



Memorandum



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To: Honorable Carlos Gimenez, Mayor, Miami-Dade County

Honorable Jean Monestime, Chairman, Board of the County Commissioners
Honorable Xavier L. Suarez, Chairman, Economic Prosperity Committee
and Members of the Board of County Commissioners

From: Mary T. Cagle, Inspector General 

Date: July 13, 2016

Subject: OIG Observations, Comments and Recommendations on Agenda Items 3D & 3E
for the July 14, 2016 Miami-Dade Economic and Prosperity Committee Meeting

The Office of the Inspector General (OIG) has been monitoring the contract negotiations with approved applicants for funding from the Building Better Communities General Obligation Bond (BBC GOB) – Economic Development Funds for Projects 124 and 320. These applicants have already had their project scopes and funding allocation requests preliminarily approved by the Board of County Commissioners (BCC), subject to contract negotiation by County staff and final approval by the BCC. During the negotiations process, the OIG has been providing comments and suggestions to staff whenever appropriate and of value to protect the investment of taxpayer dollars. As you may be aware, for the past several years, the OIG has been auditing, reviewing and monitoring other grants and uses of BBC GOB funds, and some suggestions made in this memorandum are informed by our prior oversight efforts.

Negotiations have been completed with the first two of these projects and the resulting agreements are being presented to the Economic Prosperity Committee (EPC) on July 14, 2016 for consideration and approval. OIG observations, comments, and recommendations for each of the agreements follow:

- 1. Agenda Item 3D - Resolution Approving Interlocal Agreement with the Village of Palmetto Bay and Authorizing its Execution for a Building Better Communities General Obligation Bond Economic Development Fund Grant for Downtown Palmetto Bay Development Project. (Grant of \$7.5 million from EDF Project No. 124)**

Unlike the other approved EDF applications for private entity projects, these EDF grant funds would be provided to the Grantee, the Village of Palmetto Bay, while construction of the project is in-progress. Funds would be released by the County upon receiving a pay requisition from the municipality. Additionally, there is no requirement that this project create a minimum number of new jobs—a requirement contained in the grant agreements to private entities.

All too often County money is the first and only dollars spent on any given project. The OIG has consistently advocated—as we did in our recent memorandum regarding the Frost Museum—that County funds should only be spent concurrently with the other project funding.

As presented by Palmetto Bay officials, this project is estimated to cost \$12.44 million. The County's grant of \$7.5 million would pay for 60.29% of the project's cost. The OIG is pleased to see that the *Interlocal Agreement Section 4 - Funding Plan* requires Palmetto Bay to fund its share of the project concurrently; i.e. the County would reimburse only 60.29% of the presented invoice, thus requiring Palmetto Bay to concurrently pay its 39.71% share.¹

Post-execution, this Interlocal Agreement will be implemented by the County's Office of Management and Budget (OMB) (i.e., OMB will process the funding requests and monitor performance). Based on our prior GOB grants-related review, the OIG recommends that OMB require that pay requisitions include documentary evidence demonstrating the actual expenditure of funds (e.g., cancelled checks or other forms of payment to the contractor performing the construction work) prior to release of concurrent grant funds.

The OIG also observes that this agenda item, when earlier presented to the BCC for project and funding allocation approval, expressly contained a waiver as to the requirement that each approved project receive no less than \$10,000,000 (the minimum requirement pursuant to the amendments made to the Administrative Rules adopted in June 2010²). However, in those same policy amendments, a “municipal entity or agency based on [sic] Miami-Dade County” was eliminated as an eligible applicant that could receive Economic Development Funds.³

In neither case of the EDF Project 124 grant to the City of Miami (see footnote 1) nor the subject grant to the Village of Palmetto Bay has this eligibility requirement been waived. Similar to how this Board has waived the minimum dollar thresholds on a case-by-case basis, we recommend that a similar municipal entity exemption waiver be expressly stated in the Village of Palmetto Bay item, and a retroactive waiver should be made for the City of Miami Flagler Street grant.

¹ The Interlocal Agreement between the City of Miami and Miami-Dade County for a \$6 million grant to fund the Flagler Street Reconstruction and Economic Development (Resolution R-810-14 approved on September 16, 2014), contains a similar but looser requirement. This project was slated to cost \$13 million, with the City funding \$7 million and the County, through this grant, funding \$6 million. The City of Miami's agreement language does not state a percentage of what the County will pay of each invoice. Instead, it only states the City “shall include evidence that the City funded a like amount of capital costs for which it is not seeking reimbursement....” We find that the language in the Village of Palmetto Bay's Agreement to be an improvement.

² Resolution R-688-10

³ See Resolution R-668-10, handwritten page 18.

2. Agenda Item 3E - Resolution Relating to Grant Agreement between Oak Plaza Associates LLC and Miami-Dade County and Authorizing its Execution for a Building Better Communities Economic Development Grant to Miami Design District NE 2nd Avenue (Grant of \$2 million from EDF—Targeted Urban Areas—Project No. 320)

This grant is conditioned on the Grantee, Oak Plaza Associates LLC, creating and maintaining 433 new full-time jobs, with an annual median salary of \$35,000. Grant funds will be released either 1) in six equal payments with annual job creation and salary certifications for five years, or 2) a one-time reimbursement of the full grant amount subject to maintaining an irrevocable letter of credit for five years, which may be drawn upon by the County if the Grantee fails to meet its job creation requirements.

Throughout the negotiations process and upon review of multiple drafts of the proposed Grant Agreement, the OIG expressed concern that the definition of “new jobs” did not provide sufficient safeguards to ensure that jobs created by the project would be a positive increase for Miami-Dade County. The OIG commented that if new jobs includes “... (ii) existing businesses relocating to the Project or to the area as a result of the Project ...”⁴ then any business relocating from within the County to the project area (e.g., businesses from Bal Harbor Shops to the Design District) would be credited and there would be a zero-sum gain for the County.

The OIG is pleased to note that the final Grant Agreement presented to the EPC for consideration and approval has revised the definition of new jobs to now state “...(ii) existing businesses relocating to Miami-Dade County as a result of the Development ...” This revision now ensures that new jobs created from the investment of public tax dollars are new to the County and, as such, would result in a positive job gain for the County.

Furthermore, the OIG notes that this grant, and several more grants yet to be finalized, are reliant on new jobs to be created by third parties located in the project area (e.g., tenants to a shopping district). Thus, the annual new jobs certification will contain multiple certifications from multiple tenants. According to Section 2 of the Grant Agreement:

The determination of the number of new jobs created and maintained shall be based on an annual report prepared and certified by (1) the Grantees Certified Public Accountant (CPA), (2) the Grantee's Tenant(s)' CPA or (3) an agent of the Grantee's Tenant who has been duly authorized to sign on behalf of the Tenant company, by a corporate manager or officer. (Emphasis added by OIG)

⁴ Proposed language from an earlier draft.

We note that allowing three different methods of supplying job creation certifications to the County OMB on an annual basis may be too burdensome to County staff and result in inconsistencies in how these statistics can be verified. The burden should be on the Grantee to submit one package to OMB, on an annual basis, that contains all the necessary support to validate the Grantee's claim that 433 new full-time jobs have been created as a result of the successful completion of its project. There should be some responsibility on the Grantee to assure that its tenants' reported numbers are accurate. For example, who is held responsible if a tenant provides a false certification? The Grantee—not a tenant who the County is not in contractual privity with—should be held accountable during the performance period of the grant. The Grantee through inclusion and submission of its tenants' new job certifications should also be required to attest to its veracity. We strongly urge that this annual submission requirement be strengthened to hold the Grantee accountable for the reported job numbers by its tenants. This could be accomplished by revising this section of the Grant Agreement prior to final approval by this Board or through the implementation of an affidavit or affirmation form that the Grantee will supply when it submits its annual package.

Last because the amount of paperwork and certifications can become unwieldy, we encourage OMB to formalize its paperwork requirements to ensure a workable approach to how it will receive and verify these annual submissions.

The OIG will continue to monitor negotiations with all remaining applicants for funding from EDF Project Nos. 124 and 320. We may provide additional memoranda containing any observations, comments and/or recommendations, as warranted, for the next group of applicants who have reached a final agreement with the County for BCC approval.

cc: Abigail Price-Williams, County Attorney
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Jennifer Moon, Director, Office of Management and Budget
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