

## Administrative Order



**Administrative Order No.:** 3-27

**Title:** Cone of Silence

**Ordered:** 1/29/2002

**Effective:** 2/8/2002

### **AUTHORITY:**

Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter and Section 2-11.1 of the Code of Miami-Dade County.

### **SUPERSEDES:**

This Administrative Order supersedes previous Administrative Order 3-27 ordered January 21, 1999 and effective January 31, 1999.

### **POLICY:**

It is the policy of Miami-Dade County that a Cone of Silence be established on all County competitive selection processes including RFPs, RFQs, and bids for the provision of goods and services, and audit and Independent Private Sector Inspector General (IPSIG) contracts. The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the recommendation of contract award. This Cone of Silence shall be imposed on these contracts after advertisement of same.

### **PURPOSE:**

This Administrative Order describes two distinct Cones of Silence, and establishes procedures for their implementation and administration. It identifies the exceptions to the Cones of Silence, includes the method of notice to the public and the affected County officials, and establishes a disciplinary and/or penalty process for those who violate the Cone of Silence.

### **DEFINITIONS:**

“issuing department” means the County department that releases the contract solicitation to the Public.

## CONE OF SILENCE FOR RFPs, RFQs, AND BIDS FOR THE PROVISION OF GOODS AND SERVICES:

The Cone of Silence prohibits any communication regarding a particular RFP, RFQ or bid between:

- A. a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff. The professional staff includes, but is not limited to, the County Manager and his or her staff.
- B. a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners or their respective staffs.
- C. the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff.
- D. a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor.
- E. the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor.
- F. any member of the County's professional staff and any member of the selection committee therefor.

## **EXCEPTIONS:**

Unless specifically provided otherwise in the applicable RFP, RFQ or bid documents, the Cone of Silence does not apply to the following:

- A. Competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development.
- B. Communications with Office of the County Attorney and his or her staff.
- C. Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development (DBD) regarding small and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs.
- D. Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or

procedure.

- E. Duly noticed site visits to determine the competency of bidders during the period between bid opening and issuance of the County Manager's written recommendation.
- F. Any emergency procurement of goods and services pursuant to Administrative Order 3-2 and 3-16.
- G. Communications regarding a particular RFP, RFQ or bid between any person and the County's Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process 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.
- H. Communications regarding a particular RFP, RFQ or bid between the procurement agent or contracting officer, or their designated secretarial/clerical staff, responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee therefor provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.
- I. Oral communications at pre-bid conferences.
- J. Oral presentations before publicly noticed selection committee meetings.
- K. Contract negotiations during any duly noticed public meeting.
- L. Public presentations before the Board of County Commissioners during any duly noticed public meeting.
- M. Communications in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents.
- N. Communications between the County Manager and the Chairperson of the Selection Committee about a particular Selection Committee recommendation, only after the committee has submitted an award recommendation to the Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Manager with the Clerk of the Board and be included in any recommendation memorandum submitted by the Manager to the Board of County Commissioners.

## **COMMENCEMENT AND TERMINATION OF CONE:**

The Cone of Silence commences after the advertisement of the RFP, RFQ or bid solicitation.

At the time of imposition of the Cone of Silence, the issuing department shall notify the Department of Business Development (DBD). The Department of Business Development shall provide written and/or electronic notice to the affected departments, the Mayor, each County Commissioner, the County Manager, the Clerk of the Board and the Department of Procurement Management. The issuing department shall include in any public solicitation for goods and services a statement disclosing the requirements of the Cone of Silence Ordinance.

The Cone of Silence terminates at the time when the County Manager issues a written recommendation to the Board of County Commissioners, or at the time when the issuing department issues its written recommendation to the Manager when the award is within the Manager's delegated authority. Should the Board of County Commissioners refer the County Manager's recommendation back for further review, or if the Manager refers the procuring department's recommendation back to the department, the Cone of Silence shall be reinstated until such time as the County Manager issues a subsequent written recommendation to the Commission or, for contract awards within the Manager's delegated authority, until such time as the Manager issues a recommendation for award pending the bid protest period.

## **CONE OF SILENCE FOR AUDIT AND IPSIG CONTRACTS:**

The Cone of Silence for audit and IPSIG contracts prohibits any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners, or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff. It also prohibits any oral communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff.

## **EXCEPTIONS:**

The Cone of Silence for audit and IPSIG contracts does not apply to the following:

- A. Public presentations by any bidder or proposer at duly noticed pre-bid conferences or before duly noticed selection committee meetings.
- B. Contract negotiations during any duly noticed public meeting.
- C. Communications in writing with any County employee or official for purposes of seeking clarification or additional information from the County or responding to the County's request for clarification or additional information, subject to the provisions of the applicable RFP, RFQ or bid documents.

D. Any lobbyist, bidder, proposer or other person or entity publicly addressing the Board of County Commissioners during any duly noticed public meeting regarding action on any audit or IPSIG contract.

E. Communications with the Office of the County Attorney and his or her staff.

**COMMENCEMENT AND TERMINATION OF THE CONE FOR AUDIT AND IPSIG CONTRACTS:**

The Cone of Silence commences after the advertisement of the RFP, RFQ or bid solicitation for audit and IPSIG services.

At the time of imposition of the Cone of Silence, the issuing department shall notify the Department of Business Development (DBD). The Department of Business Development shall provide written and/or electronic notice to the affected departments, the Mayor, each County Commissioner, the County Manager and the Clerk of the Board. The Cone of Silence shall terminate when the County Manager executes a particular audit or IPSIG contract. The issuing department shall include in any public solicitation for goods and services a statement disclosing the requirements of the Cone of Silence Ordinance.

**GENERAL PROCEDURES FOR IMPLEMENTATION AND ADMINISTRATION OF THE CONE OF SILENCE:**

A. At the point in time when the RFP, RFQ or bid solicitation is advertised, the issuing department shall provide to the Department of Business Development (DBD) the project number, project title / description and any other information required by DBD for public notice of the Cone of Silence.

B. Each Monday, the Department of Business Development shall provide public notice of the Cone of Silence by posting a report of all contract solicitations under the Cone on the home page of the County's website and in the County's Vendor Information Center. The Cone of Silence report shall contain the name and phone number of the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, as the point of contact to receive inquiries limited strictly to matters of process or procedure already contained in the corresponding solicitation document. The Department of Business Development shall, at the same time, provide written and/or electronic notice to the Mayor, each County Commissioner, the County Manager, the Clerk of the Board and the affected departments.

C. All County staff should be aware of the requirements and prohibitions of the Cone of Silence.

D. The issuing department shall insure that all contract solicitations include provisions describing the requirements and prohibitions of the Cone of Silence

including how a potential vendor, service provider, bidder, lobbyist or consultant may communicate with County personnel.

- E. When the Cone of Silence is in effect, any communication shall be in writing, except where otherwise provided under this Administrative Order. Any written communication from a bidder or proposer regarding a particular RFP, RFQ or bid that is under the Cone of Silence shall be filed with the Clerk of the Board.
- F. When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any correspondence concerning the particular RFP, RFQ or bid with the Clerk of the Board. Each department shall file a copy of any response or request for additional information with the Clerk of the Board.
- G. The Clerk of the Board shall make copies of any written communications available to any person upon request. The Clerk of the Board shall maintain a log and file of all written communications. The retention period of these documents shall be in accordance with established County policies.
- H. Any person, whether employed by the County or not, who violates a provision of this Administrative Order shall be prohibited from serving on Miami-Dade County competitive selection committee.
- I. Violation of this Administrative Order by a particular bidder, proposer, respondent and/or representative shall render any RFP award, RFQ award or bid award to said bidder, proposer or respondent voidable.
- J. In addition to any other penalty provided by law, violation of this Administrative Order by a Miami-Dade County employee shall subject said employee to disciplinary action up to and including dismissal from County service.
- K. Any person who has personal knowledge of a violation of this Administrative Order shall report such violation to the State Attorney and/or may file a complaint with the Miami-Dade County Ethics Commission.

This Administrative Order is hereby submitted to the Board of County Commissioners of Miami-Dade County, Florida.

Steve Shiver  
County Manager