


OFFICE OF THE COUNTY AUDITOR

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April 13, 2020

Advisory No. 141

To: Bertha Henry, County Administrator

From: Robert Melton, County Auditor

A handwritten signature in blue ink that reads "Bob Melton".

Subject: Conflict of Interest regarding Metropolitan Planning Organization and Surtax Funded Programs

This Advisory Memorandum is to communicate our serious concerns about the Broward Metropolitan Planning Organization's (MPO) conflict of interest involving surtax funding. The County pays the MPO for services including ranking municipal capital projects for surtax funding; however, the MPO is also seeking to provide services to the municipalities related to the same projects that they have a responsibility to consider for ranking. This obvious conflict of interest can amount to a "pay for play" situation, which opens the door for corruption. Our recommendations, conclusions, and discussion are provided below.

Recommendations

The County should strictly prohibit municipalities from receiving surtax funding that have engaged the MPO for services directly or indirectly relating to any of the projects.

1. The draft Municipal Interlocal Agreement for Surtax-Funded Transportation Projects (Agreement), to be executed between Broward County and various municipalities, for upcoming Surtax funded capital and repair and maintenance projects includes 'Conflict of Interest' language. This language must remain in the template Agreement to be executed by each municipality, unaltered from its current form. No modifications to this language should be permitted during the negotiation process with any municipality.
2. Any municipalities currently with such a conflict of interest shall be required to disclose and resolve the conflict as a prerequisite to execution of the Agreement with the County, or receipt of any Surtax funding for capital and/or repair and maintenance projects.
3. The County should proactively monitor its funding recipients, and vigorously enforce any identified violations of this requirement, as provided for in the current language.

Conclusions

Based on the concerns outlined in this Advisory memorandum, it is critical that Conflict of Interest language, as currently drafted, be included in all final agreements with municipalities who are to receive Surtax funding for transportation projects. Avoidance of any such conflicts is absolutely necessary to foster transparency in all Surtax funding processes and is essential to maintaining the public's trust in the administration of these funds. These key principles form the basis of our Recommendations.

For municipalities to remedy any already existing conflicts, as required in Recommendation No. 2, and continue to be eligible to receive Surtax funding for eligible transportation projects, municipalities will need to refrain from entering into, or will need to terminate any agreements with the MPO, or other such potential entities. Alternatively, the MPO must decide whether to continue its current agreement with the County, or if the parties should opt to mutually terminate this agreement, in which case the MPO can continue to provide/pursue other transportation planning and management related services with municipalities.

Finally, as provided in Recommendation No. 3, the County should, on an ongoing basis, proactively monitor its Surtax funding recipients to ensure that no such conflicts arise in the future. If any violations are identified, immediate actions should be taken to protect the interests of all Surtax stakeholders, via withholding of funding, or termination of agreements.

Discussion and Analysis

The current draft Agreement contains the following important language:

Conflict of Interest. In no event shall Municipality subcontract or assign this Agreement, including any right or obligation under this Agreement, or contract for the performance of any project management, public education, data-related services, transportation or transit planning, grant management or surtax oversight, or any other transportation planning services to a third-party that has any role or responsibility in the review, approval, or ranking of Surtax-Funded Projects. Violation of this section shall constitute a basis for County's withholding of any and all funding under this Agreement and/or termination of this Agreement for cause.

This language seeks to protect the integrity of the County's processes in the evaluation of eligible projects and awarding of Surtax funds by prohibiting the municipalities from entering into inherently conflictive arrangements. Specifically, the language precludes municipalities from entering into agreements for any project management, transportation planning, grant or Surtax management with entities that have responsibility for the review of, approval, or ranking of Surtax-Funded Projects. Based on our review of the agreement between the County and the MPO, this would prohibit municipalities from having any such arrangements with the MPO.

Presently, under the terms of the MPO's interlocal agreement with the County, the MPO receives Surtax funding to provide services such as the recently completed review, ranking and prioritization of over 500 municipal capital projects; a process which required the MPO to extensively coordinate one-on-one with all applicant municipalities to gather project information for presentation to the County. Their agreement with the County also requires the MPO to assist in the development of a five year plan for projects which "will act as basis for annual surtax funding appropriations" and to assist in the development of an application process for "municipalities to submit eligible projects for MPO review, ranking and prioritization." Further, this agreement acknowledges that the County's Mobility Advancement Plan Administration will annually prepare a budget, "which includes municipal projects that have been prioritized by MPO staff" and that the County may request MPO staff "to work and coordinate with project teams throughout corridor construction."

It has come to our attention that at least one municipality and the MPO have objected to the County's drafted Conflict of Interest language, and that the MPO has already entered into one or more contractual relationships in which they provide transportation planning, project management, public education and/or grant management services (including advising on pursuing Surtax funding) directly to municipality(ies) who are currently applying to the County for Surtax funding.

This type of arrangement opens the door to corruption and creates the appearance of a 'pay to play' scenario. Specifically, the MPO is paid by the County to develop an application process for municipalities to receive Surtax funding for its proposed transportation projects, reviews the proposals, ranks them, and then prioritizes them for the County's approval. At best, any municipality who engages the MPO to provide transportation planning and/or project or grant management services, receives an immediate advantage over other cities by having the entity who designed the application and ranking process develop and submit their cities' application for funding. Presumably, such applications would meet all requirements, be tailored to achieve high scores, and would result in highly ranked, high-priority projects to be presented for approval. Such a process may result in the appearance that any municipality that engages the MPO for these services are the ones that receive the funding. This may inadvertently create an environment by which more and more municipalities feel compelled to hire the MPO to provide transportation related services to their cities to ensure they also get a 'piece' of the Surtax 'pie'. Conversely, the MPO could feel obligated to rate highly any project that they assisted a municipality in preparing.

Such a circumstance could erode the integrity of the entire application and prioritization process, and ultimately tarnish the awarding of funding to municipalities. The municipalities and voters have placed their trust in the County to fairly and objectively administer these funds, which are projected to exceed \$350 million per year. Accordingly, it is imperative that we maintain high standards, and demand the same from all of our partners.

The conflicts are further magnified as the MPO gets paid by the municipalities to develop their cities' proposals, and then gets paid again by the County to review the very documents they prepared in the first place.

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The County/Municipality Interlocal agreements will also require ongoing reporting of project milestones, and the submission of regular documentation to support awarded funds. If the MPO is engaged by a city to provide project management services for these agreements, the MPO could eventually be preparing the documents used to support the expenditure of the funds they recommended, and reporting on project performance they may later use to assist the County in evaluating ongoing funding arrangements. This creates a negative appearance of self-generating work.

Please be advised that that this review process is not considered an audit in accordance with Generally Accepted Governmental Auditing Standards. Had we conducted an audit, we may have identified additional findings and concerns.

I hope you find this information useful, should you have any questions, I can be reached at 954-357-7590.

cc: Mayor and Board of County Commissioners
Andrew Meyers, County Attorney
Gretchen Cassini, Mobility Advancement Program Administrator
Angela Wallace, Transportation Surtax General Counsel