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ETHICS COMMISSIONERS

March 15, 2004

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Director
Miami-Dade Housing Agency
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Miami, FL 33125

ROBERT A. MEYERS
EXECUTIVE DIRECTOR

MICHAEL P. MURAWSKI
ADVOCATE

ARDYTH WALKER
STAFF GENERAL COUNSEL

RE: REQUEST FOR ADVISORY OPINION 04-06

Dear Mr. Rodriguez:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on March 10, 2004 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding the application of the Cone of Silence exemption for federally-funded disadvantaged business programs to the Housing Agency Section 3 programs.

In your request, you advised the Ethics Commission that pursuant to Section 3 of the Housing and Urban Development Act of 1968, the Miami-Dade Housing Agency operates the Section 3 program to promote contracting and employment opportunities for public housing residents and other low-income residents in the community. The Section 3 program mandates that the Housing Agency give preference in construction and service contracts to Section 3 businesses. The Housing Agency also requires construction contractors and consultants to hire qualified public housing residents for at least 30% of any vacancies that occur during the duration

of a housing agency construction or services contract.

In order to qualify as a Section 3 business, a business must either have a 51% or higher ownership interest by a Section 3 resident; have a permanent full-time employee roster that includes persons at least 30% of whom are currently Section 3 residents or within three years of the date of first employment with the business concern were Section 3 residents.

The Commission found that the Section 3 program is exempt from the Cone of Silence and Housing Agency personnel may discuss program procedures with bidders and contractors. Section 2-11.1 (t) (1) (a) provides that a "Cone of Silence" is hereby defined to mean a prohibition on (i) any communication regarding a particular RFP, FRQ 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 or 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 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.

The Cone of Silence provides for certain exemptions including "communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County

departments receiving federal funds, providing the funds are limited strictly to matters of programmatic process or procedure."

The Section 3 program qualifies as a disadvantaged business enterprise program in a County Department receiving federal funds for purposes of the Cone of Silence. The Section 3 program, while not officially designated as a DBE program, is a program designed to help disadvantaged businesses and persons in the community. Further, the program is federally funded and the exemption furthers the purpose of the exemption by allowing staff to assist disadvantaged businesses in understanding procedures and guidelines so they may be competitive.

Accordingly, the Section 3 program staff may communicate with potential vendors, service providers, bidders, lobbyists or consultants regarding matters of process and procedure related to the Section 3 program. The staff may not communicate with potential bidders and service providers regarding any other matters related to the proposed contract.

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) 579-2594 or Ardyth Walker, Staff General Counsel at (305) 350-0616.

Sincerely Yours,



ROBERT MEYERS
Executive Director