



Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

TO: Bruce Adams, Director
Office of Community Partnerships

FROM: Marc P. Hansen *Marc Hansen*
Deputy County Attorney

DATE: July 16, 2008

RE: Nonprofit participation in the solicitation process and other County
decisionmaking

You have asked for a description of the circumstances under which nonprofit organizations “can be at the table and when they can’t be at the table for policy/program discussions” with staff from County using departments.¹ You indicate that the nonprofit organizations that your Office works with wish to avoid violating any County rules that would prevent a nonprofit from submitting an offer in response to a County solicitation.

Generally, the public has the right to communicate with the government. From that perspective, individuals and entities, including nonprofit organizations, may provide suggestions, information, or comments to the County departments at any time regarding any matter, including planned procurements. This does not mean, however, that the County must adopt the suggestions or proposals it receives, or meet with nonprofit organizations to discuss matters of mutual importance; the County’s legal obligation is limited to accepting the information offered.

There may be occasions when the County seeks input, such as when it is considering a

¹ In Procurement parlance, a using department is a County department that initiates a solicitation to procure goods, services, or construction on behalf of the County. The using department also generally administers the contract awarded as a result of the solicitation. A solicitation generally takes the form of a Request for Proposals or an Invitation for Bids.

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new program or revising an existing one. Whether a task force is created or the information is sought less formally by seeking information from specific nonprofit organizations, the key factor for those requests is that the process should lead to the acquisition of information that does not result in a solicitation that is biased in favor of a subset of potential bidders.

Aside from the general sharing of information, there are two statutory provisions that directly impact on the ability of a nonprofit² to discuss policy and program issues concerning a County solicitation with the County department responsible for issuing the solicitation:

1. A nonprofit may discuss matters that are directly related to a solicitation that a using department plans to issue. Participation in these discussions will not preclude the nonprofit from submitting an offer in response to a solicitation or receiving a contract award under the solicitation, IF the nonprofit is not being compensated by the County for the nonprofit's input.³

2. Although a County employee may obtain information from others for the purpose of determining the contents of a solicitation, the County employee must not release specific information concerning the solicitation until the solicitation is publicly issued.⁴ If a nonprofit obtains information concerning the specific contents of a solicitation before the solicitation has been publicly issued, the nonprofit should contact the Director of the Department of General Services so that remedial action may be taken.

Note that neither of these situations alters the ability of the County to determine the need for input or discussions, nor does it diminish the ability of the County to make its own decision as to whether to establish or revise a particular policy or program.

Either I or Leon Rodriguez will attend next week's meeting and would be happy to share these points with you and the group at that time. In the meantime, if you have any questions regarding this advice, or need additional amplification, please let me know.

cc: Leon Rodriguez, County Attorney
David Dise, Director, Department of General Services
Karen Federman Henry, Chief, Division of Finance and Procurement

² These rules are not limited to nonprofit entities. These rules apply to any individual or organizational entity that participates in a County procurement.

³ See Section 11B-52, Montgomery County Code (2004). "A contractor providing an analysis or recommendation to the County concerning a particular matter must not, without first obtaining the written consent of the Chief Administrative Officer: . . . (2) seek or obtain an economic benefit from the matter in addition to payment to the contractor by the County."

⁴ See Section 3.1.1, Montgomery County Procurement Regulations.

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