



Internal Audit Department

Interim Audit Report 2013-6 (formerly Interim Audit Report 2011-2A)

Tourism Department

Limited Scope:

**Tourist Development Tax (TDT) Revenue
Grant Applications – Fiscal Year 2011-2012**

Issued: July 3, 2013

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TABLE OF CONTENTS

OBJECTIVES	2
SCOPE	2
BACKGROUND	3
SUMMARY	4
OBSERVATIONS, RECOMMENDATIONS, & MANAGEMENT RESPONSES	5
CONCLUSION	9
ADDITIONAL MANAGEMENT COMMENTS	9

The files and draft versions of audit reports remain confidential and protected from public records requests during an active audit under Nicolai v. Baldwin (Aug. 28, 1998 DCA of FL, 5th District) and Florida Statute 119.0713. Work-papers supporting the observations noted within this report will become public record and can be made available upon request once the final audit report has been issued.

The draft interim audit report 2013-6 (formerly interim audit report 2011-2A), dated August 22, 2011, was responded to by Jack Wert, Tourism Department Director for the management response. An additional management response, from the department, was provided on January 5, 2012 for updates on progress and a revised management response on July 2, 2013.

Objectives

The objectives of the audit were to determine 1) grant award compliance to Category B and Category C-2 grant guidelines, Collier County Ordinance, and Florida Statute, 2) whether grant applications included all required documentation, and 3) consistency of Collier County Ordinance language to Florida Statute.

Scope

The audit review consisted of reviewing Tourist Development Tax Revenue Grant Applications for FY 2011-2012, including but not limited to the following tasks:

- Review of Florida Statute Chapter 125.0104;
- Review of Collier County Ordinance 92-60, as amended;
- Review of Category B and C-2 grant guidelines;
- Observe the grant application process;
- Attend Tourism Grant Review Committee meeting;
- Attend Tourist Development Council meetings;
- Interviews with County staff;
- FY 2011-2012 grant applications for Category B and Category C-2 submitted to the Tourism Department for review (100% testing); and
- Review of Florida Department of State Division of Corporations records.

Background

The Tourism Department received four Category B grant applications, five Category C-2 grant applications, and one request for funding for Fiscal Year (FY) 2011-2012. The purpose of the grant application is to provide information to County Staff for events and organizations in order to determine if the entity is qualified to receive Tourist Development Tax Revenues in compliance with Florida Statute 125.0104 and Collier County Ordinance 92-60, as amended. Ordinance 2005-43 is the most recent amendment to Ordinance 92-60.

Florida Statute 125.0104(5)(a)2 for Authorized Uses of Tourist Development Tax Revenues: “to promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or events to tourists.”

Collier County Ordinance 2005-43 states Category B funds are “to promote and advertise county tourism within the State of Florida, nationally and internationally, which encourages tourism with an emphasis on off-season visitors to Collier County and to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies. If tax revenues are expended for an activity, service, venue or event, the activity, service, venue or event shall have as one of its main purposes the attraction of tourists as evidenced by promotion of the activity, service, venue or event to tourists.”

Florida Statute 125.0104(5)(a)1 for Authorized Uses of Tourist Development Tax Revenues: “to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums, or museums that are publicly owned and operated or operated by not-for-profit organizations and open to the public, within the boundaries of the county or sub-county special taxing district in which the tax is levied...However, these purposes may be implemented through service contracts and leases with lessees with sufficient expertise or financial capability to operate such facilities.”

Collier County Ordinance 2005-43 states Category C funds are “to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote one or more County owned or operated museums or municipal owned museums or museums that are owned and operated by not for profit organizations and open to the public.” Category C-2 further specifies “Municipal owned museums and Museums owned and operated by not for profit organizations open to the public.”

While reviewing the Tourist Development Tax Revenue grant application process was in conjunction with the Tourism Department Audit (*Reference Audit Report 2013-5, formerly Audit Report 2011-2*), a further review was completed on FY 2011-2012 grant applications when compliance concerns were discussed in the Tourist Development Council Advisory Board Meeting on May 27, 2011.

Summary

The following observations were generated during this review:

1. Florida Statute is more restrictive than the Collier County Ordinance.
2. Some applicants grant applications for Category B and Category C-2 are incomplete.
3. The Friends of Rookery Bay, Inc. does not qualify for Tourist Development Tax Revenue Funding under Category C-2.
4. The Holocaust Museum & Education Center of Southwest Florida grant application does not use the not-for-profit organization's legally registered name.
5. Request for Funding submitted by The United Arts Council was not a grant application and lacked the required documentation.
6. Collier County Ordinance 2005-43 percentage allocation should be verified for compliance when transfers of funds occur between grant categories.

Grant applications need to include all documentation required by the Tourism Department. Without all required documents, County Staff cannot properly evaluate the qualifications for events and organizations, which can lead to non-compliance with Florida Statute 125.0104 and/or Collier County Ordinance 92-60, as amended. In addition, County Staff has approved and recommended funding grant applications that were not qualified to receive Tourist Development Tax Revenues under the current Florida Statute and/or Collier County Ordinance and/or internal grant guidelines.

A more comprehensive report of the Tourism Department will be issued for other areas of review (*Reference Audit Report 2013-5 Tourism Assets, Revenues, and Expenditures Review, formerly Audit Report 2011-2*). The Interim Report was provided to the Department and County Attorney's Office to outline concerns. The concerns were discussed with Tourism Department Staff and the County Attorney Staff as resolution of grant requests was urgent due to pending agenda items.

Observations

1) Florida Statute is more restrictive than the Collier County Ordinance.

Florida Statute 125.0104(5)(a)1 states the authorized uses of revenue must be “within the boundaries of the county or sub-county special taxing district in which the tax is levied.” The Collier County Ordinance 2005-43 does not include this limitation.

Florida Statute 125.0104(5)(a)1 states funding must be to “publicly owned and operated or owned and operated by a not-for-profit organization and open to the public...However, these purposes may be implemented through service contracts and leases with lessees with sufficient expertise or financial capability to operate such facilities.” Collier County Ordinance 2005-43 Category C states funding must be to “County owned or operated museums or municipal owned museums or museums that are owned and operated by not for profit organizations and open to the public.” Category C-1 further states funding is to “County owned or operated Museums.” Category C-2 further states funding is to “Municipal owned museums and Museums owned and operated by not for profit organizations open to the public.”

The Collier County Ordinance uses the word “or” making the Ordinance less restrictive than the Florida Statute which uses “and”. This may cause the approval of grant funding for entities not qualified to receive Tourist Development Tax Revenues under Florida Statute.

Recommendation:

- The language used in the Collier County Ordinance should mirror the Florida Statutory language.

County Management Response:

“The Ordinance will be revised by the County Attorney to mirror Florida Statutory language when the next amendment occurs. County staff plans to present these suggested amendments to the Tourist Development Council (TDC) on September 6, 2011 and depending on the TDC recommendation, to the Board of County Commissioners (BCC) on September 13 or September 27, 2011.”

Internal Audit Response to County Management Response:

The above County Ordinance amendment has not been completed and the County Ordinance remains less restrictive than Florida Statute.

2) Some applicants grant applications for Category B and Category C-2 are incomplete.

The application for funding packets have a check list for the following items: charter, articles of incorporation, by-laws, proof of current status, minutes of meetings authorizing officers to apply for tourism tax funds, IRS determination letter, list of officers and board members with terms of position and salaries, organizational chart, copy of the most recent fiscal year’s financial statement, proof of liability insurance, and letters of commitment for co-sponsors and matching fund contributions.

Many of the documents required were not included by some applicants. It is important that the applicants include all of the required documents so the appropriate review can be performed by County Staff for category recommendation and qualification determinations to ensure compliance to applicable Florida Statute, Collier County Ordinances, and internal grant guidelines.

Recommendations:

- Future applications should include all required documentation.
- When applications are not complete, the additional information should be requested by County Staff or the application should be declined.

County Management Response:

“We obtained the required grant application documents from the applicants and have the original FY 12 grant applications with the required attachments available in our office for review.”

3) The Friends of Rookery Bay, Inc. does not qualify for Tourist Development Tax Revenue Funding under Category C-2.

Rookery Bay National Estuarine Research Reserve is a component of the Florida Department of Environmental Protection, a State Agency; the reserve is state funded and operated. The Friends of Rookery Bay, Inc. operates as a 501(c) (3) not-for-profit organization, but does not own or operate the reserve. Volunteers of The Friends of Rookery Bay, Inc. provide supporting services and assistance to the reserve.

Florida Statute 125.0104(5)(a)1 states the criteria for funding as follows: “Museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county.” Collier County Ordinance 2005-43 Category C states: “County owned or operated museums or municipal owned museums or museums that are owned and operated by not for profit organizations and open to the public.” Category C-2 further specifies: “Municipal owned museums and museums owned and operated by not for profit organizations open to the public” are qualified for TDT funding.

The Friends of Rookery Bay, Inc. does not own or operate the reserve or a museum. It does not appear that the organization is qualified to receive funds under Category C-2.

FY 2010-2011 Grant Funding from Category C-2 provided to The Friends of Rookery Bay, Inc. needs to be reviewed and any current outstanding funds requested put on hold until the discrepancies are reviewed and alternative funding method is available.

Recommendation:

- The Friends of Rookery Bay, Inc. appear to be qualified to receive Category B funding with revisions to the project expense budget and an updated application. The Friends of Rookery Bay, Inc. could make the necessary updates for information and submit under Category B.

County Management Response:

“The Friends of Rookery Bay, Inc. have submitted the necessary information to the tourism staff in order to prepare the submittal to the Tourist Development Council (TDC) for their September 6, 2011 meeting and then to the Board of County Commissioners on September 13, 2011. The TDC and BCC will be asked to change the funding source for the FY 11 agreement with The Friends of Rookery Bay, Inc. to Category B (Fund 184), approve an amended project scope in Exhibit F of the agreement and to waive the \$25,000 limit, and the 80% multiple year request guidelines in the Category B grant application..”

Internal Audit Follow-Up:

The source of funding for The Friends of Rookery Bay, Inc. was revised to provide funding from Category B rather than Category C-2. The observation was resolved and closed.

4) The Holocaust Museum & Educational Center of Southwest Florida grant application does not use the not-for-profit organization’s legally registered name.

The Holocaust Museum & Education Center of Southwest Florida applied for grant funding under a name other than the legally registered entity name. The Florida Department of State Division of Corporations not-for-profit corporation name is “Southwest Florida Holocaust Museum, Inc.” All of the Florida Department of State Division of Corporation’s information for the address and president of Southwest Florida Holocaust Museum, Inc. match the information provided in the Category C-2 grant application under the name Holocaust Museum & Education Center of Southwest Florida. The Holocaust Museum & Education Center of Southwest Florida is not listed as an organization with the Florida Department of State Division of Corporations.

The registered legal name should be used on the grant application exactly as registered with the Florida Department of State Division of Corporations. If the name of the entity has changed, then the name should be changed with the Florida Department of State Division of Corporations.

Category C-2 grants require the entity be either a municipal owned museum or a museum owned and operated by a not-for-profit organization. By not using the legally registered not-for-profit organization's name, the funding could be awarded to an unqualified entity and be non-compliant to Florida Statute and County Ordinance.

Recommendation:

- Applications should only be accepted in the legally registered name to avoid confusion, ensure proper award of grant funds, and to ensure proper payment for reimbursement requests.

County Management Response:

"We will caution all grant applicants to complete their applications using the correct legal corporate name as registered with the State of Florida."

Internal Audit Follow-Up:

The grant agreement was properly entered into with the entity in the entity's legal registered name. The observation was resolved and closed.

5) Request for Funding submitted by The United Arts Council was not a grant application and lacked the required documentation.

The United Arts Council submitted a Request for Funding to print a Calendar of Events brochure rather than a grant application. The Tourist Development Council (in FY 2011) stated in FY 2012 the funding would not qualify for Category B funding and would need to be funded through the Tourism Department's line item budget because the program was predominately for local advertising rather than soliciting out of the area tourists.

The United Arts Council appears to meet the requirements of Florida Statute 125.0104(5)(a)2 and Collier County Ordinance 2005-43 Category B, which state to promote and advertise tourism.

The internal grant guidelines require out of Collier County expenditures and marketing. The requested funding for the calendar does not appear to meet the internal grant guideline requirements.

The United Arts Council requested funding from the Tourism Department through a Request for Funding as recommended in FY 2011 by the Tourist Development Council rather than as a Category B grant application. The Request for Funding was then submitted as a Category B grant application by County Staff without all the required documentation needed for review and recommendation. Proper documentation is needed to ensure compliance to Florida Statute and County Ordinance.

Recommendations:

- Future applications should include all required documentation and should follow appropriate funding sources.
- When applications are not complete, the additional information should be requested by County Staff or the application should be declined.

County Management Response:

"United Arts Council of Collier County, Inc. thought they were applying for marketing funding assistance from tourist tax marketing funds, not a Category B grant. This understanding was a carryover from a TDC discussion in 2010 about their FY 11 application where staff was directed to fund the United Arts cultural events calendar project as a tourism department printing project, not as a Category B grant. United Arts assumed the situation with their FY 12 application would be treated the same as the FY 11 project, so they did not feel they were required to submit

a Category B grant application. Their written request was in the form of a letter and brief presentation of the project and the projected budget. Their request was reviewed by the Grant Review Committee along with all the FY 12 grant applications, but ultimately this request was recommended by the TDC for funding as a tourism department printing project for FY 12, and is not included in the Category B grants line item in the FY 12 tourism department budget.”

Internal Audit Follow-Up:

The County did not enter into a Category B grant agreement with the United Arts Council and properly entered into a vendor agreement. The observation was resolved and closed.

6) Collier County Ordinance 2005-43 percentage allocations should be verified for compliance when transfers of funds occur between grant categories.

During the Tourist Development Council grants funding meeting for FY 2011-2012 on June 27, 2011, discussions were held regarding the level of category funds. The recommendation was to increase Category B (event and promotion) funding and decrease Category C-2 (museum) funding to provide additional funds to organizations that were not qualified under Category C-2 funding.

Recommendation:

- When the adjustments or line item budget changes are proposed, verification and reconciliation for the modifications need to occur to ensure compliance to Collier County Ordinance 2005-43 for the percentage allocations by the grant categories for Tourist Development Tax Revenue funds in order to maintain compliance with ordinances.

County Management Response:

“Staff fully understands that transfers between tourist tax funds cannot be accomplished without BCC approval, including a tourist tax ordinance change. The intent of the discussion at the TDC level was to reallocate funds between line items in Fund 184 (Advertising and Promotion) to free up funding for applicants that better qualify for Category B grants, rather than Category C-2 grants. That was accomplished in the budget process for FY 12 and will not necessitate any transfers between funds, or ordinance changes.”

Conclusion

Grant applications submitted need to include all documentation required by the Tourism Department. Without all required documents, County Staff cannot properly evaluate the qualifications for events and organizations, which could lead to non-compliance with Florida Statute 125.0104 and/or Collier County Ordinance 92-60, as amended. In addition, County Staff has approved and recommended funding grant applications that were not qualified to receive Tourist Development Tax Revenues under the current Florida Statute and/or Collier County Ordinance and/or internal grant guidelines.

Audits do not relieve management of their responsibilities. It is the responsibility of County management to understand and implement the proper procedural controls in order to reduce and limit the risk of fraud, error, and misappropriation of County assets/revenues. Internal Audit may recommend improvements in audit reports, but ultimately it is the duty and decision of County management to formulate processes and controls that ensure compliance with Federal Regulation, Florida Statute, County Ordinance, and County Policies and Procedures.

Additional County Management Comments:

"We completely concur that only the County Commission can approve funding. We routinely do recommend to the TDC actions related to expenditures of tourist tax funds, based on the advice and counsel of the County Attorney's Office regarding any legal interpretations of funding eligibility. We do not feel that any unqualified tourist tax grant funding was recommended to the TDC or subsequently awarded to applicants as covered under Florida Statute 125.0104. We acknowledge that a conflict exists in language between State Statute 125.0104 and County Ordinance 92-60, as amended, due to a scrivener error. That conflicting language is currently in the ordinance amendment process and will come before the County Commission for consideration in January and February 2012."

Internal Audit Comments:

The County Ordinance has not been amended and remains less restrictive than Florida Statute.

Internal Audit gratefully acknowledges the cooperation and assistance from the Tourism Department. The Tourism Department's quick response for providing information and responses to recommendations greatly assisted Internal Audit in the interim work and resolution of findings.