



**MIAMI-DADE COUNTY
COMMISSION ON
ETHICS & PUBLIC TRUST**

In re: **City of Coral Gables Health
Insurance Consultant RFP**
David Brown
John Holian
Rafael "Ralph" Cabrera

Complaint No. 05-09, 05-10, 05-11

PUBLIC REPORT AND ORDER ACCEPTING SETTLEMENT AGREEMENT

The Advocate ["Complainant"] filed the above-captioned complaints against David Brown, the City Manager for the City of Coral Gables, John Holian, who was the Chairman of the City of Coral Gables Health Insurance Consultant RFP Selection Committee, and Rafael "Ralph" Cabrera, City Commissioner and Vice-Mayor of Coral Gables ["Respondents"]. For purposes of this public report and all other related documents, the above-captioned complaints are heretofore, collectively referred to as the 'City of Coral Gables Health Insurance Consultant RFP.'

The complaint alleged violations of Article X., Sec. 4-462 of the City of Coral Gables Procurement Code and Regulations entitled, "Cone of Silence. Contracts for the Provision of Goods and Services."

According to the facts outlined in each of the complaints, on September 21, 2004 the City of Coral Gables advertised an RFP for Health Insurance Consultant services; thus,

the City's cone of silence went into effect on September 21, 2004. The Cone of Silence states, in pertinent part:

The Cone of Silence is defined to mean a prohibition on: (2) any communication regarding a particular RFP, RFQ, IFB or any other advertised solicitation between the City Commissioners or respective staffs and any member of the City's professional staff, selection committee, or evaluation committee members. The City Manager or Assistants may communicate with the chairperson of the selection/evaluation committee only after the committee has submitted its written recommendation to the City Manager and provided that, should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the City Manager with the City Clerk and be included in any recommendation submitted by the City Manager to the City Commission.

Complainant alleged that prior to the termination of the cone of silence, each of the Respondents had several communications concerning the pending Insurance Consultant RFP with members of the Selection Committee, which was charged with the task of choosing an insurance consultant pursuant to the RFP.

On April 27, 2005, the Ethics Commission accepted the Complainant's recommendation to dismiss the above-captioned complaints and enter into a settlement agreement, whereby a General Letter of Instruction shall be issued clarifying the application of Section 4-462 (c)(2) of the City's Cone of Silence. In addition, the City of Coral Gables shall pay one thousand dollars (\$1000.00) to the Ethics Commission to cover investigative and administrative expenses.

Therefore it is:

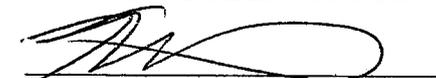
ORDERED AND ADJUDGED THAT the complaints are dismissed and pursuant to the settlement agreement, the City of Coral Gables shall pay one thousand

dollars (\$1000.00) to the Ethics Commission to cover investigative and administrative expenses in full satisfaction of the complaint.

DONE AND ORDERED by the Miami-Dade County Commission on Ethics and Public Trust in public session on April 27, 2005.

MIAMI-DADE COUNTY COMMISSION
ON ETHICS AND PUBLIC TRUST

By:



Kerry Rosenthal
Chairperson

Cc: John C. Dellagloria
Elizabeth Hernandez
Joseph H. Serota
Alejandro Vilarello



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_____ /

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GENERAL LETTER OF INSTRUCTION

The Advocate filed the above-captioned complaints alleging violations of Article X, Section 4-462 of the City of Coral Gables Procurement Code and Regulations, entitled Cone of Silence, Contracts for the Provision of Goods and Services. On April 25, 2005, the Respondents entered into a negotiated settlement with the Ethics Commission, which included, among other things, the issuance of a General Letter of Instruction in full satisfaction of the complaint. This General Letter of Instruction is intended to clarify the Commission's review of the City's application of Section 4-462 of the City's Cone of Silence, the adoption of the ordinance, and to provide recommendations on the procedures in place.

The City of Coral Gables opted out of the County's Cone of Silence ("MDCOS") on December 11, 2001 pursuant to Ordinance No. 3550 and adopted its own ordinance on February 11, 2003 (Ordinance No. 0-2003). The City's Cone of Silence ("COS") was established to ensure a fair and unbiased selection of City vendors by minimizing any

possible influence or pressure being brought to bear on the City's professional staff and selection committee members during the RFP, RFQ and IFB process.¹

The City's ordinance differs from the MDCOS. The County's ordinance makes it clear that "professional staff" includes the County Manager. Unlike the County provisions, the City takes the position that professional staff is defined to mean the City's department heads and their staff, but specifically not the City Manager.²

The City Commission also has the authority to waive provisions of the Code per its Home Rules Powers.

The COS, however, prohibits any communication regarding a particular RFP between certain individuals. Section 4-462 (c)(2) prohibits "any communication regarding a particular RFP or any other advertised solicitation between the City Commission or respective staffs and any member of the City's professional staff, selection committee or evaluation committee members..."

The Ethics Commission disagrees with the City's interpretation of the COS as written. The Ethics Commission's interpretation of that section of the COS, based on the plain language of the ordinance is that the ordinance prohibits any communication regarding a particular RFP between a City Commissioner and the City Manager at any time prior to the Manager making his or her approval of the award, or having the Manager's written recommendation to the City Commission filed with the City Clerk. The City maintains that their COS only applies to such communication with department heads and their staff, or selection or evaluation committees not the City Manager.

¹ An RFP is a Request for Proposal, an RFQ is a Request for Qualifications and an IFB is an Invitation for Bids.

² At the Public Hearing at which the City considered the ordinance, reference to the provisions of the COS only applying to department heads and their staff was made.

The COS does allow the City Manager, the Chairperson of the selection committee, or a Commissioner to discuss a "process or procedure" issue with either the City Attorney or the Chief Procurement Officer. The City takes the position that committee members may ask questions of process or procedure.

The Ethics Commission recommends the following to clearly outline the procedures adopted by the City:

1. At the beginning of the process for a particular RFP, RFQ or IFB, the Department responsible - either the Procurement Division or the Public Works Department, should provide an instructional and informational session with selection committee members clearly outlining the rules and procedures in place. In this fashion, members of a selection committee will know what rules they must follow;
2. The City should amend its COS to more clearly articulate its' proposed, original intent. Specifically, with regard to the current language in the COS as it relates to the City's position that the COS does not apply to the City Manager or the City Commissioners. Such an amendment would help prevent future potential violations.

MIAMI-DADE COUNTY COMMISSION
ON ETHICS AND PUBLIC TRUST

By: _____


Kerry E. Rosenthal
Chairperson