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October 24, 2002

Luisa Millan Donovan  
Director, Professional Services Division  
Department of Procurement Management  
111 N.W. First Street  
13<sup>th</sup> Floor  
Miami, FL 33128

**RE: REQUEST FOR ADVISORY OPINION 02-115**

Dear Mrs. Donovan:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 23, 2002 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the cone of silence to staff communications.

In your letter, you advised the Commission that the Department of Procurement Management handles the procurement process for architectural and engineering (AE) contracts. The user department and the Department of Procurement Management write the requirements for a particular request for proposal (RFP) or request for qualifications (RFQ). During the selection process, the Department of Procurement Management and the user department may need to consult on matters covered by the solicitation.

The Commission found the Cone of Silence permits Department of Procurement Management staff members and user department staff to

discuss process matters related to a covered solicitation. However, the cone prohibits communication between county staff members who serve on the selection committee or staff members who work on the staff of the Mayor or the Board of County Commissioners and DPM or user department staff.

Section 2-11.1(t) states that the Cone of Silence is hereby defined to mean a prohibition on: 1) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and the County's professional staff including but not limited to , the County Manager and his or her staff; 2) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including but not limited to the County Manager and his or her staff; 3) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or consultant and any member of the selection committee thereof; 4) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners and their respective staffs; and 6) any communication regarding a particular RFP, RFQ or bid between any member of the County's professional staff and any member of the selection committee therefore.

The ordinance provides an exception for communication regarding a RFP, RFQ or bid between the procurement agent or contracting agent, or their designated secretarial/ clerical staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee therefore provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

Under the exception, county staff who serve on selection committees may only speak to the procurement agent and his or her secretarial/clerical staff regarding process and procedure matters contained in the solicitation document. The staff selection committee members may not consult or discuss with other staff, including the user department or DPM, any matter related to a covered solicitation.

Therefore, the Conflict of Interest and Code of Ethics ordinance permits Department of Procurement Management staff and user department staff to discuss issues related to a solicitation covered by the Cone of Silence. However, the cone of Silence prohibits communications regarding a covered solicitation between a staff member serving on a selection committee and any other county staff except the procurement agent and his or her secretarial/clerical staff.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Ardyth Walker, Staff General Counsel at (305) 350-0616 or the undersigned at (305) 579-2594.

Sincerely Yours,



ROBERT MEYERS  
Executive Director