



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

19 West Flagler Street, Suite 820 · Miami, Florida 33130  
Phone: (305) 579-2594 · Facsimile: (305) 579-0273  
Website: [ethics.miamidade.gov](http://ethics.miamidade.gov)

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**MEMORANDUM**

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**TO:** Pablo Valin, Senior A/E Coordinator  
Miami-Dade County Internal Services Department

Julie Whiteside, A/E Consultant Selection Coordinator  
Miami-Dade County Internal Services Department

**FROM:** Radia Turay, Esq., Staff Attorney  
Commission on Ethics

**SUBJECT:** INQ 19-117 [Organizational Conflict of Interest]

**DATE:** November 5, 2019

**CC:** Elizabeth Ogden, RA, PPM, LEED AP  
Assistant Port Director, Capital Development

All COE Legal Staff

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Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust and requesting our guidance regarding the following proposed transaction.

Facts: We received from Julie Whiteside, a Memorandum with Attachments dated September 10, 2019 regarding ISD Project No. DB10-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment program (the Project). Attachments included: 1) Letter of September 3, 2019 from Julie Whiteside to Maira Suarez, Lemartec Corporation (Lemartec), a Design Build Services Proposer, requesting information regarding the participation of Matthew Wasala (Wasala) as an employee of Lemartec, who was previously employed with Bernblum Busch Architecture (BBA), a Design Criteria Sub-Consultant; and 2) Letter of September 5, 2019 from Maira Suarez to Julie Whiteside responding to the request for information regarding Wasala's participation in the Lemartec Design Build Services proposal.

A review of the documents revealed that Wasala was previously employed with BBA and worked on the Design Criteria package for the Project. He separated from BBA on July 22<sup>nd</sup>, 2019.

He was hired by Lemartec on August 2<sup>nd</sup>, 2019. Lemartec is a Design Build Services Proposer for the Project. It is Lemartec's intention to utilize Mr. Wasala in his current capacity with Lemartec should the firm be selected to perform Design Build services.

Upon receipt of the correspondence, the COE conferred briefly with Lamartec, regarding the organizational conflict of interest concerns raised by the County arising from Wasala's past work on design criteria while employed by BBA *and* his proposed work on the design build of this Project as an employee of his current employer, Lemartec.

Lemartec advised that any information obtained by Wasala while employed by BBA is proprietary and confidential and cannot be disclosed. Wasala additionally is bound by a non-disclosure agreement. Accordingly, Lemartec suggested that there is no prohibited conflict that would preclude Lemartec's participation as a proposer or its selection for build, with Wasala engaged, because there can be and will not be any design criteria information known to Wasala that will be or has been shared with Lemartec.

Issue: Whether an organizational conflict of interest exists due to Wasala's past work on design criteria while employed by BBA *and* his proposed work on the design build of this project as an employee of his current employer, Lemartec.

Discussion: The Ethics Commission issued RQO 17-02 along with an Amended Letter of Instruction to the County on April 13, 2017, delineating the COE's limited procedural role in the handling of organizational conflicts of interest (OCIs).

The Amended Letter of Instruction specifically states that the COE's role in the handling of OCIs in connection with a contract with a local government entity will be limited to the following circumstances:

- 1) The terms of the local government contract or proposal must state the standards by which the organizational conflicts of interest will be determined.
- 2) Disclosures of organizational conflicts of interest shall be reported by the local government entity to the Ethics Commission.
- 3) The local government entity will analyze and address organizational conflicts of interest on a case by case basis.
- 4) The local government entity's decision of how to address an organizational conflict of interest shall be subject to the approval of the Executive Director of the Ethics Commission or his/her designee, who will render his/her determination promptly. Disapproval by the Executive Director or designee may be appealed by the local government entity to the Ethics Commission board.
- 5) Copies of decisions regarding the resolution of a reported conflict of interest shall be forwarded to the Ethics Commission.

In accordance with the procedures set forth in the Amended Letter of Instruction, the COE is not responsible for identifying or determining the existence of OCIs in the County's procurement process, but rather, that responsibility falls on the County officer or department involved in the respective procurement. *See* INQ 17-198. Provided that an

OCI is identified by the County, the COE's role is limited to the approval or disapproval of the measures implemented by the County to resolve the OCI. *See* INQ 17-198.

In this instance, we are in receipt of a correspondence from Elizabeth Ogden, Assistant Port Director, Capital Development, dated October 10, 2019. Ms. Ogden, in her correspondence, indicates that PortMiami has thoroughly researched the possibility of an Organizational Conflict of Interest that may provide a competitive advantage to the Lemartec team which submitted a Step One proposal for the Project.

The correspondence from Ms. Ogden notes that PortMiami reviewed the two Non-Disclosure Agreements (NDA) signed by Wasala while employed by BBA. Ms. Ogden in her correspondence stated that based on the two NDA documents signed by Mr. Wasala, PortMiami concurs that as stated in the Lemartec letter, Mr. Wasala's continued honoring of the two NDA documents eliminates any potential conflict of interest.

Further, Ms. Ogden stated that after a reviewing all the information provided, PortMiami has concluded that Mr. Wasala's employment with Lemartec, and/or his involvement in the Project while employed by Lemartec, does not present any organizational conflict of interest in the contractual relationship presented on the proposal submitted by Lemartec.

Conclusion: Consequently, as the County has not identified an organizational conflict of interest as a result of Wasala's past and proposed work on design criteria *and* design build of this project, the COE will not take any further action in this matter. *See* RQO 17-02; INQ 19-53 and INQ 17-198.

This opinion is limited to the facts as you presented them to the Commission on Ethics and is limited to an interpretation of the County Ethics Code only and is not intended to interpret state laws. Questions regarding state ethics laws should be addressed to the Florida Commission on Ethics.

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.

## Sanchez, Rodzandra (COE)

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**From:** Turay, Radia (COE)  
**Sent:** Tuesday, November 5, 2019 7:37 PM  
**To:** Sanchez, Rodzandra (COE); Anderson, Machell (COE)  
**Cc:** Perez, Martha D. (COE); Diaz-Greco, Gilma M. (COE)  
**Subject:** INQ 19-117: ISD Project No. DB10-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment (Organization Conflict of Interest)  
**Attachments:** FW: ISD Project No. DB10-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment (Organization Conflict of Interest); INQ 19-117 WASALA.pdf

**From:** Turay, Radia (COE)  
**Sent:** Tuesday, November 5, 2019 7:33 PM  
**To:** Whiteside, Julie (ISD) <Julie.Whiteside@miamidade.gov>; Valin, Pablo (ISD) <Pablo.Valin@miamidade.gov>  
**Cc:** Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Ogden, Elizabeth (Seaport) <Elizabeth.Ogden@miamidade.gov>; Pino, Gyselle (Seaport) <Gyselle.Pino@miamidade.gov>; Benitez, Hugo (CAO) <Hugo.Benitez@miamidade.gov>  
**Subject:** FW: ISD Project No. DB10-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment (Organization Conflict of Interest)

Dear Ms. Whiteside

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust, seeking our guidance regarding whether an organizational conflict of interest exists due to Matthew Wasala's past work on design criteria while employed by BBA *and* his proposed work on the design build of this project as an employee of his current employer, Lemartec. Please find our opinion regarding same attached.

Cordially,

## **RADIA TURAY**

Staff Attorney  
Miami-Dade Commission on Ethics and Public Trust  
19 W. Flagler Street, Suite 820  
Miami, FL 33130  
Tel: (305) 350-0601  
Fax: (305) 579-0273  
Ethics.miamidade.gov

**From:** Whiteside, Julie (ISD) <Julie.Whiteside@miamidade.gov>  
**Sent:** Thursday, October 10, 2019 5:40 PM  
**To:** Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>  
**Cc:** Pino, Gyselle (Seaport) <Gyselle.Pino@miamidade.gov>; Benitez, Hugo (CAO) <Hugo.Benitez@miamidade.gov>; Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Ogden, Elizabeth (Seaport) <Elizabeth.Ogden@miamidade.gov>  
**Subject:** RE: ISD Project No. DB10-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment (Organization Conflict of Interest)

Good Afternoon Mr. Arrojo,

Pursuant to your email below, please find the attached response from PortMiami. Please advise if this response is satisfactory and whether we may proceed with the evaluation process for this project.

Thank you for your kind attention to this matter. Should you have any questions or require additional information, please do not hesitate to contact me.

Regards,

**Julie B. Whiteside, CPPB**  
A/E Consultant Selection Coordinator  
**Miami-Dade County Internal Services Department**  
111 NW 1 Street, Suite 1300, Miami, FL 33128  
305-375-1559 Phone  
[www.miamidade.gov/internalservices](http://www.miamidade.gov/internalservices)



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**From:** Arrojo, Jose (COE)  
**Sent:** Friday, September 20, 2019 5:59 PM  
**To:** Whiteside, Julie (ISD) <[Julie.Whiteside@miamidade.gov](mailto:Julie.Whiteside@miamidade.gov)>  
**Cc:** Pino, Gyselle (Seaport) <[Gyselle.Pino@miamidade.gov](mailto:Gyselle.Pino@miamidade.gov)>; Benitez, Hugo (CAO) <[Hugo.Benitez@miamidade.gov](mailto:Hugo.Benitez@miamidade.gov)>; Turay, Radia (COE) <[Radia.Turay@miamidade.gov](mailto:Radia.Turay@miamidade.gov)>; Perez, Martha D. (COE) <[Martha.Perez2@miamidade.gov](mailto:Martha.Perez2@miamidade.gov)>  
**Subject:** ISD Project No. DB10-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment (Organization Conflict of Interest)

Dear Ms. Whiteside:

We are in receipt of your Memorandum with Attachments of September 10, 2019 regarding ISD Project No. DB10-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment program. Attachments include: 1) Letter of September 3, 2019 from Julie Whiteside to Maira Suarez, Lemartec Corporation (Lemartec), a Design Build Services Proposer, requesting information regarding the participation of Matthew Wasala (Wasala) as an employee of Lemartec, who was previously employed with Bernblum Busch Architecture (BBA), a Design Criteria Sub-Consultant; and 2) Letter of September 5, 2019 from Maira Suarez to Julie Whiteside responding to the request for information regarding Wasala's participation in the Lemartec Design Build Services proposal.

A review of the documents reveal that Wasala was employed with BBA and worked on the Design Criteria package for the Cruise Terminal F Expansion and that it is Lemartec's intention to utilize Mr. Wasala in his current capacity with Lemartec should the firm be selected to perform Design Build services.

In response to the organizational conflict of interest concerns raised by the County arising from Wasala's past and proposed work on design criteria *and* design build, respectively, Lemartec advises that any information obtained by Wasala while employed by BBA is proprietary and confidential and cannot be disclosed. Wasala additionally is bound by a non-disclosure agreement. Accordingly, Lemartec suggests that there is no prohibited conflict that would preclude Lemartec's participation as a proposer or its selection for build, with Wasala engaged, because there can be and will not be any design criteria information known to Wasala that will be or has been shared with Lemartec.

As you are aware, the Miami-Dade Commission on Ethics (COE) issued RQO 17-02 along with an Amended Letter of Instruction to the County on April 13, 2017, delineating the COE's limited procedural role in the handling of OCIs. These potential conflicts of interests may arise out of relationships that a contractor may have with other existing or prospective contractors, with individuals employed by existing or prospective contractors, or with County personnel.

The procedure in these matters as provided for in the Ethics Opinion is as follows:

- 1) The issuing County department must disclose the standards by which the organizational conflicts of interest will be determined.
- 2) Disclosures of organizational conflicts of interest shall be reported by the County department.
- 3) The County department will analyze and address organizational conflicts of interest on a case by case basis and attempt to eliminate or mitigate the conflict with a plan.
- 4) Copies of the plan regarding the resolution of a reported conflict of interest shall be forwarded to the Ethics Commission
- 5) The local government entity's decision of how to address an organizational conflict of interest shall be subject to the approval of the Ethics Commission staff, who will render a prompt determination.
- 6) Disapproval by the staff may be appealed by the County department the Ethics Commission that will hear the matter in open session.

In accordance with the procedures set forth in RQO 17-02, the COE is not responsible for identifying or determining the existence of OCIs in the County's procurement process, but rather, that responsibility falls on the County officer of department involved in the respective procurement. *See* INQ 17-198. Provided that an OCI is identified by the County, the COE's role is limited to the approval or disapproval of measures implemented by the County to resolve the OCI. *See* INQ 19-53 and INQ 17-198.

Respectfully, while ISD and PortMiami have at this point, identified a potential organizational conflict of interest involving the same person involved in the design and prospective build phases of the project and asked for information regarding the same, the County has not decided on a plan to resolve the reported conflict or clarified whether it will simply accept the representations contained in Lemartec's response.

It is therefore premature for Ethics Commission to issue any opinion as our process is to rely on the affected County department to address the potential conflict and devise a conflict elimination or mitigation plan for Commission on Ethics staff review. Please do not hesitate to contact me should you require any additional assistance.

Regards,

**Jose J. Arrojo**

Executive Director  
Miami-Dade Commission on Ethics and Public Trust  
19 W. Flagler Street, Suite 820  
Miami, FL 33130  
[Jose.Arrojo@miamidade.gov](mailto:Jose.Arrojo@miamidade.gov)  
Tel: (305) 579-2594  
Fax: (305) 579-0273  
<http://ethics.miamidade.gov/>



**From:** Whiteside, Julie (ISD) <[Julie.Whiteside@miamidade.gov](mailto:Julie.Whiteside@miamidade.gov)>  
**Sent:** Tuesday, September 10, 2019 5:00 PM  
**To:** Arrojo, Jose (COE) <[Jose.Arrojo@miamidade.gov](mailto:Jose.Arrojo@miamidade.gov)>  
**Cc:** Clerk of the Board (COC) <[Clerk.Board@miamidade.gov](mailto:Clerk.Board@miamidade.gov)>; Benitez, Hugo (CAO) <[Hugo.Benitez@miamidade.gov](mailto:Hugo.Benitez@miamidade.gov)>;  
Valin, Pablo (ISD) <[Pablo.Valin@miamidade.gov](mailto:Pablo.Valin@miamidade.gov)>  
**Subject:** DB19-SEA-01 - Request for Ethics Opinion

Dear Mr. Arrojo,

Please find attached the Request for Ethics Opinion with respect to ISD Project No. DB19-SEA-01: Design Build Services for Cruise Terminal F Expansion and Berthing Re-Alignment Program.

Should you have any questions or require additional information, please do not hesitate to contact me.

Thank you for your kind assistance with this matter.

Regards,

**Julie B. Whiteside, CPPB**  
A/E Consultant Selection Coordinator  
**Miami-Dade County Internal Services Department**  
111 NW 1 Street, Suite 1300, Miami, FL 33128  
305-375-1559 Phone  
[www.miamidade.gov/internalservices](http://www.miamidade.gov/internalservices)



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