

## Sanchez, Rodzandra (COE)

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**From:** Diaz-Greco, Gilma M. (COE)  
**Sent:** Monday, March 20, 2017 9:47 AM  
**To:** Sanchez, Rodzandra (COE)  
**Subject:** Jose Smith, City Attorney, City of North Miami Beach (Cone of Silence) INQ 17-78

INQ 17-78 Smith

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**From:** Smith, Jose [mailto:Jose.Smith@citynmb.com]  
**Sent:** Friday, March 17, 2017 4:40 PM  
**To:** Centorino, Joseph (COE) <Joseph.Centorino@miamidade.gov>; Johnston, Sarah <Sarah.Johnston@citynmb.com>  
**Cc:** Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; 'Robert Meyers' <RMeyers@wsh-law.com>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Kirtley, Eddie (CAO) <Eddie.Kirtley@miamidade.gov>; Rosenthal, Oren (CAO) <Oren.Rosenthal@miamidade.gov>; Garcia, Ana <Ana.Garcia@citynmb.com>; Johnston, Sarah <Sarah.Johnston@citynmb.com>; Wasserman, Joel <Joel.Wasserman@citynmb.com>; Thompson, Jeffrey <Jeffrey.Thompson@citynmb.com>; Moya Denham, Maria <Maria.MoyaDenham@citynmb.com>; Latimore, Pamela <Pamela.Latimore@citynmb.com>  
**Subject:** RE: INQ 17-78 Jose Smith, City Attorney, City of North Miami Beach (Cone of Silence)

Thanks, Joe.

I appreciate the time and effort you devoted to provide me with your well-reasoned ethics opinion.

This procurement is very important to the city and its residents.

We want to insure that the process is not tainted by lobbying or undue political influence.

Jose

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**From:** Centorino, Joseph (COE) [mailto:Joseph.Centorino@miamidade.gov]  
**Sent:** Friday, March 17, 2017 3:48 PM  
**To:** Smith, Jose <Jose.Smith@citynmb.com>; Johnston, Sarah <Sarah.Johnston@citynmb.com>  
**Cc:** Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <perezmd@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; 'Robert Meyers' <RMeyers@wsh-law.com>; Sanchez, Gerald (CAO) <Gerald.Sanchez@miamidade.gov>; Kirtley, Eddie (CAO) <Eddie.Kirtley@miamidade.gov>; Rosenthal, Oren (CAO) <Oren.Rosenthal@miamidade.gov>  
**Subject:** INQ 17-78 Jose Smith, City Attorney, City of North Miami Beach (Cone of Silence)

Jose:

You have inquired concerning whether the procedure being utilized by the City of North Miami Beach in connection with the hiring of a contractor to operate and manage the City's water and wastewater utility (RFQ No. 2016-08 NMB Water Operations, Maintenance and Program Management Services ("RFQ")) would result in a lifting of the Cone of Silence prior to the City Manager's sending a written recommendation to the City Commission for the final award of the contract. You have explained that this RFQ is being conducted in compliance with the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes. The procedure is for there to be at least three competitive submissions to be sought, which has been done, and for the City Manager to seek authorization from the City Commission to commence negotiations with the highest ranked submission. If granted that authorization, the City Manager would then proceed to commence negotiations with the top-ranked party, and, if successful, to then bring the matter back to the Commission with a recommendation for final award of the contract. If the negotiations are not successful, then the Manager would proceed to negotiate with the second-ranked party, and, if necessary, go to the third-ranked party to finalize a recommendation to the Commission.

It is understood that the City of North Miami Beach has not opted out of the County Cone of Silence, Section 2-11.1(t) of the County Ethics Code, and, therefore, is bound by the provisions of the County Cone. Subsection 2-11.1(t)1.(b)(ii) provides that the Cone shall terminate at the time that the Manager makes his or her “written recommendation” to the Commission. Your specific question relates to whether the Manager’s request for authorization from the Commission to begin negotiations with the firm ranked first by the selection committee constitutes a “written recommendation” under the latter provision that would trigger the lifting of the Cone of Silence, even though the final recommendation would not be made to the Commission until the conclusion of the negotiation process.

You have cited RQO 10-17 issued by former Ethics Commission Executive Director Robert Meyers as possible support for the lifting of the Cone at the time of that the Manager first seeks authorization from the Commission to commence negotiations with the top-ranked firm. That RQO dealt with a situation where, in the midst of a procurement involving a firm whose subcontractor was deemed unqualified, but with whom the Manager wished to contract, went to the County Commission for approval to waive the competitive bidding process to permit negotiation with that firm. I do not disagree with that opinion, and I see that opinion as distinguishable from the facts of your request. In RQO 10-17, the authorization to waive the competitive bidding procedure ended any competitive procurement process. It permitted the County staff to negotiate with the sole remaining firm, and with no second or third-ranked firm remaining in the process. Under the facts of your request in the pending RFQ, the competitive bidding process would not be ended by the authorization to the Manager (assuming it is approved by the Commission) to commence negotiating with the top-ranked firm. Indeed, two other firms would remain in the process until the final award recommendation goes to the Commission.

The Cone of Silence is intended to provide insulation from private lobbying or political influence during competitive procurement processes. Where, as in RQO 10-17, the recommendation is to waive competitive bidding and focus on one firm, the recommendation more closely resembles a final recommendation to award a contract, which is the usual circumstance under which the Cone is lifted. While the language in Subsection 2-11.1(t)1.(b)(ii) does not specify that the “written recommendation” resulting in the lifting of the Cone be the “final award” recommendation, it is a fair interpretation of the phrase that it would apply to a recommendation essentially ending the competitive bid process, upon approval of which there would be no reason for competing firms to continue to lobby for the award and no need for the Cone of Silence to remain in effect.

Consequently, it is my opinion that the Cone would not lift upon the Manager’s seeking authorization to commence negotiations with the top-ranked firm, and would not be lifted until the Manager recommends the final award of the contract, upon approval of which the competitive process would end. This opinion is not inconsistent with RQO 10-17, which essentially held that the Cone is lifted at the point where the Manager issued a recommendation to waive and, therefore, to end the competitive bid process.

Sincerely,

Joe Centorino

*Joseph M. Centorino*

Executive Director and General Counsel  
Miami-Dade Commission on Ethics and Public Trust  
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Miami, FL 33130  
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**From:** Johnston, Sarah [<mailto:Sarah.Johnston@citynmb.com>]  
**Sent:** Saturday, March 11, 2017 1:53 PM  
**To:** Centorino, Joseph (COE) <[Joseph.Centorino@miamidade.gov](mailto:Joseph.Centorino@miamidade.gov)>  
**Cc:** Smith, Jose <[Jose.Smith@citynmb.com](mailto:Jose.Smith@citynmb.com)>; Moya Denham, Maria <[Maria.MoyaDenham@citynmb.com](mailto:Maria.MoyaDenham@citynmb.com)>  
**Subject:** Fwd: CCNA and Cone of Silence Inquiry

Good Afternoon Mr. Centorino,

The City is currently in a request for qualifications process to hire a contractor to operate and manage the City's water and wastewater utility (for reference see attached RFQ No. 2016-08 NMB Water Operations, Maintenance and Program Management Services ("RFQ")). The City is undertaking this process pursuant to the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes ("CCNA"). This process requires that an evaluation committee review the respondent firms qualifications and three firms shall be selected as the most highly qualified to perform the services. Upon the City Commission approving the ranking, the City Manager is authorized to negotiate an agreement with the most qualified firm, if the agency is unable to negotiate a satisfactory agreement with the most qualified firm, negotiations shall commence with the second-ranked firm (and third, if necessary). Once a satisfactory agreement is negotiated the Agreement is presented to the City Commission for award of the RFQ and approval of the agreement.

Technically, in accordance with the CCNA process, the RFQ is not awarded until the agreement has been negotiated. Robert Meyers' opinion RQO 10-17 (attached hereto) creates doubt as to whether the Cone of Silence is lifted at the time the City Manager recommends the ranking of the most highly qualified firms or until the negotiations have concluded and an agreement is recommended for approval. In reconciling the Cone of Silence and the CCNA process, should the Cone be lifted (as to discussions about the ranking) upon the City Manager's recommendation to the City Commission and then re-imposed upon the City Commission's approval of the ranking and authorization to negotiate an Agreement for award of the RFQ?

Please contact Jose Smith at your convenience on Monday.

Thank you for your time and consideration.



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