



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130

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MEMORANDUM

TO: Imran Ali, Chief of Staff
The Children's Trust

FROM: Jose J. Arrojo, Executive Director
Commission on Ethics

SUBJECT: INQ 19- 94, Application of Section 2-11.1 (t), Cone of Silence, to
The Children's Trust's Competitive Procurements

DATE: October 4, 2019

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transactions.

Issue:

Whether Section 2-11.1(t), Cone of Silence, is applicable to the procurement of goods and services by The Children's Trust.

Answer:

Yes, when The Children's Trust's procurement policy requires the use of a competitive selection process, Section 2-11.1 (t), Cone of Silence, as contained in the County's Code of Ethics Ordinance, shall be applicable.

Facts:

The Children's Trust maintains a vendor pool of creative advertising firms. It recently engaged in what was described as a mini-bid for advertising services related to the "Young Talent Big Dreams" initiative. The budgeted amount for the procurement was at least \$270,000. Arising from that process, a member of the vendor pool raised questions regarding the mini-bid procedures that were used in the advertising services procurement process. Specifically, the vendor questioned

whether the procurement was conducted in compliance with the Cone of Silence as referenced in The Children's Trust policies and procedures documents.¹

Discussion:

The Children's Trust has an established Purchasing and Procurement Policy.² Section 2000A of that policy provides in relevant part as follows:

- A. Conflict of Interest and Code of Ethics: The purchase of goods and services and direct community services shall be made in compliance with the Children's Trust's conflict of interest policy, the County's conflict of interest policy, *the County's code of ethics ordinance*, the state of Florida's code of ethics for public officers and employees, and applicable state statutes. [emphasis added]

By establishing a board policy that the purchase of goods and services shall comply with the County's code of ethics ordinance, The Children's Trust has adopted Section 2-11.1 (t) of the Code of Miami-Dade County, Cone of Silence.³ See generally RQO 07-11, INQ 19-19.

The language of the Cone of Silence is broad, and it applies to communications regarding any competitive procurement process, to specifically include any RFP, RFQ, or bid. The Cone is imposed upon the advertisement of the bid documents and remains in place until the executive officer or his or her designee makes a written recommendation to the elected body. During this time period, the Cone of Silence imposes prohibitions on a myriad of communications between bidders, potential vendors, The Children's Trust's professional staff, selection committee members, president/chief executive officer or his or her designate, and board members.⁴

The Children's Trust has additionally established a General Purchasing and Procurement Policy.⁵ Section 2000 of that policy provides, in relevant part, as follows:

The Children's Trust recognizes that competitive solicitation ensures that there is no favoritism during the vendor selection process, and also inspires public confidence that contracts are awarded equitably and economically. Unless exempt from the formal competitive procurement process, all purchases of goods and

¹ The vendor also raised concerns that might be characterized as public meeting breaches, but those concerns are not the subject of this opinion.

² Sections 2000A to 2010, The Children's Trust Purchasing and Procurement Policy.

³ While not the subject of this informal opinion, by adopting the County's code of ethics ordinance, The Children's Trust has also adopted Section 2-11.1 (s), Lobbying, of the Code of Miami-Dade County, and thus all persons that seek to encourage a procurement decision of the board of directors, the president/chief executive officer, or staff, when such decision will foreseeably be heard or reviewed by the board or a Children's Trust committee, must register as a lobbyist and comply with other provisions contained in the lobbying subsection.

⁴ Section 2-11.1 (t) 1. (a), Cone of Silence, Code of Miami-Dade County.

⁵ Section 2000, The Children's Trust Purchasing and Procurement Policy.

services above \$50,000, or direct community services of \$25,000 or greater from a single vendor in a fiscal year, must be secured in accordance with the Formal Competitive Procurement Process.

This policy therefore establishes the formal competitive procurement process as the preferred method for the acquisition of goods and services by The Children's Trust.

As regards the establishment of qualified vendor pools, The Children's Trust's policy preference for formal competitive procurement processes likewise applies.⁶ In qualified vendor pool scenarios, the Request for Qualifications (RFQ) policy provides for the use of a two-step competitive process to "pre-qualify" potential vendors. Thereafter, those only those prequalified vendors will be allowed to "compete" when a procurement opportunity is announced.⁷

Conclusion:

The Children's Trust has adopted a policy that explicitly provides that the purchase of goods and services and direct community services shall be made in compliance with the County ethics code.

Moreover, because The Children's Trust has also adopted a policy that competitive procurement methods will be used for all higher monetary value purchases of goods and services, then the Cone of Silence as contained in Section 2-11.1 (t), of the County's code of ethics ordinance specifically applies to these processes, including so-called mini-bids involving pre-selected members of vendor pools.

Bidders, proposers, procurement staff, persons serving on competitive selection committees as voting members or non-voting technical advisors, and procurement executive decision makers, are encouraged to familiarize themselves with the prohibitions and requirements of the Cone of Silence as contained in the County's code of ethics ordinance.

For County employees, and thus for similarly situated employees of agencies that have adopted the Cone of Silence, a knowing violation of the section subjects the employee to disciplinary action up to an including termination. A violation by a bidder or proposer shall render the procurement award voidable.⁸

⁶ Section 2004, Vendor Pools, The Children's Trust Purchasing and Procurement Policy.

⁷ Section 2000A, Request for Qualifications (RQO), The Children's Trust Purchasing and Procurement Policy.

⁸ Section 2-11.1 (t) 3. Penalties, Cone of Silence, Code of Miami-Dade County.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.

Arrojo, Jose (COE)

From: Arrojo, Jose (COE)
Sent: Friday, October 4, 2019 10:10 AM
To: Imran Ali
Cc: Graves, Shanika (CAO); Perez, Martha D. (COE); Turay, Radia (COE); Diaz-Greco, Gilma M. (COE); Murawski, Michael P. (COE); Anderson, Machell (COE)
Subject: INQ 19- 94, Application of Section 2-11.1 (t), Cone of Silence, to The Children's Trust

Dear Mr. Ali:

Thank you for engaging with the Miami-Dade County Commission on Ethics and Public Trust regarding the application of the Cone of Silence to procurement by the Children's Trust.

Attached is a responsive ethics opinion.

Also, I recently spoke to one of my colleagues at the County Attorney's Office about this topic. He relayed that he recently put on training for the Children's Trust and that there were a lot of questions regarding Cone of Silence. Please know that we can make ourselves available to meet with your procurement staff, selection committee members, and executive staff to discuss the application of the Cone to your processes.

Enjoy your weekend.

Best regards,

Jose



INQ 19- 94,
Section 2-11.1 (t...

Arrojo, Jose (COE)

From: Imran Ali <imran@thechildrenstrust.org>
Sent: Friday, October 4, 2019 9:34 AM
To: Arrojo, Jose (COE); Graves, Shanika (CAO)
Cc: Anderson, Machell (COE)
Subject: Re: Cone of Silence Application to Children's Trust Procurements

EMAIL RECEIVED FROM EXTERNAL SOURCE.

Jose, I received the copy. Thanks for sharing. Looks good.

Have a good weekend.

Imran

Imran Ali

Chief of Staff
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From: "Arrojo, Jose (COE)" <Jose.Arrojo@miamidade.gov>
Date: Wednesday, October 2, 2019 at 6:11 PM
To: Imran Ali <imran@thechildrenstrust.org>, "Shanika.Graves@miamidade.gov" <Shanika.Graves@miamidade.gov>
Cc: "Anderson, Machell (COE)" <Machell.Anderson@miamidade.gov>
Subject: Cone of Silence Application to Children's Trust Procurements

[EXTERNAL]

Dear Colleagues:

I am going to forward you a scanned draft ethics opinion that will issue later in the week. The conclusion is consistent with what I relayed to Imran when he and I spoke a couple of days ago. I think it is also consistent with the COA's position. Shanika and I spoke briefly in passing about it. It is provided to you in draft form before issue as a courtesy. Please do not hesitate to contact me with questions. My computer is acting up this evening so Ms. Anderson will scan and forward tomorrow. She is copied.

Regards,

Jose

Jose J. Arrojo

Executive Director

Miami-Dade Commission on Ethics and Public Trust

19 W. Flagler Street, Suite 820

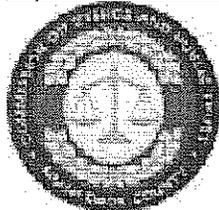
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Arrojo, Jose (COE)

From: Imran Ali <imran@thechildrenstrust.org>
Sent: Friday, September 27, 2019 4:07 PM
To: Arrojo, Jose (COE)
Cc: Graves, Shanika (CAO); Kobrinski, Leigh (CAO)
Subject: Request for Ethics Commission opinion

EMAIL RECEIVED FROM EXTERNAL SOURCE

Jose, as a follow up the documents I previously sent, I am requesting an opinion on the prospective way forward regarding The Trust's competitive solicitation and bid process.

Thank you

Imran

Imran Ali

Chief of Staff
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