



CITY OF SOUTH MIAMI CONE OF SILENCE ORDINANCE, SECTION 8A-7

Chapter 8A of the City of South Miami Code of Ordinances is hereby amended in pertinent part to add a new section 8A-7 which is to read as follows:

Sec. 8A-7. Cone of Silence:

(A) Definitions.

(1) "Cone of silence", as used herein, means a prohibition of any communication regarding competitive solicitations such as a request for proposal ("RFP"), request for qualification ("RFQ"), request for information ("RFI") or request for bid ("RFB"), between:

(a) A potential vendor, service provider, proposer or bidder (hereinafter referred to as the "Potential Bidder"), or agent, representative, lobbyist or consultant for the Potential Bidder; (hereinafter referred to as the "Bidder's Representative") and

(i) Members of the City Commission or

(ii) City's professional staff or

(iii) Any member of the City's selection, evaluation or negotiation committee.

(b) Members of the City Commission shall not communicate with professional staff or members of the selection, evaluation and negotiation committees at any point in the competitive process except as provided in paragraph D (3) below.

(2) "City's professional staff" means City Department Heads and their staff and the City Manager and Deputy City Manager and their staff including consultants involved in the solicitation, evaluation and negotiation process.

(B) **Restriction; notice.** A cone of silence shall be imposed upon each competitive solicitation, commencing with the date that the advertisement of said solicitation is published and the requirements of this section shall be included in the solicitation. At the time of imposition of the cone of silence, the City Manager or Manager's designee shall: (a) provide for public notice of the cone of silence by posting a notice at City Hall; (b) issue a written notice thereof to the affected Departments; (c) file a copy of such notice with the City Clerk; and (d) serve a copy thereof on each City Commissioner.

(C) **Termination of Cone of Silence.** The Cone of Silence shall terminate at the beginning of the City Commission meeting at which the City Manager makes his or her written recommendation to the City Commission or at the time that the solicitation process is terminated by the City Manager. However, if the City Commission refers the Manager's recommendation back to the Manager or staff for further review, the cone of silence shall be reimposed until the beginning of the City Commission meeting at which the City Manager makes a subsequent written recommendation.

(D) **Exceptions to applicability.** The provisions of this section shall not apply to:

(1) Communications at a duly noticed pre-bid conferences or at any duly noticed public Selection or Negotiation Committee meeting or duly noticed public City Commission meeting at which the City Manager has placed the subject of the solicitation on the Agenda;

(2) Communication regarding the solicitation at recorded contract negotiations, recorded oral presentation or recorded oral question and answer session and recorded contract negotiation strategy sessions in compliance with the exemption in Florida Statutes Section 286.0113;

(3) Briefings made by the City Manager or his designee to the City Commissioners during a meeting following the completion of the Selection or Negotiation Committee meetings;

(4) Written communication at any time with any City professional staff (not including selection, evaluation or negotiation committee members), unless specifically prohibited by the applicable competitive solicitation documents. This section shall not be construed to prevent written communication between City professional staff and any City selection, evaluation or negotiation committee. A copy of any written communication made during the cone of silence shall be contemporaneously filed with the City Clerk by the Potential Bidder or Bidder's Representative. The City Clerk shall make copies available to any person upon request;

(5) Communication that is strictly limited to matters of those processes or procedures that are contained in the corresponding solicitation document and which communication is between any person and the City's Purchasing Agent or the City employee who is designated as being responsible for administering the procurement process for such solicitation;

(6) Communications with the City Attorney and his or her staff;

(7) Communications during any duly noticed site visits to determine the competency and responsibility of bidders regarding a particular bid during the time period between the opening of bids and the time the City Manager makes a written recommendation;

(8) Any emergency procurement of goods or services pursuant to City Code;

(9) Responses to a request made by the City's Purchasing Agent, or the City employee who is designated as being responsible for administering the procurement process for such solicitation, for clarification or additional information;

(10) Communications prior to bid opening between City's professional staff and Potential Bidders and/or Bidder's Representatives to enable City staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a Potential Bidders and/or Bidder's Representatives and any member of the City's professional staff including, but not limited to the City Manager and his or her staff, are in writing or are made at a duly noticed public meeting.

(F) Penalties. Violation of this section by a particular bidder or proposer, or their representative, shall render any award to said bidder or proposer voidable by the City Commission and/or City Manager. Any person who violates a provision of this section may be prohibited from serving on a City selection or evaluation committee. In addition to any other penalty provided herein, violation of any provision of this section by a City employee may subject said employee to disciplinary action at the discretion of the City Manager.