

PROPOSED

ORDINANCE NO.

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE CONE OF SILENCE; REPEALING AND REPLACING SECTION 1-266 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, the Broward County Cone of Silence Ordinance, Section 1-266 of the Broward County Code of Ordinances, limits permitted communication between prospective vendors of Broward County and certain representatives of Broward County ("County") or members of the Board of County Commissioners ("Board") during the pendency of a Competitive Solicitation; and

WHEREAS, the Board finds it appropriate at this time to repeal and replace the Cone of Silence Ordinance to clarify these limitations and to conform its provisions to the recently adopted Procurement Code,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Section 1-266 of the Broward County Code of Ordinances is hereby repealed in its entirety and reenacted to read as follows:

[Underlining omitted]

1 **Sec. 1-266. Cone of Silence.**

2 (a) *Definitions.* For purposes of this section, use of the plural shall include the
3 singular, and use of the singular shall include the plural. Any terms used in this section
4 but not defined herein have the same meaning as defined in Chapter 21 of the Broward
5 County Administrative Code (the "Procurement Code"). The following additional
6 definitions apply unless the context in which the word or phrase is used requires a
7 different definition:

8 *Commissioner Office* means any County Commissioner and/or any staff member
9 reporting to the County Commissioner or otherwise directly assigned to work in that
10 County Commissioner's office.

11 *Competitive Solicitation* has the meaning ascribed to it in the Procurement Code.
12 In addition, as used herein, the term "Competitive Solicitation" includes a solicited public
13 private partnership as well as an Unsolicited Public Private Partnership as defined herein.

14 *Cone of Silence* means a prohibition on certain communication between certain
15 persons regarding a particular Competitive Solicitation, as further detailed in this
16 Section 1-266.

17 *County Staff* means employees of the County, regardless of their role or
18 participation (if any) in the Competitive Solicitation, and any other person engaged by the
19 County to perform services relating to the Competitive Solicitation, except for persons
20 expressly excepted herein. The following persons are not "County Staff" unless such
21 persons are voting members of the Evaluation Committee for the Competitive Solicitation:
22 the employees of the Purchasing Division; the designated Project Manager(s) or their
23 designee(s); the Small Business Development Specialist Supervisor designated by the
24 Director of the Broward County Office of Economic and Small Business Development

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1 (“OESBD”) to answer any questions related to the Competitive Solicitation; the Broward
2 County Chief Financial Officer; employees of the Office of the County Attorney; and
3 employees of the Office of the County Auditor.

4 *Unsolicited Public Private Partnership or Unsolicited P3* means an unsolicited
5 proposal for a public private partnership submitted under Section 255.065, Florida
6 Statutes, as amended.

7 *Vendor’s Representative* means an owner, individual, employee, partner, officer,
8 or member of the board of directors of a Vendor, or a consultant, lobbyist, or actual or
9 potential subcontractor or subconsultant who acts at the behest of a Vendor in
10 communicating regarding a Competitive Solicitation.

11 (b) *Prohibited communication.* Except as set forth in section (e) below, a Cone
12 of Silence shall be in effect for all communications, oral or written, relating to a
13 Competitive Solicitation, at any point during the time periods stated in section (c) below,
14 between any of the following persons:

15 (1) Any person or entity, including a Vendor or Vendor’s Representative, that
16 seeks a contract, award, recommendation, or approval for the Competitive
17 Solicitation, or is subject to being evaluated, or having its response
18 evaluated, in connection with the Competitive Solicitation; and

19 (2) Any of the following: a Commissioner Office, County Staff, or a member of
20 the Evaluation Committee for the Competitive Solicitation.

21 (c) *Effective dates.*

22 (1) Except for Unsolicited P3s, the Cone of Silence shall begin upon
23 advertisement of the Competitive Solicitation. For Unsolicited P3s, the Cone
24 of Silence shall begin as follows: for the Vendor that submitted the proposal,

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1 upon the County's receipt of the proposal; and for all other Vendors, upon
2 decision by the County to advertise a Competitive Solicitation for the subject
3 matter of the proposal.

4 (2) The Cone of Silence shall terminate at the earliest of the following: the time
5 the Board of County Commissioners ("Board") or other award authority
6 (i) makes final award or approves the contract for the Competitive
7 Solicitation, (ii) rejects all bids or responses to the Competitive Solicitation,
8 or (iii) takes other action that ends the Competitive Solicitation, or (iv) the
9 time the Board determines not to advertise a Competitive Solicitation for the
10 applicable Unsolicited P3.

11 (d) *Notice.* Notice of the applicability of the Cone of Silence and a reference to
12 this Section 1-266 shall also be included in the solicitation documents for each
13 Competitive Solicitation. Upon receipt of an Unsolicited P3, the County Administrator will
14 provide written notice to the submitter of the applicability of the Cone of Silence. Upon
15 decision by the County to advertise a Competitive Solicitation for the subject matter of an
16 Unsolicited P3, the Purchasing Division shall post notice of the applicability of the Cone
17 of Silence on the Purchasing Division's website. The notice shall describe generally the
18 subject matter of the forthcoming Competitive Solicitation for the subject matter of the
19 Unsolicited P3.

20 (e) *Permitted communication.*

21 (1) Nothing contained in this section shall prohibit communication between
22 County employees or between a Commissioner Office and County
23 employees.
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1 (2) Nothing contained in this section shall prohibit a Commissioner Office or
2 County Staff from initiating contact with a Vendor or Vendor's
3 Representative for the purpose of obtaining further information regarding a
4 Competitive Solicitation other than an Unsolicited P3, or the Vendor's
5 response to such contact or communication initiated by the Commissioner
6 Office or County Staff.

7 (3) The Cone of Silence shall not apply to communications with employees of
8 the Office of the County Attorney or the Office of the County Auditor, or with
9 any other County employees that are expressly excepted from the scope of
10 County Staff, as defined herein, provided that such person is not a member
11 of the Evaluation Committee appointed for the Competitive Solicitation if an
12 Evaluation Committee has been appointed.

13 (4) Nothing contained in this section shall prohibit a Vendor or Vendor's
14 Representative from:

15 a. Making presentations at pre-bid conferences or at a public meeting
16 related to the Competitive Solicitation;

17 b. Engaging in contract negotiations related to the Competitive
18 Solicitation after notice of proposed ranking or proposed award of the
19 Competitive Solicitation;

20 c. Making a presentation to the Board, including responding to
21 questions posed by the Board, during any public meeting of the
22 Board;

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- d. Communicating with the person(s) designated in the Competitive Solicitation as the contact person(s) for information related to the Competitive Solicitation;
- e. Communicating with the representative of the Small Business Development Specialist Supervisor designated by the Director of OESBD to answer questions related to the Competitive Solicitation; or
- f. Communicating in writing as provided in section (5) below.

(5) The Director of Purchasing or designee shall accept written communications from a Vendor or Vendor's Representative at any time the Cone of Silence is in effect. Such writing, including any response thereto, shall be provided by the Director of Purchasing or designee as follows: if an Evaluation Committee has been appointed, to the Evaluation Committee sufficiently in advance of evaluation and ranking to permit appropriate review under the circumstances; and to the Board or other awarding authority, prior to consideration of the request for award of the Competitive Solicitation or approval of the contract for the Competitive Solicitation, or within three (3) days after the writing is received or the response is provided (as applicable) if the writing was received or the response was provided after approval of the award or contract, as applicable.

(f) *Violations.*

(1) A complaint alleging a violation of this section may be filed with the County's Professional Standards/Human Rights Section. In each such instance, an investigation shall be performed by the Professional Standards/Human

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1 Rights Section and the results of each investigation, including any
2 determination of violation, shall be set forth in a written report issued within
3 180 days after receipt of the complaint, unless the Director of the
4 Professional Standards/Human Rights Section determines in writing that
5 additional time is required in which event the time shall be extended by an
6 additional 30 days. If there is a determination of violation, a fine shall be
7 imposed as provided in Section 8½-16(f) of the Broward County Code of
8 Ordinances.

9 (2) A copy of the written report and notice of the imposition of a fine, if any, shall
10 be provided via e-mail (if no e-mail is available, then via U.S. mail, certified
11 or return receipt requested) to the Vendor and any other person or entity
12 that was investigated in connection with the complaint.

13 (3) Any Vendor, person, or other entity determined by the Professional
14 Standards/Human Rights Section to have violated the Cone of Silence may
15 appeal such determination within the time and in the manner provided in
16 Part XII ("Appeals") of the Procurement Code. If the determination is timely
17 appealed and a decision is rendered by a hearing officer, the decision of the
18 hearing officer shall be the final determination. If no appeal is timely filed or
19 a decision is not rendered by the hearing officer, the determination of the
20 Professional Standards/Human Rights Section shall be the final
21 determination.

22 (4) After the final determination, a copy of the final determination shall be
23 furnished to the Board, the Vendor, and any other person or entity that was
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1 investigated. Notice and demand for payment of any fine imposed shall be
2 included with the final determination.

3 (5) At the sole discretion of the Board, a determination of violation shall render
4 voidable any award of the applicable Competitive Solicitation to a Vendor
5 found to have violated the Cone of Silence.

6 (6) If a Vendor is determined to have violated the Cone of Silence on three or
7 more occasions within the prior five-year period, the Director of Purchasing
8 shall initiate debarment proceedings against the Vendor pursuant to Part XI
9 of the Procurement Code.

10 (g) *Direct Procurement Authority and Unsolicited P3s*. Notwithstanding
11 anything stated otherwise in this Section 1-266, unless otherwise expressly approved by
12 the Board, the following provisions shall govern the application of the Cone of Silence for
13 any Competitive Solicitation in which the Board is the direct procurement authority
14 pursuant to Section 21.7 of the Procurement Code, and with regard to any Unsolicited
15 P3, as applicable:

16 (1) For any Competitive Solicitation in which the Board is the direct
17 procurement authority, the Cone of Silence shall begin for the
18 Commissioner Offices immediately upon approval of the Competitive
19 Solicitation and shall remain in effect until the agreement resulting from the
20 Competitive Solicitation is awarded or the Board takes other action that
21 ends the procurement.

22 (2) For any Competitive Solicitation in which the Board is the direct
23 procurement authority and for any Unsolicited P3, no Commissioner Office
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1 may initiate contact with a Vendor or a Vendor’s Representative while the
2 Cone of Silence is in effect.

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4 Section 2. Severability.

5 If any portion of this Ordinance is determined by any court to be invalid, the invalid
6 portion will be stricken, and such striking will not affect the validity of the remainder of this
7 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
8 legally applied to any individual, group, entity, property, or circumstance, such
9 determination will not affect the applicability of this Ordinance to any other individual,
10 group, entity, property, or circumstance.

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12 Section 3. Inclusion in the Broward County Code of Ordinances.

13 It is the intention of the Board of County Commissioners that the provisions of this
14 Ordinance become part of the Broward County Code of Ordinances as of the effective
15 date. The sections of this Ordinance may be renumbered or relettered and the word
16 “ordinance” may be changed to “section,” “article,” or such other appropriate word or
17 phrase to the extent necessary in order to accomplish such intention.

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Section 4. Effective Date.

This Ordinance is effective as of April 1, 2022.

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By /s/ Fernando Amuchastegui 01/05/2022
Fernando Amuchastegui (date)
Senior Assistant County Attorney

By /s/ René D. Harrod 01/05/2022
René D. Harrod (date)
Chief Deputy County Attorney

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