

**GREATER ORLANDO AVIATION
AUTHORITY**

Board Meetings and
Procurement Practices



Sherrill F. Norman, CPA
Auditor General

Authority Board Members and Chief Executive Officer

During the period October 2018 through January 2020, Phillip N. Brown served as Chief Executive Officer of the Greater Orlando Aviation Authority and the following individuals served as Authority Board members:

Domingo Sanchez, Chairman from 3-20-19^a
Frank Kruppenbacher, Chairman through 2-26-19^a
M. Carson Good from 2-27-19, Vice Chairman from 3-20-19
Domingo Sanchez, Vice Chairman through 3-19-19
Dean Asher through 2-26-19
Jerry Demings from 12-4-18
Buddy Dyer
Ed Fouche through 2-26-19
Randall Hunt from 2-27-19, through 11-14-19^b
Teresa Jacobs through 12-3-18
Ralph Martinez from 2-27-19
Maggie Montalvo through 2-26-19
Dr. Jason Pirozzolo from 2-27-19

^a Chairman position vacant 2-27-19, through 3-19-19.

^b Position vacant 11-15-19, through 1-31-20.

The team leader was Jeffrey M. Brizendine, CPA, and the audit was supervised by Derek H. Noonan, CPA.

Please address inquiries regarding this report to Michael J. Gomez, CPA, Audit Manager, by e-mail at mikegomez@aud.state.fl.us or by telephone at (850) 412-2881.

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GREATER ORLANDO AVIATION AUTHORITY

Board Meetings and Procurement Practices

SUMMARY

This operational audit of the Greater Orlando Aviation Authority (Authority) focused on Authority Board meetings and procurement practices. Our audit disclosed the following:

Finding 1: During Board meetings, the Board acted on significant issues that were either not included or not clearly described in the respective meeting agendas. In addition, rather than waiting to discuss an upcoming Board action during the course of an open meeting, a Board member communicated, through an e-mail sent to other Board members, his position on the action. Board meeting agendas without sufficient descriptions and communications among Board members outside public meetings may limit opportunity for public dialog and reduce transparency of the Board decision-making process.

Finding 2: The Board approved several consent agenda items with financial impacts greater than \$45 million at Board meetings without Board and public discussion. Such actions limit the Board's ability to adequately and transparently carry out its statutorily required duties.

Finding 3: Authority records did not demonstrate that the Board followed the established competitive selection process when procuring Interim General Counsel services or document justification for not following that process, thereby increasing the risk that the services were not acquired at the lowest price consistent with desired quality.

Finding 4: As of October 2020, the Authority had not established effective policies and procedures to identify potential conflicts of interest for Board members and employees who participate in purchases of goods and services.

BACKGROUND

In 1957, the Greater Orlando Port Authority was established by State law as an agency of the City of Orlando (City)¹ and renamed the Greater Orlando Aviation Authority (Authority) in 1978.² In 1998, previous State laws were repealed and replaced to reestablish the Authority.³ The Authority operates the City-owned Orlando International Airport (Airport) pursuant to an agreement⁴ for the accommodation of air commerce and transportation. Under the terms of the agreement, the City transferred to the Authority custody, control, and management of the Airport until September 30, 2065. The agreement may be terminated early under certain conditions or extended by the City and the Authority.

During the fiscal year ended September 30, 2019, the Authority served 49.8 million passengers and for that fiscal year the Authority reported total revenues of \$758.8 million and total expenses of \$624.9 million. In addition, according to the Federal Aviation Administration, the Airport ranked

¹ Chapter 57-1658, Laws of Florida.

² Chapter 78-578, Laws of Florida.

³ Chapter 98-492, Laws of Florida.

⁴ Amended and Restated Operation and Use Agreement between the Authority and the City of Orlando, dated August 31, 2015.

10th among United States airports in enplanements for the 2019 calendar year.⁵ As of January 1, 2020, the Authority employed 836 individuals.

The Authority's Board (Board) is composed of seven members, including the City of Orlando Mayor; Orange County Mayor; and five members appointed by the Governor for 4-year terms. The Board elects a Chairman, Vice Chairman, Secretary, Treasurer, and Assistant Secretary from its members. The Board employs a Chief Executive Officer who is responsible for the day-to-day administration, management, and operation of the Authority in accordance with policies established by the Board.

The Board's purposes and powers include:

- Coordination of the planning, financing, construction, and operation of the Authority's aviation facilities.
- Promotion of safe and efficient air commerce.
- Correlation of Authority aviation projects with other aviation projects in the region, State, and nation.
- Development of public airports to support and enhance economic development in Orange County, Florida.

This operational audit focused on selected Authority processes and administrative activities, specifically, Authority Board meetings and procurement practices.

FINDINGS AND RECOMMENDATIONS

Finding 1: Board Meetings

Except as otherwise provided in the Constitution of the State of Florida, pursuant to the State's Sunshine Law,⁶ the Greater Orlando Aviation Authority (Authority) Board meetings at which official acts are to be taken are to be public meetings open to the public at all times. State law requires the Authority Board (Board) meeting minutes to be promptly recorded and open to public inspection. To assist the public and governmental entities in understanding the requirements and exemptions to Florida's open government laws, the Attorney General's Office compiles a comprehensive guide known as the *Government-in-the-Sunshine Manual (Sunshine Manual)*. The *Sunshine Manual* is published each year.

When addressing the use of an agenda for board meetings, the *Sunshine Manual*, refers to a Florida Attorney General Opinion (AGO),⁷ which indicates that, although boards are not required to consider only those matters on a published agenda during a noticed meeting, it is advisable that boards postpone formal action on any added items that are controversial. The referenced AGO further indicates that, in the spirit of the Sunshine Law, boards should be sensitive to the community's concern that it be allowed advance notice and, therefore, meaningful participation on controversial issues coming before the board.

⁵ The Federal Aviation Administration extracts passenger (enplanement) data from the Air Carrier Activity Information System (ACAIS), a database that contains passenger boarding data.

⁶ Section 286.011(1) and (2), Florida Statutes (Sunshine Law).

⁷ Florida Attorney General Opinion No. 2003-53.

The *Sunshine Manual* also refers to an AGO,⁸ which advises that e-mail communications of factual information between board members do not constitute a meeting subject to the Sunshine Law when the communication does not result in the exchange of board member's comments or responses on subjects requiring action by the board. Another AGO⁹ indicates that communication of a board member's position on a subject to be discussed at a public meeting to other board members may result in a violation of the Sunshine Law if another board member's response to such communication is circulated. That AGO further indicates that such communications are problematic, and it would be a better practice to discuss board members' individual positions on matters coming before the board during the course of an open meeting.

Authority policies¹⁰ require the Chief Executive Officer (CEO) to prepare an agenda that includes the items for Board meeting discussions and actions and the agenda must be distributed to each Board member no later than 2 work days prior to the Board meeting. Prior to April 2020, Authority personnel posted agendas for public inspection on the Authority Web site no later than 2 work days before the Board meetings and, beginning April 2020, agendas were posted 7 calendar days before the Board meetings. Our examination of Board meeting minutes and other records for the period October 2018 through January 2020 disclosed that the Board acted on significant issues that were not always included or were not clearly described in the respective meeting agenda and, in one instance, a Board member communicated his position on an upcoming Board action through an e-mail sent to other Board members. Specifically:

- The Authority's contracted General Counsel sent a resignation letter to the Board dated August 12, 2019, indicating his desire to resign by December 31, 2019, and the agenda for the August 28, 2019, Board meeting included an item of new business titled "Recommendation to Establish the Position of Chief Legal Officer." According to the meeting minutes, the Board Chairman requested an alternate motion to this agenda item to specifically appoint a Transition Committee composed of a Board member, the CEO, a former Florida Supreme Court Justice (former Justice), and an attorney in private practice to provide recommendations to the Board regarding the position of General Counsel, including the reporting structure and best practices of the position. The motion provided that the former Justice and the attorney in private practice were to collectively assume the role and title of Interim Co-General Counsel, effective with completion of an engagement letter for up to 6 months. The motion was then made and seconded by another Board member for discussion.

During that meeting, Board members amended that motion and made and seconded additional motions for discussion. During the discussions, a Board member raised concerns that the Board was "supposed to be discussing whether we have the position of Chief Legal Officer" but was instead discussing hiring two attorneys, which was not an item on the agenda. The same Board member also stated that the Board would be voting on items that were not publicly noticed and it was "apparent that this had been talked about for some time" since both attorneys proposed to collectively assume the Interim Co-General Counsel role were present in the audience. Another Board member indicated that he had significant concerns about the process and had been given no significant information about the applicable attorneys prior to the meeting. Following the discussions, the Board approved motions with respective 5-2 votes to create a revised Transition Committee that added a second attorney and for the Board Chairman and CEO to negotiate

⁸ Florida Attorney General Opinion No. 2001-20.

⁹ Florida Attorney General Opinion No. 2001-21.

¹⁰ Organizational Policy No. 101.01 – *Greater Orlando Aviation Authority Bylaws*.

contracts with the two attorneys selected to serve as Interim Co-General Counsel, with the negotiated agreement to come before the Board in September 2019 for approval.

- The August 28, 2019, Board meeting minutes indicated that the Board approved a proposal, not included on the meeting agenda, from the Vice Chairman to negotiate an agreement with a consulting firm already under contract with the Authority for additional services relating to best practices, and to bring the negotiated agreement to the Board for consideration at a subsequent Board meeting. The Vice Chairman indicated that he had e-mailed the Board members his proposal for the consulting firm to determine best practices relating to procurement, concessions, and construction and that the cost for each of the three services would be approximately \$250,000 (\$750,000 total). Our examination of the Vice Chairman's August 25, 2019, e-mail disclosed that he requested that the Board vote to retain the consultant's services and table voting on upcoming agenda items related to the three areas (procurement, concessions, and construction) until the consultant's study was completed. According to the Director of Board Services, none of the other Board members replied to the e-mail. Notwithstanding, Board member communications to other Board members regarding upcoming Board business are problematic and, as opined by the Attorney General, it would be a better practice to discuss Board members' individual positions on matters coming before the Board during the course of an open meeting.
- The Board meeting minutes for August 28, 2019, also indicated that a Board member noted that the expansion of the consultant's services was not included on the meeting agenda for discussion and requested that the item be brought back for consideration as an agenda item at a subsequent meeting "to understand how the [consultant's] contract would be amended and the scope of the work to be performed" and so the matter would be "made public." Notwithstanding, the Board voted to negotiate with the consulting firm and consider an agreement at a future Board meeting. As of September 2020, no agreement had been presented to the Board for consideration and the consultant had not conducted work related to the proposed expanded services.
- The meeting agenda for the September 18, 2019, Board meeting included a recommendation to revise the General Counsel Transition Committee composition by replacing the CEO and one of the attorneys in private practice with two additional Board members and a recommendation to approve the engagement terms for the two attorneys selected to serve as Interim Co-General Counsel. The minutes for that meeting disclosed that the Board voted to approve the recommended revisions to the Transition Committee membership. However, after discussions about the selection method for the Interim Co-General Counsel, the Board rescinded the decision to hire the Interim Co-General Counsel selected during the August 28, 2019, Board meeting and voted to issue a request for proposal (RFP) for Interim General Counsel services for a period of 6 months. As discussed in Finding 3, at the November 13, 2019, Board meeting, rather than selecting the two attorneys as Interim Co-General Counsel, the Board selected a law firm to serve as Interim General Counsel without evaluating and ranking the proposals based upon the RFP-established criteria.

The absence of clearly described agenda items and the use of e-mail between Board members to discuss matters coming before the Board may limit the opportunity for community involvement and public dialog and reduce the transparency of the Board's decision-making process.

Recommendation: To promote transparency in Authority operations and encourage community involvement, the Board should ensure that:

- **Board meeting agendas contain complete and accurate descriptions of significant matters to be discussed and acted on during Board meetings.**
- **Board member positions on matters coming before the Board only be discussed during the course of an open meeting.**

Follow-Up to Management's Response

Authority management indicated in their written response that they found the Auditor General's citations to the Sunshine Manual to be inconsistent and selective and that the Authority publishes extraordinarily detailed agendas and follows them. However, our references to the Sunshine Manual and applicable AGOs are clearly relevant and support our position that communication of a board member's position on a subject to be discussed at a public meeting is problematic, and it would be a better practice to discuss board members' individual positions on matters coming before the board during the course of an open meeting. Also, as we noted in the finding, Board meeting agendas did not always contain complete and accurate descriptions of significant matters to be discussed and acted on during the Board meetings. As such, the finding and recommendation stand as presented.

Finding 2: Board Meeting Consent Agendas

Board meeting agendas include consent agenda items that may be collectively approved by the Board in one motion and without individual discussion. In contrast, agenda items designated as "new business" in the Board meeting agenda are individually discussed and voted on. The consent agenda may be revised by any Board member prior to approval of the motion to approve the consent agenda items; consequently, during meetings, the Board can exercise broad discretion in determining whether consent agenda items remain in the consent agenda or are moved from the consent agenda for individual discussion and action in the new business section of the Board meeting agenda.

Our examination of the minutes for Board meetings held during the period October 2018 through January 2020 disclosed that the majority of agenda items were approved by Board actions through the consent agenda without public or Board discussion, including several items involving significant expenditures. For example, the Board approved the following items included within consent agendas:

- On May 15, 2019, a \$70.9 million deductive change order for the \$3 billion South Terminal Complex (STC),¹¹ decreasing the direct cost of work for one of the two STC project's construction management entities (CMEs).¹² However, the agenda item did not include information or records evidencing that the Board and the public were informed of the Authority's intent to transfer a portion of the STC project from one CME to another. Although the Board initially approved the STC project as part of the Authority's capital improvement plan, Authority operations would have been more transparent if the reallocation of STC project costs between CMEs had been openly discussed at the meeting.
- On August 28, 2019, a \$57.4 million 3-year janitorial services contract (with an optional 3-year extension), which was \$22 million higher than, or a 62 percent increase over, the \$35.4 million prior janitorial services contract initiated 5 years earlier. The prior contract was with the same vendor for a contract term of 3 years with two optional 1-year extensions. Additionally, the first year of the current contract totaled \$18.4 million, which was a 19 percent increase over the \$15.5 million amount of the final (fifth) year of the prior contract.

¹¹ When complete, the STC will be the Airport's second terminal building, will service both domestic and international flights, and will divert approximately 8 million passengers annually from the Airport's existing north terminal.

¹² On May 16, 2018, the Board approved an expansion of the STC project by \$670 million, and on June 19, 2019, the Board approved an increase in project scope with a CME related to the STC Phase 1 expansion totaling \$233.5 million, which included work associated with the \$70.9 million deductive change order approved on May 15, 2019.

In response to our inquiries, Authority personnel indicated that the value of the janitorial services increased due to newly constructed facilities requiring services, a 21 percent increase in contractor staffing required to perform the services, a 9.9 percent increase in contractor staff wages, and an increase in needed services due to the 2.9 million increase in passengers over the prior year. However, Authority records supporting the Board agenda item and provided for our examination did not document the specific reasons for the increase, only generally explained the increased contractor staffing levels and related wage and benefits, and did not include the dollar amount or percentage increases to provide perspective for the \$22 million increase. Providing the dollar amount and percentage increases and reasons for those increases for Board consideration would have provided the Board with more complete information and more transparency to the public.

- Also, on August 28, 2019, a \$45.3 million contract for the operation and maintenance of an automated people mover (APM) system¹³ was renewed for 5 years. The renewed contract amount represented a 2 percent decrease from the prior 5-year contract amount of \$46.2 million; however, this comparable information was not included in the records supporting the agenda item for the Board and the public's consideration as to whether the contract price and terms were reasonable.

In response to our inquiries, Authority personnel indicated that these consent agenda items were discussed individually at Authority committee meetings, and the committees' recommendations for Board action are included in the consent agenda. Notwithstanding, neither the minutes of the committee meetings nor other records documenting significant details of the committee deliberations were presented to the Board for consideration at the May 15, 2019, and August 28, 2019, meetings.

Including items with significant financial impacts in the Board consent agenda, limits Board and public information and discussion and, therefore, thwarts transparency. According to the Director of Board Services, the Authority revised its Board meeting agenda process in February 2020 so that all items with a financial impact greater than \$1 million are classified as new business for Board discussion; however, as of September 2020, this process had not been formally adopted as a policy or procedure.¹⁴

Recommendation: The Board should continue efforts to establish policies and procedures that require and ensure that all items with significant financial impacts are classified as new business for Board and public discussion. In addition, such efforts should require and ensure that the Board properly approves, awards, and ratifies contracts in excess of \$325,000 as a separate line item on the Board meeting agenda and provides a reasonable opportunity for public comment.

Follow-Up to Management's Response

Authority management indicated in their written response that they disagree with the inference that the Board and public were not informed of the Authority's intent to transfer a \$70.9 million portion of the STC project and that discussion was limited by virtue of being on the consent agenda. However, detailed information or records supporting the consent agenda item, such as Authority committee meeting minutes or other records documenting significant details of committee deliberations, were not, of record,

¹³ The APM is a monorail train system that transports passengers between the north terminal and the boarding gates.

¹⁴ Effective October 1, 2020, pursuant to Section 332.0075(3)(b), Florida Statutes, a governing body of a commercial service airport must approve, award, or ratify all contracts executed by or on behalf of the airport in excess of \$325,000 as a separate line item on the Board meeting agenda and must provide a reasonable opportunity for public comment. Such contracts may not be approved, awarded, or ratified as part of a consent agenda.

presented to the Board for consideration at its May 15, 2019, meeting. Consequently, the finding and related recommendation stand as presented.

Finding 3: Interim General Counsel Selection

The Legislature has recognized in State law¹⁵ that fair and open competition is a basic tenet of public procurement and that such competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically. The Authority has established policies¹⁶ and procedures¹⁷ for the procurement of goods and services, except for certain professional services, such as legal services. According to Authority personnel, although the Authority does not have specific procurement procedures for legal services, the legal services selection process may be developed as needed depending on the type of legal services to be procured.

As discussed in Finding 1, at its September 18, 2019, meeting, the Board approved issuing an RFP for Interim General Counsel services. The outgoing General Counsel recommended that the Board, rather than Authority personnel, evaluate the proposals received to expedite the Interim General Counsel selection process. In September 2019, the Authority issued the RFP, which stated that the Board would conduct the selection process, evaluate and rank the proposals based on established criteria, and make the final selection. The Authority received proposals from eight law firms and the Board held a public workshop meeting on November 7, 2019, to evaluate the proposals.

Prior to the Board's review at the workshop, the CEO explained to the Board the selection procedures, including the use of scoring sheets to evaluate each proposal's responses to the RFP selection criteria, and how a consensus should be reached for each proposal. The CEO also explained the RFP selection criteria and provided his perspective on the proposal responses. The RFP selection criteria included:

- Overall responsiveness to the proposal and proposed transition plan.
- Assigned personnel qualifications, experience, location, availability, and tenure.
- Firm experience with local governmental entities in general and airports specifically, and references.
- Proposed hourly rates.

During the November 7, 2019, workshop, Board members created a short list of the preferred five responding firms and then, at the November 13, 2019, Board meeting,¹⁸ interviewed representatives from the five firms, asking them questions pertaining to the RFP selection criteria. Upon the completion of the interviews, the Board Chairman indicated that the Board could either discuss then rank each proposal, or discuss then select a proposal, and stated that the latter was his preference. Although the RFP

¹⁵ Section 287.001, Florida Statutes.

¹⁶ Operational Policies Nos. 120.01 – *Concessions/Procurement Committee*, 120.02 – *Construction Committee*, 120.09 – *Finance Committee*, 120.10 – *Professional Services Committee*, and 450.01 – *Purchasing Introduction and Definitions*.

¹⁷ Operational Procedure No. 450.02 – *Competitive Procurements*.

¹⁸ The portion of the meeting during which the interviews were conducted was not open to the public pursuant to Section 286.0113(2)(b)1. and 2., Florida Statutes. Deliberations on the results of the interviews and the selection of the law firm were during the portion of the meeting that was open to the public.

selection procedures specified that the Board would evaluate and rank the proposals based upon the established criteria, the Board discussed the proposals and then selected a law firm.

Although the CEO explained to the Board the RFP selection process, including the RFP selection criteria, and provided individual scoring sheets to be used for each proposal, the Board decided not to evaluate and rank the proposals in accordance with the RFP requirements. Although we requested, Authority records were not provided to justify why the Board did not follow the RFP selection process. Compliance with selection procedures established in RFPs reduces the opportunity for favoritism and appearance of impropriety.

Recommendation: When the Board deviates from an established RFP process or procures services differently than the selection requirements established by that process, the Board should maintain records to justify the basis for those actions.

Follow-Up to Management's Response

In their written response, Authority management indicated that the Board has the discretion to weigh some factors more heavily than others and make a decision within its discretion. However, our finding does not question the Board's discretion in making decisions; rather, the point of our finding is that the Board did not maintain records to justify the basis for deviating from the RFP process and procuring services differently than the selection requirements established by that process. Such records are essential for transparency and promoting public confidence in an equitable and economical procurement process and, therefore, the finding and related recommendation stand as presented.

Finding 4: Conflicts of Interest

State law¹⁹ provides that no public officer or employee is to have or hold any employment or contractual relationship with any business entity or any agency that is subject to the regulation of, or is doing business with, the agency of which he or she is an officer or employee. Authority procedures²⁰ specify that:

- Board members and Authority employees should avoid any action, whether specifically prohibited or not, that might result in or create the appearance of:
 - Using public office for private gain.
 - Offering preferential treatment to any person.
 - Impeding Authority efficiency or economy.
 - Losing complete independence or impartiality.
 - Making an Authority decision outside of official channels.
 - Adversely affecting the public's confidence in the Authority's integrity.
- No Board member or Authority employee may be employed by any person, firm, or corporation, nor have an interest in any firm or corporation having any contractual relation with services to the Authority.
- Authority employees are prohibited from having employment with or interest in firms or corporations proposing to have any contractual relation with or proposing to render for any

¹⁹ Section 112.313(7)(a), Florida Statutes.

²⁰ Operational Procedure No. 204.01, *Code of Ethics and Business Conduct*.

consideration, goods or services to the Authority when the approval, concurrence, decision, recommendation, or advice of the employee may be sought, obtained, or required in any connection with contract service.

In addition, the *Greater Orlando Aviation Authority Purchasing Manual (Purchasing Manual)*²¹ indicates, in part, that Authority Purchasing Department personnel must ensure that no Authority employee participates in the selection or award of a contract if the employee or member of their immediate family has a financial interest in a firm selected for award. As such, to ensure compliance with the provisions of the *Purchasing Manual* and other Authority procedures, it is essential that Authority personnel perform monitoring procedures to ensure that no Authority personnel or Board member with a potential or actual conflict of interest participate in the selection or award of a contract.

Three Authority committees²² are responsible for evaluating and ranking vendors and making recommendations to the Board for the awarding of contracts using Authority competitive selection processes. However, although we requested, Authority personnel did not provide records evidencing any specific procedures performed by the Purchasing Department or other Authority personnel to ensure that the Board members and Authority employees on the committees who evaluated and selected contractors or vendors were independent of the contractors or vendors.

In response to our inquiry, Authority personnel referred to certain Authority policies and procedures, including policies²³ that require division or department managers to report to the Director of the Internal Audit Department “suspicious activities or irregularities.” However, it is not clear from those policies how any potential conflicts of interest would be reported for employees and evaluated by Authority Purchasing Department personnel prior to the employees participating in the selection or award of a contract.

Additionally, Authority personnel provided us a “Conflict of Interest” (COI) form and indicated that the form is used for documenting potential employee conflicts of interest for specific procurements. The form is to include a description of the potential conflict of interest and a statement as to how the Authority intends to remove the conflict of interest or to otherwise protect the Authority’s interest. Each employee is required to complete a COI form if there is a potential conflict of interest. Authority personnel also provided documentation evidencing training provided to new Board members and employees, and periodically to existing Board members and employees, regarding identifying and disclosing potential conflicts of interest. However, while such training is useful, established procedures requiring Board members and employees to periodically complete COI forms to identify conflicts of interest or report that none exist would provide additional assurance of compliance with the *Purchasing Manual* and other Authority procedures.

Our comparison of business interests disclosed on applicable Authority officials and employees’ annual financial disclosure forms²⁴ or the Sunbiz Web site²⁵ to Authority vendor procurement records did not

²¹ *Greater Orlando Aviation Authority Purchasing Manual (Purchasing Manual)*; December 2016; General Procedures – *Conflict of Interest*.

²² Concessions/Procurement, Construction, and Professional Services Committees.

²³ Organizational Policy No. 150.02, *Handling Suspected Dishonest, Fraudulent, or Wrongful Conduct*.

²⁴ Section 112.3145(1) and (2), Florida Statutes, requires certain public officials and specified employees to file an annual financial disclosure form as of July 1 each year.

²⁵ Sunbiz.org is the Florida Department of State, Division of Corporations, official business entity index and commercial activity Web site.

disclose any specific conflicts of interest as contemplated by State law or Authority procedures. However, our audit procedures are not a substitute for the Authority's own procedures. Without such procedures, the Authority may not timely detect potential conflicts of interest.

Recommendation: The Authority should enhance procedures to ensure compliance with *Purchasing Manual* and other Authority procedure requirements precluding Board member and employee participation in the selection or award of a contract should a potential or actual conflict of interest exist.

Follow-Up to Management's Response

Authority management indicated in their written response that "the Auditor General did not identify any specific conflicts of interest, disproving the notion that our practices are ineffective." Although our audit procedures did not identify specific conflicts of interest, our finding describes areas where Authority practices could be improved. Accordingly, Authority management acknowledged in their response that opportunities for improvement had been observed and procedures to identify potential conflicts of interest were being strengthened. As such, the finding and related recommendation stand as presented.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations. Pursuant to Section 11.45(3)(a), Florida Statutes, the Legislative Audit Committee, at its December 12, 2019, meeting, directed us to conduct this operational audit of the Greater Orlando Aviation Authority (Authority).

We conducted this operational audit from April 2020 through October 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the Authority focused on Board meetings and procurement practices. The overall objectives of the audit were:

- To evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- To examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- To identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

In planning and conducting our audit, we assessed whether internal controls were significant to our audit objectives by considering the internal control integrated framework established by the Committee of

Sponsoring Organizations (COSO)²⁶ and adapted for a government environment within the *Standards for Internal Control in the Federal Government* issued by the United States Government Accountability Office. That framework is illustrated in the following table.

COSO Internal Control Integrated Framework

Internal Control Component	Description	Underlying Principles (To be Applied by the Board and Management)
Control Environment	Standards, processes, and structures that provide the basis for carrying out internal control across the organization. Represents the foundation on which an effective internal control system is built.	<ul style="list-style-type: none"> • Demonstrate commitment to integrity and ethical values. • Exercise oversight responsibility. • Establish structures and reporting lines and assign authorities and responsibilities. • Demonstrate commitment to a competent workforce. • Hold individuals accountable for their responsibilities.
Risk Assessment	Management’s process to consider the impact of possible changes in the internal and external environment and to consider actions to mitigate the impact. The basis for how risks will be managed.	<ul style="list-style-type: none"> • Establish clear objectives to define risk and risk tolerances. • Identify, analyze, and respond to risks. • Consider the potential for fraud. • Identify, analyze, and respond to significant changes that impact the internal control system.
Control Activities	Activities in the form of policies, procedures, and standards that help management mitigate risks. Control activities may be preventive in nature or detective in nature and may be performed at all levels of the organization.	<ul style="list-style-type: none"> • Design control activities to achieve objectives and respond to risks. • Design control activities over technology. • Implement control activities through policies and procedures.
Information and Communication	Information obtained or generated by management to support the internal control system. Communication is the dissemination of important information to help the organization meet requirements and expectations.	<ul style="list-style-type: none"> • Use relevant and quality information. • Communicate necessary information internally to achieve entity objectives. • Communicate necessary information externally to achieve entity objectives.
Monitoring	Periodic or ongoing evaluations to verify that the internal control system is present and functioning properly.	<ul style="list-style-type: none"> • Conduct periodic or ongoing evaluations of the internal control system. • Remediate identified internal control deficiencies on a timely basis.

We determined that the internal control components significant to our audit objectives included control environment, and control activities. The associated underlying principles significant to our objectives included:

- Board and management commitment to integrity and ethical values.
- Management design of control activities to achieve Authority objectives and respond to risks.
- Management design of controls over technology.
- Board and management establishment of policies and procedures to implement internal control activities.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in management’s internal controls significant to our audit objectives, instances of noncompliance with applicable governing laws, rules, or contracts, and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and

²⁶ The Committee of Sponsoring Organizations (COSO) of the Treadway Commission was established in 1985 to develop guidance in the areas of risk and control which enable good organizational governance and reduction of fraud. Pursuant to their mission, COSO developed a framework for internal control that consists of five components and 17 underlying principles.

audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records for the audit period October 2018 through January 2020, and selected actions taken prior and subsequent thereto. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws, rules, Authority policies and procedures, and other guidelines, and interviewed Authority personnel to obtain an understanding of applicable processes and administrative activities.
- Evaluated the adequacy of Authority policies and procedures governing public records retention requirements, including retention of electronic communications for compliance with the public record provisions of Chapter 119, Florida Statutes, and Section 286.011, Florida Statutes (Sunshine Law).
- Examined minutes of 15 Authority Board (Board) meetings that occurred during the audit period to determine whether:
 - Board meetings were properly noticed.
 - The Board conducted meetings using pre-established agendas in accordance with Authority policies.
 - Board meetings had a quorum.
 - Board meeting minutes were promptly transcribed, approved, and available for public inspection.
 - The Board took action on significant items after sufficient discussion in a public forum.
- From the population of 175,412 expenses totaling \$1.2 billion during the audit period, examined Authority records related to 30 selected expenses totaling \$25 million and one expense of \$91,868 for Interim General Counsel services provided during the period November 2019 through January 2020 to determine whether:

- All selected 31 expenses were in correct amounts and adequately documented; made in accordance with applicable laws, rules, contract terms, policies and procedures, and good business practices; and properly authorized and approved.
- 23 applicable expenses for goods and services totaling \$22.4 million were competitively selected in accordance with applicable laws and Authority policies.
- The construction projects, associated with 4 expenses totaling \$12.9 million to design professionals for construction-related services, had properly reviewed and approved construction plans, were adequately insured, and had been properly inspected in accordance with Authority policies.
- Construction management entities (CMEs) associated with 2 expenses totaling \$9,348,247 were properly licensed and sufficiently bonded. Additionally, we determined whether Authority policies and procedures were sufficient for monitoring CME subcontractor selections; verifying subcontractor licensure and payment and performance bonds; and for ensuring that subcontractor bid awards, contract amounts, and related payments agreed.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE



**GREATER ORLANDO
AVIATION AUTHORITY**

January 19, 2021

Ms. Sherrill F. Norman
Auditor General, State of Florida
Claude Denson Pepper Building
Suite G74
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Ms. Norman:

We received the Auditor General's preliminary and tentative audit findings and recommendations on December 17, 2020 resulting from your operational audit of the Greater Orlando Aviation Authority. We appreciate your team's diligence and review throughout the audit process and we are pleased that the audit reports no violations of Florida Statute or Aviation Authority Policies and Procedures. A focus of my chairmanship, which began in August 2020, is to improve the effectiveness of our operations.

Upon my direction, Aviation Authority staff and Interim General Counsel have prepared our formal response, which is attached hereto.

Sincerely,

A handwritten signature in black ink that reads "Phillip N. Brown".

for

M. Carson Good
Chairman, Greater Orlando Aviation Authority

Attachment

c: Phillip N. Brown, Chief Executive Officer

Greater Orlando Aviation Authority's Response to the Florida Auditor General's Preliminary and Tentative Audit Findings

The Aviation Authority Board and management appreciates the operational audit performed by staff of the Auditor General and their recommendations. Prior to the onset of the pandemic, Orlando International Airport was the busiest airport in Florida, and 10th busiest in the United States, and currently actively manages a \$3.76 billion Capital Improvement Plan. Among other achievements, the Aviation Authority continues to receive the Certificate of Achievement for Excellence in Financial Reporting for its Comprehensive Annual Financial Report from the Government Finance Officers Association (GFOA), and has also earned the GFOA's Distinguished Budget Presentation Award. Additionally, we are a prior recipient of the Achievement of Excellence Award from the Institute of Public Procurement (NIGP).

We are pleased that the audit demonstrates we are operating effectively, with no violations of Florida Statute or Aviation Authority Policies and Procedures. The audit found that public meetings were properly noticed, agendas properly posted, and procurements properly advertised, in accordance with the Florida Statutes. We remain committed to strong leadership, maintaining fiscal responsibility, and operating a safe and secure world-class facility to promote The Orlando Experience®, while upholding the highest level of integrity in our operations, and remaining fully transparent. The Aviation Authority provided approximately 900 records and correspondence during the course of this audit, which occurred while facing unprecedented financial and operational challenges from the COVID-19 Pandemic.

The Board and Aviation Authority management have thoroughly reviewed the audit findings and recommendations made by the Auditor General. We continuously look for ways to improve our business practices, while we strive to exceed expectations. For example, we implemented several practices, before notification of the audit findings which addressed the concerns noted by the Auditor General related to the use of the consent agenda and conflicts of interest.

Below are the Aviation Authority's specific responses to the audit findings and recommendations.

Finding 1: Board Meetings

The Aviation Authority appreciates the reference to the *Sunshine Manual*. The Aviation Authority utilizes the manual and the citations referred to within the manual as a resource for conducting business in an open, transparent, public manner consistent with the

Sunshine Law. However, we find the Auditor General’s citations to the *Sunshine Manual* to be inconsistent and selective.

The Aviation Authority publishes extraordinarily detailed agendas and follows them. The agendas are often accompanied by hundreds of pages of supporting documentation for agenda items, which exceeds any requirement imposed by Florida law. Yet, this is not acknowledged in the report.

Further, the Auditor General does not acknowledge that the “Notice and Procedures, Agenda” section of the *Sunshine Manual* leads with this statement: “The Sunshine law does not mandate that an agency provide notice of each item to be discussed via a published agenda” The *Sunshine Manual* goes on to say that courts have “rejected such a requirement because it could effectively preclude access to meetings by members of the general public who wish to bring specific issues before a governmental body.” The next paragraph is more illuminating: “Thus, the Sunshine Law does not require boards to consider only those matters on a published agenda. Whether to impose a requirement . . . from considering matters not on an agenda is a policy decision to be made by the legislature.”

This is not to say that the Aviation Authority is in favor of less detail in its agendas nor is the Aviation Authority advocating for less agenda clarity. Consistent with the spirit and intent of the Sunshine Law and its policies, the Board follows the agenda. Detailed issues for discussion during a public meeting are properly left to the Aviation Authority within its By-Laws and Policies. The By-Laws include the mandate that the Aviation Authority’s meetings operate consistently with *Robert’s Rules of Order*. *Robert’s Rules of Order* allow members to raise matters for new business, amend motions, suspend the rules, or make other subsidiary or main motions as they wish. Within the agenda, the Board has the discretion to take action consistent with the Sunshine Law and its operating policies and procedures.

The Auditor General’s inference that a public body cannot act within its discretion on published agenda items during a public meeting is impractical. Recommendations from governing Aviation Authority Committees, as well as the Chief Executive Officer (CEO), among others, are formalized and prepared in clearly described memoranda for the Board’s consideration. The Board may accept, reject, or reconsider the action before them as well as propose an alternate motion following public comment, if any. All of these actions are available to the Aviation Authority Board during a properly noticed Sunshine meeting. Discussion among board members in public meetings, exercising their governance and oversight responsibility in the best interest of the public and the Aviation Authority within the published agenda, is encouraged.

As the Auditor General’s report notes, the August 28, 2019, Aviation Authority Board meeting included vigorous discussion about whether the motion to appoint an Interim General Counsel should proceed. Objections were publicly stated and the vote on the motion was divided. At the next Aviation Authority Board meeting, the motion was

rescinded. In the end, no Interim General Counsel was selected based on the August 28, 2019, motion.

While the Aviation Authority acknowledges the Auditor General's recommendations, we feel the identified items are isolated occurrences. Except as allowed by Attorney General Opinions, board members should refrain from email communication between one another. We are pleased that the Aviation Authority had controls in place to mitigate the instance cited by the Auditor General with respect to email communication. As the Auditor General noted, there was no email exchange pertaining to the single email sent on August 25, 2019 because no Board member responded to that email. General Counsel promptly reminded board members to not respond to ensure there was no discussion, thus maintaining compliance with Sunshine Law.

To the extent possible, we will continue our practice to ensure that board agendas contain complete and accurate descriptions of forthcoming matters. As such, we will continue with our routine practice of having multiple layers of agenda review by the CEO, General Counsel, and Manager of Board Services among others. Additionally, we will continue holding a preliminary and final agenda review meeting among Aviation Authority staff, to ensure the most accurate agenda and memoranda possible.

Finding 2: Board Meeting Consent Agendas

As the Auditor General stated, the recommendation is to continue ensuring that the Aviation Authority's policies and procedures require all items with significant financial impact are classified as new business for Board and public discussion, as the Aviation Authority has done in practice since February 2020 (before the commencement of this audit), by classifying all items over \$1 million as new business. Moreover, months before this audit began, the Aviation Authority took a proactive team-approach to review and prepare to implement the full requirements of House Bill (HB) 915, desiring to be in compliance in a timely manner once the bill became law. As such, effective October 2020 any item over \$325,000 is listed as a separate line item under the new business section of the Board Agenda.

This finding largely focuses on public comment during board meetings, but does not take into account directly related procurement practices and public meetings which take place before the Board Meeting. Proposed procurements are presented at relevant public Sunshine Committee meetings, with opportunities for public engagement. Further, there is an appeal process for interested parties. The Aviation Authority provides substantive information in a condensed manner for the Board Agenda and Memoranda, supported by Committee Memoranda and supporting procurement documentation, as well as minutes and other relevant information. Board members and the public can ask questions or seek clarification by engaging Aviation Authority staff or attending Sunshine Committees, before or during the Board Meeting.

The Aviation Authority would like to specifically address the following items presented by the Auditor General:

The Auditor General mentions a \$70.9 million deduction in the scope of work from Hensel Phelps, one of the two Construction Management Entities (CMEs) involved in the South Terminal Complex project. The pathway to this deduction involved complex memoranda at several levels of the approval process. The “transparency” discussion which follows does not accurately reflect the pathway to re-allocation of this work. In fact, the pathway to the work re-allocation occurred at five publicly-noticed meetings, summarized below. We disagree with the inference that Board and public were not informed of the Aviation Authority’s intent to transfer a portion of the project and that discussion was limited by virtue of being on the Consent Agenda.

- April 30, 2019: Public Construction Committee Meeting (CCM). At this public meeting, the CCM recommended to the Aviation Authority Board to approve the \$70.9M reduction in scope from Hensel Phelps. The agenda item was publicly posted in advance of the CCM. This item was fully discussed at CCM. Minutes of this meeting were posted on the Aviation Authority’s website. The committee memorandum states, “The remaining paving work will be presented in a future Guaranteed Maximum Price (GMP) for Authority approval.” During the CCM, the Chair stated that the result would be a shift in work from Hensel Phelps to Turner-Kiewit Joint Venture (TKJV). However, the subsequent CCMs demonstrate that this GMP change was taken in steps at public meetings.
- May 15, 2019: Aviation Authority Board Consent Agenda, Items F and H. At the Aviation Authority Board meeting, no affected party and no member of the public asked to discuss the items and no member of the Board asked for the items to be discussed off of the Consent Agenda. The Board Memoranda describe the recommended action of reducing one CME’s scope (Hensel Phelps) and the amount of the change. Item F notifies the Board that the remaining work will be presented in a future GMP request.
- June 4, 2019: Public Construction Committee Meeting. At the June 4, 2019, CCM, the Construction Committee considered a proposal from TKJV to perform the scope of work which was removed from Hensel Phelps scope during previous public meetings, as described above. The amount of the total negotiated GMP for TKJV is set out in the committee memorandum.
- June 7, 2019: Public Construction Finance Oversight Committee (CFOC): The CFOC approved, during a public meeting, the CCM recommendation from the June 4, 2019, CCM meeting.
- June 19, 2019: Aviation Authority Board Consent Items D and R: Together, these items demonstrate changes in the GMP elements for the two CMEs. This culminates in a full description of the amount of the scope awarded to TKJV, and refers back to the CCM action on June 4, 2019.

We should further note that in every board meeting agenda package during this time, there is a Construction Progress Report that details each significant construction project, the names of the contractors, the scope of the project, the funding source, the status, an estimate of the time remaining of the project, and an analysis of the construction costs to date

compared to budget. We can reduce the complexity of further board and intermediate level memoranda while continuing to make this information publicly available on the Aviation Authority's website before the Board meeting.

We do acknowledge the Auditor General's finding as it relates to presenting comparative data. As a matter of routine, statistical information, such as percentage increases from prior years and causes for significant increases, are discussed in Sunshine Committees and included in Committee Memoranda. We will continue to assess the appropriate statistical information to include in Board Memoranda, which again are supported by readily available Committee Memoranda.

The Auditor General states that the 3-year janitorial services contract was \$22 million greater than the previous contract. We do not believe this is a relevant statistic, given the significant changes that occurred during the contract period, including the addition of the 1.5 million square foot South Automated People Mover (APM) and Intermodal Terminal Facility (ITF), which were presented to and approved by the CPC and the Board as necessary based on contract value, during the duration of the contract (a total contract value of \$67.6 million). With future contract awards, we will consider incorporating the more relevant statistic mentioned which compares the final year of the previous contract to the first year of the new contract, which was an approximate 19% increase.

Regarding the operation and maintenance contract for the APM mentioned by the Auditor General, due to the manner in which this contract is structured as noted in the CPC Memorandum, price increases are allowable during each year of the option period, not to exceed 5% per year. Therefore, comparing the total contract value renewal option 1 with the current value of renewal option 2, would not provide accurate information. Aviation Authority staff presented the known increase in the CPC Memorandum, which was \$179,879.44 from year 5 of renewal option 1, or 3.51%. This is an accurate and relevant statistic to present for decision-making purposes.

Finding 3: Interim General Counsel Selection

The Auditor General commented that the Aviation Authority Board should have used certain scoring sheets in the evaluation process for the Interim General Counsel selection. The Aviation Authority agrees that the matrices provided to Board members may have been a useful tool in the evaluation process. However, the tool was not required and the proceedings, which occurred in a well-publicized and well-attended public meeting, demonstrate that the Board made a thorough, thoughtful decision following ample deliberation.

Board members had many tools at their disposal for making this decision. The Board had lengthy proposals provided by each firm that addressed the criteria within the RFP mandated by the Board for written submission. The Board received references for each firm. The Board held interviews with each firm in private session and in accordance with the Sunshine Law. Afterwards, the Board returned to public session and deliberated the

matter. During those deliberations, the Board addressed the firms' qualifications and, ultimately, Board members stated their preferences in ranking the firms aloud.

The Board has the discretion to weigh some factors more heavily than others, and make a decision within its discretion. Aviation Authority action is measured against an abuse of discretion standard and it can act lawfully so long as it does not act in an arbitrary or capricious manner. In this meeting, the Board acted within its discretion. Notably, even though four sophisticated law firms lost in the selection process, none protested and none claimed that the board abused its discretion. Further, there were several opportunities for public discussion.

Finding 4: Conflicts of Interest

The Purchasing Manual referenced by the Auditor General, is a department-level manual publicly posted in the spirit of increased transparency of procurement practices and promoting a strong ethical culture within the Aviation Authority's procurement function. The Aviation Authority's Policies and Procedures, as formally approved by the Board, are the highest standard for how the Aviation Authority operates. The sole responsibility for identifying and handling potential conflicts of interest extends beyond the Purchasing department's purview, applying to all Aviation Authority employees as well as Board members. Therefore, the Aviation Authority continues to implement training and awareness programs among the Board and employees, as well as maintaining effective reporting mechanisms for appropriate handling of potential conflicts of interest.

As the Auditor General stated, the Aviation Authority utilizes a Conflict of Interest (COI) form and we have demonstrated its implementation in practice. In addition, the Auditor General did not identify any specific conflicts of interest, disproving the notion that our practices are ineffective. However, in review of our current practices and prior notification of this finding, we observed opportunities for improvement, and implemented the following items which further strengthen our procedures to identify potential conflicts of interest: 1) in August 2020, Aviation Authority management and committee members received training on operating in the Sunshine as well as the Aviation Authority's Code of Ethics and Business Conduct Operational Procedure, which included training on preventing and disclosing potential conflicts; and 2) in August 2020, the Aviation Authority implemented an Affirmative Disclosure Process for each Board and Committee meeting. Members are asked to affirm the following statements: a) you have no conflict of interest on any agenda item; b) whether to your knowledge any person has violated the Aviation Authority's lobbying activities policy for any agenda item; c) you are not aware of any Sunshine Law violations; and d) you are not aware of any breaches of the Authority's Code of Ethics and Business Conduct Procedure for any agenda item. The Aviation Authority will continue to explore ways to further develop procedures for the prevention, identification, and handling of potential COI.