



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Eduardo Villavicencio
Chief, Construction Mgmt. Division
Miami-Dade Corrections & Rehabilitation Department (MDC&R)

FROM: Martha D. Perez, General Counsel
Commission on Ethics & Public Trust

SUBJECT: INQ 2021-09, Cone of Silence, Sections 2-11.1(t)

DATE: January 22, 2021

CC: COE Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the roles and responsibilities of MDC&R Staff involved in a procurement.

Background:

The MDC&R is in the process of presenting a A&E professional services solicitation for the building of a new/replacement jail facility. The Department will be requesting the assignment of staff to be part of the selection committee and technical advisors to the selection committee. While it is clear that selection committee members may not communicate regarding the solicitation with the County's professional staff involved in the project (MDC&R), you would like clarification on the limitations imposed by other staff members who will be sharing their technical expertise with the selection committee in the evaluation of the proposals. More specifically, you inquire whether the technical advisors assigned to the committee may communicate with a consultant (s) assigned or hired to assist MDC&R with the project.

Discussion:

The Cone of Silence is contained in Section 2-11.1(t) of the County Ethics Code. It prohibits in relevant part, “[a]ny communication regarding a particular RFP, RFQ or bid between any communication regarding the particular bid between any member of the County’s Professional Staff and any member of the selection committee, therefore.” *See* Section 2-11.1(t)1. (a)(vi), County Ethics Code

In addressing the limitations of communications between and among MDC&R staff members, we must determine what role technical advisors and Department consultants play in Cone of Silence restrictions.

Selection committee voting members are assigned by the Mayor or her designee. A selection committee is generally composed of subject-matter experts within the County or other non-County sectors. A technical advisor or a technical committee created to advise the selection committee on the technical aspects of a solicitation is subject to the Cone of Silence. *See* INQ 15-252 and INQ 18-228¹

The County's Professional Staff is synonymous with the "Issuing Department"- the staff or employees of the County department that is responsible for administering the specified procurement process. A consultant retained by the County department charged with the administration of a procurement acts as an extension of the Professional Staff and is thus, covered by the COS. *See* INQ 09-120

Consequently, a technical advisor(s) assigned to assist a selection committee in a solicitation may not communicate about the solicitation with the County's Professional Staff (Issuing Department), including consultants who have been retained by the Department to assist with the pending solicitation. *See* INQ 16-129 and INQ 18-228

Note, all parties may communicate during a duly noticed public meeting. Also, provided the solicitation does not state otherwise, written communications are also permitted among the parties provided a copy is forwarded to the Clerk of the Board. *See* Section 2-11.1(t)1. (c)²

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.

¹ *See* I.O. 3-34

² For additional exemptions from the communications prohibitions in a competitive solicitation, please review the Cone of Silence ordinance at Section 2-11.1(t) of the County Ethics Code.

