

M E M O R A N D U M

TO: COMMISSION ON ETHICS AND PUBLIC TRUST
FROM: ARDYTH WALKER, STAFF GENERAL COUNSEL
RE: RQO 02-86 Martin Dareff Cone of Silence
DATE: JULY 17, 2002

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BACKGROUND

Martin Dareff of the Fleet Management Division is seeking an advisory opinion regarding the application of the Cone of Silence to General Terms and Conditions of Invitations to Bid.

FACTS

The county's Invitation to Bid documents contains two sections. Section 1 covers general terms and conditions for most county solicitations. The items covered in Section 1 include provisions regarding the Family Leave ordinance, Living Wage ordinance, Inspector General ordinance, Cone of Silence ordinances and required affidavits. Section 2 of the Terms and Conditions concerns terms and conditions related to the bid solicitation.

ARGUMENT

The Cone of Silence permits a procurement agent or contracting officer or their designated secretarial/clerical staff to answer questions regarding General Terms and Conditions that are contained in Invitation to Bid documents. However, the contracting officer or procurement agent and their secretarial/clerical staff may not answer questions regarding specific terms and conditions for a particular solicitation. 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. "

Section (t)(1)(a)(vii) provides that notwithstanding the foregoing, the Cone of Silence shall not apply to "communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement agent for such RFP, RFQ or bid provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document."

The ordinance provisions and other general terms and conditions contained in the invitation to bid are generally matters of process and procedure and may be discussed orally without violating the cone of silence. However, specific questions (with the exception of date and time for submission of bids and bid opening and the like) regarding the particular scope of work and conditions for a particular solicitation fall outside the realm of process and procedure and would be covered by the Cone of Silence.

The procurement agent and contracting officer is prohibited with orally communicating with potential vendors, bidders, service providers and other covered persons regarding any matter concerning the invitation to bid that concerns matters unrelated to a matter contained in the solicitation document.

CONCLUSION

Section 2-11.1(t) of the Code of Miami-Dade County permits contracting officers and procurement agents and their secretarial/clerical staff to answer questions regarding matters contained in the general conditions section of an invitation to bid document. However, contracting officers and procurement agents may not answer questions regarding the scope of services or other matters particular to the solicitation. A contracting officer is prohibited from orally communicating regarding a covered solicitation on any matter unrelated to process or procedure contained in the solicitation documents.