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19 West Flagler Street  
Suite 220  
Miami, Florida 33130  
Phone: (305) 579-2594  
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Miami-Dade County  
Commission on Ethics  
and Public Trust

# Fax

To: Steve Spratt From: Robert Meyers  
Fax: (305) 375-1358 Pages: 2, including cover sheet  
Phone: \_\_\_\_\_ Date: 4/26/01  
Re: Attachment CC: \_\_\_\_\_

Urgent     For Review     Please Comment     Please Reply     Please Recycle


Per your request.

Robert

The information contained in this facsimile message is **CONFIDENTIAL** information intended only for the use of the individual or entity named above. If the reader of this message is not the recipient you are hereby notified that any dissemination, distribution or copy of this communication is strictly **PROHIBITED** and will be considered as a tortious interference in our confidential business relationships. Additionally, unauthorized dissemination of this confidential information subjects you to criminal and civil penalties. If you have received this communication in error, please immediately notify us by telephone and return the original to us at the above address via the U.S. Postal Service.

# Memo

**To:** Steve Shiver  
County Manager

**From:**  Robert Meyers, Executive Director  
Commission on Ethics and Public Trust

**Date:** 04/12/01

**Re:** MIA South Terminal Conflict of Interest

---

Thank you for your memorandum dated April 6, 2001, which I received via fax on April 10<sup>th</sup>. I am well-aware of the issues surrounding the CM-At-Risk solicitation at MIA. I had have several discussions with Pablo Acosta, Esq. regarding this solicitation and I eventually directed him to the Advocate for the Ethics Commission, Michael Murawski.

At this juncture, I will recommend against the Ethics Commission rendering conflict of interest opinions involving the CM-At-Risk solicitation unless the bidders themselves request such opinions. First and foremost, the purpose of the advisory opinion process is for a party who believes that he or she may have a conflict of interest to come forward and ask for a formal opinion from the Ethics Commission. Our enabling ordinance states that third parties do not have "standing" to utilize the advisory opinion process to garner opinions about the conduct of others. In exceptional cases, we have relaxed this rule, but these circumstances do not warrant our office to deviate from our official policy. The appropriate mechanism by which an individual may raise alleged conflicts of interests by others is to either provide us with information to investigate or file a formal complaint with our office. Indeed, Mr. Acosta gave us information which he believed represented one or more conflicts of interest and Mr. Murawski conducted an investigation. His findings are summarized in a letter to Mr. Acosta dated March 30, 2001 (See attached letter). Additionally, Mr. Acosta may file a complaint with this office which the Ethics Commission will review in accordance with our rules of procedure.

Another reason for declining to act in this matter goes to the nature of the allegations. According to the bid documents and attachments, bidders are encouraged to submit requests for opinions to the Ethics Commission to avoid conflicts of interest. However, the language in the addendum by no means mandates that Respondents must seek determinations from the Ethics Commission. The addendum simply states a Respondent's submittal will be rendered non-responsiveness if the Ethics Commission were to determine that one of the parties to the bid proposal had a conflict of interest. The ultimate question of bidder responsiveness or non-responsiveness is not within the Ethics Commission's purview.

 **MEMORANDUM**

TO: Robert Meyers  
Executive Director  
Commission on Ethics

DATE: April 6, 2001

SUBJECT:

MIA South Terminal  
Conflict of Interest

FROM: Steve Shiver  
County Manager



It recently came to my attention that your office has not been asked for an opinion with regards to various conflict of interest allegations raised in connection with the subject CM-At-Risk solicitation (MDAD contract number RFQ-MDAD-STE).

Please refer to the attached January 26, 2001 letter from Pablo Acosta, which refers to the potential conflicts in question. Addendum 3 to the RFQ prescribes that possible conflicts of interest be resolved by the Ethics Commission prior to completion of the selection process.

I respectfully request that your office render an opinion as to the conflict of interest allegations raised in the January 26, 2001 correspondence at the earliest opportunity. This is a very significant project at MIA and it is vitally important that we minimize delays in moving the project forward. Thank you for your prompt attention.

Attachment

cc: Angela Gittens, Aviation Director  
Robert Ginsburg, County Attorney  
Kay Sullivan, Clerk of the Board

COMMISSION ON ETHICS  
AND PUBLIC TRUST  
01 APR 11 PM 2:56

**VERNER LIPPERT  
BERNHARD McPHERSON & HAND  
ATTORNEYS**

3100 FIRST UNION FINANCIAL CENTER  
200 SOUTH BISCAYNE BLVD  
MIAMI, FL 33131  
PHONE: (305) 371-8801  
FAX: (305) 371-6545

January 26, 2001

**VIA FACSIMILE**

Robert A. Ginsburg, Esq.  
County Attorney  
Miami-Dade County Attorney  
111 N.W. First Street, Suite 2810  
Miami, Florida 33128

**Re: RFQ for Construction Manager At-Risk  
South Terminal Program  
Contract No. A155S, B311A, B311B, B312A, B313A,  
B315A, A155A, B315B**

Dear Mr. Ginsburg:

Please be advised that our firm represents Parsons Transportation Group, Inc. and Odebrecht Construction Inc., a joint venture, ("Parsons/Odebrecht") in their pursuit of the above-referenced RFQ. Kindly refer to our Lobbyist Registration Form on file with the Clerk of the Board.

In reviewing the Proposals from Clark/O'Brien Kreitzberg (hereinafter "Clark") and Miami Airport Construction Managers (hereinafter "MACM"), we have noted several issues which we believe should be considered the County Attorney's Office as they relate to a determination of responsiveness.

**Issues Noted in Clark Proposal**

First, Addendum No. 3 to the RFQ, in significant part, states:

[T]o avoid conflicts of interest, subconsultants, contractors or joint venture members who performed work on the South Terminal Program cannot perform similar services or have any oversight or evaluation functions as part of the CM-at-Risk team on the related work they performed on the South Terminal

- WASHINGTON, DC
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- HONOLULU
- LAS VEGAS
- MCLEAN
- MIAMI

Robert A. Ginsburg, Esq.  
Miami-Dade County Attorney  
January 26, 2001  
Page 2

Program. In identifying any such subconsultants, contractors or joint venture members, the Respondent must identify the specific work the subconsultant, contractor or joint venture member performed on the South Terminal Program, the work to be performed as part of the CM-at-Risk team, and a statement as to how this work is sufficiently different so as not to pose a conflict of interest. Such descriptions of work performed and work to be performed may be submitted to the Miami-Dade County Commission on Ethics and Public Trust (Ethics Commission) for evaluation as to any possible conflicts of interest. Possible conflicts of interest will be resolved by the Ethics Commission prior to the completion of the selection process. Determinations by the Ethics Commission shall be deemed final. Any subconsultants, contractors or joint venture members found to have a conflict of interest will render the Respondent's submittal non-responsiveness. (Emphasis added.)

In its Proposal, Clark identified ADA Engineering as its subconsultant but failed to disclose that ADA performed civil engineering designs for the Concourse H Terminal addition, which was added to the South Terminal Project. In fact, Clark represented in its Proposal that its team does not include any subconsultants or subcontractors that have participated with DAC or any of the design teams in the development of the South Terminal Program. Clark's failure to disclose this conflict of interest and to seek an opinion from the Ethics Commission appears to materially affect the responsiveness of Clark's Proposal.

Second, Clark has designated Rasheed Enterprises Inc. ("Rasheed") as a subconsultant expected to perform "CSBE Program Management." (See Clark's attachment L1 Form DBD 301 Schedule of Participation and Rasheed's Letter of Intent). However, it is our understanding that "CSBE Program Management" is not recognized as a certified trade category. Furthermore, Clark has not otherwise designated Rasheed as a subconsultant expected to perform work in a trade category for which Rasheed has been certified by DBD. Thus, it appears that Clark's inclusion of Rasheed in its' Proposal in order to meet the CSBE goal is not proper.

Third, TLMC Enterprises, Inc. ("TLMC"), a subconsultant designated by Clark, failed to submit a Contractors's Qualification Statement (AIA Document A305) as required by the RFQ. Failure to include such a document materially affects the responsiveness of Clark's Proposal in that no information regarding TLMC is disclosed by Clark regarding their potential litigation.

Robert A. Ginsburg, Esq.  
Miami-Dade County Attorney  
January 26, 2001  
Page 3

Fourth, Clark, in its Proposal, in the section titled "Approach to Work Phasing to Minimize Disruption of Airport Services" states that:

**"ECS will lead our effort in scheduling the project. They have assisted DAC in computer simulations of the entire South Terminal Program and have modeled the entire facility ..." (Emphasis added.)**

It is our understanding that ECS was a subconsultant to Borelli-Carrano, which performed design work on the South Terminal Project. Clark not only failed to list ECS as a subconsultant, but failed to disclose that ECS performed design work on the South Terminal Project. ECS did not obtain a clarification/opinion of this conflict of interest from the Ethics Commission. Furthermore, Clark failed to disclose this conflict of interest in its Proposal. Again, in light of the language contained in Addendum No. 3, it appears that Clark's failure to disclose such information and ultimately seek an Ethics Commission opinion materially affects the responsiveness of Clark's Proposal.

Finally, Clark's Proposal reflects numerous discussions and/or meetings between Clark and DAC concerning significant and material issues relating to the cost and planning out of the Project. For example, Clark's Proposal specifically states that:

**"The Clark team has been working with DAC for over a year to provide constructability input and share insight on the CM-at-Risk process, and is therefore capable of applying our knowledge of this project to make this philosophy a reality. We have discussed with DAC our alternate phasing plan, which will eliminate rework on areas of the project and better coordinate all of the components of the project to save Miami-Dade time and money. We have prepared preliminary budget assessments to ensure that DAC's budget is achievable and know the costs associated with the project. Our working knowledge of the Miami South Terminal Program ensures that we will hit the ground running upon award and with all stakeholders to deliver a facility of the highest quality." (See Tab 1, Pg 1-Clark's Proposal) (Emphasis added).**

**"Prior to the advertisement of this RFQ, we were informed by DAC that FAA requirements for all baggage handling systems will require 100% X-Ray capability by the year 2010. The current documents do not indicate this requirement." (See Tab 13, Pg. 1 - Clark's Proposal)**

Robert A. Ginsburg, Esq.  
Miami-Dade County Attorney  
January 26, 2001  
Page 4

"The Clark Team has actively pursued this project for over a year. Based on discussions with DAC, we have created a preliminary schedule with extensive detail in the initial award, design, and procurement portions of the project." (See Tab 15, Pg. 1- Clark's Proposal)

"Our schedule is based on discussions and planning sessions we have conducted with DAC over the last several months. The sequence of work reflects our proposed resequencing and in general, DAC has agreed that the resequenced activities are viable. In addition, the following assumptions have been included in the logic of our schedule." (See Tab 15, Pg. 1 - Clark's Proposal)" (Emphasis added.)

Such representation raises serious concerns regarding the appearance of "insider knowledge" unavailable to all proposers, not to mention potential violations of various County Ordinances.

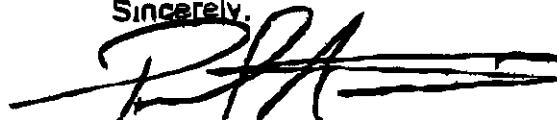
The problems noted above, singularly and collectively, appear to reflect serious deficiencies relating to the responsiveness of Clark's Proposal.

Issue Noted in MACM's Proposal

A problem has also been noted regarding MACM's proposal. The letter of intent submitted by MACM's subconsultant Dozier & Dozier Construction, Inc. fails to include any description of the scope of work it is expected to perform on this Project.

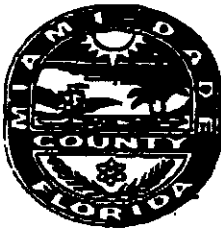
Parsons/Odebrecht respectfully submits that the issues discussed above should be addressed as they appear to be material in nature and otherwise relate to the responsiveness of the Proposals being submitted for this Project.

Sincerely,



Pablo Acosta, Esq.  
Senior Attorney - Miami Office

cc: Kay Sullivan, Clerk of the Board



# Facsimile Transmittal Cover Sheet

**Stephen M. Spratt, Senior Assistant**  
County Manager's Office  
111 NW 1 Street, 2910, Miami, FL 33128  
Phone: 305-375-1266 — Fax: 305-375-1358

To: Robert Meyers Fax: \_\_\_\_\_

From: Steve Spratt Date: 4/10/01

Re: \_\_\_\_\_ Pages: 6

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*Original will be delivered.*





# MEMORANDUM

107.07-17A METRO-DAD/USA-MAI. M01.

TO: Robert Meyers  
Executive Director  
Commission on Ethics

DATE: April 6, 2001

SUBJECT:

MIA South Terminal  
Conflict of Interest

FROM: Steve Shiver  
County Manager

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## Attachment

cc: Angela Gittens, Aviation Director  
Robert Ginsburg, County Attorney  
Kay Sullivan, Clerk of the Board

**VERNER LIPPERT  
BERNHARD McPHERSON & HAND**  
ATTORNEYS

3100 FIRST UNION FINANCIAL CENTER  
200 SOUTH BISKAYNE BLVD  
MIAMI, FL 33131  
PHONE (305) 371-8801  
FAX (305) 371-6545

January 26, 2001

**VIA FACSIMILE**

Robert A. Ginsburg, Esq.  
County Attorney  
Miami-Dade County Attorney  
111 N.W. First Street, Suite 2810  
Miami, Florida 33128

**Re: RFQ for Construction Manager At-Risk  
South Terminal Program  
Contract No. A155S, B311A, B311B, B312A, B313A,  
B315A, A155A, B315B**

Dear Mr. Ginsburg:

Please be advised that our firm represents Parsons Transportation Group, Inc. and Odebrecht Construction Inc., a joint venture, ("Parsons/Odebrecht") in their pursuit of the above-referenced RFQ. Kindly refer to our Lobbyist Registration Form on file with the Clerk of the Board.

In reviewing the Proposals from Clark/O'Brien Kreitzberg (hereinafter "Clark") and Miami Airport Construction Managers (hereinafter "MACM"), we have noted several issues which we believe should be considered the County Attorney's Office as they relate to a determination of responsiveness.

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• WASHINGTON, DC • HOUSTON • AUSTIN  
• HONOLULU • LAS VEGAS • MCLEAN • MIAMI

Jan-26-2001 05:42am From

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Robert A. Ginsburg, Esq.  
Miami-Dade County Attorney  
January 26, 2001  
Page 2

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Robert A. Ginsburg, Esq.  
Miami-Dade County Attorney  
January 26, 2001  
Page 3

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Jan-26-2001 05:43am From

7-058 P.005/005 P-600

Robert A. Ginsburg, Esq.  
Miami-Dade County Attorney  
January 26, 2001  
Page 4

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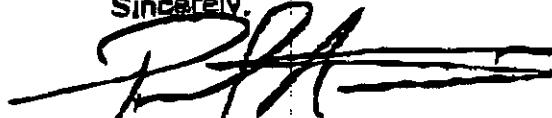
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Sincerely,



Pablo Acosta, Esq.  
Senior Attorney - Miami Office

cc: Kay Sullivan, Clerk of the Board



**ETHICS COMMISSIONERS**

**Kerry E. Rosenthal, Chairperson**  
**Charles A. Hall, Vice Chairperson**  
**Elizabeth M. Iglesias**  
**Knovack G. Jones**  
**Robert H. Newman**

**ROBERT A. MEYERS**  
EXECUTIVE DIRECTOR

**MICHAEL P. MURAWSKI**  
ADVOCATE

**ARDYTH WALKER**  
STAFF GENERAL COUNSEL

March 30, 2001

Pablo Acosta, Esq.  
Steel, Hector & Davis  
200 South Biscayne Boulevard  
Miami, Florida 33131-2398

RE: South Terminal

Dear Mr. Acosta:

Thank you for providing me with copies of your letters dated January 26, 2001 and March 12, 2001. I have reviewed the allegations you've made concerning responsiveness issues of Clark/O'Brien Kreitzberg and Miami Airport Construction Managers in their proposals to the RFQ. I agree that you have correctly identified several items that relate to responsiveness to the RFQ.

I have verified that the Inspector General's Office, the County Attorney's Office and all of the members of the Selection Evaluation Committee are aware of the issues you have raised. The mechanism for rectifying these inaccuracies in the RFQ lies in the hands of the Selection Evaluation Committee. They can reject the proposals, start anew or devise some other method of awarding the contract. However, it is not the function of this office to determine whether or not a vendor is compliant with an RFQ in terms of responsiveness.

If you wish, obviously you are free to file a formal complaint against Clark and /or MACM. For your convenience, I have enclosed the necessary forms.

Sincerely,



Michael P. Murawski

MPM/mb

STEEL  
HECTOR  
DAVIS

Steel Hector & Davis LLP  
200 South Biscayne Boulevard  
Miami, Florida 33131-2398  
305.577.7000  
305.577.7001 Fax  
www.steelhector.com

March 12, 2001

**VIA FACSIMILE**

Robert Ginsburg, Esq.  
County Attorney  
Miami-Dade County Attorney's Office  
111 N.W. First Street, Suite 2810  
Miami, Florida 33128

**RE: RFQ for Construction Manager At-Risk  
South Terminal Program  
Contract No. A155S, B311B, B312A, B313A,  
B315A, A155A, B315B**

Dear Mr. Ginsburg:

Please be advised that we represent Parsons Transportation Group, Inc. and Odebrecht Construction, Inc., a joint venture, ("Parsons/Odebrecht") in their pursuit of the above referenced RFQ. Kindly refer to our Lobbyist Registration Forms on file with the Clerk of the Board.

As you know, the Parsons/Odebrecht Team was ranked #1 by the Selection/Evaluation Committee after the scoring of technical and profit fee points were applied pursuant to the methodology described in the above referenced solicitation documents. Since then, several important issues and concerns have arisen regarding Miami-Dade County's Local Preference Program which involved, among other things, the application of Ordinance 94-166 (Local Preference Ordinance). There are two sets of issues in this regard.

The first involves the manner of application of the Local Preference Ordinance to the selection process for the South Terminal Project which (putting

Robert Ginsburg, Esq.  
Miami-Dade County Attorney's Office  
March 12, 2001  
Page 2

the issue of eligibility and compliance aside) has created results that are inconsistent with the spirit and intent of the Ordinance. In fact, several members of the Selection/Evaluation Committee raised concerns with the proposed application of the Local Preference Ordinance and the inequitable results that it has yielded. Because of these concerns, the Selection/Evaluation Committee requested that this Local Preference issue be thoroughly reviewed by the County's Office of the Inspector General (O.I.G.). The O.I.G.'s reports dated March 1<sup>st</sup> and March 5<sup>th</sup>, 2001 verify those concerns as to the application of the Ordinance and raised a second set of additional and significant issues regarding compliance by the other two proposers with the Local Preference provisions including:

- Two proposers' failure to maintain valid Miami-Dade County occupational licenses;
- Two proposers' failure to meet the technical definition of a local business;
- The O.I.G.'s inability to verify a number of employees listed by a proposer in their stated location;
- Failure by a provider to provide proof of occupancy, copy of a lease, or affidavit from lessor as required by the RFQ; and
- Local individual's inability to verify that a proposer actually was doing business at the stated address

Unfortunately, the O.I.G. report was not completed in time for the Selection/Evaluation Committee meeting of February 22, 2001, at which the Committee approved a recommendation which deviated from the clear terms of the RFQ process. Certainly, a deliberative body such as the Selection/Evaluation Committee would greatly benefit from having all the information available for consideration prior to making a final recommendation.

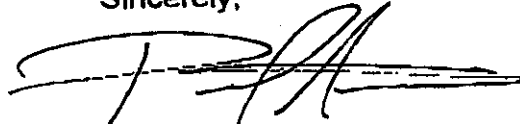
In light of the findings of the O.I.G. as well as the concerns previously raised by the Selection/Evaluation Committee regarding the Local Preference issue, we respectfully submit that the most reasonable and prudent course of action would be for the Selection/Evaluation Committee to reconvene and evaluate this new information. With the benefit of all this information before them, the Committee can conduct a complete analysis of these issues, applying local preference bonus points correctly and deleting the award of local preference bonus points to ineligible proposers.



Robert Ginsburg, Esq.  
Miami-Dade County Attorney's Office  
March 12, 2001  
Page 3

I appreciate your thoughtful consideration of these matters and look forward to hearing from you at your earliest opportunity. Should you have any questions, please do not hesitate to contact me at (305) 577-2828.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pablo Acosta', with a long horizontal flourish extending to the right.

Pablo Acosta, Esq.  
Senior Attorney

cc: Kay Sullivan, Clerk of the Board  
Robert Meyers, Commission on Ethics and Public Trust  
Christopher Mazzela, Inspector General