



MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

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MEMORANDUM

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**TO:** Daniel J. McFadden, P.E., Principal  
Lea+Elliott, Inc.

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

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

**SUBJECT:** INQ 19-110 [Organizational Conflict of Interest]

**DATE:** October 28, 2019

**CC:** Alice N. Bravo, P.E., Director  
Department of Transportation and Public Works

Hugo Benitez, Esq., Chief  
Commercial & Construction Litigation Section  
County Attorney's Office

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 correspondence from Mr. Daniel McFadden, principal of Lea + Elliott, Inc. (LEI), regarding Contract No. IRP249-DTPW18-CEI Internal Services Department (ISD) Project No E18-DTPW-10- Construction, Engineering and Inspection Services for the Metromover Comprehensive Wayside System Overhaul (the Project).

Upon receipt of the correspondence, the COE conferred briefly with Mr. McFadden. He explained that LEI was previously engaged in some Miami-Dade County projects.

Specifically, the County Department of Transportation and Public Works (DTPW) issued a work order to WSP USA, Inc., the Prime Consultant, under Professional Services Agreement, Contract No. CIP142-TR15-PE1: Engineering Services for the DTPW's

Capital Improvement Plan for the Project. Through that work order, WSP USA, Inc. and their sub-consultant, LEI, were tasked with development of the Design Criteria Package and assistance during the Request for Proposal process for the Project.

LEI expressed an interest in participating as a proposer for the Project and requested that the Commission on Ethics provide an opinion regarding whether LEI has an organizational conflict of interest (OCI) that would preclude the entity from responding to this solicitation.

Issue: Whether an organizational conflict of interest exists that would preclude LEI from responding to the solicitation for Contract No. IRP249-DTPW18-CEI ISD Project No. E18-DTPW-10: Construction, Engineering and Inspection Services for the Metromover Comprehensive Wayside System Overhaul (the Project).

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 letter from Alice Bravo, Director of DTPW, dated August 21, 2019, titled "Organizational Conflicts of Interest for Contract No. IRP249-DTPW18-CEI Internal Services Department (ISD) Project No E18-DTPW-10-

Construction, Engineering and Inspection Services for the Metromover Comprehensive Wayside System Overhaul.

Ms. Bravo, in her letter, indicates that the DTPW has analyzed the scope of services and concluded that no organizational conflict of interest exists should LEI and/or WSP USA, Inc., respond to the solicitation of the Project, ISD Project No. E18-DTPW 10.

Conclusion: Consequently, as the County has not identified an organizational conflict of interest by LEI, 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:** Monday, October 28, 2019 3:35 PM  
**To:** Sanchez, Rodzandra (COE); Anderson, Machell (COE)  
**Cc:** Perez, Martha D. (COE); Diaz-Greco, Gilma M. (COE)  
**Subject:** FW: INQ 19-110, Daniel J. McFadden, P.E., Principal, Lea+Elliott, Inc. (Organizational Conflict of Interest)  
**Attachments:** Organizational Conflicts of Interest - CEI Services for Metromover Wayside Overhaul.pdf; 081519\_Firm Matrix.docx; INQ 19-110 LEI (E18-DTPW-10).pdf

**From:** Turay, Radia (COE)  
**Sent:** Monday, October 28, 2019 3:35 PM  
**To:** 'McFadden, Daniel J.' <dmcfadden@leaelliott.com>  
**Cc:** Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>; Valin, Pablo (ISD) <Pablo.Valin@miamidade.gov>; Whiteside, Julie (ISD) <Julie.Whiteside@miamidade.gov>; Bravo, Alice (DTPW) <alice.bravo@miamidade.gov>; Benitez, Hugo (CAO) <Hugo.Benitez@miamidade.gov>; Rodriguez, Monica (DTPW) <Monica.Rodriguez@miamidade.gov>  
**Subject:** INQ 19-110, Daniel J. McFadden, P.E., Principal, Lea+Elliott, Inc. (Organizational Conflict of Interest)

Dear Mr. McFadden,

Thank-you for contacting the Miami-Dade Commission on Ethics and Public Trust, seeking our guidance in connection with the request from Lea + Elliott, Inc. (LEI), for a determination on whether an organizational conflict of interest exists that would preclude LEI from responding to the solicitation for Contract No. IRP249-DTPW18-CEI ISD Project No. E18-DTPW-10: Construction, Engineering and Inspection Services for the Metromover Comprehensive Wayside System Overhaul (the Project). 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:** Rodriguez, Monica (DTPW) <Monica.Rodriguez@miamidade.gov>  
**Sent:** Thursday, August 22, 2019 4:25 PM  
**To:** Arrojo, Jose (COE) <Jose.Arrojo@miamidade.gov>  
**Cc:** Turay, Radia (COE) <Radia.Turay@miamidade.gov>; Diaz-Greco, Gilma M. (COE) <Gilma.Diaz-Greco@miamidade.gov>; Perez, Martha D. (COE) <Martha.Perez2@miamidade.gov>; Whiteside, Julie (ISD) <Julie.Whiteside@miamidade.gov>; Bravo, Alice (DTPW) <alice.bravo@miamidade.gov>; Guyamier, Frank (DTPW)

<[Frank.Guyamier@miamidade.gov](mailto:Frank.Guyamier@miamidade.gov)>; Parjus, Alberto (DTPW) <[Alberto.Parjus@miamidade.gov](mailto:Alberto.Parjus@miamidade.gov)>; Smith, Leticia (DTPW) <[Leticia.Smith@miamidade.gov](mailto:Leticia.Smith@miamidade.gov)>; Arenes, German A. (DTPW) <[German.Arenes@miamidade.gov](mailto:German.Arenes@miamidade.gov)>; Valin, Pablo (ISD) <[Pablo.Valin@miamidade.gov](mailto:Pablo.Valin@miamidade.gov)>

**Subject:** RE: Request for Opinion Solicitation E18-DTPW-10 Construction Engineering and Inspection for the Metromover Comprehensive Wayside System Overhaul

Good afternoon Mr. Arrojo,

On behalf of Department of Transportation and Public Works Director Alice Bravo, please find attached correspondence.

Thanks.

**Monica U. Rodriguez**  
Executive Assistant to the Director  
**Department of Transportation & Public Works**  
**Miami-Dade County**  
Overtown Transit Village  
701 N.W. 1<sup>st</sup> Court, Ste 1700, Miami, FL 33136  
[www.miamidade.gov/transportation](http://www.miamidade.gov/transportation)  
**Connect With Us** on [Twitter](#) | [Facebook](#) | [Instagram](#)

**From:** Arrojo, Jose (COE) <[Jose.Arrojo@miamidade.gov](mailto:Jose.Arrojo@miamidade.gov)>

**Sent:** Wednesday, July 24, 2019 6:05 PM

**To:** Bravo, Alice (DTPW) <[alice.bravo@miamidade.gov](mailto:alice.bravo@miamidade.gov)>

**Cc:** [dmcfadden@leaelliott.com](mailto:dmcfadden@leaelliott.com); Turay, Radia (COE) <[Radia.Turay@miamidade.gov](mailto:Radia.Turay@miamidade.gov)>; Diaz-Greco, Gilma M. (COE) <[Gilma.Diaz-Greco@miamidade.gov](mailto:Gilma.Diaz-Greco@miamidade.gov)>; Perez, Martha D. (COE) <[Martha.Perez2@miamidade.gov](mailto:Martha.Perez2@miamidade.gov)>; Whiteside, Julie (ISD) <[Julie.Whiteside@miamidade.gov](mailto:Julie.Whiteside@miamidade.gov)>

**Subject:** FW: Request for Opinion Solicitation E18-DTPW-10 Construction Engineering and Inspection for the Metromover Comprehensive Wayside System Overhaul

Dear Ms. Bravo:

Greetings. We have received correspondence from Mr. Daniel McFadden, principal of Lea + Elliott, Inc. (LEI). LEI has expressed an interest in participating as a proposer in Miami-Dade County Solicitation E18-DTPW-10 Construction Engineering and Inspection for the Metromover Comprehensive Wayside System Overhaul.

During the COE's brief conversation with Mr. McFadden, he explained that LEI previously engaged in some Miami-Dade County projects. Mr. McFadden requested that the Commission on Ethics provide an opinion regarding whether LEI has an organizational conflict of interest (OCI) that would preclude the entity from responding to this solicitation.

We explained to Mr. McFadden that 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:

The issuing County department must disclose the standards by which the organizational conflicts of interest will be determined.

Disclosures of organizational conflicts of interest shall be reported by the County department.

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.

Copies of the plan regarding the resolution of a reported conflict of interest shall be forwarded to the Ethics Commission

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.

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.

At this point, 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.

Best regards,

Jose

**Jose J. Arrojo**

Executive Director

Miami-Dade Commission on Ethics and Public Trust

19 W. Flagler Street, Suite 820

Miami, FL 33130

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<http://ethics.miamidade.gov/>



**From:** McFadden, Daniel J. <dmcfadden@leaelliott.com>

**Sent:** Friday, July 19, 2019 4:00 PM

**To:** Ethics (COE) <ethics@miamidade.gov>; Whiteside, Julie (ISD) <Julie.Whiteside@miamidade.gov>; Clerk of the Board (COC) <Clerk.Board@miamidade.gov>

**Cc:** Bhattacharjee, Sambit <Sambitb@LEAELLIOTT.COM>; Mokhtech, Kamel <kmokhtech@leaelliott.com>; Caro-Szutar, Jacquelyn <jcaro-szutar@LeaElliott.com>

**Subject:** Request for Opinion Solicitation E18-DTPW-10 Construction Engineering and Inspection for the Metromover Comprehensive Wayside System Overhaul

**Importance:** High

EMAIL RECEIVED FROM EXTERNAL SOURCE

Good Afternoon,

Please find attached our Request for Determination of "No Organizational Conflict of Interest" with respect to Miami Dade County Solicitation E18-DTPW-10 Construction Engineering and Inspection for the Metromover Comprehensive Wayside System Overhaul.

We respectfully request your review of the relevant facts and concurrence with our conclusion that Lea+Elliott, Inc. is not conflicted from pursuing and providing the solicited services under E18-DTPW-10 entitled "Construction Engineering and Inspection Services for the Metromover Comprehensive Wayside System Overhaul". Since the solicitation is currently active, and time is of the essence, we request your expedited review.

Should you have any questions or require any additional information, please contact me at 305-929-8116.

Sincerely,

Dan McFadden

Daniel J McFadden, P.E. + Principal + Lea+Elliott, Inc.  
5200 Blue Lagoon Drive, Suite 250, Miami, Florida 33126 + T 305.500.9390 + D 305.929.8116

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# Memorandum



**Date:** August 21, 2019

**To:** Jose J. Arrojo, Executive Director  
Miami-Dade Commission on Ethics and Public Trust

**From:** *AW* Alice N. Bravo, P.E., Director  
Department of Transportation and Public Works

**Subject:** Organizational Conflicts of Interest for Contract No. IRP249-DTPW18-CEI  
Internal Services Department (ISD) Project No. E18-DTPW-10 – Construction,  
Engineering and Inspection Services for the Metromover Comprehensive  
Wayside System Overhaul

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The Department of Transportation and Public Works (DTPW) is in receipt of your email dated July 24, 2019 regarding a request received from Lea + Elliott, Inc. for a determination on whether an organizational conflict of interest exists that would preclude the entity from responding to the solicitation for ISD Project No. E18-DTPW-10: Construction, Engineering and Inspection Services for the Metromover Comprehensive Wayside System Overhaul (the Project).

DTPW issued a work order to WSP USA, Inc., the Prime Consultant, under Professional Services Agreement, Contract No. CIP142-TR15-PE1: Engineering Services for the DTPW's Capital Improvement Plan for the Project. Through this work order, WSP USA, Inc. and their sub-consultant, Lea + Elliott, Inc. were tasked with development of the Design Criteria Package and assistance during the Request for Proposal process for the Project.

DTPW has analyzed the scope of services and concluded that no organizational conflict of interest exists should these firms choose to respond to the solicitation for ISD Project No. E18-DTPW-10. Therefore, DTPW has not precluded WSP USA, Inc. and Lea + Elliott, Inc. for ISD Project No. E18-DTPW-10. Attached please find the matrix, prepared by DTPW staff, which supports this determination.

It is understood that DTPW's decision of how to address organizational conflicts of interest shall be subject to the approval of the Miami-Dade Commission on Ethics and Public Trust staff and we await the determination of your office.

If you have any questions or require additional information, please do not hesitate to contact my office at (786) 469-5406.

## Attachments

cc: Frank Guyamier, P.E., Deputy Director, DTPW  
Pablo Valin, Senior A/E Coordinator, ISD



**Metromover Comprehensive Wayside System Overhaul Project  
GEC Team Member Participation**

| Team Member         | Deliverables / Services   | CONFLICT OF INTEREST? | PRECLUDE FIRM? | COMMENTS |
|---------------------|---|-----------------------|----------------|----------|
| WSP USA, Inc.       | <ul style="list-style-type: none"> <li>• Conduct planning, study, and analysis activities and</li> <li>• Oversee sub-consultant's development of the Design Criteria Package (DCP) for the Project</li> </ul>   | NO                    | NO             | N/A      |
| Lea + Elliott, Inc. | <ul style="list-style-type: none"> <li>• Develop the DCP (Technical Provisions, Special Provisions, and Reference Drawings);</li> <li>• Prepare an Independent Cost Estimate;</li> <li>• Review and update Miami-Dade County boilerplate General Conditions, Contract, and procurement documents for the Request for Proposal (RFP); and</li> <li>• Provide support to DTPW through Contractor selection and award of the RFP by attending the project briefing and site visit(s), reviewing and recommending responses to Requests for Information from potential proposers and assisting through negotiations.</li> </ul> | NO                    | NO             | N/A      |