

October 27, 2009

Sheila Martinez
Executive Assistant to the Director
Housing and Community Development
701 N.W. First Court
Miami, FL 33136

RE: REQUEST FOR ADVISORY OPINION-RQO 09-41

Dear Ms. Martinez:

The Commission on Ethics and Public Trust considered your request for an advisory opinion at its meeting on October 26, 2009 and rendered its opinion based on the facts stated in your letter.

You requested an opinion regarding whether the Cone of Silence applies to general obligation fund (GOB) projects supervised by Housing and Community Development.

In your letter, you advised the Commission that in 2004, the voter approved the Building Better Communities bond program. The Affordable Housing Resolution provided for funds to construct and improve affordable housing in the community. One of the items contained within the resolution is Project 349-Preservation of Affordable Housing Units and Expansion of Home Ownership with an original allocation of 137.7 million dollars. In 2008, the Board of County Commissioners approved a resolution to divide the allocation equally among the thirteen commission districts. The purpose of the division was to permit each commissioner to determine the projects that best met the needs in his or her district.

Subsequently, in December of 2008, Commissioner Sally Heyman sponsored a resolution seeking proposers to develop

multi-family rental units on privately owned land in District 4. The resolution contained several specifications including maximization of the number of units, rental preference for families who have at least one member employed by the public sector and or health care providers, income restrictions and a requirement that the developer maintain such preferences and restrictions for the duration of the life of the bonds. The resolution directed the Mayor or his designee to issue a RFP to fund such a development in District 4. The project award and any agreements must be approved by the Board of County Commissioners.

Earlier this year, Housing and Community Development issued a solicitation for projects to be built in accordance with the specifications contained in the Heyman resolution. The HCD solicitation also provided that at least 20% of the project cost must be subcontracted to firms registered with the department of Small Business Affairs. The proposals were solicited under a consolidated Request for Application (RFA) process that included federal and state funded projects as well as the locally funded GOB program. Each program has different terms, conditions and requirements. The RFA provided that the GOB "applications are limited to the GOB funds available in the district. Applicants may not apply for any other funds available in this RFA for this activity."

The Commission found the Cone of Silence applies to the request for proposals issued under this solicitation. The exemption for other state and federally funded grant programs administered by Housing and Community Development does not apply to the District 4 GOB affordable housing development. The Cone of Silence applies to solicitations for goods and services. Section 2-11.1(t)(1)(a) provides that the "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 Mayor, County Commissioner or their respective staff and any member of the County's professional staff including , but not limited to the County Manager and his or her staff."

The Cone of Silence includes an exemption for state and federal funds administered by Housing and Community Development. Section 2-11.1(t)(1)(a) provides that "notwithstanding the foregoing, the Cone of Silence shall not apply to the competitive processes for the award of CDBG, HOME, SHIP and surtax dollars administered by the Office of Community and Economic Development (now HCD)." Without the exemption, solicitations for developers of affordable housing projects funded through a county solicitation process using state and federal dollars would be covered by the Cone of Silence.

The RFP process for the District 4 Affordable Housing Development has different terms, conditions and requirements than the programs exempted from the Cone of Silence ordinance. The RFP requires the use of firms registered with the Department of Small Business Affairs and other typical requirements of county construction projects. Moreover, the developers submitting proposals for the GOB project could not apply for other types of RFA funding for this project in the same proposal. Since typical county requirements were imposed, the Cone of Silence should apply as with any other county administered RFP process.

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

cc: Cynthia Johnson Stacks, Assistant County Attorney

Cynthia Curry, Senior Advisor to the County Manager