



# Florida Department of TRANSPORTATION

Office of Inspector General  
Robert E. Clift, Inspector General

A handwritten signature in blue ink, appearing to read "Robert E. Clift", is positioned to the right of the printed name.

Audit Report No. 14I-4002  
South Florida Regional Transportation Authority

November 10, 2016

## What We Did

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As part of the Office of Inspector General's 2014/15 audit plan development, the District Four Secretary, a statutorily designated member of the South Florida Regional Transportation Authority (SFRTA) governing board, expressed a concern about the lack of a transparent linkage between SFRTA's approved operating budget and SFRTA's actual expenditures. We initiated this engagement to determine the nature and extent of SFRTA's expenditures and whether their financial records were in compliance with applicable laws, rules, and regulations. Additionally, we reviewed SFRTA's \$30.6 million annual appropriation of state financial assistance.

## What We Found

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SFRTA, as determined by the Department of Financial Services (DFS), is a Special District and a nonstate entity that is a recipient of state financial assistance. We determined the Operating Agreement between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S. nor does it contain the procurement provisions outlined in Chapter 287, F.S. We also determined \$153 million of state appropriations was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2010/11 to 2014/15. Additionally, SFRTA did not provide a standard operating budget-to-actual expenditure report based upon the use of each grant or funding source.

## What We Recommend

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### We recommend

1. District Four execute a revised agreement between the Florida Department of Transportation (department) and SFRTA with mandatory provisions;
2. SFRTA reissue Florida Single Audit reports for fiscal years 2010/11 to 2014/15, to provide audit coverage of the \$153 million in state financial assistance previously omitted; and
3. SFRTA provide monthly budget-to-actual reports, by each grant or other funding source, for both its operating fund and capital funds.

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## **BACKGROUND AND INTRODUCTION**

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### **Organizational Overview**

In 1989, Tri-County Commuter Rail Authority (Tri-Rail) was launched as a temporary alternative for area commuters during the Interstate 95 and Florida Turnpike expansion project, Tri-Rail runs up to 50 trains and services, for approximately 15,000 riders daily. Tri-Rail also provides feeder bus services to selected stations along its 72-mile corridor. The corridor, officially known as South Florida Rail Corridor (SFRC), was acquired by the state in 1988 and runs parallel to Interstate 95 and extends south to Miami International Airport and north into Palm Beach County. See Tri-Rail System Map in Appendix G.

In 2003, the Florida Legislature established the South Florida Regional Transportation Authority (SFRTA) with the right to own, operate, maintain, and manage a transit system in the tri-county area of Miami-Dade, Broward, and Palm Beach counties.<sup>1</sup> SFRTA was created as the successor and assignee of the Tri-County Commuter Rail Authority and inherited all rights, assets, labor agreements, appropriations, privileges, and obligations.

The SFRTA is governed by a 10-member board. The board is comprised of three (3) county commissioners, three (3) county citizen representatives, three (3) gubernatorial appointees, and a FDOT district secretary, acting in an ex-officio capacity. All members have full voting privileges. Appendix H illustrates SFRTA's governance and service delivery structure.

SFRTA uses third party contractors to provide a broad range of services, including day-to-day management, operations, train and Tri-Rail station maintenance, feeder bus services, train fueling, fare collection, and armed security services. A summary of SFRTA's long term contract commitments are reported in Table 1.

**Table 1: SFRTA Long Term Third Party Contract Commitments**

| Contractor's Name                   | Start          | Term     | Amount                | Purpose             |
|-------------------------------------|----------------|----------|-----------------------|---------------------|
| Hyundai Rotem                       | September 2006 | 10 years | \$ 44,710,372         | commuter railcars   |
| Veolia Transportation Services      | January 2007   | 10 years | 105,916,013           | trains operations   |
| Bombardier Mass Transit Corporation | March 2007     | 10 years | 151,484,954           | train maintenance   |
| BV Oil Company                      | January 2013   | 5 years  | 49,000,000            | train fuel          |
| Keolis Transit Services             | January 2009   | 7 years  | 22,909,542            | feeder bus service  |
| Meridian Management Corporation     | August 2010    | 5 years  | 10,630,193            | station maintenance |
| G4S Secure Solutions USA Inc.       | November 2010  | 5 years  | 27,587,088            | trains security     |
| <b>Total</b>                        |                |          | <b>\$ 412,238,162</b> |                     |

Source: SFRTA 2014 Comprehensive Annual Financial Report (CAFR)

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<sup>1</sup> Chapter 343, Florida Statutes

### **Operating Funding Sources**

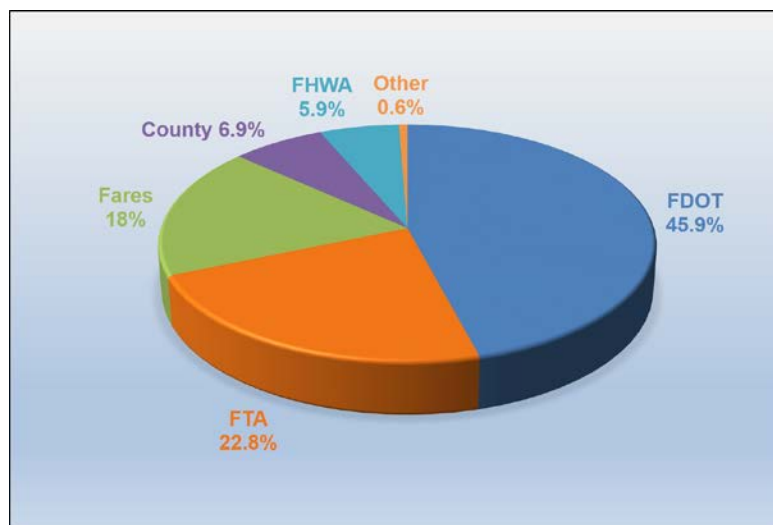
In conjunction with 2009 “Rail Bill” legislation, Chapter 343, F.S. established a dedicated funding source for SFRTA. A total annual appropriation of \$30.6 million are sourced as follows:

- State Transportation Trust Fund of \$13.3 million; and
- FDOT Work Program commitments of \$17.3 million.<sup>2</sup>

SFRTA’s operations are also funded by passenger fares, Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) grants, and dedicated funding from the three counties serviced by SFRTA.<sup>3</sup>

Since fiscal year (FY) 2010/11, SFRTA’s total annual operating budget has averaged \$68.3 million. A breakdown by funding source is illustrated in Figure 1.

**Figure 1: 4-Year Funding Average (FY 2010/11 to FY 2013/14)**



Source: SFRTA’s 2012 and 2013 CAFR

### **Expenditure Overview**

In FY 2013/14, \$58.5 million, or 78% of SFRTA’s budget, was used for operations such as train operating costs, feeder service, security, insurance, fuel, and maintenance of trains and stations. The \$58.5 million includes the \$30.6 million state appropriation. SFRTA also incurred costs for planning, engineering, marketing, legal, as well as general and administrative. See Table 2 below.

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<sup>2</sup> In 2015, SFRTA assumed responsibility for dispatch maintenance for the South Florida Rail Corridor increasing total annual appropriations in FY 2014/15 from \$30.6 million to \$43.1 million (SFRTA 2015 CAFR).

<sup>3</sup> \$1.565 million per year each is provided by Miami-Dade, Broward, and Palm Beach counties.



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**Table 2: Summary of Expenses, excluding depreciation**

| FY 2013/14  |               |        |
|-------------|---------------|--------|
| Operations  | \$ 58,463,863 | 77.5%  |
| Planning    | 5,738,954     | 7.6%   |
| Engineering | 894,589       | 1.2%   |
| Legal       | 671,479       | 0.9%   |
| G&A         | 9,631,877     | 12.8%  |
| Total       | \$ 75,400,762 | 100.0% |

Source: SFRTA 2014 CAFR

### **Joint Participation Agreement**

In June 2006, the department and SFRTA entered into JPA AOH38 to formalize the award of state financial assistance for the Tri-Rail commuter rail project. In addition to setting forth the duties and responsibilities of each party, the JPA, in accordance with Section 287.057 (13), F.S., extends the terms and conditions of the original agreement to each subsequent amendment or renewal. From 2007 through 2010, JPA AOH38 was amended four times for additional funding and/or extended time for contract performance. On December 10, 2010 at SFRTA's request, the JPA was extended until June 13, 2013 when the operating agreement was executed in place of a JPA.

### **Operating Agreement**

In June 2013, FDOT and SFRTA entered into an agreement for continuing operating rights for commuter rail service on the South Florida Rail Corridor for a 14 year period. Pursuant to this agreement, SFRTA, on behalf of the department, will manage, operate, maintain, and dispatch all railroad operations on the SFRC, and will also maintain and repair the rights-of-way, layover facilities and yards, state-owned buildings and facilities, tracks, bridges, communications, signals and all appurtenances on the SFRC in a satisfactory condition and in accordance with the specified standards:

...As a condition to maintaining the operating rights provided in this Agreement, SFRTA agrees to comply with the terms and conditions contained in this Agreement.....and to conduct all activities in accordance with applicable federal and state laws and regulations and the operating rules, policies and procedures, adopted pursuant to such laws and regulations...., on the Corridor [SFRC].

## RESULTS OF EXAMINATION

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### Finding 1 – Revised Agreement Required

**We determined** the Operating Agreement between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S. nor does it contain the procurement provisions outlined in Chapter 287, F.S.

SFRTA's third party contracts in fiscal year 2013/14 totaled \$58.5 million, or 78% of SFRTA's budget. The state of Florida provided \$30.6 million of this \$58.5 million. Fair and open competition is a basic tenet of public procurement. Competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.

Section 215.971, F.S., Agreements Funded with Federal or State Assistance requires:

An agreement that provides state financial assistance to a recipient or a subrecipient... must include provisions that [summarized]:

- specify a scope of work that clearly establishes the tasks to be performed;
- deliverables must be received and accepted in writing before payment;
- each deliverable must be directly related to the scope of work;
- specify the required minimum level of service to be performed;
- establish criteria for evaluating its successful completion of each deliverable;
- specify the financial consequences if the recipient or subrecipient fails to perform;
- specify that a recipient or subrecipient of federal or state financial assistance may expend funds only for allowable costs incurred during the agreement period;
- specify that any funds paid in excess of the amount to which the recipient or subrecipient is entitled under the terms and conditions of the agreement must be refunded; and
- Any additional information required pursuant to section 215.97 F.S. (Florida Single Audit Act).

Chapter 287, F.S., Procurement of Personal Property and Services requires the competitive solicitation processes authorized in this section<sup>4</sup> shall be used for procurement of commodities or contractual services in excess of the threshold amounts.

Because SFRTA is a recipient of state financial assistance, **we recommend** District Four execute a revised agreement with SFRTA that incorporates, at the minimum, the mandatory provisions of section 215.971 and chapter 287, F.S.

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<sup>4</sup> Section 287.017, F. S., Purchasing categories, threshold amounts.

## Finding 2 – Florida Single Audit Act Compliance

**We determined** \$153 million of state appropriations was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2010/11 to 2014/15.

### **Entity Status**

Based upon an audit confirmation memorandum response on February 1, 2016, SFRTA stated "...the Annual State Financial Assistance of \$30.6 million is for operating assistance pursuant to Florida Statutes and is not subject to the [Florida] Single Audit Act."

Regarding its entity status, SFRTA also asserted:

- No Catalog of State Financial Assistance (CSFA) number has ever been assigned by the State to these funds because SFRTA's operations are not a "state project."
- The Single Audit Act only applies to "state financial assistance...to carry out state projects."
- "State financial assistance" does not include...contracts to operate state-owned and contractor-operated facilities. SFRTA, pursuant to a contract with FDOT, operates and maintains the FDOT-owned South Florida Rail Corridor upon which SFRTA operates its commuter rail passenger service. Section 215.97(2)(q), F.S.
- "State financial assistance" is provided by an "awarding" State agency. The funds provided to SFRTA under Chapter 2009-271, Laws of Florida, are not "awarded" by a State agency, but are transferred to SFRTA by direction of the Florida Legislature. The department has no discretion whether to "award" these funds to SFRTA.
- These points were made by SFRTA to the FDOT District Four Secretary in a letter dated August 27, 2010. See Appendix K. These funds have been transferred directly to SFRTA since 2010. These funds have been deposited with the approval of the Department's Comptroller.

Based upon SFRTA's February 1, 2016 response above, we requested a determination from DFS if the \$30.6 million in annual state appropriations to SFRTA constitutes state financial assistance.

DFS responded and determined<sup>5</sup> that SFRTA is:

- a Nonstate<sup>6</sup> Entity;

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<sup>5</sup> See Appendix J, DFS determination provided to FDOT OIG by Mark Merry, Bureau Chief, Division of Accounting and Auditing

<sup>6</sup> Section 215.97(2)(m), F.S. [2014] states: Nonstate entity means a local government entity, nonprofit organization, or for-profit organization that receives state financial assistance. Section 215.97(8)(a), F.S. states: Each nonstate entity that meets the audit threshold requirements, in any fiscal year of the nonstate entity, stated in the rules of the Auditor General, shall have a state single audit conducted for such fiscal

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- a Special District;<sup>7</sup> and
- a recipient of state financial assistance.

**Florida Single Audit Act**

As a recipient of state financial assistance with expenditures of \$500,000 or more, SFRTA is subject to the audit requirements of section 215.97, F.S., Florida Single Audit Act. The purpose of the Florida Single Audit function is to:

- establish uniform state audit requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects;
- promote sound financial management, including effective internal controls, with respect to state financial assistance administered by nonstate entities; and
- ensure, to the maximum extent possible, that state agencies monitor, use, and follow up on audits of state financial assistance provided to nonstate entities.

The appropriated state funds for fiscal years 2010/11 to 2014/15, totaling \$153 million, were improperly omitted from the required audit coverage. See Table 3 below.

**Table 3: Schedule of State Financial Assistance<sup>8</sup>**

| Fiscal<br>Year<br>Ending<br>June 30 | Reported in<br>Florida Single<br>Audit | Reported in<br>CAFR |
|-------------------------------------|--|---------------------|
| 2011                                | \$ -                                   | \$ 30,600,000       |
| 2012                                | -                                      | 30,600,000          |
| 2013                                | -                                      | 30,600,000          |
| 2014                                | -                                      | 30,600,000          |
| 2015                                | -                                      | 30,600,000          |
| Total                               | \$ -                                   | \$ 153,000,000      |

Source: Florida Single Audit and CAFR

**We recommend** SFRTA's Governing Board have the prior Florida Single Audit reports reissued to include coverage of the \$153 million in state financial assistance received and comply with section 215.97, F.S., in future reporting periods.

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year in accordance with the requirements of this act and with additional requirements established in rules of the Department of Financial Services and rules of the Auditor General.

<sup>7</sup> SFRTA is listed on the official list of Special Districts online at the Florida Department of Economic Opportunity.

<sup>8</sup> Reported as "state grants (FDOT)" in the CAFRs.

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## Observation 1 – Budget-to-Actual Expenditure Reporting

Upon audit inquiry, SFRTA did not produce<sup>9</sup> a budget-to-actual expenditure report listing the actual expenses associated with the use of each grant or funding source (Federal and State grants, passenger fare revenues, and other income).

49 C.F.R. 18.20(b)(4) Budget Control states: [superseded by 2 CFR 200.302(b)(5)]

Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement.

We were provided the approved FY 2013/14 operating budget that noted the planned use of funds by source, but the information lacked comparison to final budgetary amounts and actual expenditures.

SFRTA's CAFR includes a schedule of total budget-to-actual revenues and expenses as shown in Table 4 below, but a separate comparison budget-to-actual expenditures report showing how each grant or other funding source was used each month would enhance transparency and accountability of SFRTA's management and use of funds.

**Table 4: SFRTA CAFR Budget-to-Actual Financial Reporting**

|  | FY 2013-14<br>ORIGINAL<br>BUDGET | FY 2013-14<br>BUDGET<br>AMENDMENTS | FY 2013-14<br>AMENDED<br>BUDGET | FY 2013-14<br>ACTUAL<br>REVENUE | FY 2013-14<br>VARIANCE<br>OVER (UNDER) | FY 2013-14<br>PERCENT<br>VARIANCE |
|--|----------------------------------|------------------------------------|---------------------------------|---------------------------------|--|-----------------------------------|
| <b>REVENUE</b>   |                                  |                                    |                                 |                                 |  |                                   |
| Operating Revenue  | \$12,614,106                     | \$ -                               | \$12,614,106                    | \$13,181,658                    | \$ 567,552                             | 4%                                |
| Federal Transit Administration   | 23,211,562                       | -                                  | 23,211,562                      | 15,896,451                      | (7,315,111)                            | -32%                              |
| Federal Highway Administration   | 4,000,000                        | -                                  | 4,000,000                       | 4,000,000                       | -                                      | 0%                                |
| Fl. Dept. of Transportation  | 30,600,000                       | -                                  | 30,600,000                      | 30,600,000                      | -                                      | 0%                                |
| Counties' Contribution   | 4,695,000                        | -                                  | 4,695,000                       | 4,695,000                       | -                                      | 0%                                |
| Other Revenue  | 194,738                          | -                                  | 194,738                         | 184,795                         | (9,943)                                | -5%                               |
| Revenue  | 75,315,406                       | -                                  | 75,315,406                      | 68,557,904                      | (6,757,502)                            | -9%                               |
| Federal Transit Administration Capital Contributions transferred to Operating ** | 4,724,660                        | -                                  | 4,724,660                       | 4,724,660                       | -                                      | 0%                                |
| Total Revenue  | \$80,040,066                     | \$ -                               | \$80,040,066                    | \$73,282,564                    | \$ (6,757,502)                         | 9%                                |
| <b>EXPENSES</b>  |                                  |                                    |                                 |                                 |  |                                   |
| Operations   | \$41,042,063                     | \$ -                               | \$41,042,063                    | \$39,141,852                    | \$ (1,900,211)                         | -5%                               |
| Train & Station Maintenance  | 20,800,300                       | -                                  | 20,800,300                      | 18,338,159                      | (2,462,141)                            | -12%                              |
| Personnel Expenses   | 10,322,506                       | -                                  | 10,322,506                      | 9,342,688                       | (979,818)                              | -9%                               |
| General & Administrative   | 2,145,323                        | -                                  | 2,145,323                       | 2,095,951                       | (49,372)                               | -2%                               |
| Corporate & Community Outreach   | 627,500                          | -                                  | 627,500                         | 586,720                         | (40,780)                               | -6%                               |
| Professional Fees  | 609,500                          | -                                  | 609,500                         | 569,417                         | (40,083)                               | -7%                               |
| Legal  | 843,214                          | -                                  | 843,214                         | 671,479                         | (171,735)                              | -20%                              |
| Contingency  | 500,000                          | -                                  | 500,000                         | -                               | (500,000)                              | -100%                             |
| Expenses Transferred to Capital *  | (1,575,000)                      | -                                  | (1,575,000)                     | (70,164)                        | 1,504,836                              | -96%                              |
| Expense  | 75,315,406                       | -                                  | 75,315,406                      | 70,676,102                      | (4,639,304)                            | 7%                                |
| Expenses Transferred from Capital ***  | 4,724,660                        | -                                  | 4,724,660                       | 4,724,660                       | -                                      | 0%                                |
| Total Expenses   | \$80,040,066                     | \$ -                               | \$80,040,066                    | \$75,400,762                    | (\$4,639,304)                          | 6%                                |

Source: SFRTA CAFR FY 2013/14

<sup>9</sup>On May 13, 2016, we requested a FY 2013/14 budget-to-actual expenditure report based upon revenue sources. On May 27, 2016, SFRTA provided a partial report only reporting the FY 2013/14 budgeted planned use of revenue sources. However, the report lacked the reporting of actual expenditures.

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As stated in their September 12, 2016 letter, SFRTA “will voluntarily implement the OIG’s recommendation by consolidating all of the information it currently maintains in separate reports by providing a comparative budget to actual expenditures report for grants in the capital fund. In addition, SFRTA shall also provide a standard operating budget to actual expenditure report for grants in the general fund. Implementation shall begin in fiscal year 2016-2017 with a completion date of June 30, 2017.”

## APPENDIX A – Purpose, Scope, and Methodology

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The **purpose** of this engagement was to determine South Florida Regional Transportation Authority's compliance with the provisions of the Operating Agreement between the FDOT and SFRTA for the South Florida Rail Corridor and applicable federal and state laws, rules, and regulations.

In addition, as part of the Office of Inspector General's 2014/15 audit plan development, the District Four Secretary, a statutorily designated member of the SFRTA governing board, expressed a concern about the lack of a transparent linkage between SFRTA's approved budget and SFRTA's actual expenditures.

The **scope** of this engagement included assessing the business relationship between the department and SFRTA, which included a review of SFRTA's governance and compliance activities for the period July 1, 2010 to June 30, 2014.

The **methodology** included:

- interviewing SFRTA, FDOT Central Office, and district personnel;
- reviewing applicable federal and state laws, rules, and regulations;
- testing SFRTA expenditures from June 1, 2013 to June 30, 2014;
- reviewing Comprehensive Annual Financial Reports for fiscal years ending June 30, 2011, 2012, 2013, and 2014;
- reviewing Florida Single Audit Reports for fiscal years ending June 30, 2011, 2012, 2013, 2014; and 2015; and
- examining expenditure payments and supporting documentation.

Total expenditures incurred during our test period of June 1, 2013 to June 30, 2014 were approximately \$62 million. To determine whether expenditures were necessary, reasonable, allowable, and allocable, we judgmentally selected a sample of 21 transactions totaling \$3,437,541 (5.5%) representing a cross-section of 9 expenditure categories.

These expenditure categories included:

- third party-service contract payments;
- legal fees;
- advertising and promotion;
- professional service fees; and
- travel.



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**SOUTH FLORIDA  
REGIONAL  
TRANSPORTATION  
AUTHORITY**

800 NW 33rd Street | Pompano Beach, Florida 33064 | P 954/942-7245 | F 954/788-7878 | [www.sfrta.fl.gov](http://www.sfrta.fl.gov)

September 12, 2016

Mr. William Pace  
Office of Inspector General  
Florida Department of Transportation  
605 Suwannee Street  
Tallahassee, FL 32399

Email: [bill.pace@dot.state.fl.us](mailto:bill.pace@dot.state.fl.us)

**RE: SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY  
RESPONSE TO OFFICE OF INSPECTOR GENERAL  
AUDIT REPORT NO. 14I-4002**

Dear Mr. Clift,

The following is the South Florida Regional Transportation Authority's Response to Audit Report No. 14I-4002 (the "Audit Report") dated August 12, 2016<sup>1</sup>. The following response addresses the five "Findings" and one "Observation" noted in the Audit Report.

**SUMMARY RESPONSE**

For the reasons stated in the detailed responses below, SFRTA respectively objects to all of the OIG's Findings, with the exception of a part of Finding 4 that the budget-to-actual report needs to include grant and funding sources (which were previously shown on other reports).

**SFRTA RESPONSES**

**FINDING 1 - JOINT PARTICIPATION AGREEMENT REQUIRED**

The Audit Report states: "We determined that the Operating Agreement between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S."

The Audit Report recommends that District IV "execute a JPA [Joint Participation Agreement] with SFRTA that contains provisions required by law."

**Summary Response** - The Audit Report is recommending execution of a JPA Agreement to transfer the statutory dedicated operating funds provided by the Florida Legislature pursuant to Fla. Stat. §343.58 ("Dedicated State Funds"). No agreement is required to transfer the Dedicated Funds that the State Legislature has mandated must be transferred without conditions to SFRTA.

<sup>1</sup> The audit was started on or about September 2014.

**GOVERNING BOARD** Commissioner Steven L. Abrams | Commissioner Bruno A. Barreiro | Andrew Frey | Frank Frione | Nick A. Inamdar | Gerry O'Reilly |  
F. Martin Perry | Commissioner Tim Ryan | James A. Scott | Beth Talabisco | **EXECUTIVE DIRECTOR** Jack L. Stephens



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In addition, the Dedicated State Funds are not “State Financial Assistance” within the meaning of the Single Audit Act.

**Detailed Response**

A JPA is not required to Implement the Florida Legislature’s Statutory Directive to Transfer the Dedicated State Funds to SFRTA.

The transfer of the Dedicated State Funds was approved by the Florida Legislation with the adoption of Ch. 2009-271, Laws of Florida. Subsection (4) stated:

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2.

The Dedicated State Funds are not subject to Fla. Stat. §§215.97 or 215.971 (the “Single Audit Act”).

Fla. Stat. §215.971 states:

(1) An agency agreement that provides state financial assistance to a recipient or subrecipient, as those terms are defined in s. 215.97, or that provides federal financial assistance to a subrecipient, as defined by applicable United States Office of Management and Budget circulars, must include all of the following: ...

By the very terms of Fla. Stat. §343.58, the Dedicated State Funds are not required to be provided by an “agency agreement” nor meet the requirement so the Single Audit Act. Nor do the Dedicated State Funds meet the definition of “state financial assistance.”

Fla. Stat. §343.58 provides a clear directive to the Florida Department of Transportation (FDOT) to “transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority.” FDOT JPA’s are conditioned upon satisfaction of conditions precedent, including but not limited to, the presentation of invoices for payment in arrears, not advance. As is clear from this discussion, FDOT has no discretion in transferring the Dedicated Funds to SFRTA. The statute provides no conditions that may be imposed by FDOT for SFRTA’s receipt of the Dedicated State Funds. It does not require an agreement to transfer the Dedicated State Funds<sup>2</sup> or compliance with Fla. Stat. §§ 215.97 or 215.971.

If there is any doubt as to the Legislature’s intention in its directive in §343.58, it preceded its mandate with the words: “*Notwithstanding any other provision of the law to the contrary ....*” (emphasis added)

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<sup>2</sup> SFRTA must comply with, and does comply with, numerous other provisions of State law governing the expenditure of public funds.

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By use of the phrase “Notwithstanding any other provision of law to the contrary,” the State Legislature exempted the Department and SFRTA from any other requirements of law regarding the transfer of the Dedicated State Funds from the State Transportation Trust Fund. That exemption included any of the requirements in Fla. Stat. §§ 215.97 and 215.971, if applicable.

As further evidence of that the Dedicated State Funds are not subject to the Single Audit Act, following the passage of Ch. 2012-174, Laws of Florida, SFRTA was never provided with the information required under Fla. Stat. §215.97(5) advising it of information needed by SFRTA to comply with the requirements of the Single Audit Act.

In 2012, the Florida Legislature had the opportunity to revisit §343.58 when it amended subsection (4) to provide for additional requirements “[t]o enable the department to evaluate the authority’s proposed use of state funds.”<sup>3</sup>

The Legislature left unchanged the initial language in subsection (4) that states, “Notwithstanding any other provision of the law to the contrary,” which only reinforced the Legislature’s intent to exempt SFRTA from any other state law requirements providing oversight of SFRTA’s use of the Dedicated State Funds.

It is well settled that legislative intent is the polestar that guides a court’s statutory construction analysis. In determining that intent, we have explained that “we look first to the statute’s plain meaning.” Normally, “when the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” (citations omitted) *Knowles v. Beverly Enterprises-Florida, Inc.*, 898 So. 2d 1 (Fla. 2004)

The statute could not convey a clearer or more definite meaning.

In addition, if the Dedicated State Funds was subject to Fla. Stat. §§215.97 and 215.971, it would have been unnecessary for the Legislature to impose requirements in §343.58 “to enable the department to evaluate the authority’s proposed use of state funds.”

As one final note, the Division of Financial Services’ Division of Accounting and Auditing provides a listing of Catalog of State Financial Assistance “CSFA” numbers for State projects. It also lists the program under which state assistance is provided. For the 2015/16 FY, the program for the Dedicated State Funds is stated as “Florida Rail Enterprise.” The Florida Rail Enterprise Act (Fla. Stat. §§341.8201-341.842) relates solely to high-speed rail and has no application to Chapter 343, Fla. Stat. (SFRTA’s enabling legislation) or commuter rail service.

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<sup>3</sup>The legislation states: “To enable the department to evaluate the authority’s proposed uses of state funds, the authority shall annually provide the department with its proposed budget for the following authority fiscal year and shall provide the department with any additional documentation or information required by the department for its evaluation of the proposed uses of the state funds.” Fla. Stat. §343.58(4)(c)2.

**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 4 of 19)**

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The Operating Agreement Was Not Intended to Comply with Fla. Stat. § 215.971

The Audit Report states the “department and SFRTA operated under a JPA from 2006 to 2013, which included the provisions above [some of which address financial matters].” It also states: “In 2013, an operating agreement between the department and SFRTA replaced the JPA. Because SFRTA is a recipient of state financial assistance, the department is required to have an agreement that includes the provisions as outlined in Section 215.971, F.S.”

As previously stated, the provisions of §343.58 superseded all other laws with regard to the Department’s transfer of the Dedicated State Funds to SFRTA.

The Operating Agreement between the Department and SFRTA is not and was never intended to be an “agency agreement” or “grant agreement” that authorized the transfer of the Dedicated State Funds. As SFRTA pointed out to District IV in its August 27, 2010, letter, which is attached to the Audit Report, the State Legislature’s directive to transfer the Dedicated State Funds to SFRTA eliminated the necessity for the Joint Participation Agreement to make the transfer.

SFRTA’s letter recognized that “the JPA serves other functions” aside from transferring operating funds. SFRTA, therefore, suggested a new agreement be drafted to address SFRTA’s use of the South Florida Rail Corridor. The Operating Agreement would also become the vehicle by which FDOT transferred to SFRTA responsibility for construction, operation, maintenance, and management of the South Florida Rail Corridor.

As further evidence of the State’s understanding of the Legislature’s intent, when District IV approved an extension of JPA 038 by memorandum dated December 10, 2010, it did so only to address “a delay in obtaining an operating agreement between SFRTA and FDOT allowing SFRTA the authority to continue commuter train operations over the South Florida Rail Corridor....” Although the memorandum states that the “Project Description” was “To provide FY 2010/11 operating funding,” no subsequent memorandum was executed to authorize the transfer of operating funding in FY 2011/12 or 2012/2013.

SFRTA can only assume that the transfers of funds after FY2010/2011 were approved by the Florida Department of Financial Services (“DFS”) and that DFS was aware that there was no FDOT document authorizing the transfer of the Dedicated State Funds in those years.

Although SFRTA and FDOT by June 2013 had negotiated the Operating Agreement, the reference to the Dedicated State Funds in the Operating Agreement was simply an acknowledgement of the FDOT’s obligation to fulfill the Legislature mandate to transfer such funds to SFRTA. The reference was also a predicate to provisions in the agreement that addressed the timing of payments of the Dedicated State Funds to be made to SFRTA during the year and provisions that acknowledged the increase in payments that would be required in the future when SFRTA assumed additional responsibilities for the SFRC, as contemplated by Fla. Stat. §343.58(4)(a)1. The specific timing of annual payments was not addressed in the statute.

**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 5 of 19)**

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As recently as January 2016, FDOT's position was that the Dedicated State Funds are not subject to the Single Audit Act because they did not meet the definition of "State Financial Assistance."<sup>4</sup>

As defined in the Single Audit Act; "State financial assistance" does not include procurement contracts used to buy *goods or services from vendors and contracts to operate state-owned and contractor-operated facilities*. Fla. Stat. §215.97(2)(r). (emphasis added).

All expenditures of the Dedicated State Funds are for "vendor" contracts to operate State-owned facilities (the South Florida Rail Corridor), which are pre-approved by FDOT pursuant to §343.58(4)(c)1.

For more than 5 years, FDOT has not required SFRTA to comply with provisions of the Single Audit Act as condition for transferring the Dedicated State Funds to SFRTA.

**FINDING 2 – STATE FINANCIAL ASSISTANCE RECEIVED**

The Audit Report determined that the total amount of Dedicated State Funds (\$165.5 million) that SFRTA received was "State Financial Assistance" that was omitted from audit coverage in accordance with the Florida Single Audit Act for fiscal years 2011/12 to 2014/15.

**Response** – For the reasons stated in the response to Finding 1, the Dedicated State Funds SFRTA received are not subject to the Single Audit Act. The designation of the Dedicated State Funds as "State Financial Assistance" in the DFS Project and Vendor/Recipient Determination attached to the Audit Report as Appendix H is inconsistent with State law for the reasons stated in the Response to Finding 1.

**FINDING 3 - LOBBYING EXPENSE**

The Audit Report asserts that SFRTA may not use passenger farebox revenue to pay for lobbying activities. The Audit Report relies on "FTA restrictions" for its position.

The Audit Report begins its analysis by citing provisions from the FTA Master Agreement, which are specific to the "use of Federal Funds." All recipients of FTA funding are required to enter into Master Agreements or other grant agreements.

**Summary Response**

The opinion obtained by the OIG contradicts a fairly recent statement made by FTA's then-General Counsel regarding the permitted use of non-FTA funds for lobbying. SFRTA is not aware of any change in FTA's position on this issue.

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<sup>4</sup> Email dated January 25, 2016, from FDOT District IV Maintenance Contract Manager Karen Maxon to SFRTA Senior Accountant Joseph Khouzami



**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 6 of 19)**

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**Detailed Response**

The Audit Report cites an inquiry it made of an unnamed individual with the FTA as to the use of farebox revenue for lobbying services. It cited a response received from the “FTA” on June 7, 2016, however, no correspondence from the FTA was attached to the Audit Report.

SFRTA requests that the OIG disclose who at the FTA provided the opinion cited in its Audit Report regarding the prohibited use of farebox revenue for lobbying activities because the individual’s opinion contradicts a fairly recent statement made by FTA’s prior Chief Counsel, in the form of a “Dear Colleague” letter (see Exhibit A) (the “Letter”) regarding the use of non-FTA funds for lobbying. SFRTA makes the request because it intends to inquire as to whether there has been a subsequent change in the FTA’s position on this matter (SFRTA is not aware of any change in FTA’s position on this issue and the Letter is still posted on the FTA website).

Specifically, the opinion provided by the unnamed individual with the FTA directly contradicts a statement made by then-FTA Chief Counsel Dorval Carter in a Dear Colleague letter addressing “Certifications and Disclosure of Lobbying Activities” dated August 17, 2012, which the OIGs attached to its Audit report as Appendix J.

The Letter specifically recognizes the non-Federal funds may be used for Federal lobbying, but must follow certain reporting requirements.

The FTA’s Chief Counsel stated:

Applicants and recipients that *use non-FTA funds for lobbying* must submit a “Disclosure of Lobbying Activities” form (SF LLL) to report these activities and to identify the name of the individuals performing lobbying services. (emphasis added)

SFRTA complies with the requirement for filing form SF LLL to report on lobbying activities.

**FINDING 4 - BUDGET-TO-ACTUAL EXPENDITURE REPORT BY FUNDING SOURCE**

This finding contained two sub-parts (shown as A. and B. in this document), which are addressed separately below.

**A. Standard Operating Budget to Actual Expenditure Report**

The Audit Report states: “We determined SFRTA lacks a standard operating budget to actual expenditure report for each grant or funding source.”

**Response**

SFRTA does maintain a standard operating budget to actual report for each grant or funding revenue source in the general fund report. SFRTA’s general fund operating budget has a standard report that reflects actual revenue that compares budgeted amounts for each grant (See Exhibit B). SFRTA recognizes that a standard operating budget to actual expenditure report for grants is not

**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 7 of 19)**

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available in the general fund report. However, SFRTA maintains the budgeted to actual grant expenditures on a separate Excel spreadsheet (See Exhibit C).

In addition, SFRTA maintains a standard capital budget to actual expenditure report for the capital fund, however, it recognizes that the budgeted expenditures were not reflected in that report.

SFRTA will voluntarily implement the OIG's recommendation by consolidating all of the information it currently maintains in separate reports by providing a comparative budget to actual expenditures report for grants in the capital fund. In addition, SFRTA shall also provide a standard operating budget to actual expenditure report for grants in the general fund. Implementation shall begin in fiscal year 2016/2017 with a completion date of June 30, 2017

**B. CAFR Supplemental Budget-to-Actual Report**

The Audit Report states: "We also noted SFRTA's CAFR does include a schedule of total budget-to-actual revenues and expenses as shown in Table 7 below. However, the presentation of this budgetary information does not disclose how each grant or funding source was used as required by the 49 C.F.R. above."

"Therefore, a supplemental budget-to-actual expenditures report showing how each grant and funding source was used each month would enhance transparency and accountability of SFRTA's management and use of funds."

**Response**

49 C.F.R. 18.20(b)(4) does not require the CAFR to disclose how each grant or funding source was used. In addition, 49 C.F.R. 18.20(b)(4), does not require that a supplemental budget-to-actual expenditures report showing how each grant and funding source be reported each month.

However, SFRTA will voluntarily prepare and submit to the SFRTA Governing Board a monthly budget to actual expenditure report showing the use of grant and other funding sources. Implementation shall begin in fiscal year 2016/2017 with a completion date of June 30, 2017

**FINDING 5 - PAYMENT IN ADVANCE OF FULL SERVICES**

The Audit Report states SFRTA did not comply with Fla. Stat. §287.058(1), when it paid the Miami Dolphins, Ltd. in advance for a sponsorship agreement as part of its marketing efforts for its Tri-Rail commuter rail service.

**Summary Response**

The advance payment made to the Miami Dolphins as part of a sponsorship agreement is not subject to Fla Sta. §287.058(1).

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**Detailed Response**

The Audit Report incorrectly assumes that all SFRTA procurements are subject to Fla. Stat. Chapter 287. Chapter 287 only applies to executive branch state agencies.<sup>5</sup> “Agency,” as used in Chapter 287, is defined as follows:

287.012 Definitions.— As used in this part, the term:

(1) “Agency” means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the *executive branch of state government*. “Agency” does not include the university and college boards of trustees or the state universities and colleges. (emphasis added)

SFRTA was created by the Florida Legislature in 2003 as a “body corporate and politic, an agency of the state.” Fla. Stat. §343.53(1). SFRTA has never been considered part of the executive branch of state government. Executive branch agencies are explicitly named in Fla. Stat. Chapter 20 and SFRTA is not included. In fact, the Audit Report notes that “SFRTA, as determined by the Department of Financial Services (DFS), is a Special District and a nonstate entity ...” Audit Report, p. 1.

SFRTA’s enabling legislation provides the authority with the power to:

To acquire, *purchase*, hold, lease as a lessee, and use any franchise or property, real, personal, or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the authority. Fla. Stat. §343.54(3)(d). (emphasis added)

There is no reference in Chapter 343 to SFRTA being subject to the requirements of Fla. Stat. Chapter 287.

In 2009, the Florida Legislature enacted Ch. 2009-271, Laws of Florida. The legislation included changes to Fla. Stat. §341.302.

Ch. 2009-271 amended §341.302(17)(c) to include the following new language:

Notwithstanding any law to the contrary, procurement *for the construction, operation, maintenance, and management of any rail corridor described in this subsection*, whether by the department, a governmental entity under contract with the department, or a governmental entity designated by the department, shall be pursuant to *s. 287.057* and shall include, but not be limited to, criteria for the consideration of qualifications, technical aspects of the proposal, and price. Further, any such contract for design-build shall be procured pursuant to the criteria in s. 337.11(7). (emphasis added)

<sup>5</sup> SFRTA is subject to Fla. Stat. §287.055 only because that specific section uses a different, broader definition for “agency.”

**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 9 of 19)**

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As a governmental entity under contract with the department to operate, maintain and manage the South Florida Rail Corridor, SFRTA, through execution of the Operating Agreement, became subject to Fla. Stat. §287.057<sup>6</sup> for the limited purposes specified in the legislation.

SFRTA was not made subject to §287.058(1). Also, see the discussion of “applicable” State laws below.

**OBSERVATION - NON-COMPLIANT PROCUREMENT POLICIES (AUDITING SERVICES; COMPETITIVE BID DOLLAR THRESHOLDS)**

This Observation contained two sub-parts which are addressed separately below.

**A. Competitive Bid Dollar Thresholds**

The Audit Report observed that the SFRTA has non-compliant procurement policies because SFRTA’s Procurement Policy establishes a \$100,000 threshold for purchases that are subject to competitive sealed bids, which is contrary to Fla. Stat. §287.057(3), and the \$35,000 threshold it establishes for the purchase of commodities or contractual services that are subject to competitive procurements.

**Improper Exempted Auditing Services**

The Audit Report states SFRTA has improperly exempted auditing services from competitive solicitation, which is a requirement of §287.057(5)(f)(4).

**Summary Response**

**Competitive Bid Dollar Threshold** – As stated previously in the Response to Finding 5 and the Detailed Response to this Finding (see below), SFRTA is only subject to complying with Fla. Stat. §287.057 as it relates to any procurement for “construction, operation, maintenance and management” of the SFRC. As the Audit Report does not cite an example of SFRTA failing to comply with Fla. Stat. §287.057 as it relates to any procurement for “construction, operation, maintenance and management” of the SFRC, SFRTA is unable to provide a specific response to the Audit Report’s observation that SFRTA’s has “Non-Compliant Procurement Policies” relating to the dollar threshold in §287.057(3).

**Improperly Exempted Auditing Services** – For the reasons stated above, SFRTA’s procurement of auditing services is not subject to §287.057 because the procurement of auditing services is not a procurement for “construction, operation, maintenance and management” of the SFRC. Also, SFRTA complied with the competitive solicitation requirements of its Procurement Policy in the procurement of auditing services.

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<sup>6</sup> SFRTA became responsible for the operation, maintenance and management of the South Florida Rail Corridor pursuant to the Operating Agreement entered into between FDOT and SFRTA on June 13, 2013. Prior to this, the operation, maintenance and management of the rail corridor was contractually delegated by FDOT to CSX Transportation, Inc. through the Operating and Management Agreement Phase A dated May 11, 1988. SFRTA’s role prior to June 13, 2013, was limited to operating commuter rail service on the rail corridor and maintaining commuter rail stations.



**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 10 of 19)**

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**Detailed Response**

**Competitive Bid Dollar Thresholds**

In support of its observation that SFRTA had non-compliant procurement procedures, the Audit Report cites FTA Circular 4220.1F, Third Party Contacting Guidance, which states that recipients of federal funds “will use their own procurement procedures that comply with *applicable* State and local laws and regulations, and also comply with applicable Federal laws and regulations.” (emphasis added)

However, the Audit Report then ignores the qualifier “applicable State ... laws” and asserts SFRTA is subject to Chapter 287 (Part 1)<sup>7</sup>, not just the provisions of §287.057 for procurements for construction, operation, maintenance, and management of any rail corridor as required by §343.302(17)(c). (emphasis added)

The category dollar threshold in Fla. Stat. §287.057(3) is only applicable to SFRTA procurements for the “construction, operation, maintenance and management” of the South Florida Rail Corridor.

**Improper Exempted Auditing Services**

The Audit Report fails to note that Chapter 2, Section 11 of the Procurement Policy specifically requires SFRTA’s compliance with Fla. Stat. §287.057 for procurements for construction, operation, management or maintenance of the South Florida Rail Corridor. **Specifically, Section 11 states:**

South Florida Rail Corridor. In the event SFRTA undertakes a Procurement for construction, operation, management or maintenance of the South Florida Rail Corridor, SFRTA will comply with the provisions of s. 287.057, F.S., when those provisions vary from provisions of this Policy and impose additional requirements on Procurement activities, as necessary.

SFRTA’s procurement of auditing services is not subject to the requirements of §287.057 because auditing services are not a procurement for the “construction, operation, maintenance and management” of the South Florida Rail Corridor. Nor has SFRTA exempted auditing service from competitive solicitation under its Procurement Policy.

Even though SFRTA’s procurement of auditing services is not subject to §287.057, SFRTA is required by its Procurement Policy to engage in a competitive process for the selection of auditing services.

As noted in the Audit Report on Page 15, Chapter 2 of SFRTA’s Procurement Policy states:

(c) Auditing services. *The Authority will undertake the Procurement of external auditing services pursuant to the provisions of this Policy* subject to the following restriction: Any

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<sup>7</sup> Chapter 287, Part 1, includes §§287.001-287.136.

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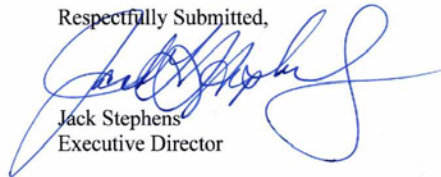
auditing company that has served as the Authority's lead external auditor in the year immediately preceding the Procurement shall be ineligible to participate in that Procurement as the prime contractor. (emphasis added)

Although the auditing services is contained in the section of SFRTA's Procurement Policy exempted certain procurements from competitive solicitation requirements of the Policy, auditing services were only included in this section to limit current auditing firms from competing on sequential auditing services contracts.

The Audit Report makes no mention of the procurement method SFRTA used to select its current auditing services firm.

SFRTA followed the competitive solicitation requirements in its Procurement Policy by using a request for proposal solicitation process to select a firm to perform auditing services for a five-year term, which is about to expire.

Respectfully Submitted,



Jack Stephens  
Executive Director

cc:

C. Mikel Oglesby, SFRTA Deputy Executive Director  
Richard D. Chess, SFRTA Director of Finance  
Teresa J. Moore, SFRTA General Counsel  
Gerry O'Reilly, Secretary, FDOT District IV

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**EXHIBIT A**

**FTA DEAR COLLEAGUE LETTER DATED AUGUST 17, 2012**

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APPENDIX J – FTA Certifications and Disclosure of Lobbying Activities Page 1 of 2

9/14/2016Certifications and Disclosure of Lobbying Activities | FTA



**Certifications and Disclosure of Lobbying Activities**

8/17/2012

Dear Colleague:

It has come to my attention that many recipients of funds administered by the Federal Transit Administration (FTA) may not be correctly applying the Federal lobbying disclosure reporting requirements. As a result, recipients may not realize that they may need to disclose lobbying activities to FTA and submit lobbying disclosure forms as often as quarterly. Because Federal law imposes a penalty of not less than \$10,000 for each violation of these rules, I write to remind you of the requirements and to request that all FTA recipients review their activities and take steps necessary to ensure full compliance. If you have questions about whether the requirements apply, or how to report lobbying activities, please do not hesitate to contact your Regional Counsel.

In 1989, Congress enacted legislation to limit the use of appropriated funds to influence certain Federal contracting and financial transactions and to require the recipients of Federal funds to report all lobbying activities. According to 31 U.S.C. 1352, as implemented at 49 C.F.R. Part 20, all applicants and recipients of federally appropriated funds must abide by the following rules with respect to lobbying:

- All applicants for and recipients of a Federal contract, grant or cooperative agreement may not use Federal funds to lobby an officer or employee of any Federal agency or Member of Congress.
- Every time a potential recipient applies for or receives such a contract, grant or cooperative agreement in excess of \$100,000, it must file a written certification that states that no Federal funds have been paid for lobbying. FTA recipients can do this by completing the annual [Certifications and Assurances in TEAM](#).
- Applicants and recipients that use non-FTA funds for lobbying must submit a "Disclosure of Lobbying Activities" form (SF LLL) to report these activities and to identify the name of the individuals performing lobbying services. SF LLL is available online at <http://www.whitehouse.gov/sites/default/files/omb/grants/sflll.pdf>. Applicants and recipients must submit SF LLL as often as once per calendar quarter, depending on whether their lobbying activities change materially. If the activities change materially, the recipient must file an additional form for that quarter. The regulation defines Material changes to include (1) a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; (2) a change in the person or individuals influencing or attempting to influence a covered Federal action; or (3) a change in the agency officers, employees, or Members of Congress or their employees or officers, contacted to influence or attempt to influence a covered Federal action.

By law, any applicant or recipient that fails to file the required lobbying disclosure r  
Federal funds for lobbying shall be subject to a civil penalty of not less than \$10,000 and not more

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| <p>Office of Inspector General<br/>Florida Department of Transportation</p> <hr/>               |  |
| <p><b>APPENDIX J – FTA Certifications and Disclosure of Lobbying Activities Page 2 of 2</b></p> |  |
| <p>6/14/2016</p>  | <p style="text-align: right;">Certifications and Disclosure of Lobbying Activities   FTA</p> <p>than \$100,000 for each such failure.</p> <p>For additional information, refer to the FTA's lobbying certification (see certification #02 from the current <a href="#">Certifications and Assurances</a> for the FTA assistance Programs) and 49 C.F.R. Part 20 (specifically section 20.110 on Certification and Disclosure).</p> <p>For assistance, please contact your FTA Regional Counsel.</p> <p>Sincerely yours,</p> <p>Dorval R. Carter, Jr.<br/>Chief Counsel</p> <p>Updated: Wednesday, March 16, 2016</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"><p><i>Contact Us</i></p><hr/><p><b>Office of Chief Counsel</b><br/>Federal Transit Administration<br/>1200 New Jersey Avenue, S.E.,<br/>Room E56-311<br/>Washington, DC 20590<br/>United States</p><p>Phone: 202-366-4011<br/>Fax: 202-366-3200</p><p>Business Hours:<br/>9:00am-5:00pm ET, M-F</p></div> |
| <hr/> <p>Audit Report No. 14I-4002 • Page 29 of 30</p>  |  |

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**EXHIBIT B**

**ACTUAL REVENUES COMPARED TO BUDGET**



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| 9/7/2016 3:51:31PM<br>S FL Regional Transportation Authority |                | Income Statement<br>Fiscal Year 2015 thru period ending 06/30/2015 |             |                      |                      | Page: 1               |
|--|----------------|--|-------------|----------------------|----------------------|-----------------------|
| Account Class  | Period to date |  |             | Year to date         |                      |                       |
|  | Month Actual   | Month Budget   | Variance    | YTD Actual           | YTD Budget           | Variance              |
| 01 TRAIN SERVICE   | 0.00           | 0.00   | 0.00        | 12,783,112.52        | 13,064,845.00        | (281,732.48)          |
| 03 VENDING MACHINES  | 0.00           | 0.00   | 0.00        | 160,918.71           | 0.00                 | 160,918.71            |
| 05 INTEREST INCOME   | 0.00           | 0.00   | 0.00        | 95,093.13            | 325,000.00           | (229,906.87)          |
| 07 ADVERTISING   | 0.00           | 0.00   | 0.00        | 6,564.91             | 0.00                 | 6,564.91              |
| 08 SFRTA EXTERNAL PROJECTS                                   | 0.00           | 0.00   | 0.00        | 0.00                 | 0.00                 | 0.00                  |
| 09 OTHER OPERATING REVENUE                                   | 0.00           | 0.00   | 0.00        | 248,116.79           | 0.00                 | 248,116.79            |
| 11 EMPLOYEE FUND   | 0.00           | 0.00   | 0.00        | 823.23               | 0.00                 | 823.23                |
| 12 FTA - PLANNING GRANT - OPER                               | 0.00           | 0.00   | 0.00        | 6,396,703.18         | 1,100,000.00         | 5,296,703.18          |
| 13 FTA - PREVENTIVE MAINTENANCE                              | 0.00           | 0.00   | 0.00        | 19,236,671.00        | 22,000,000.00        | (2,763,329.00)        |
| 14 MAINTENANCE OF WAY (MOW)                                  | 0.00           | 0.00   | 0.00        | 12,295,053.43        | 14,400,000.00        | (2,104,946.57)        |
| 17 FHWA - OPERATING  | 0.00           | 0.00   | 0.00        | 4,000,000.00         | 4,000,000.00         | 0.00                  |
| 19 FDOT - JPA OPERATING                                      | 0.00           | 0.00   | 0.00        | 17,300,000.00        | 17,300,000.00        | 0.00                  |
| 20 SFRTA RESERVES  | 0.00           | 0.00   | 0.00        | 0.00                 | 3,837,636.00         | (3,837,636.00)        |
| 21 FDOT - JPA FEEDER SER- OPER                               | 0.00           | 0.00   | 0.00        | 0.00                 | 0.00                 | 0.00                  |
| 22 FDOT- FEEDER SERVICE GRANT -OP                            | 0.00           | 0.00   | 0.00        | 0.00                 | 0.00                 | 0.00                  |
| 23 FDOT- JPA MIC STATION                                     | 0.00           | 0.00   | 0.00        | 73,281.60            | 279,344.00           | (206,062.40)          |
| 24 FDOT - HIALEAH STATION - OPER                             | 0.00           | 0.00   | 0.00        | 98,171.33            | 191,125.00           | (92,953.67)           |
| 25 FDOT - MAINTENANCE OF NRB                                 | 0.00           | 0.00   | 0.00        | 0.00                 | 0.00                 | 0.00                  |
| 26 FDOT - PLANNING GRANT - OPER                              | 0.00           | 0.00   | 0.00        | 0.00                 | 0.00                 | 0.00                  |
| 27 BROWARD SUBSIDY - OPER                                    | 0.00           | 0.00   | 0.00        | 1,565,000.00         | 1,565,000.00         | 0.00                  |
| 28 MIAMI DADE SUBSIDY - OPER                                 | 0.00           | 0.00   | 0.00        | 1,565,000.00         | 1,565,000.00         | 0.00                  |
| 29 PALM BEACH SUBSIDY - OPER                                 | 0.00           | 0.00   | 0.00        | 1,565,000.00         | 1,565,000.00         | 0.00                  |
| 31 FTA - JARC / NF ADMINISTRATION                            | 0.00           | 0.00   | 0.00        | 0.00                 | 50,000.00            | (50,000.00)           |
| 32 FTA - JARC/NF MATCH                                       | 0.00           | 0.00   | 0.00        | 371,785.00           | 375,890.00           | (4,105.00)            |
| 33 OTHER FUNDING SOURCES - OPER                              | 0.00           | 0.00   | 0.00        | 100,000.00           | 294,740.00           | (194,740.00)          |
| 35 FTA DESIGNATED RECIPIENT FEES                             | 0.00           | 0.00   | 0.00        | 0.00                 | 300,000.00           | (300,000.00)          |
| 37 TRANSPORTATION TRUST FUND                                 | 0.00           | 0.00   | 0.00        | 13,300,000.00        | 13,300,000.00        | 0.00                  |
| 39 TRANSFER FUND FROM CAP TO OPER                            | 0.00           | 0.00   | 0.00        | 0.00                 | 1,400,000.00         | (1,400,000.00)        |
| 92 SFRTA EXTERNAL PROJECTS                                   | 0.00           | 0.00   | 0.00        | 84,795.00            | 0.00                 | 84,795.00             |
| <b>Total Revenues</b>  | <b>0.00</b>    | <b>0.00</b>  | <b>0.00</b> | <b>91,246,089.83</b> | <b>96,913,580.00</b> | <b>(5,667,490.17)</b> |
| 50 SALARY AND WAGES  | 0.00           | 0.00   | 0.00        | 8,748,118.66         | 10,086,379.00        | (1,338,260.34)        |
| 52 INCENTIVE/EDUCATION/TRAINING                              | 0.00           | 0.00   | 0.00        | 66,658.40            | 74,965.00            | (8,306.60)            |
| 54 GROUP INSURANCE   | 0.00           | 0.00   | 0.00        | 1,475,365.85         | 1,553,500.00         | (78,134.15)           |
| 56 PROFESSIONAL FEES   | 0.00           | 0.00   | 0.00        | 674,022.92           | 1,447,400.00         | (773,377.08)          |

Page: 1

Office of Inspector General  
Florida Department of Transportation

**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 17 of 19)**

| 9/7/2016 3:51:31PM<br>S FL Regional Transportation Authority |                | Income Statement<br>Fiscal Year 2015 thru period ending 06/30/2015 |             |                      |                      | Page: 2             |
|--|----------------|--|-------------|----------------------|----------------------|---------------------|
| Account Class  | Period to date |  |             | Year to date         |                      |                     |
|  | Month Actual   | Month Budget   | Variance    | YTD Actual           | YTD Budget           | Variance            |
| 58 TRAIN OPERATIONS  | 0.00           | 0.00   | 0.00        | 30,092,746.33        | 34,795,493.00        | 4,702,746.67        |
| 59 ADDTL TRAIN SERVICE                                       | 0.00           | 0.00   | 0.00        | 0.00                 | 0.00                 | 0.00                |
| 60 REVENUE COLLECTION  | 0.00           | 0.00   | 0.00        | 49,687.68            | 150,000.00           | 100,312.32          |
| 62 SECURITY CONTRACT   | 0.00           | 0.00   | 0.00        | 5,798,000.48         | 6,861,215.00         | 1,063,214.52        |
| 64 BUSINESS TRAVEL   | 0.00           | 0.00   | 0.00        | 189,372.87           | 194,256.00           | 4,883.13            |
| 66 VEHICLE POOL/AUTO ALLOWANCE                               | 0.00           | 0.00   | 0.00        | 63,542.17            | 63,850.00            | 307.83              |
| 68 STATION UTILITY EXPENSE                                   | 0.00           | 0.00   | 0.00        | 853,956.22           | 1,200,000.00         | 346,043.78          |
| 70 OFFICE RENT   | 0.00           | 0.00   | 0.00        | 692,482.31           | 692,890.00           | 397.69              |
| 72 INSURANCE   | 0.00           | 0.00   | 0.00        | 2,230,123.95         | 2,600,000.00         | 369,876.05          |
| 74 CORPORATE & COMMUNITY OUTREACH                            | 0.00           | 0.00   | 0.00        | 558,402.30           | 628,500.00           | 70,097.70           |
| 80 CORRIDOR MAINTENANCE                                      | 0.00           | 0.00   | 0.00        | 17,070,559.78        | 19,834,407.00        | 2,763,847.22        |
| 82 DUES & SUBSCRIPTIONS                                      | 0.00           | 0.00   | 0.00        | 136,969.18           | 141,599.00           | 4,629.82            |
| 84 OFFICE BUSINESS EXPENSE                                   | 0.00           | 0.00   | 0.00        | 1,096,983.86         | 1,190,296.00         | 93,312.14           |
| 86 FUEL EXPENSE  | 0.00           | 0.00   | 0.00        | 7,410,904.59         | 10,632,500.00        | 3,221,595.41        |
| 90 FEEDER BUS  | 0.00           | 0.00   | 0.00        | 5,547,859.70         | 5,841,331.00         | 293,471.30          |
| 96 HOLDING ACCOUNT   | 0.00           | 0.00   | 0.00        | 0.00                 | 0.00                 | 0.00                |
| 97 RESERVES  | 0.00           | 0.00   | 0.00        | 0.00                 | 499,999.00           | 499,999.00          |
| 98 TRF TO CAPITAL PROGRAMS                                   | 0.00           | 0.00   | 0.00        | 5,255,524.82         | (1,575,000.00)       | (6,830,524.82)      |
| <b>Total Expenditures</b>                                    | <b>0.00</b>    | <b>0.00</b>  | <b>0.00</b> | <b>88,011,292.07</b> | <b>96,913,580.00</b> | <b>8,902,287.93</b> |
| <b>Subsidy</b>   | <b>0.00</b>    | <b>0.00</b>  | <b>0.00</b> | <b>3,234,797.76</b>  | <b>0.00</b>          | <b>3,234,797.76</b> |

Page: 2



**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 18 of 19)**

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**EXHIBIT C**  
**BUDGETED TO ACTUAL GRANT EXPENDITURES**  
**(EXCEL SPREADSHEET)**

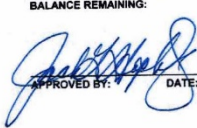
**Office of Inspector General  
Florida Department of Transportation**

**APPENDIX B – SFRTA Initial Response: September 12, 2016 (Page 19 of 19)**

South Florida Regional Transportation Authority  
600 N.W. 33rd Street, Ste 100  
Fort Lauderdale, Florida 33304  
3-Sep-12  
SFRTA Invoice #116-01

0501

| LINE # | CHECK # | VENDOR                  | AMOUNT       | % | Capital Projects<br>121-00<br>12.12.23<br>Purchase New Rail<br>Cars | Capital Projects<br>127-00<br>12.7A.00<br>Preventative<br>Maintenance | Capital Projects<br>124-00<br>12.42.07<br>Office Computer<br>Equipment | Capital Projects<br>124-00<br>12.42.20<br>Misc Equipment-<br>TVN's | Total        |
|--------|---------|-------------------------|--------------|---|---|---|--|--|--------------|
| 1      | 13074   | Bombardier Mass Transit | 1,064,906.08 |   |   | 1,064,906   |  |  | 1,064,906    |
| 2      | 13085   | Bombardier Mass Transit | 1,059,021.83 |   |   | 1,059,022   |  |  | 1,059,022    |
| 3      | 13131   | Bombardier Mass Transit | 1,096,299.08 |   |   | 1,096,299   |  |  | 1,096,299    |
| 4      | 13167   | Bombardier Mass Transit | 1,129,554.22 |   |   | 1,129,554   |  |  | 1,129,554    |
| 5      | 13175   | Bombardier Mass Transit | 1,175,747.37 |   |   | 1,175,747   |  |  | 1,175,747    |
| 6      | 104117  | Dell Marketing          | 81,030.00    |   |   |   | 81,030   |  | 81,030       |
| 7      |         |                         |              |   |   |   |  |  |              |
| 8      |         | Adjust to Actual        | (301,685.58) |   |   | (301,685.58)  |  |  | (301,685.58) |
| 9      |         |                         |              |   |   |   |  |  |              |
|        |         |                         | 5,304,873    |   |   | 5,223,843   | 81,030   |  | 5,304,873    |
|        |         | Remainder               |              |   |   |   |  |  |              |
|        |         | TOTAL AVAILABLE:        | 9,623,843.00 |   |   |   |  |  |              |
|        |         | AMOUNT BILLED TO DATE:  | 5,304,873.00 |   |   |   |  |  |              |
|        |         | BALANCE REMAINING:      | 4,318,970.00 |   |   |   |  |  |              |

APPROVED BY:  DATE: 8/7/13

**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX C – OIG Rebuttal to SFRTA’s Initial Response: Sept. 22, 2016 (Pg. 1 of 3)**

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***Florida Department of Transportation***

RICK SCOTT  
GOVERNOR

605 Suwannee Street  
Tallahassee, FL 32399-0450

JIM BOXOLD  
SECRETARY

September 22, 2016

Jack Stephens, Executive Director  
South Florida Regional Transportation Authority  
800 NW 33<sup>rd</sup> St.  
Pompano Beach, Florida 33064

RE: SFRTA's response to Draft Audit Report No. 14I-4002

Dear Mr. Stephens:

We acknowledge receipt of your response to our August 12, 2016 draft report concerning South Florida Regional Transportation Authority (SFRTA), including SFRTA's \$30.6 million annual appropriation in accordance with the provisions of Florida Statute.

**Regarding Findings 1 and 2:** We understand your position is that disbursements provided by the Florida Department of Transportation under the provisions of Florida Statute 343.58 should not be characterized as state financial assistance. In this regard, and as detailed in our draft report, the Florida Department of Financial Services has made a determination contrary to your assertion.

**Regarding Finding 3:** We do not contest that SFRTA filed disclosure of lobbying activity forms as stated in the response, we did not request or review these forms. Instead, our finding is based upon an opinion we received from the Federal Transit Administration's Region IV Director of Operations and Program Management (see attachment 1), "because the fare revenue is directly generated from the use of a federal grant or contract, these funds are prohibited to be used for lobbying."

**Regarding Finding 4:** We note your agreement to implement our recommendation. Based on your comments, we restated the report as follows, "Although SFRTA's CAFR includes a schedule of total budget-to-actual revenues and expenses as shown in Table 7 below, fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes."

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Florida Department of Transportation**

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**APPENDIX C – OIG Rebuttal to SFRTA’s Initial Response: Sept. 22, 2016 (Pg.2 of 3)**

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**Regarding Finding 5 and the subsequent observation:** We note your assertion that SFRTA contractual service procurements are not governed by the provisions of Section 287, Florida Statutes, because SFRTA is not executive branch agency. However, the Florida Department of Transportation is an executive agency of the State of Florida and must comply with the purchasing requirements contained in Florida Statute 287. Standards for financial management systems, 49 C.F.R. 18.20, requires subgrantees to comply with requirements imposed on the grantee. For further reference we have attached Attorney General Opinion 2012-34 (Attachment 2) addressing procurement of contractual services by Special Districts.

As noted in section 20.055(6)(e), F.S., your response and our rebuttal will be included in the final audit report.

Sincerely,



Robert E. Clift  
Inspector General

cc:

C. Mikel Oglesby, SFRTA Deputy Executive Director  
Richard D. Chess, SFRTA Director of Finance  
Teresa J. Moore, SFRTA General Counsel  
Gerry O'Reilly, Secretary, FDOT District IV

**Office of Inspector General  
Florida Department of Transportation**

**APPENDIX C – OIG Rebuttal to SFRTA’s Initial Response: Sept. 22, 2016 (Pg. 3 of 3)**

Attachment 1 – Use of Fare Revenues

**Holmes, Don**

**From:** Sandberg, Margarita (FTA) <margarita.sandberg@dot.gov>  
**Sent:** Tuesday, June 07, 2016 2:27 PM  
**To:** Holmes, Don  
**Cc:** Pace, Bill; Sullivan, Kristofer; Ramirez, Andres (FTA)  
**Subject:** RE: Status and Use of Passenger Fare Revenues

Mr. Holmes,

Farebox revenue is used to primarily support operating assistance for transportation programs. In FTA Circular 9030.1E, farebox revenue is also one type of revenue that may be used to secure bonds. Farebox revenues may not be used as local match on the same project, but may be used as local match on future projects.

Lobbying restrictions that are documented in the Master agreement prohibits recipients of Federal funds to use funds for lobbying activities. Because the fare revenue is directly generated from the use of a federal grant or contract, these funds are prohibited to be used for lobbying.

The Master Agreement states:

**Section 3. Ethics.**

**Lobbying Restrictions.** The Recipient understands and agrees that neither it nor any Third Party Participant will use Federal funds to influence any officer or employee of a Federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the Project or the Underlying Agreement for the Project, including any award, extension or modification, according to the following:

(1) Laws, Regulations, and Guidance.

(a) 31 U.S.C. § 1352, as amended,

(b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with 31 U.S.C. § 1352, as amended, and

(c) Other applicable Federal laws, regulations, and guidance prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a State legislature, except

(2) Exception. If permitted by applicable Federal law, regulations, or guidance, such as lobbying activities described above that may be undertaken through the Recipient's or Subrecipient's proper official channels.

Regards,  
Maggie

Margarita M. Sandberg  
Director, Operations & Program Management  
US Department of Transportation  
Federal Transit Administration, Region IV  
230 Peachtree Street, NW, Suite 1400  
Atlanta, GA 30303-1512  
Tel: (404) 865-5612  
Fax: (404) 865-5605

**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX D – DOT Management Response: October 11, 2016 (Page 1 of 2)**

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***Florida Department of Transportation***

**RICK SCOTT  
GOVERNOR**

605 Suwannee Street  
Tallahassee, FL 32399-0450

**JIM BOXOLD  
SECRETARY**

October 11, 2016

Mr. William Pace, CPA  
Contract Audit Manager  
Office of Inspector General  
Florida Department of Transportation  
2740 Centerview Dr.  
Rhyne Bldg. Suite 3A  
Tallahassee, FL 32399

**SUBJECT: OIG Assignment 14I-4002**

Dear Mr. Pace:

This letter serves as our response to Findings #1 and #3 as requested.

**Finding 1 – Joint Participation Agreement Required**

**Finding:** We determined the Operating Agreement between SFRTA and the department does not fully comply with mandatory provisions required by Section 215.971, F.S.

**Recommendation:** We recommend District Four execute a JPA with SFRTA that contains provisions required by law.

**Response to Finding:** We have no comments regarding the finding.

**Corrective Action:** FDOT District 4 has started working with the FDOT Central Office comptroller on the preparation of the JPA as per the OIG recommendation.

**Estimated Completion Date:** June 2017.

**Finding 3 – Lobbying Expense**

**Finding:** We determined SFRTA used restricted passenger fare revenue for payments to registered lobbying firms hired to represent SFRTA at the federal and state level.

**Recommendation:** We also recommend the District Four Secretary, in his dual role as an ex-officio SFRTA board member and department's representative, obtain an assurance prior to voting that future contracts for legislative consulting services are not funded with restricted program, Federal, or State funds.

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**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX D – DOT Management Response: October 11, 2016 (Page 2 of 2)**

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Mr. William Pace  
October 11, 2016  
Page 2

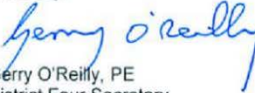
**Response to Finding:** We have no comments regarding the finding.

**Corrective Action:** We recommend that the OIG staff seek clarification from Carolyn Flowers, FTA Administrator. Her contact information is:

Carolyn Flowers  
Acting Administrator  
Federal Transit Administration  
1200 New Jersey Avenue, SE  
Washington, DC 20590  
United States  
Phone: 202-366-4040

Please feel free to contact me at (954) 777- 4411 should you have any questions.

Sincerely,



Gerry O'Reilly, PE  
District Four Secretary

GO:bo

cc: Robin Naitove, FDOT  
Stacy Miller, FDOT



**Office of Inspector General  
Florida Department of Transportation**

**APPENDIX E – SFRTA Supplemental Response: October 17, 2016 (Page 1 of 5)**



**SOUTH FLORIDA  
REGIONAL  
TRANSPORTATION  
AUTHORITY**

800 NW 33rd Street | Pompano Beach, Florida 33064 | P 954/942-7245 | F 954/788-7878 | [www.sfrrta.fl.gov](http://www.sfrrta.fl.gov)

October 17, 2016

Inspector Robert E. Clift  
Office of Inspector General  
Florida Department of Transportation  
605 Suwannee Street  
Tallahassee, FL 32399

[Bob.Clift@dot.state.fl.us](mailto:Bob.Clift@dot.state.fl.us)

Dear Inspector Clift:

RE: SFRTA Supplemental Response

SFRTA is in receipt of the OIG's letter dated September 22, 2016, ("OIG Response") responding to SFRTA's response to the OIG Draft Audit Report No. 14I-4002, dated September 12, 2016 ("SFRTA Response").

This SFRTA supplemental response is provided because the OIG Response:

- (1) raises issues not set forth in the OIG Draft Audit Report No. 14I-4002, dated August 12, 2016 ("Draft Audit Report");
- (2) provides information cited in the Draft Audit Report, but not provided to SFRTA in the Draft Audit Report; and,
- (3) while ignoring legal arguments made by SFRTA regarding certain findings in the Draft Audit Report, raises for the first time legal arguments of its own in support of its Finding 5 (in response to the SFRTA Response to Finding 5).

**Findings 1 and 2** – The OIG Response summarizes SFRTA's detailed responses to Finding 1 and 2 with the statement that SFRTA's position is that "Statute 343.58 should not be characterized as state financial assistance." It states that the Florida Department of Financial Services "made a determination contrary to your assertion."

However, the "determination" the OIG refers to (contained in Appendix H of the Draft Audit Report) is not on the Florida Department of Financial Services ("DFS") letterhead, and does not contain the name of any person at DFS for SFRTA to determine if this was prepared by an individual with the authority and ability to make such a determination. Furthermore, no legal arguments were offered in the Draft Audit Report in support of what it claims is DFS' position that funding provided pursuant to s. 343.58, F.S. ("Dedicated State Funds"), was "state financial assistance" and, therefore, subject to the Florida Single Audit Act. Nor was any legal argument offered in the OIG Response to rebut the legal arguments raised by SFRTA in opposition to its position.



**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX E – SFRTA Supplemental Response: October 17, 2016 (Page 2 of 5)**

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As SFRTA noted in its prior response, the DFS' CSFA Catalog Detail for SFRTA incorrectly cites the Florida Rail Enterprise as the State "Program" under which Dedicated State Funds are provided to SFRTA. The OIG Response does not address this clearly erroneous reference. In addition, the Catalog Detail contains other incorrect information. It states that the Dedicated State Funds are being provided through a "Cooperative Agreement." There is no Cooperative Agreement between FDOT and SFRTA for the Dedicated State Funds.

Even If SFRTA were subject to the Single Audit Act, which it is not for the reasons stated in SFRTA's prior response, the type of state financial assistance it receives would be considered under the "Direct Appropriation" class of assistance, as SFRTA's Dedicated State Funds are provided pursuant to general law, §343.58(4), F.S., not by agreement.

Direct Appropriations are defined as "Financial assistance appropriate to state agencies to be provided directly to specified non-state entities per legislative proviso to encourage or subsidize particular activities." Rule 69I-5.004(b), Florida Administrative Code. Unlike Direct Appropriations, the "Cooperative Agreements" class of assistance assumes "a substantial involvement between state agencies and recipients when carrying out the activities contemplated in the agreements."

A Direct Appropriation does not require an agreement and does not contemplate a substantial involvement between state agency and recipient. Rule 69I-5.004(b).

Also, contrary to the DFS Catalog Detail, SFRTA is not an "applicant." SFRTA does not submit to an application process to receive its Dedicated State Funds, which are provided annually by general law.

Relevant to the assertion that the DFS has made a determination that SFRTA's Dedicated State Funds are "state financial assistance," is the State's failure to comply with the requirements of §215.97(5):

- (5) Each state awarding agency shall:
  - (a) Provide to each recipient information needed by the recipient to comply with the requirements of this section, including:
    - 1. The audit and accountability requirements for state projects as stated in this section and applicable rules of the Department of Financial Services and rules of the Auditor General.
    - 2. Information from the Catalog of State Financial Assistance, including the standard state project number identifier; official title; legal authorization; and description of the state project including objectives, restrictions, and other relevant information determined necessary.
    - 3. Information from the State Projects Compliance Supplement, including the significant compliance requirements, eligibility requirements, matching requirements, suggested audit procedures, and other relevant information determined necessary.

**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX E – SFRTA Supplemental Response: October 17, 2016 (Page 3 of 5)**

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The OIG has recommended that that SFRTA perform Florida Single Audit reports for the \$165.5 million “in state financial assistance previously omitted.” Yet, SFRTA has never been provided with the information required in subsection (5)(a)1. and 2. above that SFRTA would need to have an audit performed.

Pursuant to §343.58(4)(c)1., FDOT’s involvement in SFRTA activities is specifically identified in State law as follows:

Funds provided to the authority by the department under this subsection may not be committed by the authority without the approval of the department, which may not be unreasonably withheld. At least 90 days before advertising any procurements or renewing any existing contract that will rely on state funds for payment, the authority shall notify the department of the proposed procurement or renewal and the proposed terms thereof. If the department with 60 days after receipt of notice, objects in writing to the proposed procurement or renewal, specifying its reasons for objection, the authority may not proceed with the proposed procurement or renewal.

Therefore, even if a Single Audit Act report was required, it would be limited to a review of compliance with the provision above and additional requirements in §343.58(4)(c)2., which relate to the department’s “evaluation of the proposed uses of state funds.” In other words, whether the Dedicated State Funds are being used for “operations, maintenance and dispatch.” §343.58(4)(a)1. As the department has reviewed and approved all of the contracts that have been issued by SFRTA using the Dedicated State Funds received to date, FDOT has already been monitoring and overseeing SFRTA’s expenditure of the Dedicated State Funds.

**Finding 3** – In support of its finding that the FTA restricts SFRTA from using fare box revenue to fund lobbying activities, the OIG Response now identifies the Federal source for the position it took in the Draft OIG Report. It attaches at email received from Margarita Sandberg, FTA Region IV Director, Operations & Program Management, dated June 7, 2016, to Don Holmes, the Audit Team leader. Her email states that “Because the fare revenue is directly generated from the use of a federal grant or contract, these funds are prohibited to be used by lobbying.” Ms. Sandberg makes no mention of the Dear Colleague Letter dated August 17, 2012, issued by former FTA’s Chief Counsel, Dorval Carter, recognizing that “non-FTA funds” could be used for lobbying activities (and which the OIG was in possession of and attached as an exhibit to the draft OIG Report).

An FTA Region IV staff member has now taken a position contrary to the legal position of a former FTA Chief Counsel. Clarification should be pursued as to whether FTA has changed its legal position on the use of non-FTA funds for lobbying activities. As the OIG has not indicated it is doing so, SFRTA has reached out to FTA for further clarification. At a minimum, it is SFRTA’s opinion that the OIG should not continue to assert its finding is correct in the face of a contradictory opinion from the FTA former Chief Counsel, and instead should wait for clarification regarding FTA’s position on the matter.

**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX E – SFRTA Supplemental Response: October 17, 2016 (Page 4 of 5)**

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**Finding 4** – In response to SFRTA comments to this finding, the OIG has revised its report.

Reference continues to be made to “Table 7: CAFR Budget to Actual Financial Reporting”. Table 7 is for financial reporting purposes only and is not intended to be the mechanism for SFRTA to track how each grant and funding source was used each month. As previously noted, for its operating budget, SFRTA does maintain a budget to actual grant expenditures on a separate Excel spreadsheet. The monitoring of the budget to actual grant expenditures on an Excel spreadsheet is sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

Also, as previously noted, SFRTA maintains a standard capital budget to actual expenditure report for the capital fund. However, it recognizes that the budgeted expenditures were not reflected in that report and will be amending the report accordingly, as stated in SFRTA’s prior response.

**Finding 5** – In support of its position that SFRTA is subject to procurement provisions contained in Chapter 287, Florida Statutes, the OIG Response provides two legal arguments not previously raised. It states that:

- (1) SFRTA is a subgrantee of FDOT and therefore, must comply with requirements in the Code of Federal Regulations, Title 49 Section 18.20 (“49 CFR 18.20”), which requires subgrantees to comply with requirements imposed on the grantee (i.e. SFRTA must comply with the same state statutes as FDOT, including all of Ch. 287, F.S.); and
- (2) cites Attorney General Opinion 2012-34 in support of its position.

As to the OIG’s position that SFRTA is a subgrantee, the Dedicated State Funds provided to SFRTA under s. 343.58, F.S. are not a “grant” and, therefore, SFRTA is not a “subgrantee.” Grants are typically provided as discretionary funds pursuant to a grant award process, which is not the case here. Provision to SFRTA of the Dedicated State Funds is not discretionary, but mandatory. The statute directs that “the department shall transfer annually from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1. or subparagraph (a)2” without granting any discretion to FDOT in the transfer of the Dedicated State Funds.

Regarding the application of 49 C.F.R. 18.20 to SFRTA, 49 C.F.R. 18.20 is contained in the 49 C.F.R. entitled, “UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS.”

The purpose of Part 18 is stated as follows:

**Sec. 18.1 Purpose and scope of this part.**

This part establishes uniform administrative rules for Federal grants and cooperative agreements and sub-awards to State, local and Indian tribal governments.

**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX E – SFRTA Supplemental Response: October 17, 2016 (Page 5 of 5)**

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49 C.F.R. 18.20 states:

**Sec. 18.20 Standards for financial management systems.**

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds.

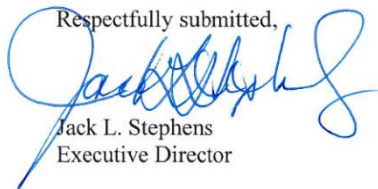
Based on these sections, it is clear that the requirements of 49 C.F.R. 18.20 only apply to Federal grants and to subgrantees of Federal grants.

There is nothing in s. 343.58, F.S. or its legislative history to indicate that the Dedicated State Funds provided to SFRTA are to come from Federal funds, or specifically Federal grants. Funds in the State Transportation Trust Fund are made up from several different funding sources. The legislation does not specify the source of funds within the Trust Fund that are to be provided to SFRTA, but the language of s. 343.58, F.S. and the directive to transfer Dedicated State Funds to SFRTA carries with it the obligation to transfer the Dedicated State Funds to SFRTA without restrictions.

In support of its position that SFRTA is a subgrantee and, therefore, subject to compliance with all state requirements in Ch. 287, F.S., the OIG Response cites Attorney General Opinion 2012-34. The opinion addresses the applicability of certain statutes to expenditures and procurements made by the Suwannee River Water Management District, specifically ss. 287.055, F.S. and 255.20, F.S. This opinion does not support the OIG's position. First, it does not address the issue of the applicability of these statutes to subgrantees and second, it addresses only one section in Ch. 287, F.S. In the SFRTA Response, SFRTA specifically noted that Section 287.055, F.S. applies to it due to a broader definition of "agency" within this one section (the remainder of Ch. 287, F.S., applies only to executive branch state agencies by definition).

The AGO also addresses s. 255.20, F.S. This section was not raised in the Draft Audit Report and SFRTA already complies with the provisions of s. 255.20, again because the application of the section is defined to include more than just executive branch agencies.

Respectfully submitted,



Jack L. Stephens  
Executive Director

cc:

C. Mikel Oglesby, SFRTA Deputy Executive Director  
Richard D. Chess, SFRTA Director of Finance  
Teresa J. Moore, SFRTA General Counsel  
Gerry O'Reilly, Secretary, FDOT District IV



**Office of Inspector General  
Florida Department of Transportation**

**APPENDIX F – OIG Follow-up to SFRTA’s Supplemental Response (Page 1 of 3)**

**Finding 1 and 2**

We have modified the text of the report (in footnote 5, page 7 of report) to reflect the source of DFS's determination.

In addition to the factors DFS used to make their determination, we noted (as shown in the excerpt below) SFRTA’s CAFR published for the past five years has reported the state funds received from the department as “State grants (FDOT).” This is contrary to SFRTA’s current assertion of the state funds received from the department as direct appropriations and/or dedicated funds.

**2015 SFRTA CAFR**

|                      | <b>2015<br/>Total</b> | <b>Percent<br/>of<br/>Total</b> | <b>2014<br/>Total</b> | <b>Percent<br/>of<br/>Total</b> | <b>2013<br/>Total</b> | <b>Percent<br/>of<br/>Total</b> |
|----------------------|-----------------------|---------------------------------|-----------------------|---------------------------------|-----------------------|---------------------------------|
| <b>Revenue</b>       |                       |                                 |                       |                                 |                       |                                 |
| Operating Revenue    | \$13,199,536          | 14.5%                           | \$13,100,115          | 17.9%                           | \$12,575,652          | 17.6%                           |
| Interest Income      | 95,094                | 0.1%                            | 81,543                | 0.1%                            | 139,080               | 0.2%                            |
| FTA                  | 26,005,159            | 28.5%                           | 20,621,111            | 28.1%                           | 19,163,234            | 26.8%                           |
| FHWA                 | 4,000,000             | 4.4%                            | 4,000,000             | 5.5%                            | 4,000,000             | 5.6%                            |
| State grants (FDOT)  | 43,066,506            | 47.2%                           | 30,600,000            | 41.8%                           | 30,613,700            | 42.9%                           |
| County Contribution  | 4,695,000             | 5.1%                            | 4,695,000             | 6.4%                            | 4,695,000             | 6.6%                            |
| Other                | 184,795               | 0.2%                            | 184,795               | 0.3%                            | 184,795               | 0.3%                            |
| <b>Total Revenue</b> | <b>\$91,246,090</b>   | <b>100.0%</b>                   | <b>\$73,282,564</b>   | <b>100.0%</b>                   | <b>\$71,371,461</b>   | <b>100.0%</b>                   |


All provisions in JPA AOH38, including Florida Single Audit, were extended on December 10, 2010, through the Extension of Time - Joint Participation Agreement requested by SFRTA and signed by Bruno Barreiro, Chair of the SFRTA Board (Appendix I). This memorandum stated “This Agreement shall terminate upon the execution by both parties of a replacement Operating Agreement,” which was executed in June 2013.

With regards to the last two years of the OIG’s audit period, we agree that the governing Operating Agreement lacked the Florida Single Audit provision. However, state funds provided SFRTA were reported on DFS’s website as state financial assistance with a designated Catalog of State Financial Assistance (CSFA) number. See excerpt below for FY 2013/14. State agencies, non-state entities, and auditors are provided guidance in the Rules of the Auditor General Questions and Answers’ annual publication<sup>10</sup> to determine if state funds received are considered state financial assistance and are subject to Florida Single Audit.

<sup>10</sup> State of Florida Auditor General Office

**Office of Inspector General  
Florida Department of Transportation**

**APPENDIX F – OIG Follow-up to SFRTA’s Supplemental Response (Page 2 of 3)**

|  |  |  |
|--|--|--|
| <a href="#">Division of Accounting and Auditing</a><br> | <a href="#">CONTENTS OF THE CATALOG</a>   <a href="#">SEARCH/BROWSE THE CATALOG</a>   <a href="#">ADDITIONS/DELETIONS/CHANGES TO THE CATALOG</a>   |  |
|  | <b>CSFA State Fiscal Year 2013-2014</b>  |  |
|  | CSFA Number:   | 55.018   |
|  | State Project Title:   | SOUTH FLORIDA REGIONAL TRANSPORTATION AUTHORITY OPERATING AND CAPITAL ASSISTANCE PROGRAM |
|  | Agency:  | Department of Transportation   |
|  | Program:   | 55100000 - Transportation Systems Development  |
|  | Budget Entity:   | 55100100 - Transportation Systems Development  |
|  | Specific Appropriation:  | GAA 1923 \$34,600,000  |
|  | Appropriation Category:  | 088792   |
|  | Related CFDA Code:   |  |
| Authorization:   | Section 343.51 -343.58, Florida Statutes; 341.302 and 341.303, Florida Statutes  |  |
| Objectives:  | To provide funding to the Department of Transportation's South Florida Rail Corridor Program for commuter operations and capital projects including the South Florida Regional Transportation Authority (SFRTA). The authority owns, operates, maintains, and manages a commuter rail system in the tri-county area of Broward, Dade, and Palm Beach Counties. |  |

Source: Excerpt of CSFA published by DFS for the Florida Department of Transportation.

DFS, the responsible authority, has determined the state funds provided to SFRTA is state financial assistance, and in accordance with Section 215.97 F.S., are subject to the Florida Single Audit Act. The amount affected by the audit recommendation in the report regarding Florida Single Audit coverage has changed to \$153 million.<sup>11</sup>

**Finding 3 (Removed)**

As previously reported in our preliminary and tentative draft, we relied upon a FTA Region 4 determination that use of program funds (farebox revenues) for lobbying expenses is prohibited. Based upon responses from SFRTA and department management, we made telephone inquiries with FTA’s Executive Director Welbes and Chief Counsel Comito. The Executive Director and Chief Counsel advised that SFRTA currently only receives capital grants from FTA, which do not carry lobbying restrictions affecting program income (e.g. farebox revenues).

Based on this new information, Finding 3 has been removed from our report.

<sup>11</sup> Reduced from \$165.5 million to \$153 million based upon the exclusion of funds related to the dispatch and maintenance of the corridor.



**APPENDIX F – OIG Follow-up to SFRTA’s Supplemental Response (Page 3 of 3)**

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**Finding 4 (now Observation 1)**

We have changed this to an observation. As stated in their September 12, 2016 letter, SFRTA has agreed to voluntarily implement the OIG’s recommendation by consolidating all of the information it currently maintains in separate reports by providing a comparative budget to actual expenditures report for grants in the capital fund. In addition, SFRTA shall also provide a standard operating budget to actual expenditure report for grants in the general fund. Implementation shall begin in fiscal year 2016/17 with a completion date of June 30, 2017.

**Finding 5 and Observation (Removed)**

The report has been modified to remove Finding 5 and the related observation addressing third party contracts. Fair and open competition is a basic tenet of public procurement. Competition reduces the appearance and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically; and that documentation of the acts taken and effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which commodities and contractual services are procured.

Note: The 49 CFR provision referenced in the draft report (now superseded by 2 CFR 200 - Uniform Guidance) was included previously not because federal funds are conveyed through Chapter 343.58 F.S. appropriation but rather because SFRTA receives federal funds in addition to state appropriation which brings into applicability the Uniform Administrative Requirements.<sup>12</sup>

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<sup>12</sup> The Uniform Administrative Requirements contained in 2 CFR 200 requires FTA grantees to comply with applicable State procurement laws, rules, and regulations which supports Finding 1’s recommendation to add Chapter 287 commodity and contractual services provisions into the revised agreement.

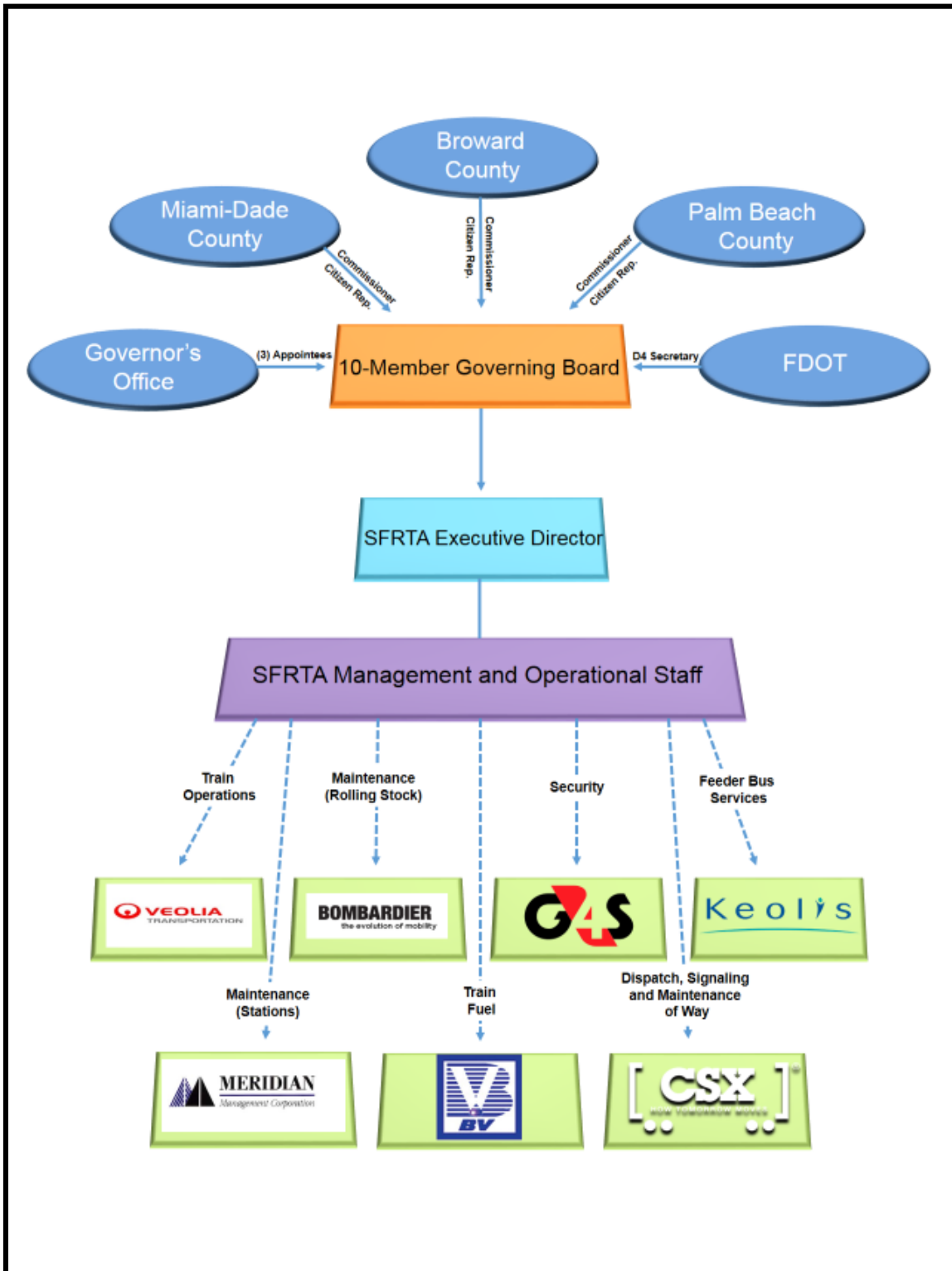
Office of Inspector General  
Florida Department of Transportation

APPENDIX G – Tri-Rail System Map



Office of Inspector General  
Florida Department of Transportation

APPENDIX H – SFRTA Governance and Service Delivery Structure



Source: Prepared by FDOT Office of Inspector General, Intermodal Audit Unit

**Office of Inspector General  
Florida Department of Transportation**

**APPENDIX I – Time Extension Agreement**



**Florida Department of Transportation**

CHARLIE CRIST  
GOVERNOR

OFFICE OF MODAL DEVELOPMENT  
3400 W. Commercial Blvd.  
Ft. Lauderdale, FL 33309-3421  
Telephone: (954) 777-4490 Fax: (954) 677-7892

STEPHANIE C. KOPELOUSOS  
SECRETARY

**MEMORANDUM**

**DATE:** December 10, 2010  
**TO:** Ms. Elizabeth Walter  
Assistant Finance Director  
South Florida Regional Transportation Authority  
**FROM:** Thomas P. Keane  
Rail Coordinator  
Office of Modal Development  
**SUBJECT:** EXTENSION OF TIME - Joint Participation Agreement

Fin. Proj. No.: 236816-1-84-01

Contract No.: AOH38

The time allotted for the completion of services on subject agreement dated June 23, 2006 and any supplemental thereto will expire on December 31, 2010.

Project Description: To provide FY 2010/2011 operating funds and transfer of management responsibilities for the Florida Commuter Rail Passenger Services from the Florida Department of Transportation (FDOT) to the South Regional Transportation Authority (SFRTA).

In accordance with Section 18.00 of the Joint Participation Agreement, you may request a time extension. For your convenience, you may complete, sign, date, and return this form to me.

It is requested that the Joint Participation Agreement for the project be extended as provided below for the following reason(s):

This extension is requested due to a delay in obtaining an operating agreement between SFRTA and FDOT allowing SFRTA the authority to continue commuter train operations over the South Florida Rail Corridor as stipulated in Exhibit "C" Item # 4 wherein FDOT granted SFRTA the right to operate its trains on the trackage of the SFRC subject to the provisions of the Operating and Maintenance Agreement Phase A between CSXT and FDOT. This Agreement shall terminate upon the execution by both parties of a replacement Operating Agreement.

Agency: South Florida Regional Transportation Authority

Date: 12-10-10

By: [Signature]

Title: CHAIR

APPROVED: [Signature]  
District Project Manager

Date: 12-14-10

APPROVED: [Signature]  
Director Transportation Development, District 4

Date: 12/28/10

## APPENDIX J – DFS Project and Vendor/Recipient Determination

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### South Florida Regional Transportation Authority Project Determination Vendor/Recipient Determination

South Florida Regional Transportation Authority is a Non-State Entity. For the last nine years, South Florida Regional Transportation Authority (SFRTA) has submitted financial audit reports to the Florida Auditor General pursuant to Section 218.39, Florida Statutes as a special district<sup>1</sup>.

A special district is defined by statute as a unit of government that is created for a special purpose, has jurisdiction to operate within a limited geographic boundary and is created by a special act<sup>2</sup>. The SFRTA is created by the South Florida Regional Transportation Authority Act<sup>3</sup> for the special purpose of operating and managing a transit system in the tri-county area of Broward, Miami-Dade and Palm Beach Counties<sup>4</sup> and limits operations to Miami-Dade, Broward and Palm Beach Counties.<sup>5</sup>

SFRTA is a nonstate entity as defined by section 215.97(2)(m), Florida Statutes<sup>6</sup>.

In addition, SFRTA receives state financial assistance under the Rail Development/Grants program in accordance with 2015-16 General Appropriations Act<sup>7</sup> to enhance and support operations, resulting in the determination that SFRTA is a state project that must be assigned a CSFA number.

Finally, since state law created the SFRTA to carry out this state project, SFRTA is a recipient of state financial assistance.

State financial assistance that is disbursed to a recipient requires the execution of an agreement that includes provisions as outlined in Section 215.971, Florida Statutes.

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<sup>1</sup>[http://www.myflorida.com/audgen/pages/specialdistricts\\_efile%20pages/south%20florida%20regional%20transp%20ortation%20authority.htm](http://www.myflorida.com/audgen/pages/specialdistricts_efile%20pages/south%20florida%20regional%20transp%20ortation%20authority.htm)

<sup>2</sup> Chapter 189.012(6), Florida Statutes

<sup>3</sup> Section 343.51, Florida Statutes, states "This part may be cited as the "South Florida Regional Transportation Authority Act." Additionally, section 343.53, Florida Statutes, creates the South Florida Regional Transportation Authority

<sup>4</sup> Section 343.54(1)(a), Florida Statute, "The authority created and established by this part shall have the right to own, operate, maintain, and manage a transit system in the tri-county area of Broward, Miami-Dade, and Palm Beach Counties, hereinafter referred to as the South Florida Regional Transportation Authority."

<sup>5</sup> Section 343.52(3), Florida Statute, "Area served" means Miami-Dade, Broward, and Palm Beach Counties. However, this area may be expanded by mutual consent of the authority and the board of county commissioners of Monroe County. The authority may not expand into any additional counties without the department's prior written approval."

<sup>6</sup> Section 215.97(2)(m), Florida Statute, "Nonstate entity means a local governmental entity...that receives state financial assistance."

<sup>7</sup> 2015-16 GAA, line item appropriation 1878 and 1894

**Office of Inspector General  
Florida Department of Transportation**

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**APPENDIX K – SFRTA Letter to FDOT: August 27, 2010 (Page 1 of 3)**

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SFRTA's letter dated August 27, 2010



**SOUTH FLORIDA  
REGIONAL  
TRANSPORTATION  
AUTHORITY**

800 N.W. 33rd Street Pompano Beach, Florida 33064 • 954/942-7245 • 954/788-7878 • [www.dfm.fl.gov](http://www.dfm.fl.gov)

August 27, 2010

James Wolfe, P.E.  
District Secretary  
Florida Department of Transportation/District 4  
3400 W. Commercial Blvd  
Ft. Lauderdale, FL 33309

VIA Email ([james.wolfe@dot.state.fl.us](mailto:james.wolfe@dot.state.fl.us)) & U.S. Mail

Re: FDOT Draft Supplemental JPA for SFRTA Operating Funds

Dear Mr. Wolfe:

SFRTA has received the draft Supplemental Joint Participation Agreement ("Supplemental JPA") to JPA No. AOH 38 (the "JPA") for SFRTA's Operating Funds for fiscal year 2010-2011 from FDOT. The purpose of this letter is to bring certain matters to your attention regarding the SFRTA dedicated funding addressed by the Supplemental JPA.

**Dedicated Funding**

As you know, the Florida Legislature during the 2009 Special Session B, approved Chapter 2009-271, Laws of Florida (the "Law"). The Law, among other things, created a dedicated funding source for the SFRTA pursuant to the changes to Section 343.58, Florida Statutes ("F.S.") provided below.

Specifically, Section 343.58, F.S. was amended to read in relevant part:

(4) Notwithstanding any other provision of law to the contrary and effective July 1, 2010, the *department shall transfer annually* from the State Transportation Trust Fund to the South Florida Regional Transportation Authority the amounts specified in subparagraph (a)1.<sup>1</sup> or subparagraph (a)2.

(a)2. If the authority does not become responsible for maintaining and dispatching the South Florida Rail Corridor:

a. \$13.3 million from the State Transportation Trust Fund to the South Florida Regional Transportation Authority for operations; *and*

<sup>1</sup> This subsection addresses funding in the event SFRTA becomes responsible for operating, maintaining and dispatching the South Florida Rail Corridor.



Office of Inspector General  
Florida Department of Transportation

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**APPENDIX K – SFRTA Letter to FDOT: August 27, 2010 (Page 2 of 3)**

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James Wolfe, P.E.  
August 27, 2010  
Page 2 of 3

- b. An amount no less than the work program commitments equal to \$17.3 million for fiscal year 2010-2011, as of July 1, 2009, for operating assistance to the authority.  
*(emphasis added)*

As FDOT recognized by its previous wire transfer of part of SFRTA's dedicated funding granted by the Legislature (i.e., \$13.3 million) to SFRTA, there is no requirement in subsection (a)2.a. that any conditions be placed on the \$13.3 million. This is also the case with the \$17.3 million. The statute's use of the word "and" shows the Legislature's intent to treat the transfer of both amounts of money from the State Transportation Trust Fund ("STTF") the same. Therefore, no greater restrictions should apply to the \$17.3 million allocation in (a)2.b., than apply to the \$13.3 million provided under (a)2.a.

The STTF is now the funding source for the total \$30.6 million of dedicated funding granted to SFRTA by the Legislature ("Total Dedicated Funding"). The Total Dedicated Funding includes the \$17.3 million amount, which is defined as the amount equivalent to the work program commitments in fiscal year 2010-2011. This money is now to be transferred directly to SFRTA.

Conditioning transfer of the funds in (a)2.b. on the execution of the Supplemental JPA incorporating the provisions from the original JPA, would defeat the clear intent of the Legislature to create a dedicated funding source for SFRTA. Chapter 2009-271 clearly states that it was the intent of the Legislature to "require" that FDOT transfer the work program funds to SFRTA. By requiring FDOT to act, the Legislation did not allow FDOT to place conditions on the transfer (as it was previously permitted to do by the deleted permissive language in Section 341.303, F.S.). *The transfer of the \$17.3 million is, like the transfer of the \$13.3 million, simply a pass-through to SFRTA from the STTF.*

The JPA states that the authority by which FDOT provides operating funds to SFRTA is pursuant to Section 341.303, F.S., which until amended by Chapter 2009-217, permitted FDOT to match up to 50% of the local contributions of a commuter rail service's net operating budget if that service had been in existence longer than 5 years. However, Chapter 2009-271 amended Section 341.303, F.S. to limit FDOT's authority such that it may only match 100% of a commuter rail service's net operating budget for seven years from the open-to-service date (which excludes SFRTA). Therefore, the legal authority by which FDOT previously provided operating funds to SFRTA no longer exists. In its place, the Legislature is now directly providing funding for SFRTA from the STTF.

Therefore, the mechanism by which FDOT previously transferred this money, or what the prior funding source was for this money, is no longer relevant under the Law.

Office of Inspector General  
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**APPENDIX K – SFRTA Letter to FDOT: August 27, 2010 (Page 3 of 3)**

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James Wolfe, P.E.  
August 27, 2010  
Page 3 of 3

Amount of Dedicated Funds to be Transferred

The Supplemental JPA proposes to transfer to SFRTA an amount that is *less than* the \$17.3 million required by Legislature in Chapter 2009-271. The proposed Supplemental JPA includes a figure of only \$16.705 million.

Conclusion

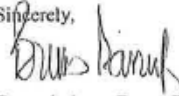
SFRTA requests that FDOT wire the remainder of SFRTA's dedicated funding, in the amount of not less than \$17.3 million, to SFRTA in the same manner as it provided the \$13.3 million portion of the Total Dedicated Funding.

In addition, we recognize that the JPA serves other functions, such as transferring to SFRTA "management responsibilities for the Florida Commuter Rail Passenger Service," which has been accomplished through an exhibit to the JPA.

However, because FDOT's authority for its use of the JPA to fund SFRTA has been removed from Section 341.303, F.S., as addressed above, and because Chapter 2009-271 now requires FDOT to transfer funding from the STTF to SFRTA without conditions, we would request that FDOT consider a new form of agreement to address SFRTA's use of the South Florida Rail Corridor (SFRC).<sup>2</sup> SFRTA is willing to provide a draft of such an agreement for FDOT to review and comment on, should FDOT concur with this approach.

We look forward to discussing with you the parameters of such an agreement that will continue the partnership between SFRTA and FDOT for commuter rail service on the South Florida Rail Corridor.

Sincerely,



Commissioner Bruno Barreiro,  
as Chair of the SFRTA Board

cc: SFRTA Board  
Joseph Giulietti, Executive Director  
Teresa J. Moore, General Counsel  
Gerry O'Reilly, FDOT/D4

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<sup>2</sup> The JPA for the New River Bridge is scheduled to expire in December of this year so the operational issues addressed in that JPA could also be included in the new SFRC use agreement

**Office of Inspector General  
Florida Department of Transportation**

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Jack Stephens, Executive Director, South Florida Regional Transportation Authority

**Office of Inspector General  
Florida Department of Transportation**

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**PROJECT TEAM**

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Engagement was conducted by:

Don Holmes, Audit Team Leader

Kyle Erickson, Auditor

Under the supervision of:

William Pace, Contract Audit Manager; and

Kristofer B. Sullivan, Director of Audit

Approved by: Robert E. Clift, Inspector General

**STATEMENT OF ACCORDANCE**

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The department's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.

The Office of Inspector General's mission is to promote integrity, accountability, and process improvement in the Department of Transportation by providing objective, fact-based assessments to the DOT team.

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Please address inquiries regarding this report to the department's Office of Inspector General at (850) 410-5800.