



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

TO: Justin Espagnol, Procurement Contracting Officer 2
Miami-Dade Strategic Procurement Department

FROM: Nolen Andrew Bunker, Staff Attorney
Miami-Dade Commission on Ethics and Public Trust

SUBJECT: INQ 2024-168, Section 2-11.1(t), Cone of Silence.

DATE: November 25, 2024

CC: All COE Legal Staff

Thank you for contacting the Miami-Dade Commission on Ethics and Public Trust (“Ethics Commission”) and requesting our guidance regarding possible conflicts of interest regarding your County board service and your employment.

Facts

On May 9, 2023, the Miami-Dade Strategic Procurement Department (“SPD”) issued a “Notice to Professional Consultants (NTPC) Miami-Dade County Water and Sewer Department (WASD) Engineering Design and Related Services for Water and Wastewater Infrastructure (Water Mains, Force Mains, Gravity Sewers, and Water and Sewer Pump Stations)” as SPD Project No. E23WS02 Set-Aside. Pursuant to this solicitation, the Miami-Dade Water and Sewer Department (“WASD”) “seeks the services of multiple consultants for the design, permitting, procurement, public engagement and related services of water and wastewater infrastructure” Specifically, WASD seeks to retain four (4) consultants or consultant teams for four (4) separate non-exclusive professional services agreements (“PSA”). Pursuant to the request to advertise memorandum and Section 2-8.2.12 of the Miami-Dade County Code, the Mayor has delegated her selection authority to the Director of WASD for this solicitation.

You advised that the Director has made a recommendation regarding some of the four PSAs under the above-discussed solicitation.

Issue

Whether the recommendation by the Mayor's designate regarding the award of one PSA to a particular respondent under a solicitation for four (4) PSAs lifts the Cone of Silence as to the recommended respondent.

Analysis

The Miami-Dade Conflict of Interest and Code of Ethics Ordinance ("County Ethics Code") contains a provision known as the Cone of Silence that restricts communications between specified parties during a competitive solicitation. *See* County Ethics Code § 2-11.1(t). The Cone of Silence is intended to insulate the competitive procurement process from private lobbying and political influence. *See* INQ 19-95. The Cone of Silence provides, in relevant part, as follows:

The Cone of Silence shall terminate at the time the Mayor makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Mayor's recommendation back to the Mayor or staff for further review, the Cone of Silence shall be reimposed until such time as the Mayor makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Mayor has the delegated authority to award under Section 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars (\$100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of Implementing Order 3-21 for such contracts or purchases involving the expenditure of over \$25,000 up to \$100,000; or (iii) at the time the award recommendation is issued in accordance with Section IV of Implementing Order 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.

County Ethics Code § 2-11.1(t)1(b)(ii).

The Cone of Silence remains in effect regardless of whether there has been a partial award recommendation. *See* RQO 11-25. For example, an employee of the Miami-Dade Housing Finance Authority ("MDHFA") served on a selection committee for a request for proposal issued by the then-extant Miami-Dade Housing Agency ("MDHA") for firms to develop County-owned public housing sites. *See id.* As part of the process, those developers could seek funding from the MDHFA. *See id.* However, the MDHFA employee serving on MDHA's selection committee could not discuss any financing options with any of the respondent firms until the entire selection process was complete, even though there had been a partial award recommendation. *See id.*

Additionally, the City of North Miami Beach issued a request for quote to hire a contractor to operate the City's water and wastewater utility. *See* INQ 17-78. The process required three competitive submissions, with the City Manager required to seek authorization from the City Commission to commence negotiations with the highest ranked respondent and then to return to the City Commission with a recommendation for a final award. *See id.* Under this procedure, the

Cone of Silence would not lift when the City Manager sought authorization to commence negotiations; rather, the Cone of Silence would lift when the City Manager made a recommendation for a final award because the two other respondent firms remained in the process until the recommendation for a final award. *See id.*

Here, based on the information provided at this time, it appears that the Cone of Silence remains in effect for SPD Project No. E23WS02 Set-Aside despite a recommendation of award regarding a portion of the total number of PSAs sought under the competitive solicitation. *See* County Ethics Code § 2-11.1(t)1(b)(ii); RQO 11-25; INQ 17-78. This is because the Cone of Silence remains in effect until the competitive selection process is completed, either through the making of a final recommendation for all parts of the solicitation or the withdrawal or other termination of the solicitation. *See* RQO 11-25; INQ 17-78.

Nevertheless, if there is an awarded contract with regard to one respondent while the competitive solicitation process continues with regard to other respondents, the Cone of Silence does not prohibit said respondent who has already been awarded a County contract from servicing that contract. *See* INQ 07-05; *cf.* INQ 21-105 (a former County employee is not engaged in lobbying activity when he meets with County personnel in furtherance of his duties under an already awarded or existing contract/project). This is because communications with County personnel in furtherance of the awarded County contract will, by definition, not be about the pending competitive solicitation; rather, the communications will be about the already awarded contract. *See* County Ethics Code § 2-11.1(t)1(a) (delineating prohibited communications).

Opinion

Based on the facts presented here and discussed above, the Cone of Silence remains in effect despite a partial recommendation or award under the competitive solicitation process, for SPD Project No. E23WS02 Set-Aside, where the WASD Director – as the Mayor’s designate – has made a partial recommendation. *See* RQO 11-25; INQ 17-78.

This opinion is based on the facts presented. If these facts change, or if there are any further questions, please contact the above-named Staff Attorney.

Other conflicts may apply under state law. For an opinion regarding Florida ethics law, please contact the Florida Commission on Ethics, P.O. Drawer 15709, Tallahassee, FL 32317, phone number (850) 488-7864, <http://www.ethics.state.fl.us/>.

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