

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE
117 WEST DUVAL STREET
SUITE 480
JACKSONVILLE, FL 32202
PHONE: (904) 255-5050



MEMORANDUM

TO: Honorable Council Members

FROM: Jason R. Gabriel, General Counsel

RE: Ex Parte (a/k/a Cone of Silence) Guidelines; JEA Invitation to Negotiate

DATE: September 24, 2019

I. Purpose & Background

The purpose of this memorandum is to provide you with simple guidelines on Ex Parte (a/k/a Cone of Silence) communication requirements with respect to the procurement process related to the JEA's exploration of potential recapitalization, namely, JEA Invitation to Negotiate #127-19 for Strategic Alternatives issued on August 2, 2019 (the "ITN"). This memo summarizes and supplements previously issued guidance on this topic pursuant to a memorandum issued by this office dated August 27, 2019.

In government procurement, the ex parte communications restriction is commonly referred to as the "cone of silence." The essential purpose of the cone of silence rules is to ensure fair, transparent, ethical and open competition in the procurement process and to secure the best values for the government at the lowest possible expense.¹ The cone of silence for the ITN began on August 2, 2019² and will remain in effect until JEA (through its Board) makes a contract award³ (the "Cone of Silence Period"). The Cone of Silence Period will also apply to any bid protests and remain in effect until JEA resolves such protests (i.e., grant or deny). As discussed, the Council⁴ is a clear *potential* decision-maker in the ITN procurement process. This is a function of the City Charter. In particular, Section 21.04(p), Charter sets forth the following:

Nothing in this article shall authorize or be construed to authorize JEA to transfer any function or operation which comprises more than ten percent of the total of the utilities system by sale, lease or otherwise to any other utility, public or

¹ *Wester v. Belote*, 138 So. 721 (Fla. 1931).

² The JEA Solicitation is available at jea.com/strategicalternatives.

³ Any JEA Board contract award under this solicitation is subject to Council approval and subsequent voter referendum. Section 21.04, JEA Charter.

⁴ The Mayor is also a *clear potential* decision-maker in the JEA ITN Solicitation procurement process. Thus, the guidelines also apply to the Mayor, including his immediate Mayoral staff.