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June 29, 2010

Andrew Zawoyski
Chief Negotiator
Department of Procurement Management
111 N.W. First Street
Suite 1300
Miami, FL 33128

RE: REQUEST FOR ADVISORY OPINION-RQO 10-17

Dear Mr. Zawoyski:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on June 23, 2010 and rendered its opinion based on the facts contained in your request. You requested an opinion regarding whether the Cone of Silence applies to an item where the Board of County Commissioners has approved the Manager's recommendation to reject all proposals and enter into negotiations with the highest ranked proposer.

In your request, you advised the Commission that earlier this year, the Department of Procurement Management (DPM) issued a Request for Proposals for financing, design, construction and management of the Poinciana Industrial Center ("Poinciana"). Poinciana consists of three county-owned parcels in Liberty City. At the conclusion of the selection committee process, Innovida Holdings was ranked as the highest proposer. Innovida's construction subconsultant was Delant Construction. Subsequent to the committee rankings but prior to the Board of County Commission meeting on the proposal, the Department of Procurement Management

determined that Delant Construction had criminal charges pending related to a City of Miami project. Specifically, Delant is charged with organized crime to defraud and grand theft.

DPM determined that Innovida was not a responsible proposer as long as Delant was a member of the team. Innovida sought to replace Delant with another construction company. Accordingly, DPM sought to waive competitive bidding requirements to permit the firm to replace one of its team members, waive bid protest procedures and enter into negotiations with Innovida regarding the Poinciana site.

During the June 3, 2010 meeting of the Board of County Commissioners, the BCC approved the manager's recommendation to waive the competitive bidding requirements so that Innovida could replace Delant on its team. Further, the BCC amended the item to permit negotiations regarding whether the proposal could be amended for development on less than all three parcels.

The Ethics Commission found that the Cone of Silence is not in effect for the Poinciana project. The Cone of Silence was lifted when the manager made a recommendation to enter into negotiations with a single proposer because that decision was tantamount to a written award recommendation. 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 the 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." Generally, the Cone of Silence applies between the time of advertisement and the submission of a written award recommendation from the County Manager to the Board of County Commissioners.

The Cone of Silence provides specific conditions for when the Cone is reimposed after the Manager makes his written award recommendation to the Board of County Commissioners. Section 2-11.1(t)(1)(b) provides that "the Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission provided however that the if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be reimposed until such time as the Manager makes a subsequent written recommendation.

The Manager has only made a written award recommendation for purposes of the Cone of Silence when he has designated a single proposer for negotiation of a final agreement. Conversely, a recommendation to reject all bids and enter into negotiation with several proposers is not an award recommendation for Cone of Silence purposes because the Manager has not determined which firm should receive the award.

In the instant case, the Cone of Silence terminated when the Manager made a written recommendation to waive competitive bidding requirements and enter into negotiations with a single proposer. Therefore, the Cone of Silence is lifted for negotiations with Innovida regarding the Poinciana project.

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 contact the undersigned or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Robert Meyers', written in a cursive style.

ROBERT MEYERS
Executive Director