

The Cone of Silence does not apply to Suncam, Inc. because they are not one of the categories of persons or entities enumerated in the ordinance. Therefore, the Procurement Department may provide Suncam with public information regarding selection committee proceedings. The Citizens' Bill of Rights does not require the department to permit Suncam to participate in selection committee proceedings because they are not a party whose interests are affected by the outcome of the proceedings. However, committee chairs have the discretion to recognize Suncam employees and permit them to speak.

This opinion construes the Miami-Dade Conflict of Interest and Code of Ethics ordinance only and is not applicable to any conflict under state law. Please contact the State of Florida Commission on Ethics if you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Ardyth Walker, Staff General Counsel at (305) 579-2653 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in cursive script, appearing to read "Robert Meyers", followed by a horizontal line extending to the right.

ROBERT MEYERS
Executive Director

not work on behalf of a particular party in regard to a particular bid, Suncam's activities do not appear to fall within any of the categories listed in the ordinance.

The "process and procedure" exemption to the Cone of Silence does not cover information sought by SunCam such as the times, dates and locations of selection committee meetings, selection committee appointments and committee decisions because the information is not contained in the solicitation documents. The provision only covers information contained within the solicitation information. However, SunCam may be provided with the requested information if it is public record information or regards decisions made at a publicly noticed meeting.

Selection Committee meetings are public meetings covered by the Sunshine Law but the Sunshine Law does not require a government agency to permit participation by the public at all meetings. Similarly, Section (A)(5) of the Home Rule Charter Citizen's Bill of Rights provides that citizens have the right to be heard in certain proceedings. Section (a)(5) provides that "So far as the orderly conduct of public meetings permits, any interested person has the right to appear before any the Commission or any agency, board or department for the presentation, adjustment, or determination of an issue, request or controversy within the jurisdiction of the entity involved." However, an interested person is a person who is affected by an issue, request or controversy that may be determined by the particular board. Moreover, the provision permits the department to restrict participation if necessary for the orderly conduct of public business. Therefore, the department is not required to permit Suncam to participate in selection committee meetings but may allow them to so at the chair's discretion.

such as dates and times of meetings, lists of bidders, members of selection committees and the results of committee deliberations.

SunCam is seeking an opinion regarding the following issues: 1) Whether the Cone of Silence applies to persons or entities that are not "potential vendors, service providers, bidders, lobbyists or consultants"; 2) Whether SunCam falls into any of the categories enumerated in the ordinance; 3) Whether SunCam is prohibited from speaking during publicly noticed meetings and 4) Whether certain public information such as dates and times of meetings, selection committee appointments are process questions which are exempted from coverage under the ordinance.

The Commission found that the Cone of Silence does not apply to SunCam since it does not fall within any of the categories enumerated in the ordinance. Section 2-11.1(t)(1)(a) provides that the "Cone of Silence is hereby defined to mean a prohibition on a) any communication 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 permits communications regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, consultant or lobbyist and the Vendor Information Center staff, the procurement agent and the contracting officer responsible for administering the procurement process provided such communication is strictly limited to matters of process or procedure already contained in the corresponding solicitation document.

The Cone of Silence only restricts communications between persons or entities that fall within the enumerated categories regarding a particular bid. Since SunCam does



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EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

April 5, 2001

Susan Aprill
Holland and Knight
701 Brickell Avenue
Suite 3000
Miami, Fl 33131

RE: REQUEST FOR ADVISORY OPINION 01-17

Dear Ms. Aprill:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on April 4, 2001 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the Cone of Silence to outside parties who are not bidders on the project.

In your letter, you advised the Commission that SunCam Inc. and SunCam News Services provide a news services to persons interested in the construction and architectural and engineering selection process in Miami-Dade County. SunCam publishes a newsletter regarding selection committee proceedings for various projects. The newsletter is available by subscription. The subscribers are mostly members of the industry. SunCam also videotapes some selection committee proceedings.

Recently, SunCam has been denied information regarding certain selection committee proceedings because of the Cone of Silence. On some occasions, county procurement staff has refused to provide SunCam information regarding selection committee proceedings