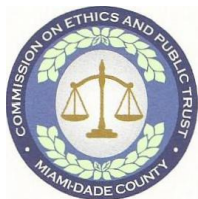


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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February 6, 2020

David J. Carter
VP, Sr Practice Director, TPO Management
Engineering, Design and Project Management

RE: INQ 20-07, Section 2-11.1(t), County Ethics Code, *Cone of Silence*

Dear Mr. Carter,

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

You advised that Atkins is a proposer on the “**CONSTRUCTION, ENGINEERING AND INSPECTION (CEI) SERVICES FOR THE METROMOVER COMPREHENSIVE WAYSIDE SYSTEM OVERHAUL ISD PROJECT NO. E18-DTPW-10**”, which is being procured to assist the County in managing the design-build “**Solicitation RFP-01307; Metromover Comprehensive Wayside Overhaul**”. As part of the RFP-01307, the proposers are provided information to attend “Pre-Proposal Conferences”.

You have indicated that Atkins would like to attend these Pre-Proposal Conferences for RFP-01307 and has posed the following questions:

Question 1: As proposers for E18-DTPW-10, can Atkins have representatives from our CEI team attend these RFP-01307 pre-proposal conferences without any violation of the cone of silence?

Question 2: If Atkins’ representatives are able to attend these pre-proposal conferences without any cone violation, are there any restrictions to our team for number of attendees and/or being able to ask questions?

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

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.

Regarding Question 1, as noted above, the COS does not apply to oral communications at publicly noticed pre-bid conferences. These meetings are subject to the Sunshine Law. Pursuant to Sunshine Law requirements, the pre-bid conference meetings are open to the public. The term "open to the public" as used in the Sunshine law has been interpreted to mean, "open to all persons who choose to attend." AGO 99-53. *Cf. Rigaya v. Board of Trustees of City Pension Fund for Firefighters and Police Officers in City of Tampa*, 162 So. 3d 348, 356 (Fla. 2d DCA 2015). Hence, any person who chooses to attend the scheduled pre-bid conference for RFP-01307 may do so.

Regarding Question 2, as the pre-bid conferences are subject to the Sunshine Law, there is no restriction regarding the number of persons who may attend the meeting. Under applicable case law, *any person* who chooses to attend the scheduled pre-bid conference for RFP-01307 may do so as it is "open to the public." However, participation during the meeting may be restricted if necessary for the orderly conduct of public business. *See* RQO 01-17

We strongly recommend that since the pre-bid conference that you and other representatives of Atkins plan to attend is regarding RFP-01307, you should limit any questions or comments that you may have to RFP-01307.

Sincerely,

Radia Turay, Esq.
Staff Attorney

Cc: Brian Webster
Julie Whiteside

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.

