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CHAIRMAN'S INITIALS: IK

CLERK, CIRCUIT & COUNTY CTS
MIAMI-DADE COUNTY, FLA.

To: Rick Dunning
From: Miami-Dade County Commission on Ethics and Public Trust
Re: Ethics Complaint C18-53-12
Date: February 14, 2019

An ethics complaint was filed against Respondent Rick Dunning (Dunning) for violating Section 2-11.1 (t) of the Miami-Dade County Conflict of Interest and Code of Ethics (the Code) entitled, "Cone of Silence."

On January 9, 2019, the Ethics Commission accepted Dunning's stipulation to probable cause and agreed with the Advocate's recommendation that the complaint be dismissed with the issuance of a Letter of Instruction.

Wherefore, the Miami-Dade County Commission on Ethics and Public Trust issues this LETTER OF INSTRUCTION to Rick Dunning.

On March 21, 2018, an Aviation official provided the Ethics Commission with an e-mail from Dunning to a County official, questioning a recommendation to award a contract for shuttle services to a competing firm. Dunning is Senior Vice President of Transit Management for First Transit, a Miami-Dade County Aviation vendor. The e-mail from Dunning expressed that a selection panel's recommendation of a competitor, SP+ Transportation (SP+), could lead to operational issues, and further, questioned the panel's fairness with respect to its scoring and evaluation.

The e-mail ended with a lengthy critique of the selection panel's decision to recommend SP+ over First Transit, as follows:

"Our firm understands the competitive nature of this business and how procurements help to assure a proper use of tax payer dollars. In this case, however, it is most curious that the recommended company will cost MIA at least \$100k more per year in management fees and promising to provide the same team of workers which they cannot assure. It should also be noted that three of the five evaluators ranked First Transit first. One evaluator scored SP+ a perfect technical score, something no other evaluator did. Furthermore, this same evaluator scored us 40 points lower than SP+, again something no other evaluator did. As a result, SP+ had a 27-point advantage over First Transit and gained the recommendation...despite First Transit having a lower cost, the ability to maintain staff continuity, and the majority of the evaluators recommending us."

At the time Dunning sent this e-mail, the Mayor had not yet made a written recommendation to the County Commission recommending the award of the contract to SP+, thus, the Cone of Silence was still in effect. Dunning would have avoided a Cone violation had he copied the Clerk of the Board on his e-mail.

The Law:

Section 2-11.1(t) of the Miami-Dade County Conflict of Interest and Code of Ethics ordinance states that, a “Cone of Silence” is imposed upon RFPs, RFQs, or bids after advertisement and terminates at the time the Mayor (or designee) issues a written recommendation to the Board of County Commissioners.

The Cone of Silence prohibits communication regarding RFPs, RFQs, or bids between: A) potential vendors, service providers, bidders, lobbyists or consultants and the County’s professional staff; B) a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs; C) the Mayor, County Commissioners or their respective staffs and any member of the County’s professional staff; D) a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee assigned to this Solicitation; E) the Mayor, County Commissioners or their respective staffs and member of the selection committee assigned to this Solicitation; and, F) any member of the County’s professional staff and any member of the selection committee.

2-11.1(t)(c)(i) “Exceptions”

“The bidder or proposer shall file a copy of any written communication with the Clerk of the Board.”

The Cone of Silence was adopted to protect the professional integrity of the County’s competitive bid process from undue influence and overreaching by interested parties prior to the recommendation of a contract award. In the interest of accountability and transparency in the procurement process, written communications with any County employee, official or member of the Board of County Commissioners must be duly filed with the Clerk of the Board.

We are hopeful that Mr. Dunning has learned from this experience and will use this Letter of Instruction to guide his future conduct. We remind Mr. Dunning that he may contact the Commission on Ethics and Public Trust at any time in the future if he has any questions or concerns about the appropriateness of his conduct under the County’s Ethics Code.