



John A. Carey  
Inspector General

**OFFICE OF INSPECTOR GENERAL  
PALM BEACH COUNTY**



Inspector General  
Accredited

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*“Enhancing Public Trust in Government”*

# **Contract Oversight Report**

## **CA-2016-0075**

### **Blighted and Distressed Property Clean-Up and Beautification Program**

#### **June 22, 2016**

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**Insight – Oversight – Foresight**



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Inspector General

**OFFICE OF INSPECTOR GENERAL  
PALM BEACH COUNTY**  
**CONTRACT OVERSIGHT REPORT  
( CA-2016-0075 )**

**DATE ISSUED: JUNE 22, 2016**



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*"Enhancing Public Trust in Government"*

**BLIGHTED AND DISTRESSED PROPERTY CLEAN-UP AND BEAUTIFICATION PROGRAM**

**SUMMARY**

**What We Did**

As a result of a Citizen complaint, we reviewed the Solid Waste Authority of Palm Beach County's (SWA) "Blighted and Distressed Property Clean-Up and Beautification Grant Program" (Grant Program). We reviewed this Grant Program's eligibility requirements, instructions, award process, and the review criteria. We also requested documentation relating to the Grant Committee meeting of January 13, 2016, and the recording of minutes which resulted from this meeting.

**What We Found**

This marked the first time that SWA requested applications and awarded monies to other governmental entities under the "Blighted and Distressed Property Clean-Up and Beautification Grant Program. Based upon our discussions with staff, we believe staff made significant efforts to ensure that a fair and equitable process was used to award funds. Nevertheless, the information presented to this Office indicates that SWA did not comply with Florida's Sunshine Laws when it evaluated, scored, and ranked the applications. The process of evaluating, ranking, scoring, and short-listing the grant applications did not occur at a

publicly noticed meeting of either the Grant Committee or the SWA Board. Moreover, the deliberations at the Grant Committee meeting – where the evaluation, scoring and ranking actually took place – were not recorded in the form of meeting minutes.

Although the SWA Board made no formal delegation to a Grant Committee when it approved funding for the Grant Program, the Director of Customer Relations, the official who was charged with the responsibility of managing the Grant Program, chose to form a Grant Committee of SWA staff to assist him with reviewing the applications. The Grant Committee reviewed, evaluated, screened, and ranked the applications. This ranking process impacted the award process in that the committee recommended that only the top seven (7) applications meeting the grant requirements receive grant funding, and such recommendations were presented to the SWA Board for approval on February 10, 2016. During the publicly noticed meeting of the SWA Board, the Board did not review and/or re-evaluate the applications to determine which to accept or reject, did not rank the applications, did not short-list the applicants from twelve (12) to seven (7), and did not discuss the terms of the proposed Interlocal Agreements

developed by staff. Instead, without independent evaluation and discussion during the public meeting, the SWA Board approved the recommendations by staff to award to less than all applicants and approved the Interlocal Agreements developed after the Grant Committee ranked and selected potential awardees. While staff committees that merely engage in fact-finding are not governed by the Sunshine Law, it appears that the ranking process utilized by this Grant Committee helped to crystallize the decision eventually made by the SWA Board. The committee took actions affecting the decision-making process that was of significance.<sup>1</sup>

An ad hoc advisory board or staff committee, even if its power is limited to making recommendations to the public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law when an official has delegated the advisory or committee the authority to perform a policy-based, decision-making function.<sup>2</sup>

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<sup>1</sup> *Silver Express Co. v. District Bd. of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997), citing *Spillis Candela and Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d 694 (Fla. 3d DCA 1988).

<sup>2</sup> *Spillis Candela and Partners, Inc. v. Centrust Savings Bank*, 535 So. 2d at 694; *Wood v. Marston*, 442 So. 2d 934, 938 (Fla.1983) (staff committee appointed by university president to solicit and screen applicants for deanship of law school and to submit a list of best qualified applicants for faculty approval before forwarding list to president for the final selection came within ambit of the Sunshine Law; committee performed policy-based, decision-making function in deciding which applicants to reject from further consideration); *Dascott v. Palm Beach County*, 877 So. 2d 8, 11 (Fla. 4th DCA 2004); *Silver Express Co. v. Dist. Bd. of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So. 2d at 1100 (staff committee appointed by college's purchasing director to consider and rank proposals was subject to Sunshine Law); *Krause v. Reno*, 366 So. 2d 1244 (Fla. 3d DCA 1979) (because the city manager had delegated at least some decision-making authority to the advisory group that assisted the city manager in his decision to select new chief of

The application of the Sunshine Law depends upon the decision-making nature of the act performed, not the make-up of the board or its proximity to the formal decisional act.<sup>3</sup> Florida law provides that no formal action shall be considered binding except as taken or made at a meeting in accordance with the Sunshine Law, and that action taken out of the Sunshine Law is void. Accordingly, we found that the award process violated Florida Constitution Article I, s.24, and Florida Statutes §286.011. Despite our finding of a violation, we did not find any willful intent by anyone to violate the Florida Sunshine Law.

### What We Recommend

We recommend that the SWA take appropriate actions to ensure that all decisions made and actions taken relating to the SWA "Blighted and Distressed Property Clean-Up and Beautification Grant Program" are accomplished in accordance with the Florida Sunshine Law. We also recommend that the SWA properly notice all meetings at which official acts are to be taken or at which public business is to be transacted or discussed, be open to the public and that minutes of such meetings be promptly recorded.

SWA Management accepted both report recommendations, although disagreed

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police, the advisory group was governed by Sunshine Law).

<sup>3</sup> *Dascott v. Palm Beach County*, 877 So. 2d at 11 ("While in this case the County Administrator had the sole authority to discipline or terminate county employees, he delegated that authority to each department head. The department head in charge of appellant's pre-termination conference chose to share this authority with the other members of the panel. As the panel exercised a decision-making function, a "board" or "commission" within the meaning of the Sunshine Act was formed. Thus, the deliberations of the panel should have been conducted in the sunshine.").

with the conclusion that there was a Sunshine Law violation. However, as a result of our finding the SWA convened a Grant Committee in which public notice was provided and minutes were taken to

cure “any potential” Sunshine Law Violation.

**BACKGROUND**

The Office of Inspector General received a citizen complaint<sup>4</sup> regarding the Solid Waste Authority of Palm Beach County (SWA). Specifically, the complaint questioned the SWA's authority in administering its "Blighted and Distressed Property Clean-Up and Beautification Grant Program." In our response to this complaint, we determined the SWA acted within its authority to [enhance the beauty and quality of our environment, conserve our natural resources,...and provide a coordinated resource recovery and waste management program for Palm Beach County...] as stated in the SWA Charter (House Bill No. 945)

On May 19, 2015, the SWA Board approved a budget that included funding in the amount of \$500,000 for a Blighted Community Litter Cleanup and Abatement Program. The documents provided by SWA staff to this office did not reflect any specific instructions as to how the Grant Program would be implemented. We were advised that the Director of Customer Relations was given the responsibility of managing the Grant Program.

SWA staff issued a Blighted and Distressed Property Clean-Up and Beautification Grant Application on or about December 4, 2015. The application stated that the grant was intended to assist in the cleanup and beautification of distressed, blighted or otherwise impacted properties within both the unincorporated and incorporated areas of Palm Beach County. The grant was offered as an incentive to improve the quality of life and provide a safer, healthier and more aesthetically pleasing environment for the residents.

During our review of this matter, we spoke with SWA representatives and reviewed the grant application, including its eligibility requirements, application instructions, the award process, review criteria, and a checklist of required information. We also requested documentation relating to the January 13, 2016 Grant Committee meeting and reviewed the documents attached to the agenda for the February 10, 2016 SWA Board Meeting. In addition, we met with SWA staff on June 1, 2016.

We learned that although not specifically directed by the SWA Board, SWA staff formed a Grant Committee, which met on January 13, 2016, to review all thirteen (13) applications submitted from seven (7) municipalities. The funding request for the thirteen applications totaled \$1,489,686.

Twelve (12) applications were deemed by SWA staff to be eligible for funding and one (1) application from the City of Pahokee was stricken from consideration for failing to meet the requirements set forth in the grant. According to a Memorandum to the SWA Board dated January 15, 2016, prepared by SWA staff, the "Grant Committee members carefully reviewed and ranked each application rejecting only one submitted by the City of Pahokee because the property is not under their ownership which was a requirement." [Emphasis added]

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<sup>4</sup> OIG Correspondence 2016-03-0002.

During its meeting, the Grant Committee awarded points to the applications based on the following review criteria:

1. **Completeness of the application (10 Points)**  
Applicants must include all required information in the application including attachments of relevant information.
2. **Tangible Neighborhood Benefit (50 Points)**  
Applicants need to state clearly the need for the project and how the project will produce a physical improvement to the neighborhood.
3. **Project Readiness (20 Points)**  
Applicants must have the project clearly defined, well planned and ready to be implemented, applicants must have secured all additional resources needed to execute the project (another source of funding, volunteer commitments, etc).
4. **Project Budget and Requested Grant Amount (20 Points)**  
Applicants must show a complete and realistic project budget, also applicants must demonstrate that there is a shared responsibility in the execution of the project meaning the applicant is not relying only on the grant funds to execute the project.

The Grant Committee tallied the points and ranked the applications accordingly. Because the amount of funds requested exceeded the amount appropriated by the SWA Board for the Program, the Grant Committee recommended seven (7) of the applications for funding.

On February 10, 2016, the SWA Board met. The items attached to the Board's agenda included 1) a memorandum from Staff to the Board, 2) a copy of the blank application package, and 3) the committee's ranking and the amount of funding requested and suggested for the award. Neither the completed applications nor a summary thereof was attached to the agenda. The Board voted, without independent discussion of the applications or the proposed interlocal agreements to be entered into with the awardees, to approve SWA staff recommendations for grant awards for seven (7) of the twelve (12) applications meeting the grant requirements. The awarded grants totaled \$501,072 to the following entities:

City of Belle Glade	\$ 107,445.00	City of Riviera Beach	\$ 99,070.00
City of Lake Worth – CRA*	\$ 72,700.00	City of Riviera Beach - CRA	\$ 44,646.00
City Boynton Beach - CRA	\$ 62,310.00	City of Delray Beach	\$ 63,200.00
The City of Delray Beach – CRA	\$ 51,701.00		

\*The grant amount for this project will be reduced by \$1,072.00 due to the limits of the available funds for the grants.



The six highest ranked applications received full funding, and the seventh-ranked application received partial funding. If the rankings had been different, applications selected for award, as well as, the amount of such awards may have differed. The SWA made payments to the grantees from the period of February 10, 2016, to May 15, 2016, totaling \$115,678.50.

## FINDING

### Finding:

**The January 13, 2016, SWA Grant Committee meeting was not publicly noticed and its minutes were not recorded as required by the Florida Constitution Article I, s. 24 and Florida Statutes §286.011.**

### OIG Review

A constitutional right of access to meetings of collegial public bodies is recognized in Article I, s. 24, Florida Constitution, which provides,

“(b) All meetings ....of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public .....

Similarly, Florida Statute 286.011 (1) states:

“All meetings of any board or commission of any state agency or authority of any agency of authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission.....at which official acts are to be taken are declared to be public meetings **open to the public** at all times, **and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.** The board or commission must provide **reasonable notice of all such meetings.**” [Emphasis added]

The Sunshine Law reflects Florida’s commitment to openness in government. Indeed, “[i]t is beyond doubt that the Statute is to be construed liberally in favor of open government.”<sup>5</sup> All governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted.<sup>6</sup> Because section 286.011 “was enacted in the public interest to protect the public from ‘closed door’ politics ... the law must be broadly construed to effect its remedial and protective purpose.”<sup>7</sup> Regardless of good intentions, boards and commissions should not be allowed to deprive the public of “its inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.”<sup>8</sup>

<sup>5</sup> *Krause v. Reno*, 366 So. 2d at 1250.

<sup>6</sup> *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010).

<sup>7</sup> *Wood v. Marston*, 442 So. 2d at 938.

<sup>8</sup> *Krause v. Reno*, 366 So. 2d at 1250.

Where an advisory or screening committee has been delegated decision-making authority, the committee's meetings must be open to public scrutiny.<sup>9</sup> The mere showing that the Sunshine Law has been violated constitutes an irreparable public injury; thus, the action taken out of the Sunshine is void ab initio.<sup>10</sup>

As previously mentioned, OIG staff requested from the SWA documentation to support the public notice and subsequent minutes of the January 13th Grant Committee meeting. The SWA advised that the Grant Committee meeting on January 13, 2016 was not publicly noticed nor were minutes produced. According to SWA staff, the grant meeting was not noticed and minutes were not taken because the Grant Program was not a procurement and there was no formal delegation from the Board to convene a committee.

Nevertheless, it is undisputed that a committee was formed for the purpose of reviewing, evaluating, and ranking grant applications. As a result of this ranking, some applications were recommended for award and some were excluded from funding. SWA staff submitted an agenda item (9.D.1) to the SWA Governing Board on February 10, 2016, seeking approval of the grant awards recommended by the Grant Committee that evaluated, scored, and ranked the applications. The backup to the Board's meeting agenda did not include the applications submitted by the municipalities and the Board did not review, score, nor rank the submitted applications at such meeting. (Attachment A). According to SWA staff, SWA Board members were briefed in private by SWA staff regarding the details of the selection process; however, it would not be legally permissible for the SWA Board to come to a consensus as a collective body on scores and ranking of the applications during such private meetings.

The SWA Governing Board approved the item (9.D.1) by a 7-0 vote. We acknowledge that Florida Courts have held that Sunshine violations can be "cured by independent, final action in the sunshine, [as] distinguished from mere ceremonial acceptance or perfunctory ratification of secret actions and decisions."<sup>11</sup> However, based upon our review of the agenda items for the SWA Board meeting and the discussions at such publicly noticed meeting, it does not appear that the Board publicly evaluated the applications to determine which to accept or reject, that the Board collectively ranked the applications based upon a review of them, or that the Board short-listed the applicants from twelve (12) to seven (7). We have not been provided with any scoring sheets filled out by the Board.

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<sup>9</sup> *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999)(appointed committee's task of creating a short list by selecting three bidders to make presentations to city council from list of six bidders was a "formal action" requiring a public meeting subject to the Sunshine Law); *Silver Express Co. v. District Bd. of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So. 2d at 1100.

<sup>10</sup> *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d at 762; *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

<sup>11</sup> *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d at 765; *Tolar v. Sch. Bd. of Liberty County*, 398 So. 2d 427, 428 (Fla. 1981); *Citizens for Sunshine, Inc. v. School Bd. of Martin Cty.*, 125 So. 3d 184, 189 (Fla. 3d DCA 2013); *Finch v. Seminole County School Board*, 995 So. 2d 1068, 1073 (Fla. 5th DCA 2008); *Zorc v. City of Vero Beach*, 722 So. 2d 891 (Fla. 4th DCA 1999).



The Board members did not discuss at the Board meeting the terms of the proposed Interlocal Agreements developed by staff. Instead, without independent evaluation and discussion during the meeting, the SWA Board approved the recommendations by the Grant Committee to award to less than all applicants and approved the Interlocal Agreements developed after the Grant Committee received, reviewed, ranked and selected potential awardees (Minutes of the Meeting in Attachment B). The mere instance of a vote to ratify the Grant Committee's recommendations does not cure Sunshine Law violations.

As of May 15, 2016, the SWA made four (4) payments to the Blighted and Distressed Property Clean-Up and Beautification Grantees in the amount of \$115,678.50. Because actions taken in violation of Florida Sunshine Laws are considered void, these grant award payments are considered by this office as Questioned Costs.<sup>12</sup> (Attachment C) Payments to the grantees should stop until appropriate action is taken to cure this violation by independent, final action in the Sunshine.

### QUESTIONED COSTS

Questioned Costs Total = \$115,678.50

### RECOMMENDATIONS

1. We recommend the SWA stop payments to the grantees until appropriate action is taken to cure any and all acts arising out of the award of the grant that are deemed void for failing to comply with the Sunshine Law.
2. We recommend that SWA follow the State Constitution and publicly notice all meetings at which official acts are to be taken or at which public business is to be transacted or discussed. Further, that the minutes of such meetings be promptly recorded.

### RESPONSE FROM MANAGEMENT

On June 16, 2016 Mr. Mark Hammond, SWA Executive Director, submitted a response to this report, which accepted the recommendations (Attachment D). However, the SWA disagreed with the report's conclusion that the administration of the Grant Program was done in violation of Florida's Sunshine Law. Instead, SWA took the position that the administration of the grant falls within the "use-of-staff" or "fact finding" exceptions to the Sunshine Law. Despite this position, on June 8, 2016, the SWA Board members delegated authority to the Executive Director to administer the Grant Program, and subsequently, a Grant Committee was constituted, public notice was provided and minutes were taken to cure "any potential" Sunshine Law violation.

<sup>12</sup> Questioned costs are costs that are questioned by the OIG because of an alleged violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds, and/or a finding that such costs are not supported by adequate documentation, and/or a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable in amount. As such, and as in this case, not all questioned costs are indicative of potential fraud or waste.

Further, SWA indicated that the OIG's suggestions "will be implemented in the future to avoid the appearance of impropriety and consistent with Florida's Sunshine Law."

### OFFICE OF INSPECTOR GENERAL RESPONSE

This office disagrees with SWA's assertion that the "use of staff" or "fact finding" exceptions to the Sunshine Law are applicable to the facts relevant to this report. The OIG does not dispute that the SWA staff could have engaged in fact-finding without violating the Sunshine Law. However, the actions taken when the "Grant Committee members carefully reviewed and ranked each application" went beyond mere fact finding, and instead constituted decision making. In its response, SWA indicates that "all twelve (12) grant applicants were presented to the SWA Board on the regular agenda and that the SWA Board was provided "the opportunity to ask any questions or inquire about any projects or applicants had they so desired." Nevertheless, neither SWA's response nor the agenda attachments show that the actual applications from the twelve (12) applicants were presented to the Board members, that the Board members reviewed and evaluated those applications, nor that the Board members themselves ranked the applications individually or collectively at a public meeting. Indeed, the Board did not engage in any discussions or exert any decision making activity regarding evaluation and ranking of the twelve (12) applicants submitted for the Grant Program. Although the agenda attachments included 1) a memorandum from Staff to the Board, 2) a copy of the blank application package, and 3) the Grant Committee's ranking, the amount of funding requested, and the suggested for the award; the agenda attachments did not include the completed applications or a summary thereof.

While this office and SWA management disagree as to whether SWA's actions violated Florida's Sunshine Law, this office is satisfied that corrective actions were taken by SWA. We are also satisfied that SWA accepted our recommendation which will prevent infractions or the appearance of impropriety in administering future grants.

### ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to the Solid Waste Authority for the cooperation and courtesies extended to us during the contract oversight process.

*This report is available on the OIG website at: <http://www.pbcgov.com/OIG>. Please address inquiries regarding this report to Dennis L. Yeskey, Contract Oversight Manager, by email at [inspector@pbcgov.org](mailto:inspector@pbcgov.org) or by telephone at (561) 233-2350.*

ATTACHMENT A

**Agenda Item 9.D.1 Summary Sheet**

**SWA Blighted and Distressed Property Cleanup  
and Beautification Grant FY 2016**

	Applicant Name	Project	Grant Amount	Committee Ranking			Final Ranking	Notes
				JA	RWK	JH		
1)	City of Belle Glade	Old Water Treatment Plant	\$107,445	1	1	1	1	
2)	City of Riviera Beach CRA	Gateway Pocket Park	\$44,646	1	1	1	1	
3)	City of Boynton Beach CRA	Heart of Boynton Improvement Project	\$62,310	1	1	1	1	
4)	City of Riviera Beach	Cunningham Park	\$99,070	1	1	2	1	
5)	City of Delray Beach CRA	Demo/Clearance	\$51,701	2	2	2	2	
6)	City of Delray Beach	Blighted Property	\$63,200	2	2	2	2	
7)	City of Lake Worth CRA *	Armory Art Annex	\$72,700	2	2	3	2	
		<b>Total Grant Amount Funded</b>	<b>\$501,072</b>					
<b>Other Non-funded</b>								
8)	City of Riviera Beach	Avenue R Canal Improvement	\$121,710	3	3	2	3	
9)	City of Riviera Beach	Heights Sidewalk	\$100,000	3	3	3	4	
10)	City of Riviera Beach	Avenue K Sidewalk/Landscape	\$76,400	4	4	3	5	
11)	City of Lake Worth CRA	Neighborhood Alleyway	\$7,774	5	5	3	6	
12)	Village of Royal Palm Beach	Waterway	\$500,000	6	5	6	7	
13)	City of Pahokee	Hospital	\$182,730	0	0	0	0	Did not meet requirement of being property owner of record

\* Total grant amount of top seven (7) applicants to be funded is \$501,072. This amount exceeds SWA Board approved amount of \$500,000 therefore as the last qualifying recipient, the City of Lake Worth CRA grant amount awarded will be reduced by \$1,072.

## ATTACHMENT B

**SWA Governing Board Minutes from February 10, 2016 Meeting Approved  
June 8, 2016**

# MINUTES

## SOLID WASTE AUTHORITY BOARD REGULAR MEETING

FEBRUARY 10, 2016  
9:00 AM

PRESENT: Vice Mayor Hal Valeche, Chair  
Commissioner Melissa McKinlay, Vice Chair  
Commissioner Steven Abrams, Secretary  
Commissioner Paulette Burdick, Member  
Commissioner Shelley Vana, Member  
Mayor Mary Lou Berger, Member  
Commissioner Priscilla Taylor, Member

ABSENT: None

STAFF: Mark Hammond, Executive Director  
Dan Pellowitz, Managing Director  
Sandra Vassalotti, Clerk to the Authority  
Kathy Levas, Acting Clerk to the Authority  
Mark Eyeington, Chief Operations Officer  
Marc Bruner, Chief Administrative Officer  
Ramana Kari, Chief Engineer  
John Archambo, Director of CIS  
Paul Dumars, Chief Financial Officer  
Phil Mugavero, General Counsel

SOLID WASTE AUTHORITY BOARD MEETING  
FEBRUARY 10, 2016

Mr. Archambo informed that at the August 2015 Board meeting, staff was directed to develop a Blighted and Distressed Property Clean-Up and Beautification Grant in the amount of \$500,000. The grant was made available to PBC municipalities, CRAs and Special Districts. As a result, thirteen (13) applications from seven (7) municipalities were received, reviewed by staff, and ranked according to the evaluation criteria provided in the grant document.

**Item: 9.D.1**

**Blighted and Distressed  
Property Clean-Up  
and Beautification  
Grant Award**

Commissioner McKinlay expressed appreciation to Mr. Archambo for a job well done. She noted that the Authority received more applications than funding available.

**MOTION BY COMMISSIONER VANA TO APPROVE STAFF'S  
RECOMMENDATION [Approve staff recommendations for Grant Awards].  
SECONDED BY COMMISSIONER BURDICK AND CARRIED WITH A 7-0 VOTE.**

**MOTION:  
Approve grant  
awards**

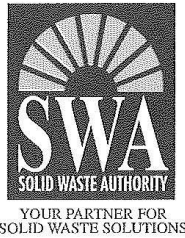
## ATTACHMENT C

Questioned Cost

Grantee	Project Name	Grant Amount (\$)	Questioned Cost (\$)
City of Riviera Beach - CRA	Gateway Pocket Park	44,646.00	22,323.00
City of Boynton Beach - CRA	Heart of Boynton Improvement Project	62,310.00	31,155.00
City of Delray Beach - CRA	Demo/Clearance	51,701.00	25,850.50
City of Lake Worth - CRA*	Armory Art Annex	72,700.00	36,350.00
<b>Total</b>		<b>231,357.00</b>	<b>115,678.50</b>

\*The grant amount for this project will be reduced in \$1,072.00 due to the limits of the available funds for the grants.

## ATTACHMENT D



June 16, 2016

John A. Carey  
Inspector General  
PBC Office of Inspector General  
P.O. Box 16568  
West Palm Beach, FL 33416-6568

**RE: Solid Waste Authority of Palm Beach County Response – Contract Oversight Notification CA-2016-0075: June 17, 2016**

Dear Mr. Carey,

The “Blighted and Distressed Property Clean-Up and Beautification Grant Program” (“Grant Program”) is an important effort by the Solid Waste Authority of Palm Beach County (“SWA”) to assist municipalities in eliminating blight and beautifying local neighborhoods. The SWA appreciates the Office of Inspector General’s (“OIG”) recognition of the significant efforts of SWA staff to ensure that a fair and equitable process was used to administer this Grant Program and award grant funds.

However, the SWA disagrees with the conclusion of the OIG that the administration of this Grant Program was done in violation of Florida’s Sunshine Law. More specifically, contrary to the findings of the OIG in its June 9, 2016, Contract Oversight Report (“Report”), the SWA maintains that the administration of this Grant Program falls within the “use-of-staff” or “fact finding” exceptions to the Sunshine Law.<sup>1</sup>

As the OIG has found in its Report, “the SWA Board made no formal delegation to the Grant Committee when it approved funding for the Grant Program”, nor was there a delegation of such authority by myself, as Executive Director. Report at p. 1.<sup>2</sup>

<sup>1</sup> The Grant Committee was gathered informally, the staff members had no decision-making authority and no formal action was taken or could have been taken at this meeting. Lyon v. Lake County, 765 So. 2d 785 (Fla. 5<sup>th</sup> DCA 2000); see also, Knox v. District School Board of Broward, 821 So. 2d 311, 315 (Fla. 5<sup>th</sup> DCA 2002) (holding that “a Sunshine violation does not occur when a governmental executive uses staff for a fact-finding and advisory function in fulfilling his or her duties.”).

<sup>2</sup> Unlike the administration of this Grant Program, in each case cited in the Report there was a specific delegation of authority to carry out a specific function. Report p.2 at fn. 2.



John A. Carey  
RE: CA-2016-0075  
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Further, all twelve (12) grant applicants were presented to the SWA Board on the regular agenda (Item 9.D.1), not the consent agenda, of its February 10<sup>th</sup>, 2016, properly noticed public meeting. Therefore, any member of the Board had ample opportunity to ask any questions or inquire about any projects or applicants had they so desired. The fact that no member of the Board did so, is not a basis to conclude that the award of Grant Program funds was not fully considered by the Board.

However, to avoid any appearance of impropriety moving forward, on June 8<sup>th</sup>, 2016, after a duly noticed, regularly scheduled meeting of the SWA Board, the Board delegated to me the authority (Add-On Item 9.A.1) to administer this Grant Program. Subsequently, at my direction and after proper publication, a formal Grant Committee was constituted in the Sunshine where minutes were taken and a member of the OIG staff present.

Therefore, any potential Sunshine violation has been cured. The OIG's recommendations are gratefully accepted and will be implemented in the future to avoid the appearance of impropriety and consistent with Florida's Sunshine Law.

Sincerely,



Mark Hammond  
Executive Director

cc: Dan Pellowitz, Managing Director  
Philip Mugavero, SWA General Counsel