



# Memorandum



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To: The Honorable Carlos A. Gimenez, Mayor, Miami-Dade County  
The Honorable Audrey M. Edmonson, Chairwoman  
and Members, Board of County Commissioners, Miami-Dade County  
The Honorable, Harvey Ruvin, Clerk of the Courts of Miami-Dade County

From: Mary T. Cagle, Inspector General 

Date: April 22, 2020

Subject: OIG Final Report Re: Beach Corridor RFP Disclosure of Confidential Information Review, Ref. IG 20-0002-I

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Attached please find the above-captioned Final Report issued by the Office of the Inspector General (OIG). The Final Report details the OIG's review of the disclosure of confidential information relating to the Beach Corridor Request for Proposal No. RFP-01353 by a Clerk of the Board (COB) employee during a response to a public records request. The Final Report contains the OIG's independently established timeline of events surrounding the disclosure, and provides our findings relating to how the disclosure occurred, the extent of the disclosure, and the effect of the disclosure.

After a review of all available information, the OIG concludes that the COB employee, in responding to a public records request, did not intentionally disclose confidential information. A misinterpretation of the response period in COB policies resulted in the release of records prior to receiving redactions from the ISD Procurement Officer. It is clear, however, that the County would not have discovered the breach but for the requestor's (the law firm of Bilzin Sumberg Baena Price & Axelrod, LLP [Bilzin]) notification to the County that it had inadvertently received confidential information that it should not have received.

The information that was disclosed will not affect RFP-01353 from proceeding as a fair procurement to all parties. In addition to our findings and conclusions, our report contains several recommendations to prevent such disclosures in the future while ensuring that the COB remains responsive to public records requests.

The OIG appreciates the cooperation of the Clerk's Office, the Internal Services Department, the County Attorney's Office, and Bilzin throughout this entire review. Although our review, which took place in the middle of an active procurement process, was time consuming for those individuals interviewed, the process was crucial in order to ensure a fair, impartial, and transparent procurement. We look forward to our continuing work with the COB and ISD on the specific recommendations; at this time, however, the

OIG is not requesting any written follow-up replies. The OIG will reach out to the COB and ISD as soon as practical, given the current public health emergency created by the Covid-19/novel Coronavirus, to ensure that they are moving forward with the implementation of new procedures, including the OIG's recommendations, regarding the protection of confidential information in future procurements. The OIG is continuing our contract oversight monitoring of the Beach Corridor RFP and will do so through all phases of the procurement process.

#### Attachment

cc: Abigail Price-Williams, County Attorney  
Edward Marquez, Deputy Mayor  
Tara Smith, Director, Internal Services Department  
Namita Uppal, Chief Procurement Officer, Internal Services Department  
Cathy Jackson, Director, Audit and Management Services Department  
Yinka Majekodunmi, Commission Auditor  
Parties previously provided with the Draft Report (under separate cover)

**MIAMI-DADE COUNTY**  
**OFFICE OF THE INSPECTOR GENERAL**



**FINAL REPORT**

**IG20-0002-I**

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*Beach Corridor RFP Disclosure of Confidential Information Review*

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**April 22, 2020**

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**I. INTRODUCTION & SYNOPSIS**

On February 13, 2020, the Office of the Inspector General (OIG) was notified by the Miami-Dade County Attorney's Office (CAO), at the request of the Miami-Dade County Internal Services Department (ISD), that in responding to a public records request a Clerk of the Board employee transmitted confidential information to an unauthorized party. The CAO learned of the disclosure of confidential information from Mr. Albert Dotson, Managing Partner of the law firm Bilzin Sumberg Baena Price & Axelrod, LLP (Bilzin), the firm that inadvertently received the confidential information. In response to a Bilzin public records request, the Clerk of the Board (COB) sent an email with several attachments containing confidential information. Specifically, the confidential information was Miami-Dade County's (County's) responses to Alternative Technical Concepts Proposals submitted to the County as part of the Request for Proposal No. RFP-01353 for Rapid Mass Transit Solution for the Beach Corridor Trunk Line (RFP-01353).

The OIG conducted a review of the incident to independently establish a timeline of events surrounding the disclosure, to identify how the disclosure occurred, and, to the extent possible, determine if the email attachments were opened, read, and disseminated. Our review also sought to verify that any and all copies of the confidential attachments have been deleted by the recipient. Last, our review sought to identify what steps can be taken to prevent such disclosures in the future while ensuring that the COB remains responsive to requests.<sup>1</sup>

At the time of the notification to the OIG, the County was in the middle of a competitive procurement process to select a developer and award a contract to "...design, permit, construct/build, finance, manage, operate, and maintain a Rapid Mass Transit Solution on the Beach Corridor Trunk Line of the County's SMART Plan...intended to connect the Downtown Miami/Overtown (Mainland) area to South Beach..."<sup>2</sup> After receiving and reviewing an Unsolicited Proposal on May 2, 2019, for a Beach Corridor Trunk Line, the County decided to proceed with an RFP. RFP-01353 was issued September 17, 2019.

The solicitation included the opportunity for proposers to request participation in an Alternative Technical Concepts (ATC) Process. The ATC Process allows proposers to present the County with innovative technical modifications to the criteria in the RFP that are equal to or better than the requirements of the RFP. The concepts proposed must provide innovative and technical solutions that enhance and increase efficiency from the requirements in the RFP document. The process is confidential to encourage the free exchange of innovative concepts that may contain proprietary information.

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<sup>1</sup>This review was conducted in accordance with the *Principles and Standards for Offices of Inspector General* and the *Quality Standards for Inspections, Evaluations, and Reviews* as promulgated by the Association of Inspectors General.

<sup>2</sup> RFP-01353 Section 1 Solicitation Overview.

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RFP-01353 required that proposers wishing to participate in the ATC Process request participation. The County provided two individual negotiation meetings with the ATC proposers and a deadline of December 27, 2019, for final submissions of ATCs. The County reviewed the ATC proposal submissions and approved, rejected, or approved based on modifications. An ATC proposal is not a prerequisite in order to submit the RFP proposal; therefore, the ATC responses may or may not be incorporated into the final RFP proposal. However, if a proposer does submit an ATC as part of its RFP response, the proposer must have participated in the ATC process and no modifications to the final ATC submitted on December 27, 2019, other than those requested by the County, are allowed. The RFP proposals were due March 17, 2020.

As part of the review, the OIG interviewed, under oath, the project manager, Beth Goldsmith, CPPB,<sup>3</sup> Chief Negotiator, ISD. The OIG examined the available documentation regarding the interactions with Bilzin and the COB to determine an accurate timeline of their notification and response to the incident. Bilzin's Managing Partner, Albert Dotson, and Associate Elise Holtzman Gerson (the recipient of the email) were interviewed under oath regarding the incident. The OIG also took sworn statements from COB personnel, including Ms. Olga Valverde (the sender of the email).

The OIG also contacted Bilzin's Chief Information Officer, Juan Torres, the individual in charge of Bilzin's Information Technology (IT), to learn what steps were taken to ensure that Bilzin had permanently deleted and not disseminated the email and its attachments. Mr. Torres conducted an internal investigation, to assist in determining – to the extent possible – if the email or its attachments were opened, shared, and were still accessible to anyone within the firm. A summary of the IT investigation was provided to the OIG, advising that the email has been deleted and was not forwarded, sent, or shared from Bilzin's servers.

After a review of all available information, there is no evidence to suggest that the Bilzin firm, as an inadvertent recipient, shared or inappropriately handled the email message and attachments in question once the disclosure was discovered. The OIG believes, based on the assessment of the ISD procurement officer and a reading of the disclosed documents, that the information disclosed will not affect RFP-01353 from proceeding as a fair procurement to all parties. Although a disclosure of confidential information is not a desired event in any procurement, the information disclosed is of limited to no value to a potential competitor in this solicitation. The actual ATC responses by proposers that would contain innovative concepts, proprietary information, or trade secrets were not attached nor disclosed. Last, our review has identified several areas that can be improved

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<sup>3</sup> Certified Professional Public Buyer (CPPB), is a designation bestowed by the Universal Public Procurement Certification Council to individuals that have demonstrated a level of knowledge, education, and experience to perform the work of a public procurement buyer.

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upon to ensure that confidential information is not disclosed in response to public records requests and that the COB remains responsive to requests.

Following our jurisdictional statement and review methodology, the report contains a section providing background information on the RFP, the Alternative Technical Concepts Process, and the Cone of Silence and COB responsibilities. Following the background, in order to give context to the OIG's analysis, we provide a timeline of events and factual findings explaining the events leading up to and following the disclosure. The report next discusses the OIG's analysis of the events to determine, to the extent possible, how the disclosure incident occurred, the extent of the breach, and the steps taken in remediation. The report's final section contains the OIG's conclusions and recommendations.

## **II. OIG JURISDICTIONAL AUTHORITY**

In accordance with Section 2-1076 of the Code of Miami-Dade County, the Inspector General has the authority to make investigations of County affairs; audit, inspect and review past, present and proposed County programs, accounts, records, contracts, and transactions; conduct reviews, audits, inspections, and investigations of County departments, offices, agencies, and boards; and require reports from County officials and employees, including the Mayor, regarding any matter within the jurisdiction of the Inspector General.

## **III. REVIEW METHODOLOGY**

During the review, the OIG was provided access to email communications, by the COB, ISD, and the Bilzin law firm. The OIG also reviewed the procurement documents issued under the RFP, as well as the confidential attachments that were submitted to Bilzin in response to its public records request.

This review required the OIG to conduct numerous interviews. From the Clerk's Office, the OIG interviewed Linda Cave, Director, Clerk of the Board, Mark Martinez, Chief Deputy Clerk, Keith Knowles, Senior Clerk, Shania Momplaisir, Senior Clerk and Olga Valverde, Commission Clerk III. From Bilzin, the OIG interviewed attorneys, Albert Dotson, Managing Partner, and Elise Holtzman Gerson, Associate Attorney. From the Internal Services Department (ISD), the OIG interviewed Beth Goldsmith, Chief Negotiator, who also happens to be the assigned Project Manager on RFP-01353. All the above-named individuals were interviewed by the OIG under oath. Bilzin also provided the OIG with an opportunity to meet with Chief Information Officer, Juan Torres, the head of its IT department and ask detailed questions about the Bilzin system and its capabilities. In addition, Mr. Torres agreed to conduct an internal review of the system and report his findings to the OIG. Last, the OIG spoke with Assistant County Attorneys

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(ACAs) Oren Rosenthal and Mike Valdes to learn of their knowledge of Bilzin's disclosure and receipt of the email attachments from the COB.

#### **IV. BACKGROUND**

##### **A. Request for Proposal No. RFP-01353**

As part of the County's effort to improve rapid transit corridors within the County, the Strategic Miami Area Rapid Transit (SMART) Plan was adopted by the Miami-Dade Transportation Planning Organization's Board in 2016. The SMART Plan identified six rapid transit corridors to implement mass transit projects within the County. The Beach Corridor, which connects Downtown Miami/Overtown to the City of Miami Beach is one such corridor identified as an optimal route to alleviate traffic and improve connectivity. Department of Transportation and Public Works (DTPW) is the lead agency in implementing the objectives of the SMART Plan for the Beach Corridor.

On May 2, 2019, the County received an Unsolicited Proposal for a Beach Corridor transit line connecting mainland Miami to Miami Beach. The County decided to issue a Request For Proposal to "...design, permit, construct/build, finance, manage, operate, and maintain a Rapid Mass Transit Solution on the Beach Corridor Trunk Line of the County's SMART Plan."<sup>4</sup> In addition to meeting the need to create mass transportation between two densely populated areas of the County, the solicitation seeks a "...Multimodal Hub of the Project to be built on the Mainland that must be in close proximity to or connect to either Metrorail or Metromover, and major bus routes that feed into the Solution."<sup>5</sup> RFP-01353, was issued by ISD's Strategic Procurement Division for DTPW.

The procurement officer and County contact for the solicitation is Ms. Beth Goldsmith, CPPB, Chief Negotiator with ISD. The solicitation contemplates that the County will enter into an Interim Agreement with the winning bidder to be followed by a Project Agreement for the design, construction, management, and operation of the Beach Corridor Trunk Line for a term of thirty (30) years with two (2) ten (10) year options to renew. RFP-01353 was issued September 17, 2019. The solicitation included the opportunity for proposers to request participation in an ATC Process.

##### **B. Alternative Technical Concepts**

The ATC process allows bidders to present and describe ideas and changes to the County's supplied criteria, scope, or design, in order to present innovative technical or construction solutions that are equal to or better than the minimum technical criteria

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<sup>4</sup> RFP-01353 Section 1 Solicitation Overview.

<sup>5</sup> RFP-01353 Section 3.2 Project Objectives/Scope.

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required in the RFP solicitation. This process is new to County procurement, and its use in RFP-01353 is the first time the County has used the process in a solicitation for goods and services. As set forth in Section 2.15 of RFP-01353 the ATC process "...allows innovation, flexibility, time, and cost savings on the design and construction." ATCs proposals that reduce the scope, quality, performance, or reliability of the project, or proposals that contain elements already contemplated within the County's minimum technical criteria, could be deemed nonresponsive.

In order to submit an ATC, a proposer had to first request to participate in the ATC process. Proposers were not limited in the number of ATCs they could submit. The deadline to request to participate in the ATC process was originally set as October 18, 2019, but was extended by Addendum No. 5 to November 6, 2019. Following the intent to participate, the County held two separate rounds of "Individual Negotiation Meetings" with each proposer to discuss the ATCs. The purpose of the Individual Negotiation Meetings was to provide the proposers and the County with an opportunity to discuss and review relevant information, as well as answer questions related to the ATC proposals prior to a formal ATC submittal. At the Individual Negotiation Meetings, the County was represented by appropriate personnel from the various areas related to the project and allowed technical advisors and representatives from key stakeholders to attend.

The Individual Negotiation Meetings were recorded in accordance with Section 286.0113(2)(b)(1) of the Florida Statutes. ATC submissions and related correspondence, including the recordings of the Individual Negotiation Meetings, are to be maintained as confidential until 30 days after submission of the Proposals or the award recommendation, whichever comes first, in accordance with Section 119.071(1)(b)(2), Florida Statutes.

After the Individual Negotiation Meetings were held, proposers had until December 27, 2019, to submit their final formal ATC. According to Beth Goldsmith, the ATC proposals were submitted through BidSync, which contained a specific Alternative Technical Concept Submittal mechanism identified as RFP-01353-ATC-SUBMISSION. This submission mechanism for the ATCs is different and apart from the submission mechanism in BidSync for the RFP proposal, in that it allowed the submission of the ATCs to be and remain confidential. Importantly, pursuant to Section 2.15.2 of RFP-01353: "The County shall not approve any final ATC submittal that has not been previously submitted as a draft ATC submittal and discussed at an Individual Negotiation Meeting with the County."

After receipt of the final ATC submittals the County, on January 28, 2020, notified the proposers in writing if their ATCs were:

- Approved
- Approved with modifications or
- Rejected

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Only ATCs that were approved or approved with modifications, could be submitted in the final proposal due on March 17, 2020. Including an ATC in the final proposal was optional and not mandatory or fatal to any proposal.

**C. Section 2-11.1(t) of the Code of Miami-Dade County - Cone of Silence and Clerk of the Board Requirements**

Section 2-11.1(t) of the Code of Ethics, establishes a Cone of Silence for certain County procurements during which communications are restricted. The Cone of Silence begins upon the advertisement of a procurement and ends upon the Mayor's written recommendation to the Board of County Commissioners (BCC) regarding the procurement's award. When the Cone of Silence is in effect, certain classes of persons—such as proposers, lobbyists, or consultants—are prohibited from any oral communications about the procurement with other persons—such as the County's staff. Communications in writing, unless restricted by the RFP documents or directed to the members of the Competitive Selection Committee, are allowed if a copy of the written communication is filed with the COB.

Administrative Order No. 3-27 sets out the policy of Miami-Dade County as it relates to the Cone of Silence restrictions found in Section 2-11.1(t) of the Code of Miami-Dade County, and delineates certain responsibilities of the COB. Specifically, any written correspondence filed with the COB concerning an RFP, shall be made available to any person upon request. In addition, the COB shall maintain a log and file of all written communications.

RFP-01353 was advertised on September 17, 2019, at that time the Cone of Silence was imposed and written communications regarding the RFP should have been copied to the COB. Generally, communications that are copied to the COB during a procurement's Cone of Silence period are public records as defined in Florida Statute 119.07 and are subject to disclosure upon request. In order to obtain a copy of any communication related to RFP-01353, a requestor had to contact the COB, and could make a public records request through email at [clerkbcc@miamidade.gov](mailto:clerkbcc@miamidade.gov).

Although the ATC proposals were submitted through the confidential link in BidSync, the County's January 28, 2020, responses to the ATCs were emailed to the proposers and copied to the COB in accordance with the Cone of Silence. It was the County's confidential responses to the ATCs that were emailed to Bilzin by the COB in response to a public records request.

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**V. OIG VERIFIED TIMELINE and FACTUAL FINDINGS**

Based on documents obtained from all parties and the interviews conducted, the OIG was able to establish a chronology of events and make the following factual findings relating to the matter under review.

**September 18 – October 18, 2019**

According to Ms. Goldsmith, since ISD was aware that there would be an exchange of confidential records during the time the Cone of Silence was in effect, she spoke with Ms. Olga Valverde at the COB to discuss a procedure to maintain confidentiality in response to public records requests made to the COB. Among various other responsibilities, Ms. Valverde was at that time responsible for responding to all public records requests made regarding any Miami-Dade County solicitation document filed with the COB. Ms. Valverde was also responsible for monitoring the email account of the COB and filed all procurement related emails into folders by month, as they were received. She also maintained folders for awards and recommendations and for public records requests. According to Ms. Valverde she archived, in the COB Outlook folders, between eight and nine thousand emails a month.

Ms. Goldsmith advised the OIG that she was aware that on a different procurement an ISD Procurement Manager had reached an arrangement with the COB on how to handle confidential documents. She recalled speaking to Ms. Valverde after the RFP solicitation had been advertised, September 17, 2019, but before the intent to participate in the ATC process was first due on October 18, 2019.<sup>6</sup> Ms. Goldsmith indicated that she discussed using the same process previously established with Ms. Valverde for RFP-01353. Ms. Goldsmith stated that Ms. Valverde agreed to send her an email with attached documents that had been identified as responsive to a public records request for Ms. Goldsmith's review. Ms. Goldsmith would then delete from the attachments any documents that were not subject to disclosure and forward to Ms. Valverde the remaining documents that could be provided in response to the public records request. Ms. Goldsmith advised Ms. Valverde that ATC or Alternative Technical Concepts in the subject line of her emails could indicate the email contained confidential information.

The OIG learned from the COB employees interviewed that around this same time –mid-September to mid-October – the COB became concerned about the potential to inadvertently disclose confidential information on another procurement, after an inquiry by that solicitation's procurement officer. Although no confidential information had been

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<sup>6</sup> At the time of Ms. Goldsmith's statement to the OIG her recollection was that the initial ATCs intent to participate responses were first due October 14, 2019. The date listed on the RFP document is October 18, 2019. Regardless, the date was changed to November 6, 2019, by Addendum No. 5 to the RFP.

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disclosed, the COB management used the inquiry as an opportunity to establish procedures to ensure no confidential information was inadvertently disclosed.

COB Director Linda Cave, and Senior County Commission Clerks Shania Momplaisir and Keith Knowles created the procedures with the oversight of Senior Deputy Clerk Mark Martinez. On October 9, 2019, Mr. Knowles sent out an email to COB employees specifying the procedures for handling public records requests. The procedures included instructions on how to handle public records requests for procurement records containing confidential information. The email states:

*Request for RFP's/Bid Projects, etc. These requests are sent through the Clerk of the Board's email address and are usually handled by Olga [Ms. Valverde], or any employee assigned by a Supervisor, who shall proceed as follows:*

1. *Forward the response with the corresponding attachments to the Project Manager with the following language: **"Please Review the attached documents, as they will be forwarded in response to a Public Records Request. Contact us immediately if they [sic] are any concerns. If no concerns, we will move forward with sending the attachments to the customer after 2 business days."***
2. *Give the project manager 2 business days to respond, as indicated in your email. If no response is received, move forward with sending the request to the customer.*
3. ***cc your Supervisor and [ClerkBCC@miamidade.gov](mailto:ClerkBCC@miamidade.gov) on all responses.***
4. *Refer to **routine public records request** above to access the Public Records Request log and **follow steps 2-5.** (Emphasis in the original)*

**Tuesday, February 3, 2020**

On February 3, 2020, Ms. Elise Holtzman Gerson, Esq., sent a public records request to Ms. Valverde requesting RFP-01353 records. Ms. Gerson, an attorney in the Land Development and Government Relations division at Bilzin was interviewed by the OIG. She explained that she regularly makes public records requests on procurements related to her work for the firm. She sends requests to Ms. Valverde and directly to the contracting officer on any given project. At 8:45 a.m., Ms. Gerson sent the following email message to Ms. Valverde:

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*Good morning Olga,  
I hope you had a nice weekend. When you have the chance, could you please send me any communications received by the Clerk since Monday, January 20, regarding the following?*

- *RFP-01353...*

According to Ms. Valverde, she maintained electronic email folders in Outlook under the COB inbox. For any communication she received related to a procurement project under the Cone of Silence Ms. Valverde copied it to the COB account. She archived the emails sent to the COB email account into project folders using the project number so she could readily search for any communications by project. Ms. Valverde stated that the subject line or the body of the messages usually have the project number or the name of the project to help her archive them. When she received a public records request for a project, she searched the folders to find responsive documents. She then attached any responsive messages and their attachments into an email and sent it to the procurement officer. This procedure of forwarding the responsive email messages to the procurement officers for their review started in October 2019 as instructed by her supervisors in the aforementioned email.

Prior to the change in procedure, Ms. Valverde would gather the responsive documents and respond directly to the requestor immediately. Ms. Valverde recalled that after the COB instituted the new procedures, she received an email from Ms. Goldsmith explaining that documents containing ATCs shouldn't be sent out. Ms. Valverde stated she did not understand what ATCs were.<sup>7</sup>

Once Ms. Valverde sent the project manager the email with the attachments, she placed the original request and the email she sent for review into the Public Records Request folder in Outlook. Ms. Valverde explained that she moved all emails and her responses immediately into their appropriate folders and kept nothing in her inbox or sent mail. The volume of requests is so high that she would fall behind too fast if she did not move the emails into their folders immediately. For Ms. Gerson's request, Ms. Valverde followed her normal procedures and found responsive documents. At 11:44 a.m. Ms. Valverde sent Ms. Goldsmith an email stating:

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<sup>7</sup> Ms. Goldsmith told the OIG she had a telephonic conversation with Ms. Valverde about the procedure and advised that any document with the reference "ATC" or "Alternative Technical Concept" could contain confidential information. Ms. Goldsmith acknowledged to the OIG that Ms. Valverde might not remember the term ATC. Although Ms. Valverde does have a recollection of the substance of the discussion with Ms. Goldsmith, it is possible that she mistook the discussion to have been through email rather than a phone conversation.

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*Please review the attached documents, as they will be forwarded in response to a Public Records Request. Contact us immediately if there are any concerns. If no concerns, we will move forward with sending the attachments to the customer after two business days.*

The email contained 19 attachments which were all email messages. Some of the email messages themselves contained pdf attachments. The subject line of each email message attached by Ms. Valverde was highlighted as the link to open that email message. There were seven email messages that clearly indicated Alternative Technical Concept in the subject line.

**Wednesday, February 5, 2020**

Ms. Valverde told the OIG that once she forwarded a public records request to a procurement officer, she printed out the email and placed it in a public records request folder so she could keep track of the requests and the two-day waiting period. Ms. Valverde stated that many project managers do not respond when she sends them requests to review. At the end of the two-day waiting period, if Ms. Valverde had not received a response, she forwarded the requestor the email she sent to the procurement officer containing the attachments.

Ms. Valverde stated that Ms. Goldsmith was the only person responding and removing attachments. When she received a response from Ms. Goldsmith, she merely forwarded Ms. Goldsmith's email to the requestor with a short message. In effect she did not handle the attachments, she added a message to the requestor and forwarded the message from which confidential documents had already been removed by the procurement officer. Ms. Valverde copied the COB and her supervisor on the responses to the requestor and then archived the sent email to the PRR folder in Outlook.

At 9:46 a.m., having received no response from Ms. Goldsmith, Ms. Valverde forwarded the email sent to Ms. Goldsmith – with the 19 attachments – to Ms. Gerson at Bilzin adding the following message: *“Attached please find communications requested.”*

Ms. Gerson explained to the OIG that she was in her office on February 5, 2020. She was not sure exactly when she opened the email response from Ms. Valverde. Whenever she opened the email, she clicked on an attachment to review the records. The first email message with a pdf attachment that she clicked on was an email sent to Bilzin from the County. She then clicked on another email message with a pdf attachment and at that time realized that she had received information regarding ATCs that she was not entitled to receive. She was aware that ATC responses by the County were confidential. Ms. Gerson noted that nothing in the attachments stated they were confidential. Ms. Gerson

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stated that she immediately stopped opening attachments and emailed the firm's Managing Partner, Mr. Dotson, and another firm partner, Mr. Micovic, to advise them of the receipt of confidential information and seek guidance. The OIG has reviewed her email sent at 2:51 p.m. which stated: "*When you get a chance, I need to inform you regarding my latest public records request.*"

Ms. Gerson waited a few minutes and then walked over to the office of Mr. Dotson, who was out of town. Ms. Gerson, then placed a call to Mr. Dotson on his cell. Bilzin provided the OIG with call records for both Ms. Gerson and Mr. Dotson. The call records contain a call from Ms. Gerson to Mr. Dotson at 3:12 p.m. and a return call from Mr. Dotson to Ms. Gerson at 3:16 p.m.

According to both Ms. Gerson and Mr. Dotson they decided to call the County Attorney's Office to advise them of the receipt of confidential information. Ms. Gerson first called Ms. Valverde to ask if anyone else had received the same records she had requested and been sent. Mr. Dotson explained that he wanted to be able to advise ACA Oren Rosenthal of the full facts including if there were additional recipients. The Bilzin phone records show two calls within a few minutes of the first conversations between Mr. Dotson and Ms. Gerson. At 3:20 p.m., Ms. Gerson called Ms. Valverde's direct line at the COB and at 3:24 p.m., Ms. Valverde called Ms. Gerson.

Ms. Valverde advised the OIG that she received a call from Ms. Gerson between 2 p.m. and 3 p.m. Ms. Gerson wanted to know if anyone else had received the same records and she asked that Ms. Gerson put the request in writing. Emails reviewed by the OIG confirm both Ms. Valverde's and Ms. Gerson's statements. At 3:27 p.m., Ms. Gerson emailed Ms. Valverde and asked: "*Have you received any public records requests relating to RFP-01353 since January 20, 2020?*" At 3:31 p.m., Ms. Valverde responded: "*I have not received any other public records requests for RFP-01353 from anyone else but you.*" A few minutes after Ms. Valverde's email response, phone records confirm Mr. Dotson's and Ms. Gerson's statements that they placed a conference call to ACA Rosenthal. Mr. Dotson wanted to disclose the receipt of the confidential information and to receive instructions from the CAO as to what to do with the documents received. The phone records indicate a call to Mr. Dotson from Ms. Gerson and then the conference call to the CAO. The records show a call at 3:32 p.m. from Ms. Gerson to Mr. Dotson and then a conference call between the parties and the CAO's main number at 3:37 p.m.

Mr. Dotson remembers that because he was not in the office, he did not have ACA Rosenthal's direct line and the call was placed to the main phone number for the CAO. Mr. Dotson and Ms. Gerson both advised that they did not reach ACA Rosenthal and left a voicemail. ACA Rosenthal's phone records, reviewed by the OIG, also contain the call

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from Mr. Dotson and Ms. Gerson to the main line at the CAO that was transferred to his direct line.

ACA Rosenthal advised the OIG that he received a voicemail from Mr. Dotson about a public records matter. He also stated that he then tried to return the call and played phone tag with Mr. Dotson for the next couple of days. ACA Rosenthal's phone records confirm that he tried to return the call at 4:02 p.m. At that same time, Mr. Dotson's phone records show an incoming call from the CAO that appears to have gone to voicemail, as he was not in the office to answer.

Having not reached ACA Rosenthal, Mr. Dotson advised Ms. Gerson that she should print out the documents, place them in a sealed envelope and leave them in his office, which would be locked by his secretary. He also asked her to delete the email. Mr. Dotson explained to the OIG that he was not sure how best to handle the matter, but he wanted to make sure that the email was not in Bilzin's system or easily accessible to anyone. Ms. Gerson confirmed those were the instructions she received from Mr. Dotson.

Ms. Gerson advised that she was aware that ATCs were confidential and, as such, those were the emails she printed to place in a sealed envelope. Ms. Gerson stated she printed the ATC email messages containing pdf attachments and did not read the content of the emails. She printed the emails, placed them in an envelope, and handed them to Mr. Dotson's secretary who sealed the envelope and placed them in his office. Ms. Gerson then deleted the email from her Outlook email folder. At the time of Ms. Gerson's interview with the OIG, on February 14, 2020, she had deleted the email from her inbox but had not deleted it from the deleted items folder in Outlook. In the presence of the OIG investigator, Ms. Gerson deleted the email from the deleted items folder in Outlook.

By the end of the day on February 5, 2020, the email containing confidential information had been received and deleted from Ms. Gerson's inbox in her email account, email messages containing pdf attachments had been printed and sealed in an envelope, and the CAO had been called to disclose the inadvertent receipt of the confidential information. Of the seven email messages containing confidential information, six related to responses sent by the County to four separate ATC proposers. In addition, one attachment was correspondence between the County and an ATC proposer that only identified the proposer. No ATC proposals were transmitted. The ATC proposals were submitted confidentially through the separate link in BidSync. Only the County's responses were attached to the COB public records response sent to Bilzin.

That same day, Ms. Goldsmith, who had received the email for her review, did in fact review the documents and removed confidential emails from Ms. Valverde's attachments. Ms. Goldsmith advised the OIG that she had several complex procurements that she was

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handling at the time. Even so, because of the two-day deadline imposed by the COB, Ms. Goldsmith found herself putting other work aside in order to review requests and respond. Ms. Goldsmith further stated that she did not know exactly when the two-day period began. She advised the OIG that "...regarding the business days, Section 2-8.4(b) of the Code states that the date of the filing shall not be counted when calculating the protest period. As these are both processes administered by the Clerk, I interpreted the public records process to mirror this, meaning that when the email stated that records request would be completed after 2 business days, this meant that records would be sent on or after 2/6. My response was sent late in the night on 2/5."<sup>8</sup> At 11:46 p.m., Ms. Goldsmith sent a response to Ms. Valverde's email. Ms. Goldsmith's email to Ms. Valverde contained twelve of the original nineteen email messages. Ms. Goldsmith removed seven of the nineteen messages sent to her, and advised Ms. Valverde that:

*Some of the attached correspondence is not subject to public records disclosure until after the proposal due date, currently scheduled for 3/17/20. Only the attached correspondence is subject to disclosure at this time.*

**Thursday, February 6, 2020**

On the morning of February 6, Ms. Valverde received and opened Ms. Goldsmith's response to the public records review. Ms. Valverde stated to the OIG that when she saw that confidential information had been redacted from the attachments, she said to herself "oh wow," and recalled thinking "oh my God, what a huge problem this is going to be." She admitted that she realized at that time, February 6, that she had made a mistake, but also stated that Ms. Goldsmith should have responded earlier. Regardless, Ms. Valverde did not alert anyone about the disclosure of confidential information.

Ms. Valverde explained her understanding of the two-day rule. According to her, if the message was sent on February 3 then the response would have been due on February 5, as she was instructed. Ms. Valverde agreed that she did not look at the time the email was sent in calculating the two days, she simply counted two days.

Mr. Dotson and ACA Rosenthal both advised the OIG that they exchanged calls on both February 6 and February 7 but did not actually speak. The phone records of both parties reviewed by the OIG bear out the calls, and the length suggests that they were missed calls.

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<sup>8</sup> At the time of Ms. Goldsmith's initial statement to the OIG, on February 18, 2020, she believed she had responded on the morning of February 5. Ms. Goldsmith later clarified and advised of her understanding of the two-day period and her response time.

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**Monday, February 10, 2020**

On February 10, ACA Rosenthal called Mr. Dotson at 11:03 a.m. and finally spoke with him. According to ACA Rosenthal, Mr. Dotson inquired whether the ATCs were confidential, and upon the acknowledgement that they were, advised of the disclosure to his firm in a public records response from the COB.

ACA Rosenthal immediately attempted to contact Ms. Goldsmith to verify what was sent to the Bilzin firm. Initially there was some confusion as to whether the ATC proposals, instead of the County's ATC responses, were disclosed. Ms. Goldsmith called and emailed Ms. Valverde at 12:39 p.m.:

*Could you please call me on cell phone...as soon as you are available? I am in public meetings but am in [sic] a break until 1pm. If I do not answer, I will return your call as soon as there is a break in my meeting.*

According to Ms. Goldsmith, she and Ms. Valverde traded messages until they spoke. Ms. Valverde told her, "I got your awful message." Ms. Goldsmith asked if Ms. Valverde had access to BidSync and to forward whatever she had recently sent related to RFP-01353.

**February 12, 2020**

Two days after Ms. Goldsmith's request, at 7:43 a.m., Ms. Valverde forwarded the email sent to Bilzin on February 5 and stated:

*I believe this is the last request that I responded to. I could have mistakenly sent out the wrong one; however, I don't know how this could have happened. I always send from the one that you approve.*

Her message to Ms. Goldsmith was misleading. It suggested that she had mistakenly forwarded to Bilzin the original message sent to Ms. Goldsmith with all the attachments instead of the one Ms. Goldsmith had returned with the redacted attachments. Ms. Valverde did not advise Ms. Goldsmith that the confidential information was released because she sent the response prior to receiving Ms. Goldsmith's redactions.

Upon receiving the email and realizing that the ATC responses were provided to Bilzin, Ms. Goldsmith sent another email to Ms. Valverde at 10:29 a.m.:

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*This message did contain confidential information. This was not the filtered lists of files that I provided back. Can you please confirm that these records were not provided to any other parties? I am in consultation with the County Attorney's Office on next steps.*

Ms. Valverde responded within a few minutes at 10:38 a.m.:

*I checked and no one else received this communications [sic]. I must of [sic] pulled it from the email that I forwarded to you. I am so sorry for this mistake.*

Even though Ms. Valverde apologized, her response is again misleading as it once more suggests she picked the wrong email to forward instead of admitting that she sent the response prior to receiving any redactions. It is not clear why Ms. Valverde was insistent on the misdirection. She advised the OIG that she realized she did not wait 48 hours before sending the response. However, even if she had waited 48 hours, she still would have sent the confidential information as Ms. Goldsmith's redacted response was not sent until late on the evening of February 5. Whatever her reasoning, Ms. Valverde did not advise anyone at the COB of the disclosure until after receiving Ms. Goldsmith's February 12 email advising her that the CAO had been notified.

Ms. Valverde disclosed the incident to her supervisor, Ms. Shania Momplaisir, Senior Commission Clerk, the morning of February 12. On February 12, internal meetings were held by all parties to review what information had been disclosed. Deputy Mayor Ed Marquez, and the Director of ISD, Tara Smith, along with the Director of Procurement, Namita Uppal, recommended that the OIG should investigate the matter.

The OIG began its review upon notification by the CAO on February 13. The OIG contacted Bilzin immediately, through the assistance of Bilzin's Assistant General Counsel, Mr. Dotson and Ms. Gerson were available for interviews the next day, February 14. In addition, the sealed envelope containing the confidential information was turned over to the OIG, and in the OIG's presence, the email was deleted from the deleted folder in Ms. Gerson's Outlook.

Once the OIG commenced its review, Deputy Mayor Edward Marquez notified the BCC of the disclosure. COB Director Linda Cave also notified the Chair of the BCC of the disclosure. In addition, ISD sent separate letters to each ATCs proposer whose County response was included in the COB's public records response advising of the disclosure.

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**VI. DETERMINATIONS RESULTING FROM THE OIG'S REVIEW**

In addition to the documents reviewed and the interviews conducted to establish the above timeline, the OIG's review focused on determining, to the extent possible, how the disclosure incident occurred, the extent of the breach, and the steps taken in remediation.

In order to determine how the disclosure occurred, the OIG examined emails related to the Bilzin public records request and how that request was handled by the COB. The review found that the volume of emails that must be archived by the COB each month is staggering. In addition to the archiving, there are many public records requests, between 80 to 90 a month, that require the attention of the same clerk responsible for the archiving. While the majority of the requests do not require review for confidential information, as the County moves to novel procurement methods, such as Public Private Partnerships and Alternative Technical Concepts Proposals, more confidential documents will be filed with the COB during the time the Cone of Silence is in effect.

The OIG found that the COB is efficient in responding to the large volume of public records requests. In fact, it may be the unintended consequence of the COB's policy for a quick response that resulted in the disclosure. Ms. Valverde responds to each public records request as quickly as possible. Indeed, for most requests she receives there is no need to review for confidentiality, and she often responds immediately. As such, when the two-day policy was instituted, she continued to work with lightning efficiency only stopping to allow the passage of the two days.

The two-day waiting period was not defined to Ms. Valverde, nor was it defined to the procurement officers who were asked to review the documents for potential confidential information. As the OIG discovered, Ms. Valverde's interpretation of the two-day waiting period and Ms. Goldsmith's interpretation were completely different. Ms. Valverde counted two days starting on the day she sent the email, regardless of the time sent and without verification of receipt.<sup>9</sup> For Ms. Goldsmith, two days began the day after she received the email in keeping with her knowledge of the County Code and other processes observed by the COB. Having waited—for what she believed was the required—two days, Ms. Valverde sent the records to Bilzin.

In order to determine the extent of the breach, the OIG interviewed the Bilzin attorney that received the email. Ms. Gerson stated that she realized almost immediately that she had received information related to ATCs and knew that the information was confidential. From that moment, Ms. Gerson took action to alert of the disclosure. The attorneys at

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<sup>9</sup> The OIG learned that Ms. Valverde did not receive verification that the email was delivered to the recipient or opened.

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Bilzin assessed the situation, left a message for an Assistant County Attorney, deleted the documents from the firm's accessible email, and sealed the records awaiting further instructions. Ms. Gerson advised the OIG that she did not read the ATC response in detail as she immediately realized it contained confidential information. She also reviewed the other emails with the subject line containing Alternative Technical Concept and printed those that contained pdf attachments. Ms. Gerson advised the OIG, that other than the first email that triggered the awareness that she had received confidential information, she did not read the other documents she printed out. Ms. Gerson deleted the email from her Outlook inbox once she had printed and sealed the attachments in the envelope.

The OIG interviewed Bilzin's Chief Information Officer, Juan Torres. Mr. Torres provided the OIG with a comprehensive summary of his internal investigation, conducted at the OIG's request, in order to determine if the message was forwarded, saved, or deleted. Mr. Torres advised the OIG that the confidential information has been deleted from the Bilzin recipient's email folder, deleted files folder, and the Bilzin IT recovery folder.<sup>10</sup>

Per Mr. Torres, he personally performed searches of Ms. Gerson's email account and confirmed that the email was never forwarded between the time it was received and the time it was deleted from the deleted items in Outlook. Mr. Torres also performed a search of the "...SMTP email gateway for anything leaving the firm from Ms. Gerson with the subject content in question. Again, no evidence of any outgoing messages from Ms. Gerson with the subject of the email in question."<sup>11</sup> Mr. Torres also performed a third search in "exchange." The final exchange search confirmed the receipt of the email via SMTP and the routing of the email to Ms. Gerson's mailbox. No other records were found during the search in exchange.

The OIG also interviewed Ms. Goldsmith to determine the extent of the breach given the nature of the documents released. Of the seven email messages containing confidential information six directly referenced ATC responses sent by the County to four different proposers. One was an email exchange between the County and a proposer that clearly identified the proposer who had submitted an ATC. The OIG's review of that email exchange found that it did not contain any information about the ATC proposal. Ms. Goldsmith advised that her reasoning for removing that email string from the public records request was because it identified an ATC proposer, although no actual ATC proposal information would be divulged by the disclosure.

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<sup>10</sup> In addition to the IT recovery folder, Bilzin's servers automatically encrypt and backup information. There is no ability to isolate the email from Bilzin's encrypted backup files and delete the email without destroying the entire backup file. Bilzin's servers will automatically delete the backup within six months. Prior to that, only Bilzin's IT personnel have access to the encrypted files and they cannot isolate and retrieve any particular file.

<sup>11</sup> From Mr. Torres's report entitled: "Email Audit Log Summary for Email Received by Elise Holtzman Gerson from Clerk of the Board Containing Confidential Information."

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The other six email messages contained the County's ATC email, although not all contained the ATC response attachments. The County's ATC responses consisted of an email that was the equivalent of a cover letter with attachments containing the actual response. Ms. Goldsmith's email message to each proposer stated: "*Please find the attached Alternative Technical Concept response form for the subject solicitation.*" As a pdf attachment to the email message, Ms. Goldsmith sent the Alternative Technical Concepts Response Form (ATC Response Form) for each ATC that a proposer submitted. The form identified the proposer's ATC proposal by number, ex.: "ATC No. 1", "ATC No. 2", etc. The ATC Response Form also identified the proposer, the date submitted, and the County's response. The response could be an approval, a conditional approval, or a rejection. If the County conditionally approved the ATC, then an additional document, an attachment, listing the County's conditions would also be included in the response email. The remaining six disclosed email messages contained the following information or pdf attachments:

- Two email messages were each email strings attached to the County's cover-letter email that did not contain the pdf ATC Response Form or its attachments. They did, however, identify the ATC proposers.
- One email message contained the cover email and three pdf ATC Response Forms indicating the proposer's three ATC proposals were not approved. This email message contained no other information about the ATC proposals.
- The remaining three email messages each contained the cover email, the attached pdf ATC Response Form(s) conditionally approving the ATC proposal(s) and the attachment(s) specifying the conditions. Two of the proposers had one pdf attachment with an ATC Response Form and a corresponding attachment with conditions. One proposer had pdf attachments containing five ATC Response Forms and five corresponding attachments specifying the conditions.

Ms. Goldsmith advised the OIG that the ATC responses do not specifically identify the technology. In her opinion, a competitor would find the response alone of limited value. A couple of the responses had no detail, but regardless of the level of detail Ms. Goldsmith stated that the responses do not reveal the technology being proposed. More importantly, Ms. Goldsmith pointed out that pursuant to the RFP, competitors could not use any information about ATCs or any knowledge gleaned from the disclosed emails because no proposer could submit or make a change to their ATCs that had not been submitted by the December 27, 2019, deadline and received the approval of the County. Moreover, proposers, even if they participated in the ATC process, did not have to submit their ATC proposal(s) as part of their final proposal due on March 17, 2020. Although it would have

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been better to maintain all the information confidential, it appears from Ms. Goldsmith's statement that it would have been more troubling and problematic if the actual ATC proposals had been disclosed.

**VII. CONCLUSION & RECOMMENDATIONS**

After a review of all available information, there is no evidence to suggest that the recipient, Ms. Gerson, or her employer Bilzin, shared or inappropriately handled the email message and attachments in question once they discovered their receipt of confidential information. The County would not have discovered the breach but for Bilzin's timely disclosure.

It is unfortunate that the COB employee who sent the confidential documents did not act as swiftly as did the Bilzin attorneys. Ms. Valverde discovered the disclosure the morning after the Bilzin attorneys did, yet she did not ring the alarm until it was clear that ISD was discussing the matter with the CAO, six days later. Based on all the statements and the review of emails, the OIG believes that Ms. Valverde did not intentionally disclose confidential information. Although she did not, as she suggested to Ms. Goldsmith, send the wrong email, it is clear, that Ms. Valverde was not required to review the documents for potentially confidential information, and that she was strictly following the protocols in place for her job. A misinterpretation of the time period in the policies resulted in the disclosure and Ms. Valverde failed to timely address the matter.

The OIG believes, based on a reading of the disclosed documents, and more importantly, Ms. Goldsmith's assessment, that the information disclosed will not affect RFP-01353 from proceeding as a fair procurement to all parties. Although a disclosure of confidential information is not a desired event in any procurement, the information disclosed is of limited to no value to a potential competitor in this solicitation. The actual ATC proposals that would contain innovative concepts, proprietary information, or trade secrets were not attached nor disclosed.

Of the seven email messages attached, three merely identify the proposers. While this might give a competitor some information, the pool of competitors for this type of solicitation is limited and it is highly likely that the competitors know who the potential proposers would be. The remaining three confidential attachments also contain very limited information. The conditions imposed by the County in the ATC responses were so succinctly worded that it would be very difficult to discern the nature of an ATC proposal from the County conditions. Some conditions referenced engineering standards but contained no substantive discussion of their application. Even if a competitor could divine the extent of an ATC proposal from the County's reference to an engineering standard in the response, it would not provide an advantage. Proposers could not submit, as part of

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their RFP response on March 17, 2020, an ATC proposal that was different than their final ATC response submitted on December 27, 2019.

This disclosure incident has highlighted the urgent need for certain procedures in order to prevent any future disclosures that might be more impactful and damaging to the intended procurement. The Cone of Silence was enacted prior to these new procurement methods that allow for the submission of confidential information. Therefore, while most procurements are not affected, there are and will continue to be procurements that will have to be scrutinized before a response to a public records request is sent.

The COB has advised the OIG that they have put into place interim procedures for public records requests. Among these procedures are: the implementation of a central email address specifically created for public records requests and responses; a public records request log with an assigned control number for each request received; the creation of a network "Shared Drive" accessed only by authorized personnel to store requests and responses; requiring that potential responsive documents sent to procurement officers, project managers, and department personnel for review include an Outlook read receipt to ensure delivery; COB supervisory review prior to fulfillment of the request; an extended four-day review period to procurement officials with an escalation to supervisors and senior management if there is no response; a request that exempt documents be sent to the COB in a separate password protected document.

The OIG recognizes that the COB has acted swiftly in adopting interim procedures to ensure there are protections from any further disclosures of confidential information. Many of these interim procedures will go a long way to protect the confidentiality of information and the integrity of the process, in particular the following procedures: that there should be *no* release of records to a requestor until the COB has received a response from the procurement officer, and the proposed escalation to the appropriate supervisor if a response from ISD is not received during the requisite time period. The COB has also advised the OIG that they have added staff to handle public records request.

The OIG has the following additional recommendations based on those interim procedures and information gathered from all parties:

1. The COB and ISD should formalize permanent joint procedures for the handling of confidential information in procurements.
2. ISD should identify the procurements that will contain confidential information by:

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- a. Providing to the COB in an email, prior to the imposition of the Cone of Silence, the name and contact information of the ISD procurement officer that will review any documents for confidentiality.
  - b. Further identify specific emails containing confidential information, during the course of the procurement, by marking them “confidential” in the Subject line of the email to ease review and diminish the risk of erroneous release.
3. ISD should determine if it is possible to add to their automatic numbering system an identifier specifically for solicitations containing confidential information. For Example: RFP-01353-**C**. The use of the **C** as an identifier will make it immediately noticeable to a COB clerk that any responsive document with that numbering may contain confidential information that should be first reviewed by the procurement officer.
  4. The calculation of the time period established by the COB for the procurement officer’s review needs to be clearly defined. It should be clear when the time period begins to run and when it ends so that all parties can calculate their response times and responsibilities. For example, using the COB’s interim policy with a four-day time period, a policy could state that the four days begin the day after the email is sent to the procurement officer and ends at the close of business on the fourth business day, weekends and holidays excluded. In that example, if the COB emails the procurement officer on Tuesday, February 4 then the four days would start on Wednesday, February 5 and end on Monday, February 10.
  5. The COB should include in the subject line of all emails sent to the procurement officer and to a public records requestor the COB assigned control number from the COB public records request log. The control number is assigned as part of the COB’s new interim procedures, including it on the email correspondence will provide another identifier for the tracking of requests.
  6. ISD should consider including in the solicitation documents for any RFP that will contain confidential information instructions indicating what to do and who to notify should a proposer receive confidential information not pertaining to that proposer.
  7. The COB should add a statement to all email correspondence indicating what to do and who to notify upon receiving information not intended for that recipient.

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**VIII. PROVISION OF DRAFT REPORT AND FINAL OIG COMMENTS**

This report, as a draft, was provided to the Clerk, Harvey Ruvlin; Ms. Tara Smith, ISD Director; Ms. Olga Valverde; and Mr. Albert Dotson for their review and the opportunity to provide a written response. The OIG has not received responses.

The OIG appreciates the cooperation of the Clerk's Office, the Internal Services Department, the County Attorney's Office, and Bilzin throughout this entire review. Although our review, which took place in the middle of an active procurement process, was time consuming for those individuals interviewed, the process was crucial in order to ensure a fair, impartial, and transparent procurement. We look forward to our continuing work with the COB and ISD on the specific recommendations; at this time, however, the OIG is not requesting any written follow-up replies. The OIG will reach out to the COB and ISD as soon as practical, given the current public health emergency created by the Covid-19/novel Coronavirus, to ensure that they are moving forward with the implementation of new procedures, including the OIG's recommendations, regarding the protection of confidential information in future procurements. The OIG is continuing our contract oversight monitoring of the Beach Corridor RFP and will do so through all phases of the procurement process.