

Sanchez, Rodzandra (COE)

From: Diaz-Greco, Gilma M. (COE)
Sent: Thursday, November 08, 2018 11:44 AM
To: Sanchez, Rodzandra (COE)
Subject: 18-239 Carolina Alfonso, Contracting Officer, DOCA, (Cone of Silence (t))
Attachments: INQ 18-239 Alfonso.docx

INQ 18-239 Alfonso

From: Perez, Martha D. (COE)
Sent: Thursday, November 01, 2018 9:36 AM
To: Alfonso, L. Carolina (CUA) <Lydia.Alfonso@miamidade.gov>
Cc: Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Benitez, Hugo (CAO) <Hugo.Benitez@miamidade.gov>
Subject: Carolina Alfonso, Contracting Officer, DOCA, Cone of Silence (t), INQ 18-239

Dear Carolina,
Please see attached.

Martha D. Perez
Staff Attorney
MIAMI-DADE COUNTY COMMISSION ON ETHICS & PUBLIC TRUST
19 West Flagler St. Suite 820
Miami, FL 33130
(305)350-0656
PEREZMD@miamidade.gov

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MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 Miami, Florida 33130

Phone: (305) 579-2594 Facsimile: (305) 579-0273

Website: ethics.miamidade.gov

MEMORANDUM

TO: Carolina Alfonso
Construction Projects Manager, Dept. Cultural Affairs (DOCA)

FROM: Martha D. Perez
Staff Attorney

SUBJECT: INQ 18-239 (§2-11.1(t), Cone of Silence)

DATE: November 1, 2018

CC: All COE Legal Staff

Facts: You advise that the Department of Cultural Affairs (DOCA) has advertised a bid. During the solicitation process, it has been determined that there is a departmental funding shortage regarding the bid. You are the Contracting Officer (CO) assigned to this solicitation. You would like to know whether, prior to the submittal of an award recommendation, you may meet and discuss the shortage with the issuing department's director of DOCA.

Discussion: The Cone of Silence at Section 2-11.1(t) of the County Ethics Code, goes into effect when a bid, RFP or RFQ is advertised and it generally terminates when the Mayor makes his recommendation to the Board of County Commissioners (BCC). While the COS is in effect, oral communications between the following parties are prohibited: potential vendor, bidder, lobbyist, consultant AND County's professional staff; **Mayor, BCC or their staffs AND County's professional staff**; potential vendor, lobbyist, bidder, consultant AND selection/evaluation committee; Mayor, BCC and their staffs AND selection/evaluation committee; potential vendor, bidder, lobbyist, consultant AND Mayor, BCC or their respective staffs; and, **County's professional staff and selection committee**.

As the Contracting Officer, you are a (non-voting) member of the selection/evaluation committee in this bid (I.O 3-34). The issuing department's director is part of the County's professional staff. In general, you are prohibited from engaging in any oral communications with the issuing department's director. Similarly, the director is prohibited from engaging in any oral communications about this bid with the Mayor or the BCC and their respective staffs (INQ 13-276).

There are exceptions to this prohibition which are found at Section 2-11.1(t)(1)(c)(i) of the County Ethics Code. The prohibited oral communications do not apply at: pre-bid conferences; oral presentations before public selection committee meetings; duly noticed public meetings; recorded

contract negotiations; *recorded contract negotiation strategy sessions, in compliance with Florida Statute 286.0113*; public presentations before the BCC during a duly noticed public meeting; and, written communications with any County employee, official or BCC member unless specifically prohibited by the bid solicitation.

In consultation with the County Attorney's Office, we agree that the issue of a departmental funding shortage affecting the progress of a solicitation is an appropriate subject-matter of a contract negotiation strategy session.

Opinion: Consequently, you may discuss the budget shortage with the issuing department's director at a recorded contract negotiation session. Section 2-11.1(t)(1)(c)(i). If it is your intent to engage in a contract negotiation strategy session/meeting with the department director, you must provide written notice of the meeting, with a copy to the Clerk of the Board. Also, you may opt to communicate with the issuing department's director in other ways consistent with the exceptions referenced herein.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.