

MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 24, 2014

The Honorable Carlos A. Gimenez
Stephen P. Clark Center
111 NW 1st St., Suite 2910
Miami, FL 33128

Re: RQO 13-11-Opinion as to County Ethics Code at Sec. 2-11.1 (t)

Dear Mayor Gimenez:

At a public meeting on December 12, 2013, the Miami-Dade Ethics Commission (Ethics Commission) opined that a member of a County selection committee, who may be either a County or non-County employee, is considered a County "official" under Section 2-11.1(t)(1)(c)(i) of the Ethics Code. Consequently, such an individual is allowed to receive a written communication from a vendor regarding a bid during the time the Cone of Silence is imposed, as long as a copy of the written communication is filed with the Clerk of the Board.¹ Additionally, the Ethics Commission opined that the language found in solicitation document, ISD Project No. E13-WASD-01R does not specifically prohibit proposers from delivering subsequent, supplemental written materials to selection committee members, thereby permitting the communication of such materials to the committee members pursuant to the aforementioned Ethics Code section.²

Public Official

The Cone of Silence contains an exception which allows communications in writing to any "official" when a copy of the written communication is filed with the Clerk of the Board, unless specifically prohibited by the applicable RFP, RFQ or bid documents.³ Selection committee members who are vested with critical public duties and serve under the authority of the office of the Mayor fulfill an important role in the public decision-making process. In that capacity, each member should be considered a public "official" who is subject to all local ordinances and state laws pertaining to public procurement, including the exception found in the Cone of Silence.

¹ This question has been addressed previously in informal COE staff opinions and was also discussed in the attached letter dated Nov. 5, 2013, from Executive Director Joseph Centorino to County Mayor Carlos Gimenez regarding ISD Project No. E13-WASD-01R. However, the question has never been formally addressed by the Ethics Commission. The Mayor's request is attached as Exhibit 1, and the Director's response of Nov. 5, 2013, is attached as Exhibit 2.

² ISD Project No. E13-WASD-01R, Solicitation (NTPC) Document, Section 2.2. Attached as Exhibit 3.

³ Miami-Dade County Ethics Code at Sec. 2-11.1 (t)1(c)(i).

Consequently, "official" as used in the Cone of Silence exception cited above should be defined to include both County and non-County employees who serve as selection committee members.

Solicitation Documents

The Cone of Silence is a procedure designed to protect the integrity of the County's procurement process by shielding it from undue influences prior to the recommendation of contract award.⁴ The Cone of Silence is imposed at the time a solicitation is advertised and is lifted when the Mayor makes a written recommendation to the County Commissioners.

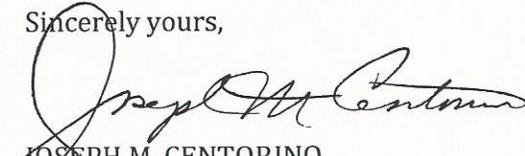
Section 2.2 of the underlying solicitation document in this case requires that "Interested firms must submit their proposal in sealed envelope(s) and/or container(s)," and "All sealed envelopes and/or containers shall be delivered to" the Clerk of the Board."⁵ However, this directive does not state that it is the exclusive method for submitting subsequent, supplemental materials.

Further, Section 1.13 of this solicitation document that deals with "Confidential Information" requires that trade secrets or other confidential information included in submissions be redacted and returned to the proposer prior to submission to selection committee members.⁶ This provision states the conditions under which confidential information is to be handled, but it does not indicate that this is the exclusive method for submitting non-confidential materials. In the absence of such clarity, no specific prohibition of the practice may be found in the solicitation documents.

This opinion construes the Miami-Dade County Ethics Code and is not applicable to other conflicts under County or State laws. Inquiries regarding possible conflicts under State ethics laws should be directed to the State of Florida Commission on Ethics.

If you have any questions regarding this opinion, please call the undersigned or Staff Attorney Gilma Diaz-Greco at 305-579-2594.

Sincerely yours,


JOSEPH M. CENTORINO
Executive Director and General Counsel

cc: Miguel De Grandy, Esq.
Albert E. Dotson Jr., Esq.

⁴ Miami-Dade County Administrative Order AO 3-27 (2002).

⁵ Id.

⁶ ISD Project No. E13-WASD-01R, Solicitation (NTPC) Document, Section 1.13. Attached as Exhibit 4.