

MEMORANDUM

Agenda Item No. 7(E)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 6, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to the County Mayor's authority to recommend rejections of bids or proposals in competitive processes and the Cone of Silence; amending section 2-8.1 of the Code relating to the County Mayor's delegated authority to advertise County contracts; amending section 2-8.3 of the Code relating to the County Mayor's recommendations to reject bids or proposals subject to Board directives and requiring reports on delays in competitive processes; conforming provisions in sections 2-8.3 and 2-11.1 of the Code to implement the Miami-Dade County Strong Mayor amendment and elimination of the position of County Manager; amending section 2-11.1 of the Code to repeal the prohibition on certain communications between members of the Board of County Commissioners and their staff and the County Mayor and the County Mayor's professional staff; making technical changes

Ordinance No. 23-67

A substitute was presented and forwarded to the BCC with a favorable recommendation at the 7-12-23 Chairman's Policy Council and Intergovernmental Affairs Committee.

This substitute differs from the original in that the prohibition in the cone of silence on communications regarding a particular RFP, RFQ, or bid between the County Mayor or any member of the County's professional staff and the County Commissioners or their respective staffs is no longer deleted in its entirety. Rather, the prohibition on such communications is retained, subject to an exception permitting communications regarding a particular RFP, RFQ, or bid between County Commissioners or their respective staffs and the County Mayor or any member of the County's professional staff designated by the County Mayor to engage in such communications. The substitute also includes certain conforming changes to recital clauses, as well as modifications to formatting and renumbering of paragraphs.

Rule 5.06(i) of the Board's Rules of Procedure provides that where double underlining and double strike-through would not clearly show the differences between an original item and the substitute, comments may instead be provided. Pursuant to this rule, the preceding description of the differences between the original item and the substitute is provided in lieu of double underlining and double strike-through for this item.

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairman Oliver G. Gilbert, III and Co-Sponsor Commissioner Marleine Bastien.


Geri Bonzon-Keenan
County Attorney

GBK/gh

MDC001

Memorandum



Date: September 6, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Fiscal Impact Statement for Ordinance Relating to County Mayor's Authority to Recommend Rejection of Bids or Proposals and the Cone of Silence - Substitute

The substitute ordinance amends Section 2-8.1 of the Code of Miami-Dade County to establish procedures for the County Mayor to reject bids or proposals subject to Board Directives and requires reports on delays, if any, in the competitive selection process. It also amends Sections 2-8.3 and 2-11.1 of the Code pertaining to the Cone of Silence (Cone) to allow communications regarding a particular RFP, RFQ or bid between members of the Board of County Commissioners and their staff and the County Mayor or the County's professional staff designated by the County Mayor to engage in such communications.

The implementation of this ordinance is not anticipated to have a fiscal impact to Miami-Dade County.

A handwritten signature in blue ink that reads "Edward Marquez".

Edward Marquez
Chief Financial Officer

Memorandum



Date: September 6, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Social Equity Impact Statement for Ordinance Relating to County Mayor's Authority to Recommend Rejection of Bids or Proposals and the Cone of Silence - Substitute

The substitute ordinance amends Section 2-8.1 of the Code of Miami-Dade County (Code) to establish procedures for the County Mayor to reject bids or proposals subject to Board Directives and requires reports on delays, if any, in the competitive selection process. It also amends Sections 2-8.3 and 2-11.1 of the Code pertaining to the Cone of Silence (Cone) to allow communications regarding a particular RFP, RFQ, or bid between members of the Board of County Commissioners (Board) and their staff and the County Mayor or the County's professional staff designated by the County Mayor to engage in such communications.

The removal of the prohibition on communications between the County Mayor and professional staff will expedite the procurement process. Additionally, it would allow the County Mayor (or designated staff) to provide information and updates to the Board on ongoing procurements. The Board members will be able to communicate their priorities to the County Mayor in a timely manner. This timely flow of information will allow the County Mayor to consider and incorporate the Board's priorities during the procurement process as opposed to at the time when the award is recommended by the County Mayor to the Board, which will thereby streamline the process.

A handwritten signature in blue ink that reads "Edward Marquez".

Edward Marquez
Chief Financial Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: September 6, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 7(E)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(E)
9-6-23

ORDINANCE NO. 23-67

ORDINANCE RELATING TO THE COUNTY MAYOR'S AUTHORITY TO RECOMMEND REJECTIONS OF BIDS OR PROPOSALS IN COMPETITIVE PROCESSES AND THE CONE OF SILENCE; AMENDING SECTION 2-8.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATING TO THE COUNTY MAYOR'S DELEGATED AUTHORITY TO ADVERTISE COUNTY CONTRACTS; AMENDING SECTION 2-8.3 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA RELATING TO THE COUNTY MAYOR'S RECOMMENDATIONS TO REJECT BIDS OR PROPOSALS SUBJECT TO BOARD DIRECTIVES AND REQUIRING REPORTS ON DELAYS IN COMPETITIVE PROCESSES; CONFORMING PROVISIONS IN SECTIONS 2-8.3 AND 2-11.1 OF THE CODE OF MIAMI-DADE-COUNTY, FLORIDA TO IMPLEMENT THE MIAMI-DADE COUNTY STRONG MAYOR AMENDMENT AND ELIMINATION OF THE POSITION OF COUNTY MANAGER; AMENDING SECTION 2-11.1 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, TO REPEAL THE PROHIBITION ON CERTAIN COMMUNICATIONS BETWEEN MEMBERS OF THE BOARD OF COUNTY COMMISSIONERS AND THEIR STAFF AND THE COUNTY MAYOR AND THE COUNTY MAYOR'S PROFESSIONAL STAFF; MAKING TECHNICAL CHANGES; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, pursuant to the Miami-Dade County Home Rule Charter, the power to award contracts is a power of the Board; and

WHEREAS, this Board may delegate such power to the County Mayor, and, by enacting sections 2-8.1 and 2-8.3 of the County Code, has delegated substantial authority to the County Mayor to advertise and administer procurements, and permits the County Mayor to make a recommendation to the Board to award a contract or take other appropriate action following the completion of a competitive procurement process; and

WHEREAS, under that authority, the County Mayor may recommend that this Board reject all bids or proposals received in connection with a competitive procurement; and

WHEREAS, recommendations to reject all bids or proposals often occur after substantial time has elapsed since the procurement was initiated, and after participants have expended substantial efforts and resources to respond to County procurements; and

WHEREAS, while this Board has delegated substantial authority to the County Mayor to initiate and administer procurements, this Board retains the authority to direct the manner or method by which the County Mayor will administer a particular procurement, or meet the goals of a particular procurement; and

WHEREAS, recommendations to reject bids or proposals and resolicit for the same or similar goods or services often do not provide the Board with a meaningful opportunity to exercise the Board's authority and award a contract under the existing solicitation; and

WHEREAS, recommendations to reject bids or proposals in procurements where the Board has previously issued directives to the Mayor regarding the procurement can serve to frustrate this Board's direction; and

WHEREAS, this Board desires that when the County Mayor recommends the rejection of bids or proposals or the County Mayor delays in the recommendation to award a bid or proposal subject to a prior directive of this Board, the County Mayor shall not take any action that will prevent the Board from awarding the bid or proposal and shall provide sufficient information together with and notwithstanding the County Mayor's recommendation, for the Board to award a contract at its discretion; and

WHEREAS, therefore, this Board desires to amend sections 2-8.1 and 2-8.3 of the Code of Miami-Dade County, Florida, to require that the County Mayor, whenever possible, recommend contract awards, and not rejection of bids or proposals; and

WHEREAS, to provide protection from outside interference in the County's procurement processes, this Board adopted Ordinance No. 98-106 to establish a "Cone of Silence" restricting communications between vendors, service providers, bidders, lobbyists, consultants, the then-County Manager, County professional staff and the County Mayor and the County Commissioners or their professional staff; and

WHEREAS, the rules pertaining to the Cone of Silence are set forth in the Miami-Dade County Conflict of Interest and Code of Ethics Ordinance, which is codified in section 2-11.1 of the County Code; and

WHEREAS, prior to 2007, the County Manager served as the head of the administrative branch of the County and was responsible for supervising the County's procurement process, while the County Mayor had limited administrative responsibilities; and

WHEREAS, in 2007 the electors of Miami-Dade County adopted the "Strong Mayor" amendment to the Miami-Dade County Home Rule Charter and transferred from the County Manager to the County Mayor the power and responsibility of administering County government and provided that the County Manager should assist the County Mayor in the administration of County government; and

WHEREAS, in 2010, the electors of Miami-Dade County again amended the Miami-Dade County Home Rule Charter, effective after the General Election in 2012, to eliminate the position of County Manager; and

WHEREAS, to implement the provisions of the Strong Mayor amendment and the elimination of the position of County Manager, this Board adopted Ordinance No. 12-94 to deem all references in enactments of the Board including, but not limited to, ordinances, resolutions, implementing orders, regulations, rules, and provisions of the Code of Miami-Dade County relating to the County Manager to be references to the County Mayor or County Mayor's designee; and

WHEREAS, after the elimination of the County Manager position and adoption of Ordinance No. 12-94, all references to the County Manager in the Cone of Silence ordinance are deemed to be references to the County Mayor or County Mayor's designee; and

WHEREAS, notwithstanding the provisions of Ordinance No. 12-94 and the amendments to the Miami-Dade County Home Rule Charter granting the County Mayor the powers and responsibilities of administering County government, the inclusion of the vestigial position of County Manager in the Cone of Silence ordinance may create confusion as to the ability of the County Mayor to confer with her professional staff during a procurement; and

WHEREAS, the possibility of confusion is made greater still because the Cone of Silence ordinance includes references both to the County Manager and the Mayor; and

WHEREAS, this Board desires to amend the Cone of Silence ordinance to make clear that with the adoption of the Strong Mayor amendment and the elimination of the County Manager position, the County Mayor may communicate with County professional staff and other entities in the procurement process in the same manner as the County Manager prior to elimination of such office; and

WHEREAS, the existing prohibition on communications between the County Commissioners and members of their staff and the County Mayor and members of the County's professional staff limits the ability of County Commissioners to receive important and timely information relating to procurements; and

WHEREAS, modifying the prohibition on communications between the County Commissioners and members of their staff and the County Mayor and members of the County's professional staff will allow greater oversight of the administrative functions of the County and provide better planning for County legislation and purchases; and

WHEREAS, the Cone of Silence will still preserve a prohibition on certain communications between members of the County Commission and potential vendors, service providers, bidders, lobbyists, consultants and members of the selection committee until the County Mayor issues a recommendation regarding a solicitation; and

WHEREAS, this Board desires to modify the prohibition on certain communications between the County Commissioners and members of their staff and the County Mayor and members of the County's professional staff; and

WHEREAS, the Board also desires to make technical changes to section 2-8.3 of the Code and remove the outdated references to the County Manager consistent with Ordinance No. 12-94 and section 1-4.4 of the Code,

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Section 2-8.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-8.1. - Contracts and purchases generally.

* * *

- (b)(1) *Bid requirement for certain purchases; delegation of authority to advertise, award and reject bids or proposals for certain purchases.* Formal sealed bids shall be secured for all contracts and purchases within the scope of this section when the transaction involves the expenditure of two hundred fifty thousand dollars (\$250,000.00) or more, except that the Board of County Commissioners, upon written recommendation of the Mayor or Mayor's designee, may, by resolution adopted by two-thirds ($\frac{2}{3}$) vote of the members present, waive competitive bidding when it finds this is to be in the best interest of the County. >>Except as set forth in section 2-8.3(2) of the Code, the<< [[The]] Mayor or Mayor's designee is hereby delegated the authority to advertise for bid all County contracts, including contracts for public improvements, purchases of supplies, materials and services, and purchases of professional services, without the need for action by the County Commission. The Mayor or Mayor's designee shall be required to include in any such advertisement the measures approved by the Review Committee relating to the County's small and community business programs established in this Code. The Mayor or Mayor's designee shall further be required to report to this Board on a bi-annual basis all contracts advertised with the measures included, and other steps taken to foster small and community business programs. The Commission Auditor shall review and evaluate the Mayor's or Mayor's designee exercise of authority delegated pursuant to this section and report the results of his or her evaluation to the Board of County Commissioners on a periodic basis. The Mayor or Mayor's designee is hereby delegated the authority to award and reject bids or proposals for contracts for public improvements (construction), and purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to section 2-10.4 and Section 287.055, Florida Statutes) costing one million dollars (\$1,000,000.00) or less, or in the case of miscellaneous construction contracts designed to provide opportunities for Community Small Business Enterprises specifically authorized by Board

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

resolution five million dollars (\$5,000,000.00) or less, without the need for action by the County Commission. The authority to award contracts provided in the preceding sentence shall not constitute authority for the Mayor or Mayor's designee to exercise an option to renew any contract where the combined value for such contract's initial term and the option to renew would exceed one million dollars (\$1,000,000.00), and in such instances the Mayor or Mayor's designee shall obtain the prior authorization of the County Commission to exercise such option. The Mayor or Mayor's designee may recommend that the foregoing requirement to obtain prior Commission authorization to exercise an option to renew be waived for a specific contract when the Mayor or Mayor's designee deems it to be in the best interests of the County. The Inspector General shall be invited to participate as appropriate in the processes by which the authority delegated hereby is exercised. The Mayor or Mayor's designee is delegated the authority to utilize any of the following processes for selection of a contractor to perform contracts for public improvements: competitive price bidding, request for proposals, or request for qualifications without the need for prior approval of the County Commission. The Mayor or Mayor's designee shall review all construction projects to determine whether the break-up of the project into smaller contracts will increase the opportunity for CSBEs to participate therein. ~~[[For those contracts where the Mayor or Mayor's designee requests authority from the County Commission to advertise, the request for such authority shall advise the steps taken to accomplish the foregoing sentence.]]~~ The Mayor or Mayor's designee may designate appropriate County staff to exercise the authority delegated hereunder by implementing order, approved by the Board of County Commissioners.

Section 2. Section 2-8.3 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-8.3. >>Mayor's<< ~~[[Manager's]]~~ recommendation.

>>(1) Subject to the requirements of subsection 2 below, whenever<< ~~[[Whenever]]~~ a competitive process is utilized for selection of a contractor, vendor, consultant, tenant or concessionaire, the County >>Mayor<< ~~[[Manager]]~~ shall review the responses to the solicitation and recommend to the County Commission award or other appropriate action. Such recommendation shall be in writing and shall be filed with the Clerk of the Board, with copies mailed to all participants in the competitive process, no later than ten (10) days prior to any Commission meeting at which such recommendation is scheduled to be presented. Such recommendation shall be accompanied by a memorandum from the County >>Mayor<< ~~[[Manager]]~~ that clearly identifies any and all delegations of Board authority contained in the body of the proposed contract. >>~~For those~~<< ~~[[Those]]~~ contracts covered by Section 2-8.2.7 for which no timely protest is filed, the County >>Mayor's<< ~~[[Manager's]]~~ recommendation may be awarded by the County >>Mayor<< ~~[[Manager]]~~ in accordance with >>the<< ~~[[his]]~~

recommendation. The Commission, by two-thirds ($\frac{2}{3}$) vote of the members present, may waive the requirements of this section. The foregoing notwithstanding, the requirements of this section shall not apply to contracts or purchases which the County >>Mayor<< [[~~Manager~~]] has the delegated authority to award under Section 2-8.1(b) of this Code.

>>(2) For purposes of this subsection, a “Board Directive” shall mean a directive to the County Mayor from the County Commission via an ordinance, resolution or motion to competitively solicit and award any County contract or supporting an existing competitive process for the award of any County contract, including but not limited to, the acquisition of goods or services, leases, public improvements and construction contracts, design-build projects, public-private partnership projects, or professional services within the scope of architectural, professional engineering, landscape architecture, registered land surveying and mapping, as defined by the laws of the state. The County Mayor shall not recommend a rejection of proposals or bids in a competitive process subject to a Board Directive except under the following circumstances:

- (a) The County received no responsive bids or proposals in the competitive process; or
- (b) The recommendation to reject all bids or proposals is based on the County Mayor’s conclusion that the County received no bids or proposals from any responsible bidder or proposer. In such circumstances, the County Commission retains the final authority to determine bidder or proposer responsibility; or
- (c) The County is legally unable to award a contract to any responsive and responsible bidder via the competitive process for any reason, including but not limited to, an incurable legal infirmity in the specifications of the competitive solicitation or because none of the short-listed responsive proposers or bidders are able to negotiate a contract materially and legally compliant with the terms of the competitive solicitation and their bids or proposals to the County; or
- (d) If none of the exceptions set forth above in subsections (2)(a) – 2(c) apply and the County Mayor recommends that it is in the best interests of the County to reject all bids or proposals and waive the requirements of this subsection 2 and such recommendation is approved by a two-thirds ($\frac{2}{3}$) vote of the Board members present.

Notwithstanding and prevailing over any other provision of the Code to the contrary, if the County Mayor recommends a rejection of all bids and proposals in a competitive process subject to a Board Directive, the County Mayor has no

authority to re-advertise or re-solicit for bids or proposals the same project or contract that is the subject of the Board Directive until the County Commission has approved the recommendation to reject all bids or proposals or has taken any other appropriate action in relation to the County Mayor's recommendation unless the immediate re-advertisement or re-solicitation is necessary to address an imminent threat to life, health or property pursuant to an Emergency Declaration or where the procurement was initiated pursuant to any emergency procurement authority delegated to the County Mayor pursuant to Implementing Order 3-38, as may be amended from time to time. In any recommendation to the County Commission to reject all bids and proposals in a competitive process subject to a Board Directive, the County Mayor shall attach to the recommendation the last best responsive negotiated contract offer from the highest ranked proposer or lowest bidder that is materially and legally compliant with the terms of the competitive solicitation and their bids or proposals to the County. Nothing in this section shall prohibit, limit or modify the authority of the County Commission to reject bids or proposals in a competitive process.

- (3) The County Mayor or County Mayor's designee shall provide the Office of the Commission Auditor all recommendations of a selection committee regarding proposals in a competitive process subject to a Board Directive within three business days of the issuance of the selection committee's recommendation. The Office of the Commission Auditor shall track and monitor whether the County Mayor has issued a recommendation regarding proposals in a competitive process subject to a Board Directive within ninety days of a selection committee's recommendation and shall report to the County Commission every ninety days whether the County Mayor has issued a recommendation to the County Commission on a competitive process subject to a Board Directive.<<

Section 3. Section 2-11.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 2-11.1. – Conflict of Interest and Code of Ethics Ordinance.

* * *

- (t) Cone of Silence.

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

- (a) "Cone of Silence" is hereby defined to mean a prohibition on:

(i) 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]]~~ >>Mayor<< and his or her staff;

(ii) Any 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>> other than any professional staff member who is designated by the County Mayor to engage in such communications<<~~[[including, but not limited to, the County Manager and his or her staff]]~~;

(iii) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefor;

(iv) Any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefor;

(v) Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and ~~[[the Mayor,]]~~ County Commissioners and their respective staffs; and

(vi) Any communication regarding a particular RFP, RFQ, or bid between any member of the County's professional staff and any member of the selection committee therefore.

The County ~~[[Manager]]~~ >>Mayor<< and the Chairperson of the selection committee may communicate about a particular selection recommendation, but only after the committee has submitted an award recommendation to the ~~[[manager]]~~ >>Mayor<< and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change as well as the reasons for such change shall be described in writing and filed by the ~~[[Manager]]~~ >>Mayor<< with the

Clerk of the Board and be included in any recommendation submitted by the ~~[[Manager]]~~ >>Mayor<< to the Board of County Commissioners. Notwithstanding the foregoing, the Cone of Silence shall not apply to:

(i) Competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste >>Management<< Departments, Cultural Affairs and Tourist Development Councils and the >>Miami-Dade County<< Environmental Resources Management >>division of the Regulatory and Economic Resources Department<<;

(ii) Communications with the County Attorney and his or her staff;

(iii) Communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the ~~[[Department of]]~~ >>Small<< Business Development >>Division<< regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs;

(iv) 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;

(v) Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County ~~[[Manager]]~~ >>Mayor<< makes his or her written recommendation;

(vi) Any emergency procurement of goods or services pursuant to ~~[[Administrative]]~~

>>Implementing<< Order >>3-38<< [[~~3-2~~]];

(vii) 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 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;

(viii) Communications between a potential vendor, service provider or bidder and employees of the [[~~Department of~~] >>Strategic<< Procurement [[~~Management~~]] >>Department<< or other department identified in the solicitation document as the issuing department; [[~~and~~]]

(ix) Consultations by employees of the [[~~Department of~~] >>Strategic<< Procurement >>Department<< [[~~Management~~]] with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress>>; and<<[[~~:~~]]

>>(x) Communications regarding a particular RFP, RFQ or bid between County Commissioners or their respective staffs and the County Mayor or any member of the County's professional staff designated by the County Mayor to engage in such communications.<<

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County [[~~Manager~~] >>Mayor<< or his or her designee shall provide for public notice of the Cone of Silence. The County [[~~Manager~~] >>Mayor<< shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance.

(ii) The Cone of Silence shall terminate at the time the ~~[[Manager]]~~ >>Mayor<< makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the ~~[[Manager's]]~~ >>Mayor's<< recommendation back to the ~~[[Manager]]~~ >>Mayor<< or staff for further review, the Cone of Silence shall be reimposed until such time as the ~~[[Manager]]~~ >>Mayor<< makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County ~~[[Manager]]~~ >>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 ~~[[A.O.]]~~ >>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 ~~[[A.O.]]~~ >>Implementing Order<< 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.

(iii) While the Cone of Silence is in effect, County Staff shall create a written record of any oral communications with potential vendor, service provider, bidder, lobbyist, or consultant related to or regarding a solicitation, bid, proposal, or other competitive process. The record shall indicate the date of such communication, the persons to whom staff communicated, and a general summation of the communication. This subsection applies to all communications made while the Cone of Silence is in effect for a particular solicitation.

(c) Exceptions.

(i) The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees duly

noticed as a public meeting, recorded contract negotiations and contract negotiation strategy sessions in compliance with the exemption in Florida Statutes Section 286.0113, any portion of a meeting discussing an unsolicited proposal in compliance with the exemptions in section 255.065, Florida Statutes, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communication 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. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

~~[[(ii) — The provisions of this ordinance shall also not apply to oral communications at briefings held by county commissioners and the County Mayor or his designee, after the selection committee or other evaluating group makes its recommendation to the County Manager, provided that the briefings are not intended to influence the outcome of the selection committee or other evaluating group's recommendation to the County Manager; provided, however, that this exception shall not apply to outside groups such as lobbyists or representatives of the responding or bidding companies or entities.]]~~

2. Audit and IPSIG contracts.

(a) "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 Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County >>Mayor<< ~~[[Manager]]~~ and his or her staff~~[[(b) 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]]~~. Notwithstanding the foregoing, the Cone of Silence shall not apply to (a) communications with the County Attorney and his or her

staff; (b) communications between a potential vendor, service provider or bidder and employees of the >>Strategic Procurement<< Department >>or its successor department<< ~~[[of Procurement Management]]~~ or other department identified in the solicitation document as the issuing department; and (c) consultations by employees of the >>Strategic Procurement<< Department >>or its successor department<< ~~[[of Procurement Management]]~~ with professional procurement colleagues in determining an appropriate approach or option involving a solicitation in progress.

(b) Except as provided in Subsections 2(c) and 2(d) hereof, a Cone of Silence shall be imposed upon each RFP, RFQ and bid for audit and IPSIG services after the advertisement of said RFP, RFQ or bid. At the time of the imposition of the Cone of Silence, the County ~~[[Manager]]~~ >>Mayor<<or his or her designee shall provide for the public notice of the Cone of Silence. The Cone of Silence shall terminate when the County ~~[[Manager]]~~ >>Mayor<<executes a particular audit or IPSIG contract.

(c) Nothing contained herein shall prohibit any bidder or proposer: (i) from making public presentations at duly noticed pre-bid conferences or before duly noticed selection committee meetings; (ii) from engaging in recorded contract negotiations in compliance with the exemption in Florida Statutes Section 286.0113; or (iii) from communicating in writing with any County employee or official for purposes of seeking clarification or additional information from, subject to the provisions of the applicable RFP, RFQ or bid documents. Any recordings made pursuant to this section shall be made available, as a public record, upon the conclusion of the selection committee or negotiation meetings notwithstanding the elapsed time from bid or proposal opening. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to the general public upon request.

(d) Nothing contained herein shall prohibit any lobbyist, bidder, proposer or other person or entity from publicly addressing the Board of County Commissioners during any duly noticed public meeting regarding action on any audit or IPSIG contract. The County ~~[[Manager]]~~ >>Mayor<< shall include in any public solicitation for auditing or IPSIG services a statement disclosing the requirements of this ordinance.

3. Penalties. In addition to the penalties provided in subsections (s) and (v) hereof, violation of this subsection (t) by a particular bidder or proposer shall render any RFP award, RFQ award or bid award to said bidder or proposer voidable. Any person who violates a provision of this ordinance shall be prohibited from serving on a Miami-Dade County competitive selection committee. In addition to any other penalty provided by law, violation of any provision of this ordinance by a Miami-Dade County employee shall subject said employee to disciplinary action up to and including dismissal. Additionally, any person who has personal knowledge of a violation of this ordinance shall report such violation to the State Attorney and/or may file a complaint with the Ethics Commission.

4. The requirements of Section 2-11.1(t) shall not apply to any municipality in Miami-Dade County that has adopted an ordinance providing that the cone of silence shall not apply to that municipality. Any municipality that opts out of the requirements of Section 2-11.1(t) shall provide the Ethics Commission with a copy of the ordinance.

5. Within thirty days of a recommendation from a selection committee, the County Mayor or his designee shall either appoint a negotiation committee or take other affirmative action with respect to the solicitation, including but not limited to rejection of proposals or recommendation for award. In the event that negotiations have not commenced within thirty days, or if such other affirmative action has not been taken within thirty days, the County Mayor or his designee shall report such event, and the reasons therefore, to the Board of County Commissioners. Additionally, the County Mayor or his designee shall present the Clerk of the Board with a recommendation for award, or a recommendation to reject proposals, within ninety days from the date a selection committee makes a recommendation. In the event that the County Mayor or his designee has not provided such recommendation to the Clerk of the Board within ninety days, the County Mayor or his designee shall

provide a report on the status of the solicitation to the Board of County Commissioners, including the reasons for any delay.

Section 4. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 5. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 6. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

September 6, 2023

Approved by County Attorney as
to form and legal sufficiency:

GKS for GBK

Prepared by:

EW

Eduardo W. Gonzalez
David M. Murray

Prime Sponsor: Chairman Oliver G. Gilbert, III
Co-Sponsor: Commissioner Marleine Bastien