



Raul J. Aguila
First Assistant City Attorney

RJA/kw(F:\ATTO\AGUR\LETTERS\REGOSA.COE)

cc: Murray H. Dubbin, City Attorney
Jorge M. Gonzalez, City Manager
Robert Middaugh, Assistant City Manager
Tim Hemstreet, Special Asst. to City Manager

expenditures during the reporting period. The statement shall list in detail each expenditure by category, including food and beverage, entertainment, research, communication, media advertising, publications, travel, lodging and special events.

(b) The city clerk shall notify any lobbyist who fails to timely file an expenditure report. In addition to any other penalties which may be imposed as provided in section 2-485.1, a fine of \$50.00 per day shall be assessed for reports filed after the due date.

(c) The city clerk shall notify the Miami-Dade County Commission on Ethics and Public Trust of the failure of a lobbyist to file a report and/or pay the assessed fines after notification.

(d) A lobbyist may appeal a fine and may request a hearing before the Miami-Dade Commission on Ethics and Public Trust. A request for a hearing on the fine must be filed with the Miami-Dade Commission on Ethics and Public Trust within 15 calendar days of receipt of the notification of the failure to file the required disclosure form. The Miami-Dade Commission on Ethics and Public Trust shall have the authority to waive the fine, in whole or in part, based on good cause shown.

(Ord. No. 92-2777, § 6, 3-4-92; Ord. No. 92-2785, § 7, 6-17-92; Ord. No. 2000-3243, § 1, 5-10-00)

Sec. 2-485.1. Penalties.

(a) A finding by the Miami-Dade County Commission on Ethics and Public Trust that a person has violated this division shall subject said person to those penalties set forth within subsections 2-11.1(s) and (u) of the Metropolitan Dade County Code, said penalties including admonition, public reprimand, fines, as well as prohibitions from registering as a lobbyist or engaging in lobbying activities before the city.

Also, a bidder or proposer shall be subject to the debarment provisions of sections 2-397 through 2-406 as if the bidder or proposer were a contractor where the bidder or proposer has violated this division either directly or indirectly or any combination thereof, on three or more occasions. As used herein, a "direct violation" shall mean a violation committed by the bidder or proposer and

an "indirect violation" shall mean a violation committed by a lobbyist representing said bidder or proposer. A contract entered into in violation of this division shall also render the contract voidable. The city manager shall include the provisions of this subsection in all city bid documents, RFP, RFQ, RFLI; provided, however, that failure to do so shall not render any contract entered into as the result of such failure illegal per se.

(b) Except as otherwise provided in subsection (a) herein, the validity of any action or determination of the city commission or city personnel, board or committee, shall not be affected by the failure of any person to comply with the provisions of this division.

(Ord. No. 2000-3243, § 1, 5-10-00)

DIVISION 4. PROCUREMENT

Sec. 2-486. Cone of silence.

(a) *Contracts for the provision of goods, services, and construction projects other than audit contracts.*

- (1) *Definition.* "Cone of silence" is hereby defined to mean a prohibition on: (a) any communication regarding a particular request for proposal ("RFP"), request for qualifications ("RFQ"), request for letters of interest ("RFLI"), or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the city's administrative staff including, but not limited to, the city manager and his or her staff; (b) any communication regarding a particular RFP, RFQ, RFLI, or bid between the mayor, city commissioners, or their respective staffs, and any member of the city's administrative staff including, but not limited to, the city manager and his or her staff; (c) any communication regarding a particular RFP, RFQ, RFLI, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of a city evaluation and/or selection committee; and (d) any communication regarding a particular RFP, RFQ, RFLI or bid between the mayor, city commissioners or their respective staffs and

any member of a city evaluation and/or selection committee. Notwithstanding the foregoing, the cone of silence shall not apply to competitive processes for the award of CDBG, HOME, SHIP and Sur-tax Funds administered by the city office of community development, and communications with the city attorney and his or her staff.

(2) *Procedure.*

- a. A cone of silence shall be imposed upon each RFP, RFQ, RFLI, and bid after the advertisement of said RFP, RFQ, RFLI, or bid. At the time of imposition of the cone of silence, the city manager or his or her designee shall provide for public notice of the cone of silence. The city manager shall include in any public solicitation for goods and services a statement disclosing the requirements of this division.
- b. The cone of silence shall terminate (i) at the time the city manager makes his or her written recommendation as to selection of a particular RFP, RFQ, RFLI, or bid to the city commission, and said RFP, RFQ, RFLI, or bid is awarded; provided, however, that following the manager making his or her written recommendation, the cone of silence shall be lifted as relates to communications between the mayor and members of the commission and the city manager; providing further if the city commission refers the manager's recommendation back to the city manager or staff for further review, the cone of silence shall continue until such time as the manager makes a subsequent written recommendation, and the particular RFP, RFQ, RFLI, or bid is awarded or (ii) in the event of contracts for less than \$25,000.00 when the city manager executes the contract.

- (3) *Exceptions.* The provisions of this section shall not apply to: (a) oral communications at pre-bid conferences; (b) oral presentations before evaluation committees; (c) contract discussions during any duly noticed public meeting; (d) public presentations made to the city commissioners during any duly noticed public meeting; (e) contract negotiations with city staff following the award of an RFP, RFQ, RFLI, or bid by the city commission; or (f) communications in writing at any time with any city employee, official or member of the city commission, unless specifically prohibited by the applicable RFP, RFQ, RFLI, or bid documents; or (g) city commission meeting agenda review meetings between the city manager and the mayor and individual city commissioners where such matters are scheduled for consideration at the next commission meeting. The bidder, proposer, vendor, service provider, lobbyist, or consultant shall file a copy of any written communications with the city clerk. The city clerk shall make copies available to any person upon request.

(b) *Audit contracts.*

- (1) "Cone of silence" is hereby defined to mean a prohibition on: (a) any communications regarding a particular RFP, RFQ, RFLI, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the mayor, city commissioners or their respective staffs, and any member of the city's administrative staff including, but not limited to the city manager and his or her staff, (b) any oral communication regarding a particular RFP, RFQ, RFLI, or bid between the mayor, city commissioners or their respective staffs and any member of the city's administrative staff including, but not limited to, the city manager and his or her staff; and (c) any communication regarding a particular RFP, RFQ, RFLI, or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of a city evaluation and/or selection commit-

tee; and (d) any communication regarding a particular RFP, RFQ or bid between the mayor, city commissioners or their respective staffs and any member of a city evaluation and/or selection committee. Notwithstanding the foregoing, the cone of silence shall not apply to communications with the city attorney and his or her staff.

- (2) Except as provided in subsections (b)(3) and (b)(4) hereof, a cone of silence shall be imposed upon each RFP, RFQ, RFLI, or bid for audit services after the advertisement of said RFP, RFQ, RFLI, or bid. At the time of the imposition of the cone of silence, the city manager or his or her designee shall provide for the public notice of the cone of silence. The cone of silence shall terminate (a) at the time the city manager makes his or her written recommendation as to selection of a particular RFP, RFQ, RFLI, or bid to the city commission, and said RFP, RFQ, RFLI, or bid is awarded; provided, however, that following the manager making his or her written recommendation, the cone of silence shall be lifted as relates to communications between the mayor and members of the commission and the city manager; providing further if the city commission refers the manager's recommendation back to the city manager or staff for further review, the cone of silence shall continue until such time as the manager makes a subsequent written recommendation, and the particular RFP, RFQ, RFLI, or bid is awarded or (b) in the event of contracts for less than \$25,000.00 when the city manager executes the contract.
- (3) Nothing contained herein shall prohibit any bidder, proposer, vendor, service provider, lobbyist, or consultant (a) from making public presentations at duly noticed pre-bid conferences or before duly noticed evaluation committee meetings; (b) from engaging in contract discussions during any duly noticed public meeting; (c) from engaging in contract negotiations with city staff following the award of an RFP,

RFQ, RFLI, or bid for audit by the city commission; or (d) from communicating in writing with any city employee or official for purposes of seeking clarification or additional information from the city or responding to the city's request for clarification or additional information, subject to the provisions of the applicable RFP, RFQ, RFLI, or bid documents. The bidder or proposer etc. shall file a copy of any written communication with the city clerk. The city clerk shall make copies available to the general public upon request.

- (4) Nothing contained herein shall prohibit any lobbyist, bidder, proposer, vendor, service provider, consultant, or other person or entity from publicly addressing the city commissioners during any duly noticed public meeting regarding action on any audit contract. The city manager shall include in any public solicitation for auditing services a statement disclosing the requirements of this division.

(c) *Violations/penalties and procedures.* A violation of this section by a particular bidder, proposer, vendor, service provider, lobbyist, or consultant shall subject said bidder, proposer, vendor, service provider, lobbyist, or consultant to the same procedures set forth in Division 5, entitled "Debarment of Contractors from City Work" shall render any RFP award, RFQ award, RFLI award, or bid award to said bidder, proposer, vendor, service provider, bidder, lobbyist, or consultant void; and said bidder, proposer, vendor, service provider, lobbyist, or consultant shall not be considered for any RFP, RFQ, RFLI or bid for a contract for the provision of goods or services for a period of one year. Any person who violates a provision of this division shall be prohibited from serving on a city evaluation and/or selection committee. In addition to any other penalty provided by law, violation of any provision of this division by a city employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this division shall report such violation to the city attorney's office or state

§ 2-486

MIAMI BEACH CODE

attorney's office and/or may file a complaint with
the county ethics commission.

(Ord. No. 99-3164, § 1, 1-6-99; Ord. No. 2001-
3295, § 1, 3-14-01)

Secs. 2-487—2-510. Reserved.