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VIA FAX (954) 759-5538

December 8, 2003

Alexander P. Heckler, Esq.
Greenberg Traurig, P.A.
401 East Las Olas Boulevard, Suite 2000
Fort Lauderdale, FL 33301

RE: REQUEST FOR ADVISORY OPINION 03-180

Dear Mr. Heckler:

You requested an advisory opinion seeking clarification of the applicability of the Cone of Silence provision, as outlined in the Miami-Dade County Conflict of Interest Ordinance Section 2-11.1 (t).

In your letter to the Ethics Commission you advise that your firm represents Nextran Corporation ["Nextran"] in connection with Invitation to Bid ["ITB"] No. 7368-4/08, Automated Garbage Trucks. In a letter signed by Senior Procurement Agent, Nazario Soto and filed with the Clerk of the Board on October 29, 2003, the Department of Procurement Management notified the bidders in this above-referenced solicitation of the award recommendation. [*See attached.*] Nextran was not selected. Also included in this ITB is Section 1.13, "Bid Protest," which provides that,

When a letter of intent to award a Bid Solicitation has been communicated (mailed, faxed, or emailed) to each competing Bidder and filed with the Clerk of the Board, a Bidder wishing to protest said award recommendation shall file a protest with the Clerk of the Board within ten (10) working days of the date of the award recommendation letter.

Upon receipt of this letter, you filed your bid protest on behalf of Nextran with the Clerk of the Board within the requisite ten (10) day period. However, an e-mail dated

November 6, 2003 from Mr. Soto, stated that the Cone of Silence remains in effect until the Manager makes his recommendation.

You now seek clarification from the Ethics Commission as to whether the Cone of Silence remains in effect in light of Mr. Soto's letter of October 29th and if it is in effect, whether the bid protest hearing scheduled for December 9, 2003 would constitute a violation of the Cone of Silence provision under Section 2-11.1, The Conflict of Interest and Code of Ethics Ordinance.

Section 2-11.1 (t)(b)(ii), provides in part, that the Cone of Silence terminates at the time the Manager makes his or her written recommendation to the County Commission. However, Section 2-11.1 (t)(c) outlines various 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 meetings, 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 letter from Mr. Soto dated on October 29th is not the Manager's written recommendation. The letter states in part, that the "...County Manager or designee, will recommend award of this contract..." The word "will" suggests future action by the Manager; whereas the language in Section 2-11.1 (t)(b)(ii) clearly states that the, "Cone of Silence shall terminate at the time the Manager makes his or her written recommendation..."

Nevertheless, the bid protest hearing clearly falls within the exceptions as outlined in 2-11.1 (t)(c). The bid protest hearing is a public meeting and accordingly does not violate the Cone of Silence provision under the Conflict of Interest and Code of Ethics Ordinance.

This opinion construes the Miami-Dade County 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 should you have any questions regarding possible conflicts under state law.

If you have any questions regarding this opinion, please call Christina Prkic, Staff Attorney at (305) 350-0615 or the undersigned at (305) 579-2594.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Robert Meyers", with a long horizontal flourish extending to the right.

ROBERT MEYERS
Executive Director