



May 20, 2003

David Hope
Assistant County Attorney
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ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

RE: REQUEST FOR ADVISORY OPINION 03-81

Dear Mr. Hope:

You requested an advisory opinion regarding the application of the Cone of Silence to the BellSouth Corporation in regard to the Request for Proposal for Non-Exclusive Telecommunications and Network Management Services Agreement. The Executive Director and I reviewed this matter and I am issuing the opinion based on the facts contained in your request.

In your request, you advised me the BellSouth Corporation has brought suit against Miami-Dade County alleging the current operation of a telecommunications and data network at Miami International Airport constitutes the operation of a telephone utility in violation of the Miami-Dade County Home Rule Charter. BellSouth is seeking declaratory and injunctive relief to void any existing contracts for the operation of the telecommunications network and to prohibit the county from operating a telecommunications network at Miami International Airport and the county's other general aviation facilities.

Subsequent to the filing of the lawsuit, the County issued a Request for Proposal for Non-Exclusive Telecommunications and Network Management Services. The scope of services provides that the proposer is responsible for: a) provisioning of voice and data

network services; b) maintaining existing and future voice and data networks infrastructure equipment including operation, maintenance, repair, monitoring and support of network devices such as routers, switches and servers; c) supporting of circuits, including vendor resolutions and support of environmentals including UPS devices for all switches and routers at all sites; d) daily analysis of network performance to research trending and troubleshooting from end point to end point to enable quick resolution of system degradation; e) providing capacity planning for all network links, PBX switches and trunk groups; f) providing an on-site Help Desk and Network Operation Center dedicated to providing uninterrupted service to airport operations; g) managing the existing voice and data network infrastructure; h) maintaining records as required by MDAD, including but not limited to equipment and cable plant record keeping of work order activity, equipment, inventory, telephone number inventory, number dialing plan, key sheets and cable management to the Intermediate Distribution Frame level and jack level for existing and new structure; i) managing the turn key installation of new voice, data and network services such as user training on equipment, project scheduling, appropriate billing to MDAD and SATS customers; j) billing user customers for services and also for the specified equipment, including when specifically requested by appropriate work order; k) needs assessment; l) system design; m) procurement of equipment and parts; n) documentation and reports; o) record keeping and inventory ; and p) any other functions related to the provisioning of the services.

The Request for Proposal is covered by the Cone of Silence ordinance. Section 2-11.1(t) provides that the "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 therefore; (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 therefore; (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 of the County's professional staff and any member of the selection committee therefore.

Section 2-11.1(t)(1)(c) provides that "(t)he 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 meetings 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.

BellSouth is a potential vendor for purposes of the Cone of Silence and the RFP for

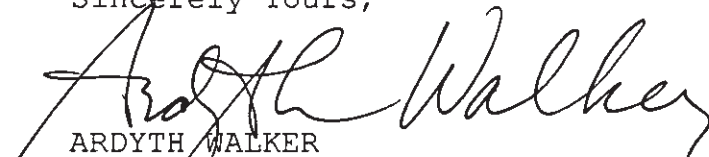
telecommunications and network management services. In Complaint 01-29, the Ethics Commission issued a letter of instruction where the Ethics Communication held that "a "potential vendor" for purposes of the Cone of Silence ordinance is a "a person or entity that is presently engaged in the type of business that is the subject matter of a particular invitation to bid, RFQ or RFP, and which person or entity seeks to affect any decision regarding the invitation to bid, RFQ or RFP. " Since BellSouth is an entity presently engaged in the business of providing the services that are the subject of the Request for Proposal and the lawsuit will directly affect the county's ability to proceed with the RFP process, BellSouth is a potential vendor for the purposes of this RFP and covered by the Cone of Silence.

Accordingly, BellSouth is prohibited by the Cone of Silence from communicating with county staff regarding any matters covered in the RFP including any current telecommunications and network management services except in writing or during a duly noticed public meeting.

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 the undersigned at (305) 350-0616 or Robert Meyers, Executive Director (305) 579-2594.

Sincerely Yours,


ARDYTH WALKER
Staff General Counsel