



AUDITOR GENERAL

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TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY

Operational Audit

SUMMARY

The Auditor General is authorized by State law to perform independent audits of governmental entities in Florida. Pursuant to a request by the President of the Senate and the Speaker of the House of Representatives and Section 11.45(2)(1), Florida Statutes, we conducted an operational audit of the Tampa-Hillsborough County Expressway Authority (Authority). The summary of our findings for the period July 1, 2005, through September 30, 2006, and selected actions taken prior and subsequent thereto, is as follows:

Finding No. 1: We disclosed several matters in this report in which we question the public purpose served by incurring certain operating expenses or providing specific benefits to certain Authority employees. The Authority has no funding source for operating purposes, other than expressway system user tolls. Accordingly, the decision to provide these expenses affects the tolls charged to the expressway system users.

Finding No. 2: Although revenue reports were provided to the Board, Authority staff had not provided periodic expenditure information, including budgetary status, to the Board since March 2004.

Finding No. 3: The Authority had not provided for an adequate separation of duties, restriction of access to its computerized accounting system, or compensating controls, in certain areas of operations.

Finding No. 4: The Authority's written policies and procedures, necessary to assure the efficient and consistent conduct of accounting and other business-related functions, and the proper

safeguarding of assets, had not been updated to incorporate policy and procedure changes.

Finding No. 5: The Authority had not officially adopted position descriptions, minimum requirements, pay grades, or pay ranges for its staff, and did not adequately document, verify, or maintain information about applicants and other significant personnel actions.

Finding No. 6: The Authority's employment agreements with its former Executive Director and several current employees contained provisions for severance pay without documenting in its public records the public purpose served. In addition, employment agreements did not provide for finite employment terms; therefore, the Authority was bound to pay severance unless the employee was terminated "with cause."

Finding No. 7: The Authority granted educational leave to an employee that enabled the employee to qualify for a different profession without documenting in its public records the public purpose served.

Finding No. 8: The Authority contracted with a law firm to provide general counsel services and employed a Legal Affairs Director without conducting a cost/benefit analysis, and Authority records were not sufficient to ensure there was no duplication of effort between the law firm providing general counsel services and the Legal Affairs Director. Further, although the Authority initiated a Request for Proposal for general counsel services, it had not analyzed or competitively selected for these services since 1997.

Finding No. 9: The Authority’s contract with the law firm did not provide for a maximum contract amount. In addition, Board approval of hourly increases for specified law firm personnel was not always documented in the Authority’s records. The law firm hired subcontractors to perform lobbying services contrary to the terms of the contract, the Authority’s procurement policies, and without written contracts between the Authority and the subcontractors.

Finding No. 10: Although the Authority’s Request for Proposal procedures allowed the Board to re-rank the selection committee’s recommended short list, the basis and justification for re-ranking the selection committee’s recommendation and selection of the contractor was not required or adequately documented in Authority records.

Finding No. 11: The Authority expended \$1.5 million dollars from July 1, 2001, through September 30, 2006, for lobbying services. Although requested, we were not provided the specific statutory authorization for the Authority to contract and make payments for lobbying services.

Finding No. 12: The Authority expended approximately \$809,500 for outsourced communication services without performing a cost/benefit analysis to determine whether it was more cost effective to use existing staff or hire additional staff.

Finding No. 13: Contrary to Section 112.313, Florida Statutes, the Authority’s minutes indicated appointment of a Temporary Interim Executive Director that was also the Vice President of a corporation with which the Authority had an ongoing contract.

BACKGROUND

The Tampa-Hillsborough County Expressway Authority (the Authority) was created in 1963 by the Florida Legislature through enactment of Chapter 63-447, Laws of Florida. Under this law, the primary purpose of the Authority was to construct, reconstruct, improve, extend, repair, maintain, and operate the expressway system authorized by Chapter 348, Part IV, Florida Statutes.

FINDINGS AND RECOMMENDATIONS

Financial Management

Finding No. 1: Administrative Expenses

Administrative costs, such as salaries and benefits, professional services, travel, utilities, and administrative facilities, are financed with user tolls on the Authority’s expressway system. Accordingly, management’s decisions as to the level of spending and the nature of specific spending activities for administrative expenses have an impact on the tolls charged to the expressway system users.

We disclosed several matters in subsequent findings in this report in which we question the efficiency of certain management practices and the public purpose served by incurring certain expenses or providing certain benefits to Authority employees. Since the Authority has no funding source for operating purposes, other than expressway system user tolls, the justification for these expenses should be demonstrated by the Authority when setting tolls to be charged to expressway system users.

Recommendation: Since administrative expenses are financed from expressway system user tolls, the Authority should carefully evaluate management practices and public purposes served and, as appropriate, document the level and nature of expenses necessary to operate the Authority.

Follow-up to Management Response

In her response, the Interim General Counsel indicated that the Authority does not concur with the implication of this finding that the Authority expends user tolls for administrative expenses without justification and documentation supporting the public purpose being served. However, the point of our finding, which summarized many of the issues in subsequent findings, was that the Authority could improve its cost-efficiency in certain areas and should document the public purpose served in expending moneys for certain expenses and providing benefits to its employees.

Finding No. 2: Interim Financial Reports

Interim financial information, reflecting the Authority's revenues, expenditures, and fiscal condition should be periodically presented to, and used by, the Board for monitoring and control purposes, as well as for decision-making, regarding Authority activities. According to the National Advisory Council on State and Local Budgeting's *Recommended Budget Practices, A Framework for Improved State and Local Government Budgeting* (Government Finance Officers Association, 1998), regular monitoring of budgetary performance provides an early warning of potential problems and gives decision makers time to consider actions that may be needed if major deviations in budget-to-actual results become evident. It is also an essential input in demonstrating accountability.

Our review indicated that, although revenue reports detailing projected-to-actual revenues were submitted to the Board on a monthly basis, periodic budget-to-actual expenditure comparisons had not been submitted to the Board since March 2004. As a result, the Board was not provided with proper control and accountability over expenditures and may not have been aware of potential problems regarding budget-to-actual expenditures.

Recommendation: To ensure that the Board is properly kept abreast of the Authority's fiscal condition and to establish proper accountability and assist in decision-making, Authority staff should present, on a periodic basis (e.g., monthly), expenditure reports, including budget-to-actual expenditures, to the Board.

Finding No. 3: Internal Controls

Proper segregation of duties is necessary to preclude the inappropriate use of Authority resources. Work responsibilities should be segregated such that one individual does not control all critical stages of a process to diminish the likelihood that unintentional or intentional errors and wrongful acts would go undetected. In a management information system, the

implementation of adequate identification, authentication, and authorization mechanisms helps enforce an appropriate segregation of duties by restricting unneeded access to, and use of, computing resources. Our review disclosed the following:

- The Accountant III job responsibilities included establishing vendors in the accounting system, processing invoices, securing blank checks, printing checks, obtaining two handwritten check signatures, distributing checks, recording transactions to the accounting records, and reconciling the Authority's three checking accounts.
- The Accountant III recorded journal entries in the accounting records. While journal entries were subsequently documented by a printout and signed by a supervisor, there was no reconciliation performed between the recorded journal entries and the accounting records.
- The Interim Chief Financial Officer (Interim CFO) job responsibilities included updating files within the payroll system to establish new employees, making changes to employee rates of pay, and recording employee termination information. In addition, the Interim CFO was responsible for establishing direct deposit information and processing and reviewing the payroll.
- Some employees had access to functions within the Authority's computerized accounting system that do not appear necessary based on their assigned job responsibilities. For example, of the six active users established in the system, it appeared that four Authority employees, including the Accountant III position described above, had the ability to generate purchase orders in the system. In addition, the Authority designated three of the six users as having System Administrator capabilities, including the Interim CFO. The Information Technology Manager was assigned limited-access capability, but was able to use a System Administrator user identification

(ID) that was included in the software package purchased from the manufacturer. The manufacturer suggested that once the System Administrator had been assigned by the purchaser, that use of the System Administrator user ID included be discontinued. Users that are designated as System Administrators have unrestricted access to all operations in the system and are the only users that can add, change, or delete other users. The assignment of the Interim CFO as a System Administrator, combined with this position's other duties, also results in a potential control weakness.

Recommendation: The Authority should separate duties such that no one employee has control over all critical stages of a process. The Authority should also restrict access to the accounting system functions based on assigned job responsibilities and strengthen controls regarding job assignments within day-to-day operations to more effectively promote a proper segregation of duties. System Administrator capabilities should be assigned to one primary employee, such as the Information Technology Manager, and one back-up employee. The back-up employee should not have responsibilities relating to critical accounting or payroll functions, and this employee's activity should be monitored. The Authority should also deactivate the System Administrator user ID that was included with the software package.

Finding No. 4: Written Policies and Procedures

Current written policies and procedures, which clearly define the responsibilities of employees, are essential to provide both management and employees with guidelines regarding the efficient and consistent conduct of business and the effective safeguarding of assets. In addition, current written policies and procedures, if properly designed, communicated to employees, and effectively placed into operation, provide management additional assurance that activities are conducted in accordance with applicable laws and other guidelines; and that financial records provide reliable information necessary for management oversight. Current written policies and

procedures also assist in the training of new employees.

During the audit period, the Authority had not updated its written policies and procedures for most of its accounting and other business-related functions. Some procedures that had changed over time were documented through memoranda rather than incorporated into the Authority's policies and procedures manual. In addition, we noted instances in which the policies and procedures manual differed from employee contract terms or from actual Authority practices. For example, the employment contract with the Executive Director that served from July 1, 2006, through November 9, 2006, provided for 176 vacation leave hours and 104 sick leave hours to be earned each year; however, the policy manual indicated that the Executive Director would be provided 240 hours of vacation leave hours and 120 hours of sick leave hours each year.

Instances of noncompliance or inadequate management controls, which may have resulted, at least in part, from a lack of current written policies or procedures, are discussed in subsequent findings.

Recommendation: The Authority should revise and update its written policies and procedures to ensure that they are consistent with current practices, applicable laws, and other guidelines. In doing so, the Authority should ensure that the written policies and procedures address the instances of noncompliance and control deficiencies discussed this report.

Organizational Structure and Staffing

Finding No. 5: Employment Practices

The Authority had 11 full-time employees and 1 part-time employee as of September 30, 2006, and salary expenses of approximately \$1.4 million for the 2005-06 fiscal year. The Authority's personnel procedures had not been formally adopted, and there were no officially adopted job descriptions or minimum requirements for all positions. In addition, the

Authority had not adopted a schedule of pay grades and pay rates, and had not assigned specific pay grades or ranges to each position.

Our review of employment practices indicated instances in which the Authority did not adequately document personnel activities and did not include all information about employees' qualifications, experience, pay rates, and other information that should be included in employees' personnel files. In our review of personnel activities, we noted the following:

- Eleven of 12 personnel files did not contain employment applications.
- Personnel files for three current employees did not contain evidence of applicable licensure or certification. Missing evidence applicable to these employees consisted of two professional engineer licenses and one certification from the American Institute of Certified Planners.
- We noted several employee contracts that pertained to a previously held position with no contract on file for the employee's current position. For example, the only contract on file for the Legal Affairs Director, employed in that position as of May 1, 2001, was a contract dated February 1, 1997, when this employee was hired as the Assistant Director.
- Our review of personnel files and payroll records disclosed nine employees who received pay raises during the 2005-06 fiscal year ranging from 8.1 to 13.6 percent. Documentation for each pay raise consisted of a one-page payroll change notice with a check mark next to the reason or reasons for the increase, such as merit increase, other-salary increase, other-increased responsibilities, other-reorganization/team leader, or job description change. The reason(s) checked were not documented to provide justification for the salary increases. For example, to justify a merit increase, the Authority's employee performance evaluation process states that the Executive Director is

responsible for (1) preparing performance evaluations for all employees and (2) approving performance-based increases for employees when applicable. Annual evaluations of the employees' performance were not included in the employees' personnel files. The payroll change notices were generally approved by the Chief Financial Officer and the Executive Director. Without proper documentation, the Authority cannot justify the basis for the salary increases.

- Authority policy requires that monthly timesheets be reviewed and approved by the Executive Director. Monthly timesheets for employee payrolls were not always signed by the Executive Director to document his approval. For example, for the 12 months in the 2005-06 fiscal year, 8 timesheets were not signed for one employee and 12 timesheets were not signed for another employee.

Effective control over the hiring of employees includes adoption of position descriptions that specify minimum education and experience requirements, verification of employment history and educational experience prior to offering employment, and maintenance of personnel files that include completed applications, letters of reference, college transcripts (if applicable), and other appropriate documentation evidencing authorized personnel actions. Absent such verification and documentation, the Authority may hire individuals that do not have the required skills to adequately perform their duties, and payroll changes may not be appropriately authorized.

Recommendation: The Authority should adopt position descriptions and minimum requirements for all positions and set a standard pay grade or range for each position. Additionally, the Authority should implement procedures to ensure that all prospective employees submit an employment application, develop a form to document employee appointment, and properly verify and document employee qualifications for the position. The Authority should also review all employment contracts to ensure consistency with each

employee's current position and ensure that all other appropriate documentation evidencing authorized personnel actions are included in the Authority's records.

Follow-up to Management Response

In her response, the Interim General Counsel indicated that some personnel files were incomplete at the time of the audit because the documents were being scanned into an electronic document repository. However, this explanation was not provided to us during the audit. The Interim General Counsel also indicated that the two employees whose positions require licensure or certification have the license or certification displayed in their offices, and also provided explanations for some of the pay raises granted to employees. However, the point of our finding is that the employees' personnel files should contain evidence of licensure or certification at the time the employee is hired, as well as documentation to support any salary increases.

Finding No. 6: Severance Pay

On October 25, 2004, the Board terminated the Executive Director's employment, effective November 1, 2004, pursuant to the Board Chairman's motion, which stated, "the Executive Director's employment agreement be terminated without cause effective November 1, 2004, which would entitle the Executive Director to one year's salary and benefits..." On November 2, 2004, the Authority entered into a separation agreement that effectively canceled the original employment agreement, and the Authority granted the Executive Director severance pay in an amount equal to one year's salary plus a three percent contribution to deferred compensation, insurance benefits, vacation and sick leave, as well as any unpaid salary and unused leave benefits which had accrued to the severance date, payable in one lump sum payment, reduced by any required statutory deductions. Pursuant to the separation agreement, the Authority valued the Executive Director's severance payout at approximately \$231,000.

The original employment agreement with the Executive Director specified that the Board reserved the right to terminate the employment arrangement at

any time and without cause in exchange for one year of salary and benefits payable to the Executive Director. However, it is a basic tenet of law that the disbursement of public funds must be primarily for a public purpose. Accordingly, the expenditure of public funds must primarily meet a public purpose, rather than a private purpose. The Authority has wide discretion in determining what constitutes a public purpose. Although the Board indicated that it felt it would be in the best interest of the Authority to pursue new leadership that possessed a different set of skills for upcoming projects, the severance pay of approximately \$231,000 appears excessive and so favorable to the Executive Director, and so disadvantageous to the Authority, it is not apparent that this expenditure was primarily for a public purpose.

Current employment agreements between the Authority and seven employees contain provisions for severance payment by the Authority of salary and benefits for periods ranging from three to six months should the employees be terminated by the Board "without cause." The value of these potential contracted severance pay totals approximately \$282,000. As of November 1, 2006, the only employees whose employment agreements did not contain severance provisions were: the Executive Director, the part-time Paralegal, the Accountant III, and the Office Assistant II. We surveyed other Florida expressway authorities and other authorities in the Tampa area and found that the Executive Director (or equivalent) was the only position provided severance pay and, like the Authority, such pay was contingent upon the employee's termination "without cause."

Unlike other authorities surveyed, the Authority's employment agreements do not provide for limited employment dates (i.e., terms). As a result, the Authority is bound to pay severance to these employees unless the employee is terminated with cause, even when an employee is terminated after a short time period. "With cause" is defined in each of the contracts and includes various forms of

misconduct by the employee, such as conviction of an offense involving willful violation of State or local laws or ordinances.

Recommendation: The Authority should review the provisions of current and future employment agreements regarding the benefit to the Authority, and the public purpose served, of providing severance pay to employees. If the Authority decides to continue the use of severance pay, and can document the public purpose served, the Authority should consider the use of employment terms and provisions that require a cost savings to the Authority as a prerequisite to paying severance upon early termination.

Finding No. 7: Educational Leave With Pay

Expenditures of public funds must be shown to be authorized by applicable law; reasonable in the circumstances and necessary to the accomplishment of authorized purposes of the governmental unit; and in pursuit of a public, rather than a private, purpose. These limitations require Authority officials seeking to expend public funds to identify the authority relied upon for the contemplated expenditure and to adequately describe how the expenditure will further an authorized public purpose (see Attorney General Opinion No. 068-12).

On November 17, 1997, the Authority's Assistant Director submitted a proposal for educational leave, with pay, in order to attend law school. Prior to the Assistant Director's request, the Authority did not have an educational leave program for its employees. Adoption of an educational leave with pay program and authorization to execute the agreement with the Assistant Director was approved by the Board on November 24, 1997. On January 6, 1998, the Authority contracted with the Assistant Director to pay the Assistant Director's salary while on educational leave for two years to attend law school. From January 1998 to July 2000, the employee worked 1,830 hours, was on leave 3,282 hours, and was paid salary and benefits of approximately \$143,000.

The contract between the Authority and the Assistant Director stated, "Following the completion of the

Program, Employee may, at the sole discretion of the Authority, assume a new employment position with the Authority which reflects the expertise Employee has gained during the Program." Upon completion of the educational leave in July 2000, and subsequent to passing the Florida bar exam, the Assistant Director's title and responsibilities were changed to Legal Affairs Director in May 2001.

Work-related education expenditures in certain circumstances may be for an authorized public purpose. For example, Section 110.1099, Florida Statutes, authorizes State employees who exhibit superior aptitude and performance to receive paid educational leave for up to one academic year at a time for specific approved work-related education and training. However, we are unaware of any authority that expenditures to qualify an existing employee for a different profession serves primarily a public purpose. Rather, education expenditures to qualify an employee for another job constitutes primarily an expenditure for a private purpose.

Recommendation: In granting educational leave with pay, the Authority should demonstrate, in its public records, the public purpose served by the arrangement.

Follow-up to Management Response

In her response, the Interim General Counsel indicated that the Authority disagrees that its payment of the Assistant Director's salary while she was on educational leave to attend law school appears to be for a private, not a public, purpose. The Interim General Counsel stated that the expenditure was for the purpose of improving "her existing job skills" and that "after graduation from law school the employee would perform customary legal services which otherwise would be outsourced to the General Counsel." The Interim General Counsel further stated that the Assistant Director's work activities primarily involved legal matters. However, the job description for that position did not contain any obvious legal-related matters.

We are aware of no authority that authorizes the payment of such expenses to qualify an employee for a new profession, nor did the Authority cite any such authority. Florida law, as explained in

Attorney General Opinion Nos. 64-136, 81-100, and 82-13, clearly holds that it is not a proper expenditure to pay for the training and education of an employee to qualify the employee for a different occupation.

Contractual Services

The Authority is responsible for establishing internal controls that provide assurance that the process of acquiring contractual services is effectively and consistently administered. As a matter of good business practice, procurement of services should be done only when it has been determined that outsourcing the function is in the best interest of the Authority, including consideration of the costs and benefits of using existing staff or possible employment of new staff to perform the function. Contractual services should be acquired using a competitive selection process to provide an effective means of equitably procuring the best quality services at the lowest possible cost. For recurring services, such as legal and auditing, contracts should have limited terms, and cost/benefit analyses and the competitive selection process should be re-utilized periodically. In addition, contractual arrangements for services should be evidenced by written contracts embodying all provisions and conditions of the procurement of such services. The use of a formal written contract protects the interests of the Authority, identifies the responsibilities of both parties, defines the services to be performed, and provides a basis for payment.

Finding No. 8: Acquisition of General Counsel Services

On May 27, 1997, the Board entered into a contract with a law firm to provide general counsel services. The firm was to provide for the preparation, review, and approval of all routine agreements, contracts, and other documents requiring execution by the Authority. It was also to provide day-to-day representation of the Authority before other agencies on routine matters. The contract was for an indefinite term and was not substantively changed from inception through September 30, 2006.

As further discussed in finding No. 7, the Authority approved educational leave for its Assistant Director to attend law school and, after the employee completed law school and passed the Florida bar exam, the employee was named Legal Affairs Director and, according to the job description, some legal responsibilities were assigned. Although the Assistant Director's Proposal for Educational Leave stated, in part, that "The Authority's innovative Plan of Projects over the next 10 to 15 years will undoubtedly result in a need for increased legal activities and create a situation wherein the Authority would be modifying its current practice of retaining outside legal counsel for all of the Authority's legal services...", the Authority did not cancel or modify the contract for services to be provided by the law firm after May 2001.

For services provided pursuant to the May 27, 1997, contract, the Authority incurred expenditures of approximately \$3.5 million for the period July 1, 2001, through September 30, 2006, including litigation services totaling \$471,000, and bond financing services totaling \$53,000. During the same period, the Authority also paid its Legal Affairs Director approximately \$649,000 in salary and benefits. We reviewed the law firm's detailed invoices for the period July 1, 2005, through September 30, 2006, and noted that fees charged by the law firm included, but were not limited to, activities such as preparation and revision of Board meeting minutes and agenda items, other Board meeting related activities, public records research, Sunshine Law issues, and personnel issues, such as employee terminations and employment contracts. The responsibilities of the Legal Affairs Director, as described in the job description, included investigating personnel issues, hiring and firing, public records rules and procedure issues, providing agenda items to committee and Board meetings, and oversight of meeting summary minutes, the Sunshine Law, and representing the Authority at local agencies' meetings. Based on the Legal Affairs Director's job description, there was a possibility that a duplication of effort in the services provided by the Authority's Legal Affairs Director and the law firm may have occurred. We

reviewed the Legal Affairs Director's work activity logs for the period July 1, 2005, through September 30, 2006; however, they were not in sufficient detail to make a clear determination of specific duplication of effort.

Prior to entering into the contract with the law firm for general counsel services, the Authority did not perform a cost/benefit analysis to demonstrate that outsourcing this function was more cost effective for the Authority than employing an in-house general counsel. Prior to granting educational leave and appointing the former Assistant Director as the Legal Affairs Director, the Authority again did not perform a cost/benefit analysis to determine whether it was cost beneficial or necessary to retain the outside law firm for general counsel services in addition to employing the Legal Affairs Director. Further, a cost/benefit analysis was not performed prior to the Board's direction to staff for issuance of a Request for Proposal for general counsel services in April 2006.

As noted previously, the contract with the law firm was for an indefinite term and had not been renewed or evaluated since inception in May 1997. The effectiveness of the competitive selection for services is negated when an entity uses the services of the same contractor for an unusually long length of time without reapplying such procedures. Although the Authority initiated a competitive selection process for these services in April 2006, an evaluation of the Authority's need for outside general counsel services should have been performed on a periodic basis (e.g., every three to five years) and, if it was determined that outside general counsel services were still necessary, the competitive selection for these services should have been employed more frequently.

Recommendation: The Authority should analyze its current needs for general counsel services. In doing so, the Authority should conduct a cost/benefit analysis to determine the potential cost savings of an in-house general counsel position and outsource special counsel services on an as-needed basis. If the Authority determines that it needs both a Legal Affairs

Director and outside legal counsel, the Authority should ensure that there is no duplication of effort. Finally, contracts for services should contain finite terms and should be analyzed for necessity and cost effectiveness, and competitively selected, on a periodic basis.

Finding No. 9: Legal Services Contract

As noted in finding No. 8, the Authority paid approximately \$3.5 million to the law firm providing general counsel services. We reviewed the contract terms and related activities and noted the following:

- The Authority's contract with the law firm did not establish a maximum contract amount, periodic reports were not required to be provided to the Board to evaluate contract performance, and there were no provisions to address the monitoring of contract performance. In the absence of an established maximum contract amount and the lack of a contract monitoring mechanism, the Authority may not have sufficient control over these expenditures.
- Although the contract established hourly rates, they were increased for specified law firm personnel four times since the inception of the contract; however, Authority records for two of the hourly rate increases, in August 2003 and June 2005, were not documented as to Board approval.
- Terms of the contract also stated that the law firm, or its affiliate, would provide monitoring, tracking, and advice regarding bills and other legislative activities before the Florida Legislature to promote the general interest of the Authority for an annual retainer of \$12,000. Although not specifically authorized through provisions in the contract, the law firm, with the awareness of the Board, hired a consultant for State lobbying services on the Authority's behalf beginning in February 1999, thereby creating a liability for payment by the Authority. This arrangement continued until May 2006, when the Authority contracted directly with the consultant for State lobbying services. On December 2, 2002, an

amendment to the law firm’s contract provided that the firm could utilize consultants for “legislative and administrative monitoring, advice, advocacy, strategy, and related services.” The law firm also hired a firm for Federal lobbying, beginning November 30, 2002, and continuing through December 14, 2004. Further the firm hired for State lobbying hired two additional lobbying firms to provide services on the Authority’s behalf. Approximately \$1.5 million was paid for lobbying services from July 1, 2001, through June 30, 2006 (see additional discussion in finding No. 11). Other issues associated with this arrangement were:

- Although there was a written contract between the law firm and the firm hired for Federal lobbying purposes, no written contract existed between the law firm and the firm hired for State lobbying purposes and no written contracts existed between the Authority and any of these firms prior to May 2006. Thus, there was no documented direction from the Authority as to what services the Authority wished to procure, description of deliverables to support the basis of any payments, provision for cost of the services and payment arrangements, or the service delivery dates. Business arrangements such as these may obligate the Authority to incur costs for unnecessary or unsolicited services, beyond what is necessary or prudent and beyond its ability to pay. There is an increased risk that payments may be made for services that are not performed in accordance with Board intentions.
- The procurement of these services without a competitive selection process violates the Authority’s policies and procedures, which require that contractual services costing \$15,000 or more be competitively selected.

Recommendation: The Authority should require that future contracts for general counsel or other services include a maximum contract amount, require reports to be provided to evaluate contract performance and provide a basis for payment, and provide for monitoring of contract performance to ensure that services and resulting costs are being obtained in accordance with Board intentions. Authority procedures should be strengthened to ensure that any hourly rate adjustments to contracts are authorized by the Board prior to payment. The Authority should also discontinue allowing contracted parties, other than construction contractors, to obligate the Authority by hiring subcontractors that are not contracted directly with the Authority. Finally, the Authority should follow its procurement policies and procedures when acquiring contractual services.

Finding No. 10: Requests for Proposal

On April 24, 2006, the Board authorized Authority staff to issue a Request for Proposal (RFP) in order to procure a contract for general counsel services. The RFPs were required to be submitted by August 4, 2006, and seven firms submitted proposals, one of which was withdrawn due to a conflict of interest. The RFP selection committee, consisting of one Board member, the Executive Director, and one staff employee, scored the responding firms and ranked them according to qualifications to perform the services requested in the RFP. The RFP selection committee’s rankings were accomplished in accordance with the Authority’s RFP policy and in accordance with the scoring attributes established for the RFP. The rankings and scores were as follows for the four highest ranked firms:

Firm	Proposal Score	Presentation Score	Total Score
1	9.1	8	17.1
2	7.5	6.6	14.1
3	6.6	7.4	14
4	5.3	5.6	10.9

The four firms with the highest scores were presented to the Board on August 28, 2006, for the Board's review and approval of the selection committee's recommendation and subsequent authorization to enter into contract negotiations with the highest ranked firm. The Board did not accept the ranking recommended by the selection committee, and chose to re-rank the firms by giving the second-ranked firm a first-ranked status. The motion to re-rank and select the firm ranked second by the selection committee was made by a Board member that was not a member of the selection committee. The Board approved the re-ranking of the selection committee's recommendation, and selection of the firm that was originally ranked second, and directed Authority staff to negotiate a contract with the firm. Although the Authority's RFP procedures allow the Board to re-rank the selection committee's recommendations, the procedures do not include a requirement to justify a re-ranking. Our review of the Board meeting minutes disclosed that there was no discussion at the Board meeting demonstrating the Board's basis for re-ranking the first and second ranked firms. In consideration of the selection committee's scores noted above, documentation of any re-ranking of the selection committee's ranking becomes essential. In the absence of such documentation, evidence of impartiality derived from the RFP process is, to the extent of the re-ranking, negated.

The Board on at least one other occasion, had re-ranked the selection committee's recommendations for the second and third ranked firms in an RFP for financial services. Although the re-ranking in that instance did not result in the first ranked firm not being awarded the contract, we noted that the basis for the re-ranking of the second and third ranked firms was also not documented in the Board meeting minutes.

While the Board retained the ultimate responsibility in selecting contractors, in order to ensure the integrity of the RFP process, any deviations from the selection committee's rankings, including justifications therefor,

should be clearly documented in the Authority's public records.

Recommendation: If the Board determines that an RFP selection committee's rankings are not acceptable to the Board, the reasons therefor should be documented in the Board minutes along with justifications for any re-rankings.

Finding No. 11: Lobbying Services

As also discussed in finding No. 9, the Authority made payments totaling approximately \$1.5 million to four consultants for lobbying services rendered on behalf of the Authority during the period July 1, 2001, through June 30, 2006. In response to our inquiry as to the specific legal authority relied upon in entering into contracts and business relationships and making payments for lobbying services, the Authority's Interim General Counsel cited several sections of Chapter 348, Florida Statutes, and concluded that the sections of Chapter 348, Florida Statutes, authorize the Authority to contract for lobbying services as follows:

Section 348.52(4), Florida Statutes, states that the Authority may employ "other professional consultants... as it may require and may determine the qualifications and fix the compensation of such persons, firms or corporations." Additionally, Section 348.0004(2), Florida Statutes, states that the Authority "may exercise all powers necessary, appurtenant, convenient, or incidental to the carrying out of its purposes..." Finally, Section 348.54(13), Florida Statutes, states that the Authority has the power "[t]o do all acts and things necessary or convenient for the conduct of its business and the general welfare of the Authority, in order to carry out the powers granted to it by this part or any other law."

While the referenced statutes authorize the Authority to employ consultants for the conduct of Authority business, they do not provide specific and express statutory authority for the expenditure of Authority

funds for the hiring of a lobbyist. The Authority's Interim General Counsel acknowledged in response to our inquiry that the Authority "does not have specific statutory authority to hire a lobbyist."

The Authority is a statutory entity created and established pursuant to Section 348.52, Florida Statutes. The Attorney General has interpreted Florida law, in numerous opinions, as prohibiting public funds from being expended by statutory entities for lobbying purposes unless expressly and specifically authorized by State law (see Attorney General Opinion Nos. 77-08, 85-04 and 2000-09). In response to our request for clarification of the Authority's legal basis to retain lobbying services, in view of the above-cited Attorney General opinions, the Interim General Counsel stated, "[a]s stated in AGO 2000-09, 'public funds may not be expended by a district or other statutory entity unless there is a statutory provision authorizing such expenditures.' However, *Attorney General Opinions* are advisory documents and AGO 2000-09 fails to highlight any Florida provision providing authority for this proposition." We believe that these Attorney General opinions, and the cases cited therein, do reflect clearly established Florida law. The Authority should take immediate steps to conform its lobbying activities to the requirements of law. Permissible activities would include, as noted in Attorney General Opinion No. 2000-09, authorizing an employee, such as the managing director, to perform "statutorily prescribed activities, such as seeking funding and as acting as an advocate."

Recommendation: The Authority should immediately discontinue its relationship with contracted lobbyists and consider assigning applicable statutorily prescribed activities to an employee of the Authority.

Follow-up to Management Response

In her response, the Interim General Counsel indicated that the Authority disagrees with our finding that its funds may not be used to retain lobbying services and indicates that the Attorney General Opinions cited in our finding rely upon Section 11.062, Florida Statutes, which is not applicable to special districts such as the

Authority. Our finding and the cited Attorney General Opinions, to the contrary, do not rely upon Section 11.062, Florida Statutes, but rather upon constitutional principles. For example, Attorney General Opinion No. 2000-09 states that the Miami River Commission, although not subject to Section 11.062, Florida Statutes, because it is a special district, has no authority to retain a lobbyist. The Authority's assertion that other expressway authorities have representatives working in the Legislature on their behalf, without specific authority, does not excuse the Authority's noncompliance. The Interim General Counsel also indicated that the Authority is conducting a cost/benefit analysis to determine the optimal structure for providing needed services. However, the point of our finding is not the cost effectiveness of outsourcing lobbying services; rather, that the Authority is not authorized to contract for lobbying services.

Finding No. 12: Outsourcing

During our review, we noted that the Authority paid approximately \$809,500 to two firms from July 2002 through September 2006 for communication services. Although requested, we were not provided with a cost/benefit analysis demonstrating that it was more cost effective for the Authority to outsource these duties rather than use existing staff or hire additional staff.

While cost is not the only factor to consider, the reasons for outsourcing functions that are typically performed by employees, or could be performed by employees, should be documented in the Authority's public records.

Recommendation: The Authority should evaluate outsourced functions that may be more effectively handled by existing or additional staff. For those functions, the Authority should perform cost/benefit analyses and document its reasons for outsourcing, especially in instances where factors other than cost were used to make the decision.

Other

Finding No. 13: Conflict of Interest

Section 112.313(7)(a), Florida Statutes, provides that no public officer or employee of an agency shall have or hold any employment or contractual relationship with any business entity of which he or she is an officer or employee; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties. The term “public officer” includes any person elected or appointed to hold office in any “agency,” which means any state, regional, county, local, or municipal government or political subdivision of this State.

The appointment of a Temporary Interim Executive Director was discussed by the Board in its November 13, 2006, meeting to serve as Executive Director until an Interim Executive Director could be appointed. The Authority’s tape recordings of the November 13, and November 20, 2006, meetings were not specific as to the duties of the Temporary Interim Executive Director; however, in the November 13, 2006, meeting it was indicated that the Temporary Interim Executive Director would oversee the daily operations of the Authority. At its November 20, 2006, meeting, the Board voted to ratify actions taken at the November 13, 2006, meeting, including the appointment of the Temporary Interim Executive Director. In addition, in the November 20, 2006, meeting, the Temporary Interim Executive Director was requested by the Chairman to present the Executive Director’s report for that meeting, which he presented. The individual who was the subject of the discussion and ratification of the Temporary Interim Executive Director was the Vice President for a corporation with which the Authority had contracted to perform general engineering consulting work. The contract with the firm was entered into on January 10,

2005, for a five-year period, and the Authority had paid the firm a total of \$4.66 million through September 30, 2006. As a result, a conflict of interest existed as defined in Section 112.313(7)(a), Florida Statutes.

Upon our inquiry regarding the apparent appointment of the Temporary Interim Executive Director, the Interim General Counsel indicated that the individual was asked to “continue to oversee the daily operations of the Authority, as they relate to the transportation projects within his purview.” She also indicated that the individual was not given any additional duties or responsibilities which he was not already charged with as the general engineering consultant. She further indicated “We do not believe it was the intent of the Board to give [the individual] additional duties or responsibilities which would fall under the executive director.” However, the audio tapes of the Board meetings demonstrate a clear intention of appointing a person to temporarily perform the functions of an Executive Director.

Recommendation: The Board should clarify its appointment of the Temporary Interim Executive Director and, in doing so, the Authority should avoid situations that could result in conflicts of interest.

Follow-up to Management Response

In her response, the Interim General Counsel indicated that the Authority does not concur with our finding and stated that a prohibited conflict of interest did not exist because the Interim Executive Director “was not given any additional duties or responsibilities which he was not already charged with” in his capacity as a consultant. As indicated in our finding, the audio tapes of the Board meetings do not support this statement. Further, if the Interim Executive Director was not granted additional duties and responsibilities by this appointment, it is not clear what the purpose of the appointment was nor who would have the authority to administer the daily Authority operations.

OBJECTIVES AND SCOPE

Our audit objectives for the scope of this audit were to:

- Document our understanding of the Authority's management controls relevant to the organizational structure and staffing, procurement of goods and services, and contractual services. Our purpose in obtaining an understanding of management controls and making judgments with regard thereto was to determine the nature, timing, and extent of substantive audit tests and procedures to be performed.
- Evaluate management's performance in administering its assigned responsibilities in accordance with applicable laws, ordinances, and sound business practices.
- Determine the extent to which the Authority's management controls promoted and encouraged the achievement of management's objectives in the categories of compliance with controlling laws, ordinances, and sound business practices; the economic and efficient operation of the Authority; the reliability of financial records and reports; and the safeguarding of assets.

The scope of this audit included transactions during the period July 1, 2005, through September 30, 2006, and selected transactions taken prior and subsequent thereto, related to the specific issues concerning the Authority's operations disclosed in the Governor's General Counsel's report regarding her review of the Authority's selection process of its outside general counsel to determine whether such transactions were executed, both in manner and substance, in accordance with governing provisions of laws, ordinances, and sound business practices. Issues of concern expressed in the Governor's General Counsel's report, and considered in this audit, included: a top-down review of the Authority's structure; evaluation of the level and quality of the Authority's staffing; cost/benefit analysis of outsourcing of the general counsel function; benefits

and general appropriateness of employing outside lobbyists; analysis of legal and lobbying fees expended by the Authority over the past five years; current ethics policies, procurement policies, and other rules; and other financial, operational, and performance matters deemed appropriate.


Our audit did not extend to an examination of the Authority's financial statements. The Authority's financial statements for the fiscal year ended June 30, 2006, were audited by a certified public accounting firm, and the audit report is required to be filed as a public record with the Authority.

METHODOLOGY

The methodology used to develop the findings in this report included the examination of pertinent Authority records in accordance with applicable Generally Accepted Government Auditing Standards.

AUTHORITY

Pursuant to the provisions of Section 11.45(2)(l), Florida Statutes, I have directed that this report be prepared to present the results of our operational audit of the Tampa-Hillsborough County Expressway Authority for the period July 1, 2005, through September 30, 2006, and selected actions taken prior and subsequent thereto.



William O. Monroe, CPA
Auditor General

MANAGEMENT RESPONSE

The Authority's response is included in this report as Appendix A. The response, including exhibits provided by the Authority with the response, may be viewed on the Auditor General Web site.

This audit was conducted by Denis Jessen, CPA, and supervised by Marilyn D. Rosetti, CPA. Please address inquiries regarding this report to James M. Dwyer, CPA, Audit Manager, via e-mail at jimdwyer@aud.state.fl.us or by telephone at (850) 487-9031.

This report, and other audit reports prepared by the Auditor General, can be obtained on our Web site at <http://www.state.fl.us/audgen>; by telephone at (850) 487-9024; or by mail at G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.

APPENDIX A
MANAGEMENT RESPONSE AND EXHIBITS



FOWLER WHITE BOGGS BANKER

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December 19, 2006

William O. Monroe, CPA
Auditor General
State of Florida
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Re: Responses to Auditor General's Preliminary and Tentative Findings

Dear Mr. Monroe:

Pursuant to your correspondence dated November 29, 2006 this letter provides the Tampa-Hillsborough County Expressway Authority's (hereinafter the "Authority") written statement of explanation concerning your preliminary and tentative findings, as required by Section 11.45(4)(d), Florida Statutes. Our responses to each of your findings and recommendations are detailed below:

Finding No. 1: Administrative Expenses

The Authority does not concur with the implication of this finding that the Authority expends user tolls for administrative expenses without justification and documentation supporting the public purpose being served. The administrative budget is approved annually by the Authority's Governing Board following detailed presentations and discussions at Board budget workshops. Sources of funding include user fees and revenue from leases, surplus property sales, interest and insurance. The approved budget is submitted to the State Board of Administration (SBA), which each month disperses 1/12th of the budget to the Authority's administrative account.

For the fiscal year ending June 30, 2006, the administrative budget of \$1,198,008 accounted for a very conservative 4% of the Authority's net toll revenue and 3.3% of total revenue. These percentages are equal to or less than other local toll agencies in Florida even though those other Authorities are much larger and provide them with an additional economy of scale.

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The Florida Turnpike Enterprise collects the tolls and the Florida Department of Transportation (FDOT) maintains the Expressway system, the costs of which are budgeted through the state budget process and reimbursed by the Authority. Toll collection and maintenance costs for fiscal year 2005-06 totaled \$8,234,293, which was 28% of net toll revenue.

Authority projects are financed exclusively by voluntary user fees and involve no tax money. The user fee to drive the entire length of the Lee Roy Selmon Crosstown Expressway has increased four times — in 1981, 1984, 1988 and 1999 — from the initial \$0.85 to the current \$1.75. The next increase had been scheduled for July 2009, consistent with the Authority's plan to raise tolls every 10 years to keep pace with average annual inflation of 3.5%. However, additional construction costs for foundation remediation of the Reversible Express Lanes project required the sale of additional revenue bonds in 2005 and acceleration of the planned toll increase to January 2007. Independent annual audits by Rivero Gordimer Company, P.A., have found the Authority in compliance with all bond covenants.

The Authority's administrative staff and consultants are responsible for overseeing the operations of the Expressway system and for planning and developing projects that enhance mobility and inter-connectivity to benefit residential, visitor and commercial transport in Hillsborough County. The Authority planned and, in partnership with FDOT, constructed the South Crosstown Expressway and the Eastern Extension, as well as planned and constructed the Brandon Parkway, the Reversible Express Lanes, the Downtown Tampa Gateway and the Transportation Management Center. The Authority also managed the planning, corridor location analyses, design and rights-of-way acquisition for the Veterans Expressway, which was constructed and is operated by the Florida Turnpike Enterprise.

With a maximum of only 13 employees, the Authority has invested approximately \$750 million in transportation improvements on behalf of the people and businesses of Hillsborough County. These vital projects have alleviated severe traffic congestion and strengthened the economic viability of the communities they serve. (Note: Beginning in February 2006, the Authority staff has now been reduced by three employees.)

The Authority is working with the City of Tampa to develop the New Tampa East-West Expressway in northeast Tampa and with FDOT to develop the I-4/Crosstown Connector. In partnership with Hillsborough County, the Authority is also nearing completion of a comprehensive analysis of potential system expansion and improvement. Going forward, the Authority will continue to evaluate its management practices and administrative expenses to insure that the Authority's public purpose is served.

Finding No. 2: Interim Financial Reports

The Authority concurs with this finding and recommendation. It has been the Authority's policy and practice to present monthly financial reports to the Board. However, following the April 2004 subsidence of two piers and bridge span collapse, the financial staff's major focus was on insuring that all matters were swiftly and efficiently remedied. Since the opening of the Reversible Express Lanes project, staff now has the capacity to recommence the presentation of

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monthly financial reports to the Board. Beginning in January 2007, staff will present the Financial Report at the first meeting of the month, and the Traffic and Revenue Report at the second meeting. The Authority will continue this practice going forward.

Finding No. 3: Internal Controls

The Authority concurs in part and does not concur in part with this finding. Prior to August 2006, the various financial duties of the Authority were divided among the four financial management employees for proper internal control. Since then, the financial staff has been reduced by two positions. With only two financial management employees remaining, the Authority is in the process of implementing the following audit recommendations:

When establishing new vendors, the Accountant III will complete a vendor form that will be executed by the Interim Chief Financial Officer (CFO). The CFO will reconcile the vendor forms with the vendor report from the accounting system.

The CFO will continue to review and authorize all invoices processed by the Accountant III. The CFO will secure the checks, and the Accountant III will print the checks. The Accountant III will match the checks with corresponding invoices and provide the CFO the check register printed from the accounting system. The CFO will compare the check to the invoice, initial the check number on the check log, and compare the check number to the register. The Accountant III will obtain the signatures and distribute the checks. The transaction is automatically recorded to the accounting records when the checks are printed. The Accountant III will reconcile the checking accounts, and the CFO will review. The CFO will reconcile recorded journal entries to the accounting system monthly.

The CFO will continue to create new employees' files in the accounting system, including changes to employees' pay history, and record employee termination information. Any additions and updates to the employees' rates of pay will be approved by the Executive Director and CFO based on senior staff input and recommendations and the documentation will be filed in the payroll files. All pay increases are approved by the board during the annual budget process. The Accountant III will process the payroll and print the payroll checks and reports. The CFO will review the payroll, establish the direct deposits, make tax deposits, process Florida Retirement System Reports and payments, and prepare all federal and state tax forms.

Current active users (in varying capacities) for the CYMA Accounting Software Access are the Accountant III; Office Assistant III; Interim CFO; IT Manager; and Executive Assistant. All past users have been deactivated within the system; and a listing of past and current users will be maintained for historical information.

Purchase Order Process: All purchase orders require approval by appropriate senior management. Office Assistant III & Executive Assistant purchase office supplies and general furniture and supplies for the Authority. Accountant III is no longer assigned Purchase Order access. IT Manager purchases networking hardware and software and building supplies and services.

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Administrator functions are now designated to the IT Manager only. That user alone now has the capability to maintain the entire system including users. The IT Manager uses a separate login when making purchase orders. For that function the IT Manager logs in as a restricted user, like any other user who is allowed to create purchase orders.

Although the Code SYS that came with the software for Administrator is still in use, the password has been changed to allow single user access, which is standard operating procedures in Network Security. The IT Manager is the only user with this access.

Finding No. 4: Written Policies and Procedures

The Authority concurs with this finding and recommendation. The Authority initiated the task of reviewing its policies and procedures in early 2004. However, shortly thereafter, the Authority was forced to reallocate its time and resources to remedying the subsidence of two piers and the collapse of two bridge spans on the Reversible Express Lanes project. Since the opening of the Reversible Express Lanes project, staff has already recommenced its efforts to review and revise its policies and procedures. In addition, as a result of the Governor's report and recommendations this past Fall, Interim General Counsel has joined in this effort. We anticipate the update and revision will be completed during the first quarter of 2007. Further, the Authority will ensure that the policies and procedures undergo regular revision to maintain their currency. We believe that this will allow the Authority to achieve a thorough and comprehensive revision of its current policies and procedures and will cure any concerns noted in your report. In addition to the above, the Authority has established a policy of providing annual updates of Sunshine and Public Records Laws for all Authority Board members and staff.

Finding No. 5: Employment Practices

The Authority concurs in part and does not concur in part with this finding and recommendation.

Employment Applications: As we have previously stated, some of the personnel files were incomplete at the time of the audit because the documents were being scanned into the newly established Electronic Document Repository (EDR) and had not yet been returned to the paper files. The personnel files for the classified positions had copies of Civil Service employment applications, and the Legal Affairs Director's file had an employment application from her 1984 hiring. Some positions were filled by employees previously employed through a temporary agency and these employees were not required to complete an Authority employment application when they became permanent Authority employees. Several senior manager files did not have completed applications. The Authority will review and revise procedures to ensure that all future employees complete employment applications.

Applicable License/Certification: As we have previously advised, the two employees whose positions require licensure or certification have proper licenses and certifications displayed in their offices. We provided copies of the displayed Professional Engineer license and the American Institute of Certified Planners certificate to the auditors.

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Pay Raises: You indicated that your review of personnel files and payroll records disclosed nine employees who received pay raises during the 2005-06 fiscal year ranging from 8.1 to 13.6 percent. However, the Salary Change forms provided to the auditors for FY 2005-06 indicate that all Authority employees received a combined 5% salary increase (consisting of a 3% annual increase and 2% merit increase) in July 1, 2005 as authorized by the Authority Board during their annual budget approval process. Effective July 1, 2006, the Authority's finance department changed the method of reporting the employer-paid 3% annual contribution to employee retirement accounts under Hillsborough County's deferred compensation program. This change in reporting, which combined the employer-paid 3% deferred compensation benefit with the 5% salary increase, was undertaken to clarify salary information requested by the Florida Retirement System. While the change in reporting of the 3% deferred compensation as salary plus the 5% salary increase appears to amount to 8% increase for all employees for fiscal year 2006-2007, Authority records indicate that no additional salary increase has been received by any employee above the 5% annual and merit increase except for two employees who received additional salary increases: one, due to a specific five-year track increase and the other, due to changes in job duties and promotions within the agency.

The Authority will re-instate its practice of conducting annual performance evaluations and will include copies of written evaluations in all personnel files as recommended.

Monthly Timesheets: The established procedure is that the Executive Director signs the monthly timesheets of the senior managers and the executive assistant. The timesheets of all other employees are signed by their supervisors. The Authority will ensure adherence to the procedure in the future.

Job Descriptions: We provided the job descriptions for every position to the auditors. However, copies of the descriptions were not in individual personnel files because of the ongoing Electronic Data Repository document scanning. Copies have been returned to the files.

As recommended, the Authority will establish standard pay ranges for each position and will require that all prospective employees complete employment applications for documentation and verification of qualifications. The Authority will also review all employment contracts and provide appropriate documentation evidencing authorized personnel actions.

Finding No. 6: Severance Pay

The practice of utilizing severance pay as part of an employment contract is a complex issue that has a significant impact on the ability to recruit well-qualified candidates for key management positions within the Authority.

The decision to grant the Executive Director severance was discussed at the December 15, 1995 Board meeting. A copy of the relevant portions of the minutes of that meeting is attached hereto as Exhibit "A." The minutes of that meeting indicate that the Authority's search firm recommended that severance pay be included in the contract with the successful applicant, in light of the pending January 1996 legislative initiative to abolish the Authority.

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During negotiations, a one-year severance agreement was deemed commensurate with the position requirements and consistent with the practice of other government agencies and expressway authorities. Additionally, in this case, the Director was a 22-year employee of the Florida Department of Transportation, and the Board determined that the amount was reasonable consideration for hiring a nationally recognized transportation leader to guide the planning and development of urgently needed transportation facilities for the residents of Hillsborough County.

The severance payment included unused accrued leave and employee benefits, which the Authority was required by law to pay. The severance pay expenditure fulfilled a public purpose in that the employee agreed to waive any claims or other adverse actions against the Authority.

It is accurate that current employment agreements with management employees have no terms and provide for three to six months of severance pay in the event of termination without cause or retirement under the Florida Retirement System. A severance package was originally offered to attract and retain qualified management professionals, which may lead to a lower turnover rate and provide a cost savings. This has been proven as most of the senior managers have been employed for eight years or longer and have worked without assistants or other support staff.

We agree with the Auditor's recommendation that if the Authority decides to continue the use of severance pay, and can document the public purpose served, the Authority will consider the use of employment terms and provisions that require a cost savings to the Authority as a prerequisite to paying severance upon early termination.

Finding No. 7: Educational Leave With Pay

Prior to the adoption of the educational leave policy, the Authority's Budget and Finance Committee carefully reviewed the proposal and determined it was consistent with Section 348.52(4) and Section 110.1099, Florida Statutes, which authorized a similar program for state employees. The November 24, 1997 minutes, a copy of which is attached hereto as Exhibit "B," indicate that the Governing Board thoroughly discussed the Committee's recommendation and the policy's public purpose prior to adopting it. The minutes also reflect that the educational and training expenditure was considered a loan and that the employee was responsible for tuition and books. The policy also required a written contract providing for repayment of the loan in the form of the employee's commitment to future service to the Authority in an amount equivalent to the number of hours of the leave, which has since been satisfied.

While there is no general rule regarding public purpose requirements, in this case the employee was a qualified employee who had performed certain duties related to the Authority's legal activities. The Board's approval of additional formal education to improve her existing job skills was consistent with the adopted policy and served the Authority in carrying out its statutory responsibilities.

Authority records indicate that when the leave was approved, the employee was a 13-year employee whose work activities as senior administrative aide and later as assistant director

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primarily involved legal matters. The employee assisted the Executive Director and worked under the supervision of the General Counsel in the performance of legal services associated with planning, financing, design, right-of-way acquisition, and construction engineering inspection for the Authority's Northwest Expressway project, which later was named the Veterans Expressway. The employee later worked with the Authority's bond counsel during the development of the 1997 Revenue Bond Series. In addition, the employee performed research activities related to historical property acquisition records and right-of-way plans in response to requests by the public or other government agencies.

The employee's file also documents that she met the required aptitude and related performance criteria for receiving the leave. The employee majored in Political Science and graduated from the University of South Florida with high honors. The Board considered such factors prior to approving work-related education and training expenditures for a qualified employee to advance in her profession.

It was agreed that after graduating from law school the employee would perform customary legal services which otherwise would be outsourced to the General Counsel. Thus, the education and training expenditures would be more than offset by the substantial savings of higher-cost outsourced services. The intent was not that the employee would perform duties typically accomplished by more experienced or specialized attorneys, such as eminent domain, large construction projects, litigation or environmental issues.

In fact, timesheets and activity logs of the Legal Affairs Director confirm that she worked approximately 11,000 hours during the audited period of 5+ years, at an average salary of \$59 per hour. Activities in the timesheets and logs were allocated across the following work categories: (1) administrative (Board agendas and meetings; personnel and HR coordination with Civil Service, Florida Retirement System and Hillsborough County; document management; extensive public records requests and inspections); (2) Expressway system (property use applications, boundary and rights-of-way issues, accident claims, general liability and other insurance issues); (3) Authority projects (contract drafting, task order review, consultant selection process oversight and implementation, and document production).

The team approach for providing legal services is consistent with the Authority's other major work activities. For example, the Authority employs a professional engineer, planning director and chief financial officer, who coordinate their work activities with outside general engineering consultants, traffic and revenue consultants, financial consultants and independent auditors.

The Authority is analyzing its current needs for legal services, and is performing a cost benefit analysis to determine the proper combination of in-house general counsel and outside counsel services. If the Authority determines that it needs a Legal Affairs Director and outside legal counsel, the Authority shall, as recommended, take steps to insure that there is no duplication of effort. In addition, any contracts for outside counsel services will be competitively selected, have defined terms with requirements for periodic review of necessity, cost effectiveness and performance.

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Finding No. 8: Acquisition of General Counsel Services

With regard to the Authority's expenditure of \$3.5 million for outside legal services during the 63-month audit period, it should be emphasized that during this time the Authority invested approximately \$420 million in transportation improvements in Hillsborough County. Even though the \$120 million litigation against the Authority's former General Engineering Consultant is being handled by special litigation counsel, this litigation also significantly increased the amount of ongoing General Counsel activities, as did several disputes involving other construction matters and eminent domain negotiations with the City of Tampa and ConAgra/CSX.

Media and general public records requests, for example, were done in-house, and document requests under discovery rules for pending construction litigation, eminent domain or construction contract issues were processed by the General Counsel. In any public records request, both the in-house attorney and the General Counsel may have documents pertaining to the same matter, which would require review to determine if such documents involve matters of attorney/client privilege. In such instances, similar entries may appear on the General Counsel's invoice and the Legal Affairs Director's time records.

Regarding contract drafting, documents such as administrative and small construction contracts and employment agreements are prepared in-house and reviewed by outside counsel. Although they were not doing the same work, they may have entries for the same matter. Another example would be employee termination. In the event of a pending action, it is in the Authority's best interest to have an experienced labor attorney's review.

Board meeting minutes were prepared by the General Counsel following the 2004 bridge collapse when some in-house activities fell behind as a result of the increased staff workload. However, there was no duplication of this activity between in-house and outside legal services. The Authority has since returned this activity to in-house staff.

Additional steps taken by the Authority to insure that there was no duplication of effort between the Legal Affairs Director and the General Counsel include:

- Weekly meetings between the General Counsel and the Executive Director
- General Counsel Reports to the Board at monthly Board meetings
- Periodic meetings between General Counsel and individual Board members as required
- Monthly File Status reports provided by the General Counsel to the Executive Director
- Regular coordination of specific work activities between the General Counsel and the Legal Affairs Director

The Authority is analyzing its current needs for legal services, and is performing a cost benefit analysis to determine the proper combination of in-house general counsel and outside counsel services. If the Authority determines that it needs a Legal Affairs Director and outside

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legal counsel, the Authority shall, as recommended, take steps to insure that there is no duplication of effort. In addition, any contracts for such services will be competitively selected, have defined terms with requirements for periodic review of necessity, cost effectiveness and performance.

Finding No. 9: Legal Services Contract

We agree with your assessment of the 1997 procurement of legal services and the resulting contract and related amendments. We recognize the need for additional oversight and management of the outside general counsel's contract. Going forward, the Authority will revise its internal procedures as they relate to the monitoring and reporting of its legal services contract to ensure consistency with the Board's intentions. These revisions could include a policy whereby the general counsel's contract requires annual reporting and review by the Board and staff, followed by Board discussion. Once we have drafted these proposed policies and procedures, we will present them to the Board for their consideration. In addition, we are taking steps to ensure that future agreements for legal services are not combined with any other subcontracts. With regard to your recommendation that future contracts for legal services contain a maximum contract amount, we agree that such a provision, with flexibility, could prove prudent for the Authority. As the nature of legal services can encompass a variety of functions requested by the Authority and the possibility of unforeseen circumstances requiring legal services could occur, such a provision must prove consistent with the Board's intention to obtain responsible and efficient legal services.

We understand it is not the intent of the Auditor General to apply this recommendation to construction and engineering contracts. Specifically, prime contractors typically do not have the internal resources to provide all of the labor expertise or specialized equipment required for construction projects. Accordingly, they routinely utilize specialty subcontractors for various construction activities. Similarly, prime engineering consultants usually do not have the in-house specialty expertise required on many engineering projects, such as geotechnical, survey, property appraisal and acquisition, and others. These services are normally provided by subcontractors.

Finally, the Authority has a proactive policy of encouraging utilization of Small Business Enterprise (SBE) firms for construction, engineering and other contracted services. Indeed, proposals for professional and construction services are evaluated and scored in part on the proposers' historical and committed practices of SBE participation. Thus, the recommendation would not be applicable to subcontractor services provided by specialty and SBE firms.

Finding No. 10: Requests for Proposals

The Board has and must continue to have absolute discretion when reviewing a selection committee's rankings of RFP proposers. Accordingly, it has been the practice of the Authority Board, that each RFP clearly provide that the Board can accept the rankings suggested by a Selection Committee, or reject the rankings suggested and re-rank the proposers. The Board's decision to accept the rankings of a Selection Committee, to re-rank, or to reject the list in its entirety is within the Board's discretion. As noted in your report, the Board's procedures do not

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include a requirement to justify a re-ranking. Nevertheless, we recognize that engaging in some discussion of the reasons for a re-ranking benefits the public by providing greater insight into the decisionmaking process and thereby promotes the goals of the Sunshine Law. The depth of any such discussion, however, is within the purview of each Board member's discretion. The Board members must have discretion and freedom to accept, reject or revise a committee's suggestions and freely discuss its decisions.

As recommended, the Authority will, in the future, insure that any discussions regarding the reasons for finding that an RFP selection committee's rankings are not acceptable will be documented in the Board minutes along with other relevant information.

Finding No. 11: Lobbying Services

As we have previously stated, the Authority's Amended and Restated Transportation and Governmental Consulting Services Agreement with Beck Consulting Group is much more than a contract for lobbying services. The Authority's contract with Beck Consulting Group includes providing direct guidance and assistance to the Authority on transportation projects. We believe such a contract is authorized by several sections of Chapter 348, specifically, Sections 348.52(4), 348.0004(2) and 348.54(13). The Attorney General Opinions referenced in your findings, cite Section 11.062, Florida Statutes, which states that "[n]o funds...available for use by, any executive, judicial, or quasi-judicial department shall be used by any state employee or other person for lobbying purposes..." As previously stated, we do not believe this statute applies to the Authority because the Authority is not an executive, judicial, or quasi-judicial department. Rather, it is an independent special district, and as such, does not fall under the scope of Section 11.062.

John Beck, and other consultants at the Beck Consulting Group, have vast experience and insight regarding the transportation industry. The past few years, John Beck and the Beck Consulting Group have helped the Authority identify strategies in order to effectively execute its statutorily charged mission. As a part of the Authority's contract with Beck Consulting Group, certain lobbying activities have been conducted on behalf of the Authority. The Authority is quite similar to other transportation agencies across the State of Florida in its acquisition of this type of a consultant. For example, the Orlando-Orange County Expressway Authority, the Miami-Dade County Expressway Authority, as well as the Jacksonville Transportation Authority all have representatives working in the legislature on their behalf. However, similar to the Tampa-Hillsborough County Expressway Authority, none of these agencies have the specific type of authority granted to them as you referred to in your findings.

Despite this, and as previously stated, the Authority is conducting a cost/benefit analysis to determine the optimal structure for providing needed services and will explore the option of creating an employee position, such as the managing director, to perform activities such as "seeking funding and acting as an advocate" and performing its government relations functions.

William O. Monroe, CPA
December 20, 2006
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Finding No. 12: Outsourcing

The Authority currently has a contract with a specialized outside communication consultant. We are currently conducting a cost/benefit analysis to determine the appropriate, cost-effective structure for providing these services. Further, we agree with the Auditor General, in that it would prudent for the Authority, as a part of its review and revision of the internal policies and procedures, to implement a policy, whereby before a task is outsourced, a cost benefit analysis should be conducted to determine whether that task should be outsourced or conducted by an internal staff employee.

Finding No. 13: Conflict of Interest

The Authority does not concur with the findings that a conflict of interest existed in the request that the GEC assist with ongoing operations until an Interim Executive Director is appointed. Section 112.313(7)(a), Florida Statutes, cited in your findings, precludes any public officer or employee of an agency from having any employment or contractual relationship with any business entity or any agency which is subject to the regulation of or doing business with an agency of which he is an officer or employee. That is clearly not the situation with Mr. Drapp. At its November 13, 2006 meeting, the Board simply requested Mr. Drapp (an employee of HNTB, the Authority's General Engineering Consultant) to continue to "oversee" the daily operations of the Authority, as they relate to the transportation projects within his purview. Mr. Drapp was not given any additional duties or responsibilities which he was not already charged with as the GEC. Mr. Drapp remains an employee of HNTB, and is not an employee of the Authority. Instead, Marty Stone of the Authority was delegated dual signatory authority during the temporary absence of an interim executive director.

The Board has already acted on your recommendation with regard to this finding. At the December 4, 2006 Board meeting, the Board clarified Mr. Drapp's role and stated that it was their intent not to grant Mr. Jim Drapp any additional duties which were not otherwise authorized under his current contract with HNTB as the General Engineering Consultant. As the Authority's General Engineering Consultant, Mr. Drapp has current and historical knowledge as it relates to the Authority's on-going transportation projects. In performing his contractual duties, he worked closely with the former Executive Director. Mr. Drapp was requested by the Board to continue to oversee the transportation projects, as the Executive Director, who would also assist Mr. Drapp in his GEC efforts, would be absent. It was in no way the Board's intention to grant Mr. Drapp the duties and responsibilities that are reserved to the Executive Director. The Board has clarified this so that no misunderstanding or conflict of interest exists.

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We appreciate this opportunity to respond to you and will be happy to provide any additional information or clarification.

Sincerely,

FOWLER WHITE BOGGS BANKER P.A.



Rhea F. Law

MS
Enclosure

- cc: J. Thomas Gibbs, Chairman
- Alba Lopez, Isa, Vice-Chair
- Mr. Robert J. Clark, Jr.
- Senator James T. Hargrett, Jr.
- Don Skelton, FDOT District 7 Secretary
- Gwendolyn Miller, City of Tampa Council Chairperson
- Kevin White, Hillsborough County Commission District 3
- Mary Hall, Legal Affairs Director

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Tampa-Hillsborough County Expressway Authority Exhibits

Friday, December 15, 1995

V. ACTION ITEMS

2. Executive Director Selection Process-Cont'd:

Referencing has been conducted on each of the final candidates. Nothing in the referencing indicates that any candidate has misrepresented their background. Once the final candidate selection is made, the Expressway Authority will negotiate compensation and terms with the candidate selected."

Mrs. Cohn named in alphabetic order the three finalists: Gerald Brinton, Patrick McCue, and Clement Mikowski.

The Board members were asked to complete the form and rank the three candidates, with number 1 being the top rank. The ranking form read as follows: Based on the personnel specification, the competencies, the strategic direction of the Tampa-Hillsborough County Expressway Authority, and my own judgment, I rank the three final candidates for the Executive Director position as follows (1 being the top ranked and 3 being the lowest ranked). Mrs. Cohn said that contract negotiations will begin with the candidate ranked number 1, and proceed to number 2 and then 3 in the event of unsuccessful negotiations.

The ranking forms were collected for tallying.

The Board members authorized Chairman Melo to proceed with the negotiation process within a base salary of \$75,000 to \$95,000, plus benefits of auto expenses similar to Mr. Speer's, health, life, disability, and dental insurance, Florida Retirement System contributions, sick leave, vacation leave and buyout options, deferred compensation plan, and longevity bonus. Chairman Melo said that moving expenses will also apply and starting date may vary. He said that the Mary Hessler is recommending that severance pay be included in the package, resulting from Senator Grant's initiative. Chairman Melo said that a performance bonus is difficult to measure and a plan or procedure has not been developed by the consultant. The Board members agreed on a three-year minimum contract term.

Chairman Melo suggested that the contract could be ratified at a special meeting next week or by some other method. The Board agreed that the negotiations should not have a time limit and the final draft of the contract to be circulated to the Board members. Discussion ensued.

Commissioner Chillura moved that the Chairman be authorized to negotiate and execute a contract within the parameters outlined and recorded into the minutes; second by Mr. Carter; carried unanimously.

Mr. Mack moved approval of the Search Committee recommendation; second by Mr. Carter; carried unanimously.

Chairman Melo read the Board's ranking as follows: 1) Pat McCue; 2) Gerald Brinton; 3) Clement Mikowski.

The Board members discussed the transition period between Mr. Speer's retirement and the starting date of the new executive director.

Mr. Mack moved that Mary Hall be appointed as Interim Executive Director and paid at the salary of the current director effective January 1 until the new director is hired and she moves back to her original position; second by Mr. Carter; carried unanimously.

Chairman Melo thanked staff, Mary Hessler, Committee Chairman Cohn, and the Ad Hoc Search Committee for a fair and well-structured process. He said that through this process the Authority has reached out to involve every member in this procedure and in future negotiations for improvements in the area and region's transportation system.

VI. STATUS REPORTS

A. Tampa South Crosstown Expressway Bond Refinancing Plan

1. Report by Charles LeCroy, Financial Advisor, Raymond James & Associates

Mr. LeCroy said that the MPO issued its report last week and project start dates will be plugged into the model when FDOT provides that information. He said that he will be meeting with Mr. Baier and the County financial advisors for their approval.

2. Special Bond Counsel, Nat Doliner, Carlton, Fields Law Firm

Mr. Doliner said that some revised documents and bond resolution agreements will be submitted in the near future for negotiations.

B. Public Information Initiative

Mr. Doliner said that positive meetings continue with the Legislative Delegation. He said that the Authority's role in Senator Grant's interest in regional transportation has been discussed. Mr. Doliner said that he has been actively involved with Harold Aldrich and Chairman Melo in preparing for a presentation before the entire Legislative Delegation on January 6, 1996. He said that he and Chairman Melo have met with some civic groups and

Search Procedure Cont'd:

Direction: Contract Negotiations

Chairman authorized to negotiate and execute contract

Ranking/Candidate

Interim Director Position

VI-B Status Report Bond Refinancing Plan Charles LeCroy Raymond James

Report by Special Bond Counsel Nat Doliner Carlton, Fields Law Firm



Tampa-Hillsborough County Expressway Authority Exhibits

Monday, January 22, 1996

VII. ADDITIONAL REPORTS

Add'l Reports Interim Director Report - Cont'd:

FRS-Senior Mgmt. Position: Legal advertisement requirement has been satisfied by advertising for two consecutive weeks in the Tampa Tribune on January 15 and January 22, 1996, of the Board's intent to designate the THCEA Executive Director position as a Senior Management Position with Florida Retirement System.

Ms. Hall expressed her appreciation for having had the opportunity to work with Ray Speer and for THCEA. She said that Mr. Speer is an outstanding leader and will always be remembered with high regards.

In response to Chairman Melo, Ms. Hall stated that HNTB has reviewed a notice from FDOT relative to increasing the speed limit on the TSCE. Ms. Hall stated that FDOT was requested to include any review comments from Mr. McCue. Chairman Melo said that this may be a policy issue that requires the Board's concurrence on any decision.

D. Legal Counsel Report

Legal Counsel Report

Referring to a Chronological Order of Litigation schedule that was provided in the agenda packet listing the remaining parcels on the NW/Veterans Expressway, Mr. McLean said that six of the 12 remaining parcels are scheduled to be disposed of by trial or settlement during February and it is probable that all parcels could be concluded by June 30, 1996, the extended date of the existing Turnpike/EA agreement. Mr. McLean said that his office is also working on a project that involves indexing closed files and preparing a closing memorandum for each parcel, prior to shipping parcel file records to Tallahassee.

Status of Executive Director Contract

In response to Mr. Mack's suggestion, Chairman Melo requested that the minutes reflect that a contract with Mr. McCue has been executed by all parties.

Mr. Carter commented on an additional report in the agenda packet that summarized annual traffic and revenue for the TSCE going back to 1981 that indicates significant increase in traffic and revenue since 1981.

Requirements to establish Sr. Mgmt. Position w/FRS have been satisfied

In response to Mr. Mack, Mr. McLean stated that approval from the Authority to designate the Executive Director position as a senior management position was pre-approved by Board action at the December meeting authorizing the Chairman to negotiate a contract. He said that the contract contains the proper senior management position wording, and that this designation transferred from the Florida Turnpike to THCEA as another agency. The Authority has satisfied FRS requirement for legal advertisement in order for FRS to officially recognize the transfer status.

VIII. PUBLIC INPUT (No requests)

IX. OLD BUSINESS

X. NEW BUSINESS

XI. ADJOURNMENT

Mr. Carter moved for adjournment at 10:05 a.m.; second by Mr. Mack; carried unanimously.

Adjournment

MINUTES OF THE JANUARY 22, 1996 MEETING:

APPROVED: [Signature] O. Eduardo Melo, Chairman

ATTEST: [Signature] Vanessa M. Cohn, Secretary

DATED THIS 26th DAY OF FEBRUARY, 1996

Note: An audio cassette and video recording of the foregoing proceedings are on file at the Administrative Office of the THCEA.

**Tampa-Hillsborough County Expressway Authority
Exhibits**

**TAMPA-HILLSBOROUGH COUNTY EXPRESSWAY AUTHORITY
MEETING OF NOVEMBER 24, 1997**

The Tampa-Hillsborough County Expressway Authority held a public meeting at 1:30 p.m. November 24, 1997, at the County Center Commission Chambers, 2nd floor, 601 E. Kennedy Blvd., Tampa, FL. The following Authority members were present:

Monroe Mack, Frank Callahan, Helen Gordon Davis, Commissioner Dottie Berger, Bill McDaniel
THCEA: Patrick McCue, Mary Hall, Sally Horrocks, Steve Anderson
HNTB: Ben Muns, Richard Fricke
MAYOR'S OFFICE: Rene Williams
URS GREINER: Ron Gregory
CLARITY CONSULTING: Harold Aldrich
HILLSBOROUGH COUNTY: Ned Baier
WILBUR SMITH ASSOC.: Steve Ferrell
FDOT OFFICE OF TOLLS: Charles Gilliard, Lee Bohning, Ken Guthrie

I. CALL TO ORDER

Chairman Mack called the meeting to order at 1:36 p.m. All present joined in the invocation and pledge of allegiance. Anyone who wished to address the Board was asked to register on the sign-in sheet.

II. APPROVAL OF THE MINUTES OF THE OCTOBER 27, 1997 MEETING:

Commissioner Berger moved for approval, seconded by Mr. Callahan. Carried unanimously.

III. PUBLIC INPUT & PRESENTATIONS

A. Public Hearing re: Schwartz application to purchase property. Time certain 1:40.

Following Mr. Schwartz's statements to the Board and a brief discussion, the Board agreed to sell the 1552 sq. ft. property to Mr. Schwartz for \$15.00/sf, contingent on approval from the city to sell their adjoining property to Mr. Schwartz.

Mr. Callahan moved for approval, seconded by Mrs. Davis. Carried unanimously.

IV. COMMITTEE REPORTS AND ACTION ITEMS

Budget & Finance Committee

A. Chief Financial Officer Position

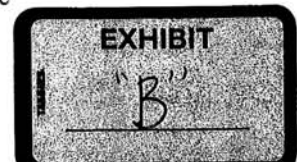
Chairman Mack called for approval of the minutes of Committee meetings from November 17, 1997 and stated they would then be open for discussion.

Mr. Callahan moved for approval, seconded by Mrs. Davis. Carried unanimously.

Chairman Mack asked Mr. McCue to read into the record the minutes of the Budget and Finance committee meeting relative to the position of Chief Financial Officer.

Mr. McCue stated: Thank you, Mr. Chairman. At the November 17 committee meeting, I presented the following report:

"The 1997 Bond sale of \$144 million dollars and planned future bond sales totaling \$400 million will create significant opportunities and necessitate certain changes for the Authority. We will enhance the local transportation network through the modernization and expansion of the Lee Roy Selmon Crosstown Expressway and the construction of new feeder roads in Brandon. We will also be responsible for overseeing a large consultant work force and investing and managing a multi-million dollar budget.



**Tampa-Hillsborough County Expressway Authority
Exhibits**

Tampa-Hillsborough County Expressway Authority
November 24, 1997

These new financial responsibilities require a level of expertise not presently available on the Authority staff. Consequently, the New York bond rating agencies, the State Division of Bond Finance, and Florida Department of Transportation have strongly recommended that the Authority establish a new position for a Chief Financial Officer.

The Chief Financial Officer would perform the following principal duties:

1. Invest and manage the Authority's funds.
2. Produce financial reports and disclosure statements mandated by Federal and State Laws and by the Authority's new bond covenants.
3. Develop financial plans and strategies to maximize financial resources available to fund the Authority's Master Plan.
4. Develop the Authority's budget and work program, prepare a cash forecast, perform feasibility analyses and develop bond plans for proposed projects.

The creation of this new position will increase the Authority's annual budget, but the cost would be largely offset through reduction of consultant fees for financial planning and by reimbursements from bond proceeds for bond related work. In consideration of the substantial benefits to be derived, and the important legal requirements that must be addressed," the following action item is recommended:

Action Item: Authorize the Executive Director to prepare an appropriate position description and publish an advertisement for the position of Chief Financial Officer of the Expressway Authority, with a starting salary not to exceed \$85,000. At the Board's December meeting, the Executive Director shall submit the necessary budget amendments to fund the new position.

The Board discussed at length the duties and necessity of a Chief Financial Officer and also the starting salary cap specified in the action item.

Mr. Callahan moved the Action Item, seconded by Mrs. Davis.

Commissioner Berger questioned the basis for the \$85,000 figure. Following discussion, the Board agreed to establish a range for the starting salary.

Mrs. Davis moved to amend the motion to modify the starting salary cap to a range of \$75,000 to \$85,000, seconded by Mr. Callahan. Carried unanimously.

B. Educational Leave

1. Educational Leave with pay policy

Mrs. Davis advised the Board that in 1988, the Florida Legislature adopted legislation that allowed State employees to take tuition-free college courses. The program was later modified to authorize educational leave with pay, with the student paying all school costs, providing that the additional education would benefit the employer. Individual leave was to be for a period of one year, with a provision that if additional time were necessary, and the employee did well the first year, additional leave with pay could be authorized. Mrs. Davis then moved the following Committee recommendations, seconded by Mr. McDaniel:

Action Item: The Committee recommends that the Board adopt a policy authorizing creation of an educational leave with pay program for Authority staff. Individual leave would be approved by the Board, for one academic year at a time, up to an equivalent of 24 months of full time employment. General Counsel is directed to write, and the Executive Director to implement, a procedure consistent with this policy and Florida statutes, and incorporate other provisions similar to the State rule, with appropriate changes to meet specific needs of the Authority.

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A lengthy discussion followed, with Mr. McCue describing the benefits of the program that he observed while he was employed at FDOT. He also explained that the employee's salary during the period of educational leave, is regarded as a loan to the employee with contractual provisions for repayment in the form of future service to the organization. He also stated that the main purpose of the program was to benefit the agency, and he described the potential benefits to the Expressway Authority of having the program in place.

Mr. McDaniel questioned how the work load would be accomplished during an employee's absence. Mr. McCue replied that remaining staff and consultants would have to absorb the work load until the employee returned.

Commissioner Berger expressed her opposition to the program because of its anticipated cost and its impact on the Authority's workload.

After further discussion, Chairman Mack called for a vote. **The Action Item was approved, with and Mr. McDaniel, Mrs. Davis and Mr. Mack voting aye; Commissioner Berger and Mr. Callahan voting nay**

2. Agreement with Mary J. Hall for educational leave with pay.

The Board next discussed a proposal submitted by the Authority's Assistant Director, Mary Hall, to attend law school beginning January 8, 1998. The Board addressed at length the needs of the Authority and management of Ms. Hall's workload. Mr. McCue expressed his support and recommended that the Board accept the proposal. He stated that the Authority's newly funded activities would require a new "mix" of skills and he sees great benefit in replacing the present "generalist" position of Assistant Director with a more specialized position of "Staff Attorney". This position, in combination with the proposed new Chief Financial Officer position, would greatly enhance the staff's ability to meet its expanded responsibilities. Mr. McCue acknowledged that the temporary absence of Mrs. Hall would require extra effort from the rest of the staff and consultants. However, after the first academic year, Mrs. Hall would return to work half-time and within three years she would return full-time with greatly enhanced skills needed by the Authority. Consequently the long term gain more than justifies the short term cost.

Mr. Anderson then outlined the general terms of a proposed agreement between Mrs. Hall and the Authority that establishes payback and service obligations by the employee, and he assured the Committee that the draft Agreement is consistent with existing statutory requirements. Mr. McCue recommended that the Agreement include a provision that will allow him to reclassify the Assistant Director position to a staff lawyer position at the completion of the education program.

Commissioner Berger stated her position for the record that she would vote against the proposal because of the cost to the Authority, and that it was nothing personal against Mrs. Hall. Mr. Callahan stated that while he had opposed approval of the program, now that it has been approved, he agrees with the merits of Mrs. Hall's proposal and he will support her leave.

Mrs. Davis moved the following Action Item, seconded by Mr. Callahan:

Action Item: The Committee recommends that the Board approve the request for educational leave with pay for Mrs. Mary Hall, consistent with terms of the new policy, and authorize the General Counsel to draft an Agreement with Mrs. Hall to be executed by the Chairman and Executive Director.

The Action Item was approved with Mr. Callahan, Mr. McDaniel, Mr. Mack and Mrs. Davis voting aye; Commissioner Berger voting nay.

**Tampa-Hillsborough County Expressway Authority
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Planning and Engineering Committee and Contracts and Land Committee – Joint Meeting

Committee Action Item D was taken up first..

D. Aesthetics

D-2 – Action Item: The Committee recommends that the Board hear a presentation at their 11/24/97 meeting by a representative of the City of Tampa and take appropriate action on the Mayor’s proposal to authorize the painting of a mural at the Expressway’s Willow Avenue Interchange.

Mrs. Rene Williams from Mayor Greco’s office proposed that the Willow Street beautification project that the City, FDOT and the Expressway Authority undertook a few weeks ago be completed with a painting of a mural on the interchange. The mural would be a landscape painting complimenting the work already done, creating a beautiful park-like setting. She then displayed a drawing prepared by a local artist.

Mr. McCue stated that the Authority would pay for the first mural, an estimated cost of \$13,000, and Mayor Greco has expressed a desire to ask private businesses to underwrite future murals. Commissioner Berger asked who would pay for the maintenance of these areas and the removal of graffiti. Ms. Williams stated that where murals have been painted, they have not been damaged or destroyed by graffiti but that the City would handle the maintenance through an agreement being negotiated with FDOT and the Expressway Authority.

Mrs. Davis moved to authorize the Executive Director to execute a contract, not to exceed \$13,000, for the painting of the mural, seconded by Mr. McDaniel. Carried unanimously.

A. Hogan-Burt Application to lease property.

Mr. McCue referred to the Committee minutes on this proposal and recommended the Committee’s action item:

Action Item: The Committee recommends that the Board accept the application and direct staff to begin the process leading to a Board decision regarding leasing the subject property.

Mrs. Davis moved for approval, seconded by Mr. Callahan. Carried unanimously.

C. Status Report on Brandon PD&E Project

Mr. Richard Fricke of HNTB stated that all activities have been started on the PD&E project. A first draft of the Public Involvement Plan has been developed and a Project Advisory Group has been established. The PD&E project is scheduled to take 14 months. Mr. Fricke then outlined to the Board the order of activities and what would be involved in each.

Mr. McCue stated that the Authority and County are working on the purchase of property for Brandon Feeder Road number 2 and that he would report back at the December meeting on how the negotiations are progressing.

D. Blanket authorization for Executive Director to execute letter contracts for amounts of \$15,000 or less.

Action Item: If professional services required by the Expressway Authority can reasonably be expected to cost less than \$15,000 for any project, the Executive Director may contract for such services without approval of the Board. If competitive services are available, the Executive Director may conduct informal Requests for Qualifications (RFQ) from a minimum of three (3) firms for his subsequent selection and approval. Letter contracts may be executed without an RFQ if the Executive Director determines and documents that the urgency of the required services precludes the time required for an RFQ, or that a particular firm is uniquely qualified to perform the services.

**Tampa-Hillsborough County Expressway Authority
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Mr. McCue advised the Board that as the Authority moves forward with its bonded projects, numerous small contracts will be required. Mr. Anderson has recommended that it would be beneficial to delegate the Board's authority to Mr. McCue to execute letter contracts of \$15,000 or less for small projects, especially projects where time is of the essence. A brief discussion followed and the Board asked that a report of any contracts executed in this manner be provided to the Board at their monthly meeting following execution of such contracts.

Commissioner Berger moved for approval, seconded by Mrs. Davis. Carried unanimously.

E. Memorandum of Understanding with DOT

Mr. McCue advised the Board that the FDOT Toll Office sent him a draft Memorandum of Understanding providing for transfer of \$4 million of our new bond funds to FDOT for replacement of toll booths on the Lee Roy Selmon Expressway and for construction of a new administration building at the east toll plaza. Mr. McCue said that, in the spirit of the Authority's new "Coordination" agreement with FDOT, he recommends that the Authority be more actively involved in the project to make input to the designs, review plans and evaluate proposed expenditures.

Commissioner Berger moved the following Action Item, seconded by Mr. Callahan.

Action Item: The Committee recommends that the Board authorize the Chairman to execute a Memorandum of Understanding with the FDOT Toll office in the amount of \$4 million, incorporating revisions proposed by the Executive Director and the General Counsel, to insure the appropriate level of involvement by the Expressway Authority.

Carried unanimously.

F. Aesthetics Consultant

Mr. McCue recommended to the Board that the Authority issue a Request for Proposals (RFP) for a consultant firm to develop and coordinate the aesthetics improvements to be made on the Lee Roy Selmon Expressway. An agreement is being developed between FDOT and the City of Tampa to establish future maintenance responsibilities for the improved areas. Mr. McCue has accepted Mayor Greco's recommendation that the aesthetic improvements be reviewed by the Mayor's office prior to final approval by the Authority and has recommended that FDOT also review the proposed improvements.

Commissioner Berger requested that the County also be involved in reviewing proposed improvements. Mr. McCue supported Commissioner Berger's recommendation.

Mrs. Davis moved the following modified Committee recommendation, seconded by Mr. Callahan;

Action Item: The Committee recommends Board approval for Mr. McCue to issue a Request for Proposals and for the Chairman to execute a contract with a consulting firm to develop and coordinate aesthetic improvements to the Lee Roy Selmon Expressway, with all proposed improvements to be reviewed by Mayor Greco's office, the County Administrator's office, and FDOT prior to final approval by the Authority.

Carried unanimously.

V. CHAIRMAN'S REPORT

Chairman Mack reported that he was pleased that the celebration following our last Board meeting was not premature and that the Authority has indeed sold its 1997 bonds at an excellent 5.29% interest rate. Mr. McCue reported that the "money is in the bank" and the Board cheered!

**Tampa-Hillsborough County Expressway Authority
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Mr. Mack also reported that the Florida Transportation Commission will be meeting in Tampa on December 4, and that he and Mr. McCue have been invited to make a presentation.

VI. EXECUTIVE DIRECTOR'S REPORT

Mr. McCue reported that all items have been covered.

VII. LEGAL COUNSEL REPORT

There was no report.

VIII. OLD BUSINESS

There was no old business.

IX. NEW BUSINESS

There was no new business.

X. ADJOURNMENT

Mrs. Davis moved for adjournment and the meeting was adjourned at 3:32 p.m.

MINUTES OF THE NOVEMBER 24, 1997 MEETING

APPROVED: Monroe W. Mack
Monroe W. Mack, Chairman

ATTEST: James L. Carter, Jr.
James L. Carter, Jr., Secretary

Note: A video recording of the foregoing proceedings is on file at the Authority's Administrative Offices. Minutes prepared by Carol Suarez.