



Cone of Silence

Administrative Order # 1-15

Ordered: 1/15/2015

Effective: 1/16/2015

AUTHORITY:

Section 4.02 of the Miami-Dade County Home Rule Amendment and Charter
Section 2-11 of the Code of Miami-Dade County.
Article III, Section 5, and Article IV_Section 4 of the City of South Miami Charter

PURPOSE:

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

This Administrative Order does not supersede but supplements the County's Cone of Silence Ordinance by providing additional restrictions and requirements.

POLICY:

It is the policy of City of South Miami that a Cone of Silence be established on all City competitive selection processes including RFPs, RFQs, and bids for the provision of goods and services. This Cone of Silence shall be imposed on these competitive selection processes at the time their solicitation and/or advertisement has been commenced.



CONE OF SILENCE FOR SOLICITATIONS OF GOODS AND/OR SERVICES

This Cone of Silence applies to all solicitations and prohibits any communication between the following persons unless an exception has been specifically provided for such communication in this Administrative Order:

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

EXCEPTIONS:

Unless specifically provided otherwise in the applicable solicitation documents, the Cone of Silence does not apply to the following:

- A. Communications with Office of the City Attorney and his or her staff, and the City Clerk and his or her staff.
- B. Duly noticed site visits to determine facts and relevant information regarding the potential vendor and their operations during the period between bid opening and issuance of the City Manager's written recommendation.
- C. Any emergency procurement of goods and services.
- D. Communications regarding a particular solicitation between any person and the City Clerk or its staff, the procurement agent or contracting officer responsible



for administering the procurement process for such solicitation, provided the communication is in writing and provided it is limited strictly to matters of process or procedure, including the scope and technical requirements in the solicitation, already contained in the corresponding solicitation document or in any addenda to the solicitation.

- E. Communications regarding a particular solicitation between the procurement agent or contracting officer, or their designated secretarial/clerical staff, responsible for administering the procurement process for such solicitation and a member of the selection committee therefor provided the communication is in writing and provided it is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.
- F. Oral communications at pre-bid conferences regarding this solicitation.
- G. Oral presentations at publicly noticed selection committee meetings regarding this solicitation.
- H. Contract negotiations during any duly noticed public meeting regarding this solicitation.
- I. Public presentations before the City Commissioners during any duly noticed public meeting in which the item is a noticed agenda item.
- J. Communications in writing during the evaluation period, prior to the issuance of a recommendation, with any City employee involved in the bid process, solely for the purpose of clarifying the solicitation or information needed in the process of responding to the solicitation unless specifically prohibited by the applicable RFP, RFQ or bid documents. However, this exception does not include communication with the City Commission or its members, or the City Manager, department heads, or Assistant City Manager, unless they are official members of the Selection Committee or they are the procurement agent or contracting officer responsible for the solicitation, and provided the communication with them is sent to the City Clerk who will ensure all appropriate staff and committee members will receive the same information in writing.
- K. Communications between the City 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 City Clerk.



COMMENCEMENT OF CONE

The Cone of Silence commences after the initiation of solicitations or the advertisement of the solicitation.

TERMINATION OF CONE

The Cone of Silence terminates at the time when:

- (a) The Manager makes his or her written recommendation to the City Commission which shall be defined as the beginning of the meeting that includes, on its agenda, an action item sponsored by the Manager for contract approval or;
- (b) The City Manager issues a written recommendation to the City Commission or;
- (c) The Selection Committee issues its written recommendation to the Manager with regard to any matter that is within the Manager's delegated authority to decide without the need for Commission approval.

Should the City Commission refer the City Manager's recommendation back for further review, or if the Manager refers the Selection Committee's recommendation back to the Selection committee, the Cone of Silence shall be reinstated until the Manager makes his or her written recommendation to the City Commission or, for contract awards or other actions that are within the Manager's delegated authority, at the time when the Selection Committee issues its written recommendation to the Manager.



PROCEDURES FOR IMPLEMENTATION AND ADMINISTRATION OF THE CONE OF SILENCE

At the time of imposition of the Cone of Silence, the Issuing Department, shall notify the City Clerk of the solicitation and the Cone of Silence. "Issuing Department" which for the purposes of this Order means the City Department as authorized by the City Manager, typically the Procurement Division of the Finance Department, that releases the solicitation and/or advertisement to the Public. Additionally, the Procurement Division shall issue an email with the message, "Bid Notice," to the Mayor and Commission, Department Heads and other involved parties. The Bid Notice for each solicitation shall advise all parties the cone of silence has been imposed. The issuing department shall include in any public solicitation for goods and services a statement disclosing the requirements of the Cone of Silence Ordinance as well as the following notice:

"WITH REGARD TO THE COUNTY'S CONE OF SILENCE EXCEPTION FOR WRITTEN COMMUNICATION, PLEASE BE ADVISED THAT, NOTWITHSTANDING THE MIAMI-DADE COUNTY EXCEPTION FOR WRITTEN COMMUNICATION, THE COUNTY'S RULES PROHIBITING VERBAL COMMUNICATION DURING AN ESTABLISHED CONE OF SILENCE SHALL, WITH REGARD TO THIS SOLICITATION, ALSO APPLY TO ALL WRITTEN COMMUNICATION UNLESS PROVIDED OTHERWISE BELOW. THEREFORE, WHERE THE CITY OF SOUTH MAIMI CONE OF SILENCE PROHIBITS COMMUNICATION, SUCH PROHIBITION SHALL APPLY TO BOTH VERBAL AND WRITTEN COMMUNICATION.

Notwithstanding the foregoing, the Cone of Silence shall not apply to...

- (1) 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 that the City Manager makes his or her written recommendation;**
- (2) Any emergency procurement of goods or services pursuant to the Miami-Dade County Administrative Order 3-2;**
- (3) Communications regarding a particular solicitation between any person and the procurement agent or contracting officer responsible for administering the procurement process for such solicitation, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and**
- (4) Communications regarding a particular solicitation between the procurement agent or contracting officer, or their designated secretarial/ clerical staff responsible for administering the procurement process for such solicitation 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."**



A. At the point in time when the solicitation is advertised, the issuing department shall provide the City Clerk with the Bid Notice including the project number, project title / description and any other required information for public notice of the Cone of Silence.

B. The Procurement Division shall provide to the City Clerk a public notice of the Cone of Silence by posting a report of all contract solicitations under the Cone on the home page of the City's website. (See sample link to "Bids and RFPs" web page). 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, procedure or scope already contained in the corresponding solicitation document.

C. All City 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 and when a potential vendor, service provider, bidder, lobbyist or consultant may communicate with City personnel.

E. When the Cone of Silence is in effect, any communication between City Administrative personnel and a potential vendor, service provider, bidder, lobbyist or consultant, if allowed, shall be in writing, except where otherwise provided under this Administrative Order. All written communication, whether prohibited or allowed, regarding a particular solicitation that is under the Cone of Silence shall be filed with the City Clerk.

F. When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of all written communication concerning any solicitation, including a RFP, RFQ or bid, with the City Clerk. Each department shall file a copy of all written communication concerning any response or request for additional information concerning a solicitation with the City Clerk. The Procurement Division shall supply all questions, replies, addenda, etc. to the Clerk's Office.

G. The City Clerk shall be requested to make copies of any written communications available to any person upon request. The City Clerk is requested to maintain a log and file for all written communications. The retention period of these documents shall be in accordance with established City policies.



H. Any person, whether employed by the City or not, who violates a provision of this Administrative Order shall be prohibited from serving on City of South Miami competitive selection committees.

I. Violation of this Administrative Order by any person who is responding to a solicitation and/or a representative of that person shall DISQUALIFY ANY PERSON RESPONDING TO THE SOLICITATION AND IF ANY PRIOR AWARD HAS BEEN MADE IT SHALL render any award to said person voidable. The term “representative” as used in this Administrative Order shall include anyone who acts at the request of the person responding to the solicitation.

J. In addition to any other penalty provided by law, violation of this Administrative Order by a City of South Miami employee shall subject said employee to disciplinary action up to and including dismissal from City service.

K. Any person who has personal knowledge of a violation of this Administrative Order shall report such violation to the City Manager and/or may file a complaint with the Miami-Dade County Ethics Commission.

L. Any provision in this Administrative Order that is less restrictive than the Miami-Dade County Code of Silence Ordinance shall not absolve the violator of any penalty provided for by the County’s ordinance for such violation.

Your cooperation is appreciated in making this an efficient and seamless process while maintaining an ethical and professional procurement system.

Should you have any questions, please feel free to contact my office.

Steven J. Alexander
City Manager