



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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January 21, 2020

Erin Hendrix
Partner, LSN Partners
ehendrix@lsnpartners.com

Re: INQ 20-02, Section 2-11.1(t), County Ethics Code, Cone of Silence

Dear Ms. Hendrix,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the applicability of the County Ethics Code cone of silence restrictions to RFP 00808 procurement.

The following information was provided to our office regarding the referenced solicitation: Back in May 2019, a resolution was presented to the Board of County Commissioners approving the award of contract RFP-00808, for the operation of public parking facilities at MIA for the Miami-Dade County Aviation Department (*See Agenda Item No. 8F, May 17, 2019 BCC Meeting*). This Item was deferred by the BCC to the Tourism and the Ports Committee. The Committee did not reject the award recommendation but rather, directed the Internal Services Department (ISD) to “go back and obtain best and final offer” from the vendor and another proposer/competitor.

Section 2-11.1(t) of the County Ethics Code, Cone of Silence (the ordinance), provides, in pertinent part:

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid...

(ii) The Cone of silence shall terminate at the time the Manager [Mayor] makes his or her written recommendation to the County Commission; *provided, however, that if the Commission refers the Manager's [Mayor's] recommendation back to the Manager [Mayor] or staff for further review, the Cone of Silence shall be reimposed until such time as the Manager [Mayor] makes a subsequent written recommendation. (Emphasis added)*

The Cone of Silence is intended to protect the integrity of the County's procurement process by, among other things, preventing undue influence from bidders, proposers and

lobbyists during a professional and sanitized competitive solicitation. The Ethics Commission has viewed the competitive process broadly, focusing on whether any aspect of the competitive process potentially remains after the action by the Mayor *or* the Board of County Commissioners has occurred.

In INQ 17-78, a competitive selection process was initiated for the procurement of services. At the conclusion of the selection committee's evaluation, the City Manager requested authorization from the Commission to commence negotiations with the top-ranked proposer, and if negotiations were unsuccessful, then with the second-ranked proposer and so on. Thereafter, the City Manager would bring a final award recommendation to the Commission. *See also* INQ 19-95

Because the Cone of Silence "is intended to provide insulation from private lobbying or political influence during competitive procurement processes," the Manager's recommendation left three potential proposers still under consideration therefore, the Cone of Silence was not lifted when the recommendation to commence negotiations was made to the Commission because the competitive selection process remained active. (emphasis added)

Similarly, in this instance, the Committee's action, i.e., directing the administration to obtain "best and final offers" from two proposers, effectively refers back the Mayor's recommendation for further action, thereby triggering the competitive element of the solicitation. Consequently, because the Board of County Commissioners deferred the contract award to the Committee and the Committee, in turn, directed the administration to obtain "best and final" from the recommended vendor and another proposer, the Cone of Silence is in effect until the final award recommendation effectively ending the competitive process, is resubmitted to the Board of County Commissioners.

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.

Cc: David Murray, Assistant County Attorney, Aviation Dept.