

Sec. 1-266. Cone of silence.

(a) *Definitions.* For purposes of this section, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

(1) *Competitive Solicitation* means a formal process by Broward County relating to the acquisition of goods or services, which process is intended to provide an equal and open opportunity to qualified persons and entities to be selected to provide the goods or services. The term shall also include any process by which Broward County officials or personnel are authorized to negotiate an amendment to a contract that was entered into pursuant to a "Competitive Solicitation," as defined in this subsection, including the actual negotiation and final approval of any such amendment, but only if the contract amendment will be subject to approval by a "Selection Committee" as defined by the Broward County Procurement Code. The term shall not include a competitive process which seeks to enter into a contract or award money to perform governmental, quasi-governmental, social, or human services primarily for charitable, benevolent, humanitarian, or other philanthropic purposes, such as the award of grants or support assistance to organized nonprofit entities that promote or assist with the care, education, health, standard of living, or general welfare of people in the Broward County community, or that promote or assist community or neighborhood enhancements.

(2) *Cone of Silence* means a period of time during which there is a prohibition on communication regarding a particular Competitive Solicitation.

(3) *Vendor* means a person or entity that has entered into or that lobbies to enter into a contract or contract amendment with Broward County, or that seeks an award from Broward County to provide goods, perform a service, render an opinion or advice, or make a recommendation related to a Competitive Solicitation for compensation or other consideration.

(4) *Vendor's Representative* means an owner, individual, employee, partner, officer, or member of the board of directors of a Vendor, or a consultant, lobbyist, or actual or potential subcontractor or subconsultant who acts at the behest of a Vendor in communicating regarding a Competitive Solicitation.

(b) *Prohibited communication.* Except as set forth in subsection (e), a Cone of Silence shall be in effect during the course of a Competitive Solicitation as provided in subsection (c) between:

(1) Any person or entity that seeks a contract, contract amendment, award, recommendation, or approval related to a Competitive Solicitation or that is subject to being evaluated or having its response evaluated in connection with a Competitive Solicitation, including a Vendor or Vendor's Representative, and

(2) Any County Commissioner or the Commissioner's staff, the County Administrator, Deputy and Assistants to the County Administrator, and their respective support staff, or any person or group of persons appointed or designated by the County Commission or the director or head of a County office, agency, department or division, or their designee, to evaluate, select, negotiate, or make a recommendation to the County Commission or other person or group of persons authorized to make or approve an evaluation, recommendation, ranking, contract amendment, or that may make an award in the Competitive Solicitation process.

(c) *Effective dates.* A Cone of Silence shall begin and shall end for Competitive Solicitations within the scope of this Ordinance as follows:

(1) A Cone of Silence shall be in effect during a Competitive Solicitation beginning upon

the first meeting of the Evaluation Committee (for Requests for Proposals - RFPs) or Selection Committee short listing (for Request for Letters of Interest - RLIs) or at the time of the opening of submissions in response to Invitations for Bids. For amendments to contracts, a Cone of Silence shall begin when direction is given by the Board or other authorized person to establish or convene a committee, or when an individual is designated by the Board or other authorized person to negotiate an amendment to a contract. Notice shall be given as required by Subsection (d) of this Section.

(2) The Cone of Silence shall terminate at the time the Board of County Commissioners or other authorized person makes final award or gives final approval of a contract or contract amendment, rejects all bids or responses to the Competitive Solicitation, or takes other action which ends the Competitive Solicitation.

(d) *Notice.* When the Cone of Silence becomes effective for a particular Competitive Solicitation, the Broward County Administrator or designee shall provide public notice of the effectiveness of this Ordinance to the Competitive Solicitation. The County Administrator shall also include a statement that generally discloses the requirements of this Ordinance in the public notice and, if any, the solicitation document for the goods or services.

(e) *Permitted communication.*

(1) Nothing in this section shall prohibit a County Commissioner, the County Commissioner's office personnel, and other County employees from communicating with each other.

(2) Nothing contained in this section shall prohibit a County Commissioner or the County Commissioner's office personnel from initiating contact with a Vendor or Vendor's Representative and subsequent communication related thereto for the purpose of obtaining further information regarding the Competitive Solicitation.

(3) The Cone of Silence shall not apply to communications with the County Attorney and his or her office personnel, the County Auditor and his or her office personnel, or with other County personnel, provided that such person with whom the communication occurs has not been appointed or designated to evaluate, rank, select, negotiate, or make a recommendation regarding a Vendor or the Vendor's response to the Competitive Solicitation.

(4) Nothing contained in this section shall prohibit any Vendor or Vendor's Representative:

- a. From making public presentations at pre-bid conferences or at a selection or negotiation meeting related to the Competitive Solicitation;
- b. From engaging in contract negotiations during a public meeting related to the Competitive Solicitation;
- c. From making a public presentation to the County Commission during any public meeting of the Board;
- d. From communicating with the person or persons designated in the Competitive Solicitation as the contact person for clarification or information related to the Competitive Solicitation; or
- e. From communicating in writing as provided in subsection (5) below.

(5) The Director of Purchasing or designee shall accept written communications from Vendors or Vendor's Representatives during the time a Cone of Silence is applicable to a Competitive Solicitation. Such writing, including any response thereto, shall be provided to the person or the members of the applicable committee appointed or designated to recommend a Vendor for award or to negotiate a contract or contract amendment. The writing shall also be attached to the Board agenda item for the award

or for approval of the contract or contract amendment under the applicable Competitive Solicitation.

(f) *Violations.*

(1) A complaint alleging a violation of this ordinance may be filed with the County's Office of Professional Standards. In each such instance, an investigation shall be performed and the results of each investigation, including a determination of violation, if any, shall be set forth in a written report. If there is a determination of violation, a fine shall be imposed against the Vendor in the maximum amount provided in Subsection 8 1/2-16(f)(34) of the County Code of Ordinances.

(2) A copy of the report and notice of the imposition of a fine, if any, as provided for in this subsection (f), shall be mailed, return receipt requested, to the Vendor and the person who has been investigated.

(3) A person or the Vendor who is determined by the Office of Professional Standards to have violated this Ordinance may appeal such determination within the time and in the manner provided in Section 21.120 of the Broward County Administrative Code. If the determination is appealed and a final decision is rendered by a hearing officer, the decision of the hearing officer shall be the final determination. If no appeal is timely filed or if no final determination is made by a hearing officer, the determination of the Office of Professional Standards shall be final.

(4) After a determination becomes final, a copy of the report or final decision of the hearing officer shall be furnished to the Board, the Vendor, and the person who was investigated. Notice and demand for payment of any fine imposed shall be included with the final determination.

(5) A determination of violation shall render any award to a Vendor who is found to have violated this Ordinance voidable, at the sole discretion of the Board.

(6) If a Vendor is determined to have violated the provisions of this Ordinance on three occasions, the Purchasing Director shall initiate debarment proceedings pursuant to Section 21-119 of the Broward County Administrative Code.

(Ord. No. 2001-15, § 8, 5-8-01; Ord. No. 2004-31, § 1, 8-24-01; Ord. No. 2007-09, § 1, 5-8-07)