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January 30, 2009

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Alicia Lafarga
Procurement Contracting Manager
Department of Procurement Management
111 N.W. First Street
13th Floor
Miami, FL 33130

RE: RQO 09-06

Dear Ms. Lafarga:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on January 29, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of a recent amendment to the Cone of Silence to meetings between DPM staff and user departments.

In your request, you informed the Commission that the Department of Procurement Management is responsible for coordinating solicitation of goods and services that will be used on a county-wide basis or for a particular department. DPM staff works with procurement liaisons in user departments to develop technical specifications, terms of agreements, qualifications and other issues related to the solicitation.

The Cone of Silence restricts communication concerning solicitations between the advertisement of the solicitation and an award recommendation by the County Manager to the Board of County Commissioners. Specifically, Section 2-11.1(t)(1)(a) provides that the "Cone of Silence is hereby

defined to mean a prohibition on: i) 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; ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their staff and 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; and (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs and (vi) 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."

During the time that a solicitation is covered by the Cone of silence, issues may arise regarding technical specifications, quantities, qualifications of bidders and proposers and other issues regarding the solicitation. In order to resolve these issues, DPM staff may need to meet with project managers and other members of the user department.

In 2008, the Cone of Silence was amended to provide for greater communication between DPM employees and employees of user departments regarding these issues. Specifically an exemption was created to provide that the Cone of Silence shall not apply to

"consultations by employees of the Department of Procurement Management with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress."

The Ethics Commission found the Code of Silence permits DPM staff to meet with employees of user departments without publicly advertising the meetings. The term "professional procurement colleagues" extends to all staff of user departments that provide required information regarding a covered solicitation.

The 2008 amendments were designed to promote faster resolution of issues related to covered solicitations and to facilitate communication between DPM and user departments. The intent of the amendment would be frustrated if DPM were still required to publicly notice meetings between DPM and user departments. Therefore, the term "professional procurement colleagues" should be liberally construed to include staff of user departments to the extent necessary to resolve issues and make necessary changes regarding technical issues, approaches and options regarding a covered solicitation.

Accordingly, the term "professional procurement colleagues" extends to any user department staff whose expertise or information is necessary to determine approaches or options regarding a covered solicitation.

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)

579-2594 or Ardyth Walker, Staff General
Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director