



ETHICS COMMISSIONERS

May 31, 2002

Kerry E. Rosenthal, Chairman
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Anita Eichenbaum
9300 N.W. 41st Street
Miami, Florida 33178

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

RE: REQUEST FOR ADVISORY OPINION 02-45

MICHAEL P. MURAWSKI
ADVOCATE

Dear Ms. Eichenbaum:

ARDYTH WALKER
STAFF GENERAL COUNSEL

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 17, 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 an optional item contained in a request for proposal.

In your request, you advised the Commission that the Department of Fire Rescue is issuing an RFP for billing services. The Department would also like to provide bidders with the option of submitting proposals for an automated data collection system. The Department has not decided whether to implement an automated data collection system. The Department will continue to do research and analyze the possibility of implementing the data collection system. The Department would like to include the following sentence in the RFP. "The Fire Rescue Department is presently researching and studying the feasibility of implementing an automated data collection system." The Fire and Rescue Department would like to continue to do research while the Cone of Silence is in effect.

The Commission found that the department may not orally communicate with potential vendors regarding the automated data collection systems during the time the Cone of Silence is in effect. Since the data collection systems will be part of the RFP, although optional, any oral communication is prohibited unless it falls within one of the exceptions to the Cone of Silence.

Section 2-11.1(t)(1)(a) states that "Section 2-11.1(t)(1)(a) provides that the "Cone of Silence is hereby defined to mean a prohibition on a) 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 and b) any communication regarding a particular RFP, RFQ or bid between Mayor, County Commissioner or their respective staff and any member of the County's professional staff including , but not limited to the County Manager and his or her staff; (iii) 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 therefore; (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefore; (v) 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.

Notwithstanding the foregoing the Cone of Silence shall not apply to (i) competitive processes for the award of CDBG, HOME, SHIP

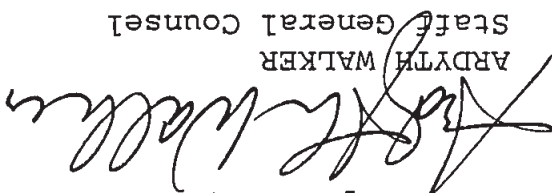
and Surtax funds administered by the Miami-Dade County Office of Community and Economic Development; (ii) communications with the County Attorney and his or her staff; (iii) communications between a potential vendor, service provider, bidder or consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development regarding small business and/or minority business programs; (iv) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure; (v) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Manager makes his or her written recommendation; (vi) any emergency procurement of goods or services pursuant to Administrative Order 3-2; (vii) communications regarding a particular RFP, RFO or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFO or bid provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and (viii) communications regarding a particular RFP, RFO or bid between the procurement agent or contracting officer, or their designated secretarial/clerical staff responsible for administering the procurement process for such RFP, RFO 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.

Since any conversations between the department and potential vendors of the automated data collection system will concern a matter contained in this particular RFP, the Code of Silence governs this matter. The additional language in the RFP would not permit staff to contact individual vendors and discuss matters related to the automated data collection system. Therefore, any oral communication can only take place if it falls within one of the exceptions above or takes place at a duly noticed public meeting.

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 the undersigned at (305) 350-0616.

Sincerely Yours,



ARDYTH WALKER
State General Counsel