

Memo

To: Carlos Giminez
Bilzin Sumberg, et.al.

From: Ardyth Walker 
Staff General Counsel

Date: 12/6/2007

Re: Inquiry 07-174

You requested an opinion regarding whether a pending resolution before the GOE Committee terminates the Cone of Silence regarding a solicitation to construct a social service center in the Wynwood area. Since the committee is meeting on December 11th, I am rendering this staff opinion based on the information contained in your request. The Ethics Commission has not considered this matter. Please contact me if you want the matter placed on the December agenda.

In your request, you state that the County Manager has issued a recommendation to combine two neighborhood services centers for the Allapattah and Wynwood areas into one facility. One of the proposed facilities has already been advertised and is under the Cone of Silence. A written award recommendation has not been issued. You are requesting an opinion as to whether the Manager's memorandum terminates the Cone of Silence regarding the covered solicitation.

The Cone of Silence is still in effect for the covered solicitation until the Manager issues a written award recommendation to the County Commission. The pending resolution concerns the policy determination of whether GOB dollars are best utilized by building two facilities or combining the facilities into one project. The resolution does not make any recommendation regarding award of the project to any bidder or proposer. Section 2-11.1(t) (1)(b)(ii) provides that "the Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission." Since the Manager has not made a written award recommendation to the BCC regarding the covered solicitation, the Cone of Silence is still in effect.

Please contact me at (305) 350-0616 if you have any further questions or I can provide any further assistance.

Walker, Ardyth (COE)

From: Carlos J. Gimenez [cgimenez@bilzin.com]
Sent: Thursday, December 06, 2007 2:52 PM
To: Walker, Ardyth (COE)
Cc: Albert E. Dotson, Jr.; Liz Ortiz
Subject: Inquiry - Cone of Silence

Dear Ms. Walker:

As we discussed, our office was referred to you by the Miami-Dade County Attorney's Office in order to render an interpretation of the Miami-Dade County Cone of Silence, specifically addressing whether or not the Cone of Silence is terminated under the following facts:

- * The County Manager issued a recommendation to combine two (2) community service centers into one (please see the attached Manager's Recommendation and Item Back-up).
- * One of the RFP's referenced in the attached Manager's Recommendation was already advertised, has gone through the selection process, etc.

Does the attached Manager's Recommendation serve to terminate the Cone of Silence pursuant to Section 2-11.1(t) of the Code of Miami-Dade County (included below for your reference)?

Kindly advise at your earliest convenience.

Best regards,

Carlos J. Gimenez

(t) *Cone of Silence.*

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on: (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff; (ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff; (iii) 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 therefor; (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor; (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; and (vi) any communication regarding a particular RFP, RFQ or bid between any member the County's professional staff and any member of the selection committee therefor. The County Manager and the Chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the 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 Manager with the Clerk of the Board and be included in any recommendation memorandum submitted by the Manager to the Board of County Commissioners. Notwithstanding the

foregoing, the Cone of Silence shall not apply to (i) competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Departments, Cultural Affairs and Tourist Development Councils and the Department of Environmental Resources Management; (ii) communications with the County Attorney and his or her staff; (iii) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs; (iv) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure; (v) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Manager makes his or her written recommendation; (vi) any emergency procurement of goods or services pursuant to Administrative Order 3-2; (vii) communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and (viii) communications regarding a particular RFP, RFQ or bid between the procurement agent or contracting officer, or their designated secretarial/clerical staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee therefor provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Manager or his or her designee shall provide for public notice of the Cone of Silence. The County Manager shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance. Notwithstanding any other provision of this Section, the imposition of a Cone of Silence on a particular RFP, RFQ or bid shall not preclude staff from obtaining industry comment or performing market research therefor provided all communications related thereto between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff are in writing or are made at a duly noticed public meeting.

(ii) The Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be reimposed until such time as the Manager makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Manager has the delegated authority to award under Sec. 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars (\$100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of A.O. 3-21 for such contracts or purchases involving the expenditure of over \$25,000 up to \$100,000; or (iii) at the time the award recommendation is issued in accordance with Section IV of A.O. 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.

(c) Exceptions. The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any

duly noticed public meeting or communications in writing at any time with any county employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

2. Audit and IPSIG contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on: (a) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff; and (b) any oral communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff. Notwithstanding the foregoing, the Cone of Silence shall not apply to communications with the County Attorney and his or her staff.

(b) Except as provided in Subsections 2(c) and 2(d) hereof, a Cone of Silence shall be imposed upon each RFP, RFQ and bid for audit and IPSIG services after the advertisement of said RFP, RFQ or bid. At the time of the imposition of the Cone of Silence, the County Manager or his or her designee shall provide for the public notice of the Cone of Silence. The Cone of Silence shall terminate when the County Manager executes a particular audit or IPSIG contract.

(c) Nothing contained herein shall prohibit any bidder or proposer: (i) from making public presentations at duly noticed pre-bid conferences or before duly noticed selection committee meetings; (ii) from engaging in contract negotiations during any duly noticed public meeting; or (iii) from communicating in writing with any County employee or official for purposes of seeking clarification or additional information from the County or responding to the County's request for clarification or additional information, subject to the provisions of the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to the general public upon request.

(d) Nothing contained herein shall prohibit any lobbyist, bidder, proposer or other person or entity from publicly addressing the Board of County Commissioners during any duly noticed public meeting regarding action on any audit or IPSIG contract. The County Manager shall include in any public solicitation for auditing or IPSIG services a statement disclosing the requirements of this ordinance.

3. Penalties. In addition to the penalties provided in Subsections (s) and (v) hereof, violation of this Subsection (t) by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable. Any person who violates a provision of this ordinance shall be prohibited from serving on a Miami-Dade County competitive selection committee. In addition to any other penalty provided by law, violation of any provision of this ordinance by a Miami-Dade County employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this ordinance shall report such violation to the State Attorney and/or may file a complaint with the Ethics Commission.

4. The requirements of Section 2-11.1(t) shall not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the cone of silence shall not apply to that municipality. Any municipality that opts out of the requirements of Section 2-11.1(t) shall provide the Ethics Commission with a copy of the ordinance.

(Ord. No. 99-1, § 1, 1-21-99; Ord. No. 00-149, § 1, 11-28-00; Ord. No. 01-149, § 1, 9-25-01; Ord. No. 01-150, § 1, 9-25-01; Ord. No. 02-3, § 1, 1-29-02; Ord. No. 04-77, § 1, 4-27-04)



Carlos J. Gimenez

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"BILZIN.COM" made the following annotations.

TAX ADVICE DISCLOSURE

Pursuant to Internal Revenue Service Circular 230, we are required to advise you that if there is any tax advice contained herein, it is not intended to be used, and cannot be used, by the addressee or any taxpayer, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code.

This message contains information which may be confidential and privileged. Unless you are the addressee (or authorized to receive for the addressee), you may not use, copy or disclose to anyone the message or any information contained in this message. If you have received this message in error, please advise the sender by reply e-mail or reply to info@bilzin.com, and delete the message. Thank you very much...

Memorandum



Date: November 13, 2007

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

From: George M. Burgess
County Manager *Burgess*

Subject: Combining of BBC-GOB Project No. 216 – "Neighborhood Service Center Land Acquisition and Construction with BBC-GOB Project No. 215 - "Neighborhood Service Center Demolition and Reconstruction"

GOE	2J
Agenda Item No. _____	

Recommendation

It is recommended that the Board of County Commissioners (the "Board") adopt the attached resolution approving the combining of Building Better Communities General Obligation Bond Program (the "BBC Program") Project No. 216 – "Neighborhood Service Center Land Acquisition and Construction" with BBC Program GOB Project No. 215 – "Neighborhood Service Center Demolition and Reconstruction" and after a public hearing pursuant to Resolution No. R-917-04 (the "Authorizing Resolution"). This action will revise the projects' scopes and descriptions and allow for maximum use of County funds, by combining the \$7.5 million allotted for each service center, thereby eliminating the need for the construction of two separate public service outreach facilities serving Commission District 3.

The Department of Human Services' ("DHS") feasibility studies were conducted and committee meetings were held with the Community Action Agency ("CAA"), General Services Administration ("GSA") and the Office of Capital Improvements ("OCI"). The studies revealed that it would be in the best interest of the community and the County at-large to combine the BBC Program GOB allocation for the two projects in order to construct one comprehensive social service center. The combined allocated funds of \$15 million would be used for the construction of a 30,000 square foot comprehensive neighborhood service center at the Wynwood site located at 2902 NW 2nd Avenue, Miami.

Scope

The direct impact of this agenda item is to the residents of County Commission District 3 who would be accessing services at the Allapattah and Wynwood Neighborhood Service Centers. The proposed newly-constructed comprehensive social service center is to be located at the present Wynwood site thereby remaining in Commission District 3.

During construction of the new comprehensive social service center at the Wynwood site, residents will continue to access services at the existing Allapattah Neighborhood Service Center located at 1897 NW 20 Street, Miami. An additional service center will be the Culmer Neighborhood Service Center located at 1600 NW 3rd Avenue, Miami, which can accommodate residents from this service area and is also located in District 3. The three centers (Allapattah, Culmer and Wynwood) all located in District 3 are within a 2 to 3 mile radius of each other.

Fiscal Impact/Funding Source

The BBC Program GOB proceeds allocated to the Wynwood and Allapattah Neighborhood Service Centers are \$7.5 million respectively for demolition and reconstruction (Wynwood) and land acquisition and new construction (Allapattah). Combining BBC Program GOB funds for both projects, for a total of \$15 million, in conjunction with the use of the County-owned land at the present Wynwood site would eliminate the cost of land acquisition for Allapattah thereby allowing maximum use of County dollars to construct a larger, comprehensive social service facility at the Wynwood site.

Track/Record/Monitor

The implementing entity for this project will be DHS and the monitoring entity will be OCI.

Background

On November 4, 2004 voters approved a referendum to fund more than 300 capital improvements throughout the County over the next 15 – 20 years. Appendix A to the Authorizing Resolution (Resolution No. R-917-04) lists the "Construct and Improve Public Service Outreach Facilities" projects eligible for funding from the BBC-GOB Bond Program by number, name and size. All additions, deletions and significant modifications to individual projects require a majority vote of the Board following a public hearing.

The two Public Service Outreach Facilities included in the BBC Program are: 1) GOB Project No. 215 - "Neighborhood Service Center Demolition and Reconstruction", which includes the demolition of the current Wynwood Neighborhood Service Center and the reconstruction of a new neighborhood center facility in the same location in the Wynwood community; and 2) GOB Project No. 216 - Neighborhood Service Center Land Acquisition and Construction, which includes the purchase of land and construction of a new neighborhood service center in the Allapattah area.

DHS has worked closely with OCI and other social services departments in the County to develop a strategic approach for maximizing the public's benefit of their BBC Program funding. As a result of this work, it is recommended that the projects' scope and description be modified as follows:

- 1) Delete GOB Project No. 216 (Allapattah) and;
- 2) Approve a significant modification to GOB Project No. 215 to combine the BBC Program GOB allocations for Project Nos. 215 and 216 (a total of \$15 million) for the construction of a comprehensive social services facility at the current Wynwood Neighborhood Service Center site.

The Building Better Communities Citizen's Advisory Committee favorably recommended this item at its meeting held on July 9, 2007.


Assistant County Manager

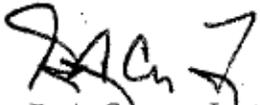


MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: December 4, 2007

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved _____ Mayor

Agency Item No.

Veto _____

Override _____

RESOLUTION NO.

RESOLUTION APPROVING DELETION OF BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM PROJECT NO. 216-"NEIGHBORHOOD SERVICE CENTER LAND ACQUISITION AND CONSTRUCTION" AND APPROVING SIGNIFICANT MODIFICATION TO BUILDING BETTER COMMUNITIES GENERAL OBLIGATION BOND PROGRAM PROJECT NO. 215-"NEIGHBORHOOD SERVICE CENTER DEMOLITION AND RECONSTRUCTION" EACH IDENTIFIED IN APPENDIX A TO RESOLUTION NO. R-917-04 AFTER A PUBLIC HEARING

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by this reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the deletion of Building Better Communities General Obligation Bond Program Project No. 216-"Neighborhood Service Center Land Acquisition and Construction" and approving significant modification to Building Better Communities General Obligation Bond Program Project No. 215-"Neighborhood Service Center Demolition and Reconstruction", each identified in Appendix A to Resolution No. R-917-04 after a public hearing, all as more particularly described in the accompanying memorandum.

The foregoing resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of December, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Geri Bonzon-Keenan

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