

ORDINANCE NO. 2012-07-280

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING SECTION 2-765, OF THE CITY'S CODE OF ORDINANCES ENTITLED "CONE OF SILENCE"; PROVIDING FOR ADOPTION OF REPRESENTATIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City's Cone of Silence Ordinance applies to competitive solicitations for the purchase of goods and services, and

WHEREAS, solicitations and awards for goods and services, which are funded through the federal Community Development Block Grant ("CDBG"), Home Investment Partnership ("HOME") and the State Housing and Initiatives Partnership ("SHIP") programs are currently exempt from the cone of silence, and

WHEREAS, federal regulations require the City to secure competitive solicitations for goods and services funded through the CDBG program, and

WHEREAS, it is being recommended by City staff that the Cone of Silence Ordinance be amended to include these solicitations in the cone of silence,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. AMENDMENT: Section 2-765 of the City's Code of Ordinances is hereby amended as follows:

Sec. 2-765. - Cone of silence.

- (a) *Purpose.* A cone of silence shall be applicable to all requests for proposal (RFP), requests for qualification (RFQ), invitations to bid (ITB), RFLI, or any other advertised solicitations for the provision of goods and services, professional services, and public works or improvements for amounts greater than \$24,999.00, unless otherwise exempted in this section.
- (b) *Definition.* The term "cone of silence" means a prohibition on:
 - (1) Any communication regarding a particular RFP, RFQ, ITB, RFLI, or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist or consultant and the city's staff including, but not limited to the city manager and his/her staff;
 - (2) Any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and any member of the selection/evaluation committee therefor;
 - (3) Any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between a potential proposer, offeror, respondent, bidder, lobbyist, or consultant and the mayor and city council and their respective staff.
- (c) *Exemptions.* Notwithstanding the foregoing, the cone of silence shall not apply to:
 - (1) ~~Competitive processes for the award of CDBG, HOME, and SHIP Funds administered by the community development department;~~
 - (2) (1) Communications between a potential proposer, offeror, respondent, bidder,

consultant and city purchasing staff, prior to bid opening date or receipt of proposals, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;

- (3) (2) Duly noticed pre-bid/proposal conferences and site inspections;
- (4) (3) Duly noticed site visits to determine the competency of bidders/proposers regarding a particular solicitation during the time period between the opening of bids/receipt of proposals and the time the city manager presents his/her written recommendation to city council;
- (5) (4) Emergency procurements;
- (6) (5) Communications with the city attorney;
- (7) (6) Sole source procurements;
- (8) (7) Those purchases that are exempted from competitive requirements in accordance with section 2-757
- (9) (8) Bid waivers;
- (10) (9) Oral presentations before selection/evaluation committees and communications occurring during duly noticed meetings of selection/evaluation committees;
- (11) (10) Public presentations made to the city council and communications occurring during any duly noticed public meeting;
- (12) (11) Communications in connection with the collection of industry comments or the performance of market research regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation by the purchasing staff;

~~(13)~~ (12) Contract negotiations that occur after an award; and

~~(14)~~ (13) Any communication regarding a particular RFP, RFQ, RFLI, ITB or any other advertised solicitation between the city manager and his/her staff, and the mayor and city council and their staff.

(d) *Procedure.*

(1) *Imposition.* A cone of silence shall be imposed upon each RFP, RFQ, RFLI, ITB or any other advertised solicitation when the solicitation is advertised in a newspaper of general circulation. At the time of imposition of the cone of silence, the city manager or his/her designee shall issue a notice thereof to the affected department, the city clerk, mayor and city council and shall include in any advertised solicitation a statement disclosing that the solicitation is subject to the cone of silence.

(2) *Termination; city council awarding authority.* Except as otherwise provided herein, the cone of silence shall terminate at the date and time of the city council meeting where the award will be made; provided, however, that if the city council defers the matter to a future date, the cone of silence shall be reimposed until such time as the matter is brought back before the city council for further deliberation. In the event the city council decides to reject all bids, then the cone of silence shall be lifted.

(3) *City manager awarding authority.* Except as otherwise provided herein, the cone of silence shall terminate at the time the issuing department issues a written recommendation to the city manager; provided, however, that if the city manager refers the recommendation back for further review, the

cone of silence shall be reinstated until such time as the city manager issues a recommendation for award pending the bid protest period.

- (e) *Penalties.* Violation of the cone of silence by a particular bidder or proposer shall render the award to said bidder or proposer voidable by the city council. A violation of this section by a particular bidder, proposer, offeror, respondent, lobbyist or consultant shall subject said bidder, proposer, offeror, respondent, lobbyist or consultant to \$500.00 fine per violation and debarment.

Section 3. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 4. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the section of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

Section 6. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASSED ON FIRST READING ON THE 13th DAY OF JUNE, 2012.

PASSED ON SECOND READING ON THE 27th DAY OF JUNE, 2012.

ADOPTED AND PASSED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON THE 27th DAY OF JUNE, 2012.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: Vice Mayor Gilbert
Second by: Councilman David Williams Jr.

VOTE: 6-0

Mayor Shirley Gibson	<u>X</u> (Yes)	_____ (No)
Vice Mayor Oliver Gilbert, III	<u>X</u> (Yes)	_____ (No)
Councilman Aaron Campbell, Jr.	<u>X</u> (Yes)	_____ (No)
Councilman David Williams Jr	<u>X</u> (Yes)	_____ (No)
Councilwoman Lisa Davis	_____ (Yes)	_____ (No) (not present)
Councilwoman Felicia Robinson	<u>X</u> (Yes)	_____ (No)
Councilman Andre' Williams	<u>X</u> (Yes)	_____ (No)