

INQ 01-07



VIA FACSIMILE (305) 854-2323

ETHICS COMMISSIONERS

Kerry E. Rosenthal, Chairperson
Charles A. Hall, Vice Chairperson
Elizabeth M. Iglesias
Knovack G. Jones
Robert H. Newman

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

February 21, 2001

Mitchell Bierman, Esq.
Weiss, Serota, Helfman, Pastoriza and
Guedes, P.A.
2655 South Bayshore Drive
Suite 420
Miami, Florida 33133

Dear Mr. Bierman:

I received your request for an opinion regarding the Cone of Silence provision in the RFQ for the Construction Manager-At-Risk for the South Terminal. Section 2-11.1(t)(1)(a) of the Code of Miami Dade Florida restricts communications 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." The Cone of Silence does not restrict communications between lobbyists and elected officials during the time that the cone is imposed but elected officials may not contact county staff during the time that the cone is in place.


Pursuant to the provisions of Section 2-11.1(t)(1)(c), however, the county may impose additional restrictions on a particular RFP, RFQ or bid document. Therefore, the county may include additional restrictions during the South Terminal RFQ process.

Please be advised that this is an informal opinion that is being issued because of the time constraints involved in you request. The Ethics Commission has not reviewed this

matter and this is not a formal opinion. You may request a formal Ethics Commission opinion which will be rendered at the March meeting.

If you have any further questions or I can provide additional assistance, please contact the undersigned.

SINCERELY YOURS,



ARDYTH WALKER
Staff General Counsel

Cc: Deborah Mastin, Assistant County Attorney

**WEISS SEROTA HELFMAN
PASTORIZA & GUEDES, P.A.
2665 South Bayshore Drive
Suite 420
Miami, Florida 33133
Telephone (305) 854-0800
Telecopier (305) 854-2323**

CONFIDENTIAL

TO: Ardyth Walker, Esq.

FACSIMILE: (305) 579-2656

Deborah Bovarnick-Mastin, Esq.

**FACSIMILE: (305) 876-7294
TELEPHONE: (305) 876-7040**

FROM: Mitchell A. Bierman, Esq.

COMMENTS:

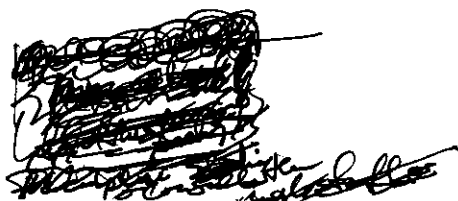
The information contained in this transmission is attorney privileged and confidential. It is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone collect and return the original message to us at the above address via the U. S. Postal Service. We will reimburse you for postage. Thank you.

FILE NO.: 695.001

DATE: February 21, 2001

NUMBER OF PAGES INCLUDING COVER SHEET: 7

PLEASE NOTIFY US IMMEDIATELY IF NOT RECEIVED PROPERLY



**WEISS SEROTA HELFMAN
PASTORIZA & GUEDES, P.A.**
ATTORNEYS AT LAW

NINA L. BONISKE
JAMIE ALAN COLE
EDWARD G. GUEDES
STEPHEN J. HELFMAN
GILBERTO PASTORIZA
JOSEPH H. SEROTA
RICHARD JAY WEISS
DAVID M. WOLPIN
STEVEN W. ZELKOWITZ

THOMAS J. ANSBRO*
LILLIAN ARANGO DE LA HOZ*
ALISON S. BIELER
MITCHELL A. BIERMAN
MITCHELL J. BURNSTEIN
ELAINE M. COHEN
DOUGLAS R. GONZALES

MIAMI-DADE OFFICE
2665 SOUTH BAYSHORE DRIVE
SUITE 420
MIAMI, FLORIDA 33133

TELEPHONE (305) 854-0800
TELECOPIER (305) 854-2323
WWW.WSH-FLALAW.COM

BROWARD OFFICE
3111 STIRLING ROAD, SUITE B
FORT LAUDERDALE, FLORIDA 33312
TELEPHONE (954) 763-4242 • TELECOPIER (954) 764-7770

GERALD T. HEFFERNAN*
JOHN R. HERIN, JR.
CHRISTOPHER F. KURTZ
PETER A. LICHTMAN
KAREN LIEBERMAN*
MATTHEW H. MANDEL
BERNARD S. MANDLER*
ALEXANDER L. PALENZUELA-MAU
GARY I. RESNICK*
NANCY RUBIN*
GAIL D. SEROTA*
DANA S. SCHWARTZ
ARI C. SHAPIRO
JEFFREY P. SHEFFEL
NANCY E. STROUD*
SUSAN L. TREVARTHEN
CARMEN I. TUGENDER
DANIEL A. WEISS*

*OF COUNSEL

February 21, 2001

VIA FACSIMILE & Email

Ardyth Walker, Esq.
Staff General Counsel
Commission on Ethics
Biscayne Building
19 West Flagler Street, Suite 220
Miami, Florida 33130
Awalker@Co.Miami-Dade.fl.us

Re: Request for Qualifications for Construction Manager at risk, South Terminal Program, Miami International Airport ("RFQ").

Dear Deborah:

Please confirm for me that this RFQ does not impose any restrictions beyond those contained in the County Code "Cone of Silence" provisions, Section 2-11.1 (t). Specifically, page 6 of the RFQ (attached), states that:

[P]ursuant to Miami-Dade County Code, Section 2-11.1, submittals of any respondent who, itself or through its representative, discusses any pending solicitation for commodities, services or construction with any County Commissioner, officer or employee, except at a public meeting that satisfies the requirements of Florida Government in the Sunshine Law, shall be rejected as non-responsive.

Ardyth Walker, Esq.
February 21, 2001
Page 2

My understanding of Section 2-11.1 (t) is that it does not prohibit discussions between representatives of a respondent and County Commissioners during the pendency of the RFQ. Accordingly, the provision in the RFQ appears to be a misstatement of the law. Please advise me immediately whether this RFQ is intended to contain additional requirements that are not contained in the County Code with respect to the Cone of Silence or the quoted provision is a misstatement. Thank you for your immediate response.

Sincerely,


Mitchell A. Bierman

MAB/ms
695.001

cc: Deborah Bovarnick-Mastin, Esq.

WEISS SEROTA HELFMAN
PASTORIZA & GUEDES, P.A.

RFQ FOR CONSTRUCTION MANAGER AT-RISK UNDER GMP CONTRACT FOR SOUTH
TERMINAL PROGRAM

- Warranty Administration
- Implementation of a Tenant Relocation Plan
- Obtain and hold all construction permits

Due to the nature of the Project, the performance of Preconstruction and Construction Phase Services may overlap.

- D. All Preconstruction and Construction Phase Services shall be performed in accordance with the plans and specifications developed by the design consultants, and the negotiated contract. Copies of the plans and specifications developed as of the date of this RFQ, and a contract are being provided as part of this RFQ.

4. Lobbyist Registration Affidavit

Pursuant to Miami-Dade County Code Section 2-11.1, the submittals of any respondent who, itself or through its representative, discusses any pending solicitation for commodities, services or construction with any County Commissioner, officer or employee, except at a public meeting that satisfies the requirements of the Florida Government in the Sunshine law, shall be rejected as non-responsive. This section does not preclude a potential respondent from submitting written questions relating to factual matters concerning the RFQ or selection process.

Further, consistent with Sections 2-11.1 (s)(2) and (5) of the Code, no person may participate at a public meeting on behalf of a respondent unless that person has been identified on the Lobbyist Registration for Oral Presentation Affidavit or has subsequently been registered with the Clerk of the Board and paid all necessary fees. The Affidavit (**Attachment F**) must be completed, notarized and included with the written submission. Lobbyists shall specifically include the principal, as well as any agent, officer or employee of a principal, regardless of whether such lobbying activities fall within the normal scope of employment of such agent, officer or employee.

Individuals substituted for or added to the presentation team after submittal of qualifications and filing by staff, **MUST** register with the Clerk of the Board and pay all applicable fees.

RFQ FOR CONSTRUCTION MANAGER AT-RISK UNDER GMP CONTRACT FOR SOUTH TERMINAL PROGRAM

NOTE: Other than for the oral presentation, respondents who wish to address County Commission or a County board or committee concerning any actions, decisions or recommendations of County personnel regarding this RFQ must register with the Clerk of the Board (**Form BCC FORM 2DOC**) and pay all applicable fees.

Pursuant to Resolution **R-1462-95**, any representation made to the County Commission on a respondent's behalf at the time the Commission considers award of the contract, the award of the contract to such respondent shall be deemed inclusive of all such representations.

5. Local Preference

Respondents are advised that Miami-Dade County Ordinance No. **94-166** is applicable to this solicitation. Up to ten selection evaluation points shall be given as a bonus to a local business, except where federal or state law mandates to the contrary. A local business is defined as a firm having its headquarters located in Miami-Dade County or having a place of business located in Miami-Dade County at which it shall produce the goods or perform the services to be purchased.

6. Community Small Business Enterprise (CSBE)

All requirements of the "Miami-Dade County Florida CSBE Participation Provisions" which delineate the requirements of this County program, including meeting the CSBE contract measures set for the Program and stimulating interest of CSBE firms must be satisfied. **Contract measures of 7% (seven) (per cent) have been established for the following construction management services:**

The successful respondent shall be required to comply with the terms of the Miami-Dade County Community Small Business Enterprise Program (CSBE) pursuant to Ordinance No. **97-52**, Ordinance No. **97-158**, Ordinance No. **99-31**, Ordinance No. **00-17**. Every portion of the work is subject to compliance with the CSBE program goals, including all services provided directly by the Contractor

Dade County: Code of Ordinances
Document -- 8 Hits

Cone of Silence

Options

PREVIOUS HIT	PREVIOUS PAGE	NEXT PAGE	NEXT HIT
--------------	---------------	-----------	----------

PART III CODE OF ORDINANCES
Chapter 2 ADMINISTRATION*
ARTICLE I. IN GENERAL

Sec. 2-11.1. Conflict of Interest and Code of Ethics Ordinance.

(Use Reference links above move to Document Titles. Use scroll bar to read bottom of page.)

(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: (a) 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; and (b) 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. 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; (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; (iv) 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; and (v) any emergency procurement of goods or services pursuant to Administrative Order 3-2.

(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 include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

(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.

(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.

(Ord. No. 99-1, § 1, 1-21-99)

(u) Prohibition on certain business transactions. No person who is serving as an elected county official or a member of the staff of an elected county official, or as county manager, senior assistant to the county manager or department director shall enter into a business transaction with any person or entity that has a contract with Miami-Dade County or any shareholder, partner, officer, director or employee of said contractor, unless said business transaction is an arm's length transaction made in the ordinary course of business. The provisions of this subsection (u) shall not apply to a business transaction between an elected county official, a member of the staff of an elected county official, the county manager, a senior assistant to the county manager or a department director and a not-for-profit entity. As used herein, a "shareholder" shall mean any person owning ten (10) percent or more of the outstanding capital stock of any corporation. As used herein, "elected county official" shall mean the mayor, county commissioners and community council members. As used herein, "business transaction" shall mean any contract wherein persons either sell, buy, deal, exchange, rent, lend or barter real, personal or intangible property, money or any other thing of value, or render services for value.

RETURN TO TOP OF PAGE	NEXT PAGE	NEXT HIT
-----------------------	-----------	----------

Municipal Code Corporation: Codes, Minutes, Custom Legal Publications