Finance and Administrative Services Department
PURCHASING DIVISION
115 S. Andrews Avenue, Room 212 • Fort Lauderdale, Florida 33301 • 954-357-6066 • FAX 954-357-8535

Certified Mail No. 7003 1010 0003 0948 2446

February 10, 2014

William C. McCulloch, III, Owner
Highland Wireless Services
6894 N.W. 20th Street
Fort Lauderdale, FL 33309

Re: Request for Proposals (RFP) R1147317P1, Local Government UHF Trunking 400 MHz Radio System

Dear Mr. McCulloch:

I am in receipt of your letters dated January 21, 2014 in which Highland Wireless Services (HWS) "objects" to the decision of the Broward County Evaluation Committee to find HWS 'non responsible' in its response to Broward County's RFP for Local Government UHF Trunking 400 MHz Radio System (R1147317P1)". I am also in receipt of HWS's letter of January 31, 2014, in which your firm references the January 21, 2014 letter, as a "formal protest" of the action of the Evaluation Committee which voted to find your firm non-responsible for the above referenced RFP.

In response, I will address the procedural issues associated with the letter(s) and then specifically respond to the substantive issues raised in the letter's assertions..

First, in response to your letter as an "objection", Sections 21.84 (f) and (g) of the Broward Procurement Code indicates that in order to reconvene the Evaluation Committee to review the information in your objection letter as you have requested, your letter would need to contain new information. The January 21, 2014 letter, however, references information which the Evaluation Committee has already reviewed, discussed and upon which their January 13, 2014 decisions have been based.

Second, if the January 21, 2014 were a protest letter, the letter is premature. Section 21.118 of the Broward County Procurement Code provides for a protest period after the Final Evaluation Committee Meeting, not however following the Initial Evaluation Committee Meeting. Additionally, a protest letter when filed would also require a protest filing fee to establish eligibility. There was no protest filing fee provided.

Finally, if this were an eligible appeal pursuant to Section 21.120 of the Broward County Procurement code, first, there would have been a determination of non-responsiveness by the Evaluation Committee to the requirements of the RFP solicitation. This is not the case. Highland Wireless Services was determined by the Evaluation Committee to be responsive to the RFP solicitation document.

The Evaluation Committee, however, determined that two areas in the Highlands Wireless proposal submittal were not compliant with the RFP's responsibility requirements. A determination of non-responsibility is not a matter which can be appealed. According to Broward County Procurement Code, Section 21.120, "Any person who has a substantial interest in the matter and who is dissatisfied or aggrieved with the determination of responsiveness by the Selection Committee pursuant to Subsection 21.83.d of this Code must appeal said determination to the County by sending written notice to the attention of the Purchasing Director to the County Purchasing Division". Only a determination of non-responsiveness can be appealed. Your firm was determined to be responsive to all such requirements in the RFP document.

The January 21, 2014 letter asserts that the procedural basis for your objection is pursuant to Section 21.32.e of the Broward County Procurement Code which states as follows:

> "Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, discussions may be conducted with responsible offerors whose submitted proposal is determined to be reasonably susceptible of being accepted for award, for the purpose of clarification to assure full understanding of responsiveness to the solicitation requirement. Offerors shall be afforded fair and equal treatment with respect to any opportunity for discussion to clarify a proposal."

This section of the Procurement Code, is complied with by providing all proposers a draft copy of the Director of Purchasing Recommendation Memorandum before it is distributed to the Evaluation Committee. With that draft, are instructions that proposers are to review the draft copy and send clarifications or explanations, within 48 hours, if they regard the information as incorrect or insufficient regarding their proposal. All communications from proposers which are received as a result of their review are forwarded to the Evaluation Committee for their consideration. County staff received a 31-page response from Highland Wireless during the 48-hour period. The 31-page response was forwarded to the Evaluation Committee as well as reviewed by County staff. County staff did not find in the 31-page response any certifications which would have resolved Highland's deficiencies regarding qualifications of professional personnel. The 31-page response only included personnel resumes with no evidence of staff certifications. The 31-page response also did not provide any additional evidence that the system proposed by Highland Wireless would allow system users to roam freely, without manually switching radio frequencies, depending on their locations.

Although your letter does not contain new information which we would need to reconvene the Evaluation Committee, the following addresses your specific objection assertions:

Assertion No. 1: "The evaluation committee's reason for voting HWS 'non responsible' was NOT one of the 5 Responsibility Requirements of the RFP."

Response No. 1: The Responsibility Requirements of RFP R1147317P1 are contained in pages 22 – 24 of the solicitation document. They are: 1. Compliance with Technical Requirements (contained in the definition of a responsible proposer "... an offeror who has the capability in all respects to perform the contract requirements...."); 2. Office of Economic and Small Business Development compliance goal which was waived for this project; 3. Disclosure of Financial Information; 4. Disclosure of Litigation History; 5. Authority to Conduct Business in Florida; and 6. Qualifications of Professional Personnel.

The Director of Purchasing Recommendation Memorandum dated January 10, 2014 defined two of the six areas of responsibility in which the proposal by Highland Wireless was deficient: Compliance with Technical Requirements and Qualifications of Professional Personnel. On January 3, 2014, Purchasing Division staff distributed the draft of the Director of Purchasing Recommendation Memorandum and asked proposers to respond within 48 hours if they had clarifications or explanations regarding the information in the Director's Memorandum.

At that time, vendors who were noted as deficient regarding the Responsibility requirements could have responded with additional information showing (1) how they complied with technical requirements and (2) returning required certifications showing the qualifications of professional personnel. Highland Wireless returned a 31-page document but the information in this document did not evidence compliance with Highland's deviation from the technical requirements (i.e. Highland's proposed system does not allow users to roam freely between certain areas of the County without manually switching radio frequencies), and Highland did not return certifications which would show evidence of the qualifications of Highland's professional personnel. The 31-page document contained staff resumes but not the certifications which had been detailed in the RFP Solicitation document as a requirement.

At the time of the Evaluation Committee Meeting on January 13, 2014, there was no change in Highland's non-compliance with the two responsibility requirements defined in the Director of Purchasing Recommendation Memorandum.

Assertion No. 2: "HWS and Control Communications bid IDENTICAL Motorola "Connect Plus" equipment - - radios, infrastructure and software".

Response No. 2: Your statement is not correct. The Highland Wireless Communication system consists of a Connect Plus system that uses three MotoBridge F2688A Controllers in order to connect the proposed sites to the existing sites. The Control Communications system consists of a Connect Plus system that uses four XRC9000 MultiSite Controllers (2 controllers at each existing site) to seamlessly interconnect, the three proposed sites to the two existing sites and facilitate free roaming without manually switching channels, once the user leaves the proposed sites' coverage area (in accordance with RFP Page 60, Paragraph 3 – Detailed Scope of Work as well as RFP Section 19.1). The Highlands proposed system using the MotoBridge F2688A Controllers would require users to manually switch channels once the user leaves the proposed sites' coverage area. This equipment is different from the Control Communications equipment and does not comply with the seamless interoperability requirement in the RFP.

Assertion No. 3: "HWS is the only vendor with experience building a Motorola "Connect Plus" System and has a commercial Motorola "Connect Plus" operational in South Florida that Broward County could use as a backup system."

Response No. 3: While your statement may be correct, prior experience building a Motorola "Connect Plus" System in South Florida is not a requirement of this RFP. In making determinations of responsibility, County staff and Evaluation Committee members operate within the written requirements of RFP R1147317P1.

Assertion No. 4: "HWS' bid is $1,775,410.00 LESS than Control Communications' bid which equates to costing Broward County 57% MORE for the IDENTICAL Motorola "Connect Plus" equipment and services.

Response No. 4: While it is true that Highland Wireless Communications (HWS) has a lower proposal price than Control Communications, the reason that the County selected the Request for Proposals (RFP) procurement method was to have a qualifications-driven procurement process, rather than a price-driven procurement process.

We note that your assertion is flawed regarding Control Communications proposal price as 57% more than that of Highland Wireless. Since Control Communications provided, in the technical requirements portion of their proposal, sufficient equipment to provide interoperability with the County's current 800 MHz radio system, and Highland Wireless did not, the comparison cannot be made because they are different systems. There is therefore no basis for comparison.

Assertion No. 5: "HWS asserts the only way for the network to perform the way Broward County and its Project Manager would like it to perform with regard to "seamless integration" is to UPGRADE both the City of Sunrise and Broward County School Board's Capacity Plus system to a Motorola "Connect Plus" system. The word UPGRADE is not present anywhere in the RFP relative to the proposed network configuration or seamless integration. Regardless, with the addition of two (2) Motorola XRC9000 controllers, HWS' proposal would accomplish this the same way Control Communications' proposal would."

Response No. 5: On page 60 of the RFP solicitation, and in section 19.1 of the scope of work, Broward County requests a solution for a digital, trunked UHF 400 MHz Radio System that must seamlessly integrate with the City of Sunrise's existing Capacity Plus system, and the School Board's existing Capacity Plus system. Additionally, the Director of Purchasing underscored this information in an October 31, 2013 response to an inquiry from your firm, indicating that the scope of work does not limit the addition of equipment to any of the existing sites. Highland would have to add four XRC9000 controllers, not two, to the equipment list in order to accomplish seamless integration where the subscriber units would roam freely across the entire area of coverage without the need to manually switch to other channels, when the subscriber units leave the three proposed sites' coverage. Highland's proposed solution is therefore not the same as the solution from Control Communications.

Assertion No. 6: "Control Communications' proposal did not address or include equipment needed to integrate into the County's 800Mhz Public Safety system which was a requirement of the RFP while HWS' proposal did address and include this."

Response No. 6: See response to Assertion No. 5 above.

Assertion No. 7: "HWS' elimination in the RFP process leaves only ONE prospective firm and removes the prospect of open and fair competition particularly for a Broward-based company that has the experience to build the network requested of the County and the ability to do it in a more timely manner than anyone else."

Response No. 7: Although the determination by the Evaluation Committee of non-responsiveness regarding Motorola Solutions, Inc. and non-responsibility regarding Highland Wireless Communications leaves only one other proposer to move forward in the RFP process, Broward County has had an open and fair competition for RFP R1147317P1. Your assertion to the contrary is incorrect. Part of that open and fair competition involves both County staff and the Evaluation Committee ensuring that all proposers comply with the responsive and responsibility requirements of the RFP solicitation. County staff and Evaluation Committee members have, openly and fairly, applied equal standards in their review of the proposers' submittals, giving proposers opportunity where that is permissible to clarify, explain and submit additional information to ensure that as many proposers as possible move forward in the RFP process to the Demonstration Meeting and final numerical scoring. Considerable work and staff hours have been expended to ensure all information has been reviewed to compile a complete and correct information package which was forwarded to the Evaluation Committee for their review, and determination of responsiveness and responsibility in the January 13, 2014 Initial Evaluation Committee Meeting.

Assertion No. 8: "Control Communications did not include Motorola "Connect Plus" Licensing Fees for each radio which are required both by the RFP and for each radio to work on a Motorola "Connect Plus" system EXCEPT for in Pricing Section C – Future Considerations, Optional Services, Optional Equipment & Components, where Control Communications priced each license at $100 when the list price from Motorola for this license is $25. This would equate to costing the County an additional $232,500 for the radios the County already owns included in the City of Sunrise and Broward County Schools.

Response No. 8: During the January 13, 2014 Initial Evaluation Committee Meeting, in response to questions by the Evaluation Committee about items listed in the optional area of the Price Sheets which should have been included in the Total Proposal Price, both Highland Wireless and Control Communications consented to including optional items which should have been part of the Total Proposal Price, within the Total Proposal Price written in their original Proposal submittals. This, therefore, established both Highland Wireless and Control Communications as responsive to the requirements of the RFP.

Assertion No. 9: "Control Communications promoted the software solution AVTECH (as did HWS) in their proposal, but did not price it at all."

Response No. 9: Control Communications priced the Dispatch Console Equipment ($2,000.00 each), and software license ($2,500.00 each) in Part C of the Pricing Sheets, in accordance with the RFP specifications since they are optional, and should not be included in the Total System Proposed Price. Highland did the same ($15,000.00 each + $35,0000.00 each).

Assertion No. 10: "Control Communications did not provide network certification by Hewlett Packard or Cisco as required in Additional Requirements 5E under Responsibility Criteria even though the Project Manager told the Evaluation Committee that Control Communications had provided all certifications. Likewise, HWS didn't provide that certification either because neither Hewlett Packard not Cisco issue that certification thus making it impossible to provide."

Response No. 10: Control Communications provided two WLAN certifications (Mark Wheeler and Jean Michel Noviot). The certifications were recognized by Motorola.

Assertion No. 11: "Please review the audio tape of the Evaluation Committee's meeting at 49 minutes and 52 seconds where the Project Manger states that Control Communications proposal will seamlessly integrate with the City of Sunrise and Broward Schools with the addition of "two controllers". This is NOT TRUE. Every MotoTrbo radio currently in use with the City of Sunrise and Broward County will need a Motorola "Connect Plus" Option Board INSTALLED in each radio and each Motorola "Connect Plus" Option Board will need a "Connect Plus" License from Motorola as well as the radio and Option Board will need to be meticulously reprogrammed. HWS has performed hundreds of these UPGRADE MODIFICATIONS and REPROGRAMMING and understands the significant time factor and cost for each of these UPGRADE MODIFICATIONS and REPROGRAMMING that both the Project Manager and Control Communications are unaware of."

Response No. 11: Control Communications solution seamlessly integrates with two existing sites by installing two controllers in each existing site. By doing that, subscriber units would roam freely provided that the portable/mobiles are Connect Plus enabled. The currently existing radios owned by the School Board and the City of Sunrise will need upgrades and reprogramming. Control Communications owner stated, during the January 13 Meeting, that there would be no additional cost. Highland Wireless stated that they would need to increase the pricing.

Assertion No. 12: "None of Control Communications' TAB D – Price Sheets (Attachment "T") Section B Price totals MATCH the accompanying worksheets that are supposed to detail their price figures. For example, the first line of B.1 RADIO SYSTEM EQUIPMENT/ HARDWARE price is $602,409.44 while the supporting worksheet shows a price of $629,276.32.

Response No. 12: During the January 13, 2014 Initial Evaluation Committee Meeting, in response to questions by the Evaluation Committee, both Highland Wireless and Control Communications agreed to honor their Total Proposal Price, as written in the original Proposal submittal for the specified Local Government UHF Trunking 400MHz Radio System as defined in the RFP solicitation document. The Total Proposal Price includes any mathematical deviations in other worksheets included in the proposal submittals.

Assertion No. 13: "HWS included a complete and redundant backup antenna system and included that cost in their total figure as required in the RFP. Control Communications listed the redundant equipment as OPTIONAL EQUIPMENT and did not include it in their final price to the County, thus INCREASING their total cost to $5,150,733.26 which is $2,070,043.26 MORE than HWS' bid FOR THE EXACT SAME MOTOROLA "CONNECT PLUS" EQUIPMENT AND SERVICES. (The only two differences are HWS included a Moto Trbo MotoBridge which is required for integration into the County's 800MHz Public Safety system and Control Communications included 2 additional Motorola XRC9000 controllers.)"

Response No. 13: During the January 13, 2014 Initial Evaluation Committee Meeting, in response to questions by the Evaluation Committee about items listed in the optional area of the Price Sheets, which should have been included in the Total Proposal Price, both Highland Wireless and Control Communications consented to including optional items which should have been part of the Total Proposal Price, within the Total Proposal Price written in their original Proposal submittals. This, therefore, established both Highland Wireless and Control Communications as responsive to the requirements of the RFP.

Assertion No. 14: "Control Communications double charged the County in its proposal for GW3-TRBO software in the amount of $23,362.00.

Response No. 14: This statement is not accurate. In the Price Sheets under Site Hardware and Software, Control Communications includes: GW3 – TRBO Connect Plus software, Network Management Terminals software and the two Network Management Terminals hardware.

We have provided responses to the various observations and information you provided in your letter dated January 21, 2014. This information is not, however, new information and is not considered a formal protest. Finally, please be aware that the Cone of Silence, (See attached) has been, and is still in effect for this procurement and both letters (January 21, 2014 and January 31, 2014) copied the Evaluation Committee Chair and/or the County Administrator.

Sincerely,

Brenda J. Billingsley

Brenda J. Billingsley, Director
Purchasing Division

Attachments

BJB/kw/hmm

c: Alphonso Jefferson, Assistant County Administrator
Glenn Marcos, Assistant Director, Purchasing Division
Erick Martinez, Purchasing Agent III, Purchasing Division
Lygia Torres, Project Manager, Aviation Department
Glenn M. Miller, Assistant County Attorney, Office of the County Attorney

highland wireless

MOTOROLA
Authorized Two-Way Radio Dealer

January 21, 2014

Brenda J. Billingsley, Director
Broward County Purchasing Division
115 S. Andrews Ave., Room 212
Fort Lauderdale, FL 33301

RFP Number: R1147317P1
RFP Name: Local Government UHF Trunking 400 MHz Radio System

Dear Ms. Billingsley,

Highland Wireless Communications (HWS) is in receipt of Glenn Marcos' letter dated January 17, 2014. This letter to you, as Director of Purchasing, formally advises that HWS objects to the decision of the Broward County Evaluation Committee to find HWS "non responsible" in its response to Broward County's RFP for Local Government UHF Trunking 400 MHz Radio System (R1147317P1). The basis for this objection is provided under Section 21.32e, Broward County Procurement Code, which follows:

Discussion with Responsible Offerors and Revisions to Proposals. As provided in the Request for Proposals, discussions may be conducted with responsible offerors whose submitted proposal is determined to be reasonably susceptible of being accepted for award, for the purpose of clarification to assure full understanding of responsiveness to the solicitation requirement. Offerors shall be afforded fair and equal treatment with respect to any opportunity for discussion to clarify a proposal.

We firmly believe that HWS should not have been found to be 'non responsible' and, notwithstanding, such a decision should not to be fatal to HWS at this stage of the evaluation process because of the following:

1) The evaluation committee's reason for voting HWS *non responsible* was NOT one of the 5 Responsibility Requirements of the RFP.

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2) HWS and Control Communications bid IDENTICAL Motorola "Connect Plus" equipment – radios, infrastructure and software.
3) HWS is the only vendor with experience building a Motorola "Connect Plus" System and has a commercial Motorola "Connect Plus" operational in South Florida that Broward County could use as a backup system.
4) HWS' bid is $1,775,410.00 LESS than Control Communications' bid which equates to costing Broward County 57% MORE for the IDENTICAL Motorola "Connect Plus" equipment and services.
5) HWS asserts the only way for the network to perform the way Broward County and its Project Manager would like it to perform with regard to "seamless integration" is to UPGRADE both the City of Sunrise and Broward County School Board's Capacity Plus system to a Motorola "Connect Plus" system. The word UPGRADE is not present anywhere in the RFP relative to the proposed network configuration or seamless integration. Regardless, with the addition of two (2) Motorola XRC9000 controllers, HWS' proposal would accomplish this the same way Control Communications' proposal would.
6) Control Communications' proposal did not address or include equipment needed to integrate into the County's 800Mhz Public Safety system which was a requirement of the RFP while HWS' proposal did address and include this.
7) HWS' elimination in the RFP process leaves only ONE prospective firm and removes the prospect of open and fair competition particularly for a Broward-based company that has the experience to build the network requested of the County and the ability to do it in a more timely manner than anyone else.

Ms. Billingsley, there are several other areas that clearly suggest HWS' proposal is, in fact superior to that of Control Communications' bid response, and therefore warrants more careful consideration by the County's technical staff and ultimately the Evaluation Committee. We believe these points will also serve the purpose of assuring "full understanding of responsiveness to the solicitation requirement." HWS does not call into question the professionalism of Control Communications. We only seek to be afforded "fair and equal treatment."

Here are a few observations that further support HWS' request for reconsideration on the Evaluation Committee's "non responsible" determination on the basis of "fair and equal treatment" as required by the County's Procurement Code, thus enabling HWS the opportunity for discussion to clarify its proposal:

- Control Communications did not include Motorola "Connect Plus" Licensing Fees for each radio which are required both by the RFP and for each radio to work on a Motorola "Connect Plus" system EXCEPT for in Pricing Section C - *Future Considerations, Optional Services, Optional Equipment & Components*, where Control Communications priced each license at $100 when the list price from Motorola for this license is $25. This would equate to costing the County an additional $232,500 for the radios included in the proposal and equally as sever for the MotoTrbo radios the County already owns included in the City of Sunrise and Broward County Schools

- Control Communications promoted the software solution AVTECH (as did HWS) in their proposal, but did not price it at all
- Control Communications did not provide network certification by Hewlett Packard or Cisco as required in Additional Requirements 5E under Responsibility Criteria even though the Project Manager told the Evaluation Committee that Control Communications had provided all certifications. Likewise, HWS didn't provide that certification either because neither Hewlett Packard nor Cisco issue that certification thus making it impossible to provide
- Please review the audio tape of the Evaluation Committees' meeting at 49 minutes and 52 seconds where the Project Manager states that Control Communications' proposal will seamlessly integrate with the City of Sunrise and Broward Schools with the addition of "two controllers." This is NOT TRUE. Every MotoTrbo radio currently in use with the City of Sunrise and Broward County will need a Motorola "Connect Plus" Option Board INSTALLED in each radio and each Motorola "Connect Plus" Option Board will need a "Connect Plus" License from Motorola as well as the radio and Option Board will need to be meticulously reprogrammed. HWS has performed hundreds of these UPGRADE MODIFICATIONS and REPROGRAMMING and understands the significant time factor and cost for each of these UPGRADE MODIFICATIONS and REPROGRAMMING that both the Project Manager and Control Communications are unaware of
- None of Control Communications' TAB D - Price Sheets (Attachment "T") Section B Price totals MATCH the accompanying worksheets that are supposed to detail their price figures. For example, the first line of B.1 RADIO SYSTEM EQUIPMENT/HARDWARE price is $602,409.44 while the supporting worksheet shows a price of $629,276.32
- HWS included a complete and redundant backup antenna system and included that cost in their total figure as required in the RFP. Control Communications' listed the redundant equipment as OPTIONAL EQUIPMENT and did not include it in their final price to the County, thus INCREASING their total cost to $5,150,733.26 which is $2,070,043.26 MORE than HWS' bid FOR THE EXACT SAME MOTOROLA "CONNECT PLUS" EQUIPMENT AND SERVICES. (The only two differences are HWS included a MotoTrbo MotoBridge which is required for integration into the County's 800Mhz Public Safety system and Control Communications included 2 additional Motorola XRC9000 controllers)
- Control Communications double charged the County in its proposal for GW3-TRBO software in the amount of $23,362.00

We respectfully request that you consider the weight of our comments and, as Purchasing Director, request that the Evaluation Committee Chair and members reconsider the matter of a responsibility determination which could operate to the detriment of Highland Wireless, thereby establishing an unfair position of sole-source vendor for Control Communications before fully and fairly vetting both responses. Finally, given our interpretation of the fee policy relating to bid award protests, we do not believe this RFP process to be at the stage where an award recommendation has been made whereby the fee would be applicable. However, if this perspective is in error, HWS will submit the appropriate amount to the County immediately.

Respectfully,

William C. McCulloch, III
Highland Wireless Services

cc: Alphonso Jefferson, Chair, Selection Committee & Members
Dr. Scott Miller, Director, Finance & Administrative Services Department
Ms. Bertha Henry, County Administrator

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January 31, 2014

Brenda J. Billingsley, Director
Broward County Purchasing Division
115 S. Andrews Ave., Room 212
Fort Lauderdale, FL 33301

RFP Number: R1147317P1
RFP Name: Local Government UHF Trunking 400 MHz Radio System

Dear Ms. Billingsley,

As you know, Highlands Wireless Communications (HWS) sent to your office a letter dated January 21, 2014 regarding the above referenced Broward County solicitation. This letter served to formally protest the action of the Evaluation Committee which voted to find HWS "non-responsible" during its review of requests for proposals by finalist firms remaining in the selection process. We believe we have provided the basis for serious re-consideration of the Committee's action in our protest.

We further requested that Broward County defer any further actions by the Evaluation Committee that would disadvantage HWS in proper redress of our claim that we have not received "fair and equal treatment" in the evaluation process. Therefore, we urge your office to take necessary action to suspend further meetings or activities associated with the selection process with the single firm remaining, until our complaint has been heard by appropriate authorities under the County's process as provided in Section 21.32e, Broward County Procurement Code.

Also, we respectfully request a response to our letter of January 21, 2014 indicating the steps to be taken to afford HWS an opportunity to present its complaint to you or your designee as soon as possible.

Respectfully,

William C. McCulloch, III
Highland Wireless Services

cc: Bertha Henry, County Administrator
Joni Armstrong Coffey, County Attorney

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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) *Affected Person* means any person, and that person's support staff, appointed, hired, designated, or authorized to evaluate, rank, recommend, or select a Vendor or a Vendor's response to a Competitive Solicitation or to make an award in a Competitive Solicitation process.

(2) *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 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.

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

(4) *Evaluation* or *Selection Committee* means a group of persons appointed or designated by the County Administrator or the Director or head of a County office, agency, department, or division, or their designee, to evaluate, rank, select, or make a recommendation regarding a Vendor or the Vendor's response to the Competitive Solicitation.

(5) *Vendor* means a person or entity that has entered into or that lobbies to enter into a contract 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.

(6) *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, including a Vendor or Vendor's Representative, that seeks a contract, 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, and

(2) Any County Commissioner, Commissioner's staff, the County Administrator, Deputy County Administrator, Assistant County Administrator, Assistants to the County Administrator, their respective support staff, any member of the Evaluation or Selection Committee appointed for the competitive solicitation, or Affected Person as

defined in subsection (a)(1).

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

(1) For any County Commissioner or the Commissioner's staff, a Cone of Silence shall be in effect during a Competitive Solicitation beginning upon the first meeting of the Evaluation Committee (for a Request for Proposals—RFP) or Selection Committee short listing (for a Request for Letters of Interest—RLI) or at the time of the opening of submissions in response to Invitations for Bids. For the County Administrator, Deputy County Administrator, Assistant County Administrator, Assistants to the County Administrator, their respective support staff, any member of an Evaluation or Selection Committee appointed for the competitive solicitation, or Affected Person as defined in subsection (a)(1), a Cone of Silence shall be in effect during a Competitive Solicitation upon the approval of the Selection Committee for a Request for Letters of Interest, upon the approval of the Evaluation Committee for a Request for Proposals, or at the time of advertisement for Invitations for Bids.

(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, 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 is not a member of the Evaluation or Selection Committee appointed for the competitive solicitation or an Affected Person as defined in subsection (a)(1).

(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 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 a Vendor or Vendor's Representative 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 . The writing shall also be attached to the Board agenda item for the award or for approval of the contract 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 Intergovernmental Affairs and 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 8½-16(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 Intergovernmental Affairs and 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 Intergovernmental Affairs and 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; Ord. No. 2011-06, § 1, 3-8-11)