



## MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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### MEMORANDUM

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**TO:** Beth Goldsmith  
Chief Negotiator  
Internal Services Department

**FROM:** Jose J. Arrojo  
Executive Director

**SUBJECT:** INQ 2020-100, Use of Videoconferencing or Other Technology for Oral Presentation to a Selection Committee in a Competitive Solicitation, Section 2-11.1(t), Cone of Silence

**DATE:** October 6, 2020

**CC:** All COE Legal Staff  
Hugo Benitez, Assistant County Attorney

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Thank you contacting the Miami Dade County Commission on Ethics and Public Trust and for requesting ethics guidance regarding the application of the Cone of Silence exception for oral presentation to a selection committee in a competitive solicitation.

Facts:

The requester has advised that she is a Chief Negotiator with the County's Internal Services Procurement Management Division. She has been tasked with managing the procurement of a new Criminal Justice Information System (CJIS). The CJIS procurement is being conducted as a competitive solicitation.

Bidders in that procurement are due to make oral presentations to the Selection Committee.

The Governor has issued various executive orders that waive the in-person quorum requirement for local boards and also allows local government bodies to conduct meetings by technological means. The most recent executive order regarding waiver expires on November 1, 2020.

Some bidders and members of the Selection Committee in the CJIS procurement have expressed a desire to participate in the oral presentation by videoconference as opposed to in-person. The requester has additionally advised that given the current pandemic, it would be operationally more efficient to participate via videoconference. One or more of the oral presentations may occur after November 1, 2020.

Issue Presented:

Whether an oral presentation by bidders to a Selection Committee in a competitive solicitation, wherein bidders and members of the committee participate by videoconference or other technological means, violates Section 2-11.1(t), of the County Ethics Code, relating to the Cone of Silence.

Discussion:

Section 2-11.1(t)1.(a)(iii), of the Ethics Code, relating to the Cone of Silence, prohibits any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee. As such, absent any exception to the prohibition on these types of communications, bidders may not have substantive communications with selection committee members.

The relevant exception is found at Section 2-11.1(t)1.(c)(i) of the Ethics Code, providing that Cone of Silence restrictions shall not apply to oral presentations before selection committees “duly noticed” as a “public meeting.”

Section 286.0113(2)(b)1. and 2., Florida Statutes, provide that any portion of a meeting at which negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, is exempt from the Sunshine Law.

While oral presentations to selection committees in a competitive solicitation are exempt from the Sunshine Law, nevertheless it is appropriate to interpret the terms “duly noticed” and “public meetings” as contained in Section 2-11.1 of the Ethics Code, in a manner consistent with the Sunshine Law.

Accordingly, “notice” of the oral presentation to the selection committee should be timely given, must contain the date, time and place of the meeting, a statement of the general subject matter to be considered, be posted physically at an appropriate location, and also posted on the agency’s website. If the “public meeting” is going to be conducted by videoconferencing or other technological means, then public access must be afforded which permits the public to listen and observe. If ordinarily the public was allowed to participate in the meeting, then the technology used must afford the public this opportunity. Instructions on how to listen, observe or participate by technological means should be contained in the notice.

While the specific questions of whether any members of the selection committee may participate in whole or in part by technological means or whether quorum requirements require in-person

attendance by a member remain at issue, these are matters which are not addressed by the Cone of Silence provision contained in the County Ethics Code. The County Attorney may have previously opined that meeting participation by a member of a County “board” as defined in Section 2-11.36.1(a) of the Code of Miami-Dade County, requires actual presence and precludes electronic participation by a physically absent public board member. However, that is a matter of interpretation that falls outside of the Ethics Commission’s jurisdiction.

Conclusion:

An oral presentation by bidders to a Selection Committee in a competitive selection, wherein bidders and members of the committee participate by videoconference or technological means, does not violate Section 2-11.1 (t), of the County Ethics Code, relating to the Cone of Silence, as long as the meeting is duly noticed as a public meeting.

That section requires that “notice” of the oral presentation to the selection committee should be timely given, must contain the date, time and place of the meeting, a statement of the general subject matter to be considered, be posted physically at an appropriate location, and also posted on the agency’s website. If the “public meeting” is going to be conducted by teleconferencing or other technological means, then public access must be afforded which permits the public to listen and observe. If ordinarily the public was allowed to participate in the meeting, then the technology used must afford the public this opportunity. Instructions on how to listen, observe or participate by technological means should be contained in the notice.

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.