

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Tuesday, July 31, 2018 11:33 AM
To: Sanchez, Rodzandra (COE)
Subject: FW: Carolina Alfonso, Construction Project Manager, DOCA, Procurement/ Cone of silence guidance , 2-11.1(t), INQ 18-185

INQ 18-185 Alfonso

From: Perez, Martha D. (COE)
Sent: Tuesday, July 31, 2018 11:12 AM
To: Alfonso, L. Carolina (CUA) <CARANA@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Benitez, Hugo (CAO) <Hugo.Benitez@miamidade.gov>
Subject: RE: Carolina Alfonso, Construction Project Manager, DOCA, Procurement/ Cone of silence guidance , 2-11.1(t), INQ 18-185

Hello Carolina,

I understand from your inquiry that the County issued an RFP for a 7040 Miscellaneous Construction Contract and advertised the RFP with a due date for all proposals to be submitted. The due date passed and no proposals were submitted rendering the solicitation/bid "expired." Since the Cone of Silence was imposed at the time that the solicitation was advertised and since a solicitation no longer exists, you inquire what, if anything, are you required to do to "lift" the Cone.

The intent of the Cone of Silence Ordinance, at Section 2-11.1(t) of the County Ethics Code, is to protect the integrity of the County's competitive bid process (Ordinance 98-106) and prevent bidders from influencing those who will be making the decisions or having meaningful input regarding the award of the solicitation. To that end, the Cone of Silence (COS) is imposed upon a RFP, RFQ, bid, *after the advertisement of said bid*. The pre-requisite for the imposition of the Cone and the prohibited communications is that there is a solicitation in place which has been advertised. If a solicitation is cancelled then there is nothing to advertise, no proposals submitted, no potential vendors, bidders, service providers or consultants and hence, no Cone to be imposed. As far as the procedure to "lift" the Cone, it is recommended that the Mayor or his designee send notice to the Clerk of the Board indicating that no bids were received and the solicitation has been cancelled.

This opinion is based on the facts as presented. Should these facts change, please contact us.

Sincerely,

Martha D. Perez

Staff Attorney

MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST

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From: Alfonso, L. Carolina (CUA)
Sent: Thursday, July 26, 2018 3:25 PM
To: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Cc: Dandrea, Lisa (CUA) <DANDREA@miamidade.gov>
Subject: RE: Carolina Alfonso, Construction Project Manager, DOCA, RE: Quick question - Cone of silence guidance , 2-11.1(t), INQ 18-150

Hi Martha, I have a question for you, we had a project advertise thru our 7040 Miscellaneous Construction Contract, and the bid date was yesterday, however, we did not get any bids.

What is the procedure if anything to lift the cone of silence for this project?

Your guidance is really appreciated.

Thanks, CA

From: Perez, Martha D. (COE)
Sent: Monday, June 18, 2018 3:21 PM
To: Alfonso, L. Carolina (CUA) <CARANA@miamidade.gov>
Cc: Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Murawski, Michael P. (COE) <Michael.Murawski@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>
Subject: Carolina Alfonso, Construction Project Manager, DOCA, RE: Quick question - Cone of silence guidance , 2-11.1(t), INQ 18-150

Dear Carolina,

You are the Project Manager and Procurement Officer of a recently advertised construction bid in the Department of Cultural Affairs. You have requested our assistance with the following general questions:

- 1) What may you communicate to the media or members of the public regarding a construction bid which has been advertised?
- 2) Is the architect/ consultant hired by the County to assist on the project under the Cone of Silence?
- 3) What are the restrictions during a pre-bid conference, and, what follow-up, if any, is required after the pre-bid meeting?

You require immediate responses as this bid will be discussed during a press meeting to be held tomorrow, therefore, I will confine my responses to your precise inquiry.

The Cone of Silence (COS) goes into effect at the time an RFP, RFQ or some form of bid is advertised. In this instance the construction bid went into effect at the time the bid was advertised and will be lifted when the Mayor makes a written recommendation to the County Commissioners. See Section 2-11.1(t), County Ethics Code; RQO 13-11 When the COS is in effect, all potential vendors, bidders, service providers, lobbyists and consultants shall file a copy of any written correspondence concerning the particular bid/ solicitation made to the Procurement Officer with the Clerk of the Board.

While communications with the media are not covered by the prohibitions under the COS, comments on a pending procurement should be avoided as they may be perceived as an attempt to influence the process. See INQ 17-102 (“given the nature of the Cone and its purpose of preventing undue political and private influence over the selection/evaluation process on a procurement, [the City Commissioner] may want to consider refraining from extensive comment on a pending procurement that could be perceived as an attempt to influence the process during the pendency of the Cone.”)

An architect who has been hired by the County as a consultant to assist County administration on a procurement is in a similar position as a member of the County staff and is thus covered by the COS. See INQ 16-129; INQ 09-120

Lastly, the COS does not apply to oral communications at pre-bid conferences. However, these meetings are subject to the Sunshine Law. Pursuant to Sunshine Law requirements, minutes of the meeting must be taken. I have been advised by the County’s procurement that tape recording is not undertaken at the pre-bid conferences.

These responses have been submitted based on the facts as presented. Should you need additional guidance, do not hesitate to contact us.

Best regards,

Martha D. Perez
Staff Attorney
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From: Alfonso, L. Carolina (CUA)
Sent: Monday, June 18, 2018 1:59 PM
To: Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>
Subject: FW: Quick question - Cone of silence guidance

Hi Martha, thank you for responding to my enquire today.

Besides the 2 questions highlighted below, I also want confirmation that during the mandatory pre-bid conference which was publicly advertise that the cone is lifted and what type of recording/meetings do we have to keep.

Thanks, CA

L. Carolina Alfonso, AIA, NCARB, LEED AP BD+C
Construction Projects Manager

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From: Rizo, Monica (CAO)
Sent: Monday, June 18, 2018 1:45 PM
To: Alfonso, L. Carolina (CUA) <CARANA@miamidade.gov>
Cc: Spring, Michael (Office of the Mayor) <Michael.Spring@miamidade.gov>; Camp, Sue (CUA) <SCAMP@miamidade.gov>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Kirtley, Eddie (CAO) <Eddie.Kirtley@miamidade.gov>
Subject: Re: Quick question - Cone of silence guidance

Good questions. However, only the Commission on Ethics is authorized to opine and render advice on the Cone of Silence. Please call Joe Centorino and seek his guidance and advice.

Thank you,

Monica

Sent from my iPhone

On Jun 18, 2018, at 1:41 PM, Alfonso, L. Carolina (CUA) <CARANA@miamidade.gov> wrote:

Hi Monica, we are getting a request from Commissioner Souto to participate in a "press release" meeting for WCAC tomorrow at noon.

At first, I said sure, but then I remember that the project as of today is under the cone of silence – so my question is could we still participate and **just request from the media or participants in the meeting to put all their questions in writing and send them with copy to the clerk?** – I don't think we can say much more than this – correct? **Also if the architect participates, would they have the same restrictions?**

Thanks, CA

The Cone of Silence prohibits any communication regarding a particular RFP, RFQ or bid solicitation after they have been advertised. This Cone of Silence is designed to protect the professional integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award.

When the Cone of Silence is in effect, any communication shall be in writing, except where otherwise provided under this Administrative Order. Any written communication from a bidder or proposer regarding a particular RFP, RFQ or bid that is under the Cone of Silence shall be filed with the Clerk of the Board.

L. Carolina Alfonso, AIA, NCARB, LEED AP BD+C
Construction Projects Manager

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