

Clarifications Regarding the Cone of Silence

1. Types of Procurements that the Cone of Silence Applies to

The Cone of Silence shall apply to procurements that are supervised and/or overseen by a County Department that are at or over the Formal Bid Limit (as defined in Ordinance No. 13-24), irrespective of the source of funds.

2. The Cone of Silence

Pursuant to Ordinance No. 13-24, the intent of the Cone of Silence is to safeguard the integrity of the County's procurement and protest process by preventing bidders/Offerors on a County procurement solicitation from influencing the person(s) that will be making the decisions and/or having meaningful input regarding the award of the applicable procurement solicitation. Section 14 of the Ordinance states that an Offeror or Interested Party (as defined under the Ordinance) is prohibited from contacting County employees, the Hearing Master and/or members of the Board of County Commissioners (including their aides and employees) regarding a procurement solicitation and/or its related protest during the time period the Cone of Silence is in effect.

3. Communications between County Employees/Staff Regarding Procurements

The Cone of Silence does not prohibit County employees/staff from communicating with each other regarding a procurement solicitation.

4. County Employee Communication/Contact with an Offeror and/or Interested Party

The Cone of Silence does not prohibit County employees from contacting an Offeror or Interested Party when such contact/communication is from County procurement personnel or coordinated through County procurement personnel, and such contact/communication is done in the course of the County's employee's duties as it relates to the applicable procurement. Accordingly, responses/communications by an Offeror or Interested Party in response to a communication or contact that has been initiated by a County employee, as set forth above, shall not be considered a Cone of Silence violation.

5. Types of Communication/Contact that do not Violate the Cone of Silence

Examples of communications/contact that do not qualify as a Cone of Silence violation by the Offeror/Interested Party, include, but are not limited to, the following:

- a. Communications during County-initiated pre-proposal and pre-bid conferences;
- b. Communications from County procurement personnel to the Offeror/Interested Party regarding a request for clarification related to a bid/proposal submitted;
- c. Communications from County employees for the purpose of determining the Offeror's responsiveness and/or responsibility; said County employees shall include procurement personnel, employees from the County's Economic Development Department, Debt and

- Financial Analysis Manager, Risk Management Division and/or consultants/contractors acting on behalf of the County with respect to the applicable procurement;
- d. Site visits by County employees to the site(s) of an Offeror being considered for award, provided that, said visits have been coordinated through applicable County procurement personnel;
 - e. Oral presentations by an Offeror related to a procurement solicitation, provided that, such presentations have been coordinated through applicable County procurement personnel;
 - f. Product demonstrations by an Offeror related to a procurement solicitation, provided that, said demonstrations have been coordinated through applicable County procurement personnel;
 - g. Negotiations initiated by the County with Offerors related to a procurement solicitation, provided that, said negotiations have been coordinated through applicable County procurement personnel;
 - h. Communications during publicly-noticed Evaluation Committee meetings, including Evaluation Committee meetings held for the purpose of Offeror presentations, product demonstrations and interviews;
 - i. Communications from County employees to the Offeror/Interested Party or vice versa regarding a public records request, provided, that such communication from the Offeror/Interested Party is limited to the public records request;
 - j. Communications from applicable County procurement personnel to the Offeror/Interested Party regarding a bid submitted or a protest submitted; and
 - k. Communications during debriefing meetings, provided that, said meetings are coordinated through and conducted by the applicable County procurement personnel.
 - l. Public comment to the Board during a regular meeting of the Board of County Commissioners (pursuant to the considerations set forth in Florida Statute, Section 286.0114).
6. Factors to Consider when Determining Whether a Cone of Silence Violation is Unintentional or Not Material

The following are guidelines that may be used in determining whether a Cone of Silence violation under Ordinance No. 13-24 is “unintentional and/or not material” (Please note that this list is not exhaustive):

- a. Whether there is sufficient evidence to show that the Offeror/Interested Party was aware of or should have been aware of the Cone of Silence;
- b. Whether the information/material contained in the subject communication from the Offeror/Interested Party was of such a nature that it could potentially influence the award decision regarding the applicable procurement solicitation;
- c. Whether the subject communication from the Offeror/Interested Party was directed to a person(s) that will be making the decision and/or have meaningful input regarding the award of the applicable procurement solicitation; and
- d. Whether the information contained in the communication from the Offeror/Interested Party actually reached a person(s) that will be making the decision and/or have meaningful input regarding the award of the applicable procurement solicitation.