



THE CITY OF KEY WEST

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MEMORANDUM

To: Jim Scholl, City Manager via Nancy Kielman, Finance Director

CC: Sarah Spurlock, ACM

From: Scott Fraser, FEMA Coordinator

Date: September 11, 2014

RE: RETURN DUPLICATION OF BENEFITS RECEIVED

SYNOPSIS:

It's been discovered the City will inadvertently receive a partial duplication of benefits for the recently completed restoration of Smathers Beach; with overlapping funding received from both FEMA and the Tourist Development Council (TDC).

Of the \$323k to be received from FEMA, the City will need to rectify this duplication with the return of \$60k to one of the two agencies. After due consideration, it's become apparent these funds should be returned to FEMA.

While it'd be much preferred to restore such monies to local funding sources such as the TDC, to do so would ultimately result in a loss of twice this amount. Were the City to first return the 60k to the TDC, the inevitable Inspector General's FEMA audit, would later deobligate the same amount, and expect repayment to its agency as well, resulting in a total return of \$120k rather than just the initial \$60k.

Our Legal Department advises that even though these monies don't constitute a purchase, but are in excess of \$20,000 – an amount that if a purchase would require City Commission approval – for the sake of transparency ought be presented to the City Commission for approval.

UPDATE: The State of Florida had – upon mutual agreement – intended to halt an additional payment to the City of \$53,893.16 for this same project. However, days ago, it was discovered this additional payment was direct deposited into the City's bank account; now requiring a return of these funds as well.

DETAILS:

During August of 2012, Tropical Storm Isaac struck the city causing severe erosion to four beaches. FEMA entertained funding the restoration of Smather's Beach, but declined the others, which remain under appeal.

While FEMA issued a Project Worksheet for Smather's Beach, final receipt of these funds remained an uncertainty, and thus hasn't been carried on the City's accounts as anticipated receivables.

In the regular course of events, the City's Grants Coordinator pursued funding opportunities for numerous projects, one of which being the regular restoration of Smather's Beach; a task she would have been urged to pursue – even if she had been aware of the ongoing FEMA effort, given the uncertainty of FEMA funds. The sole staff member aware of both efforts was under the mistaken belief the City was entitled to the excess funding.

This partial duplication of benefits was discovered by the City's Budget Analyst, when deciding how best to apply the forthcoming monies from FEMA for the same project.

Upon comparing their grant submissions, the Grants Coordinator and FEMA Coordinator discovered they'd unknowingly used the exact same checks paid to vendors as justification for reimbursement from the two agencies.

Staff has determined, there weren't any other expenditure to which either of these grants might otherwise apply. Nor may the TDC funds be applied to another similar project.

RETURN TO WHICH AGENCY:

The TDC grant doesn't specifically address a duplication of benefits, but does have language not restricting sources of additional funding:

“22. CLAIMS FOR FEDERAL OR STATE AID. Contractor and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this agreement provided that all applications requests grant proposals and funding solicitations shall be approved by each party prior to submission.”

Whereas FEMA has Disaster Assistance Policy 9525.3 that addresses this very scenario (attached).

In relevant part,

Section VI(2) states: “...no entity will receive assistance for any loss for which financial assistance has already been received from any other program, from insurance, or from any other source.”

Section VII(2,1) states: “If the grants and cash donations from non-Federal sources designated for specific eligible work exceed the amount of the non-Federal obligation, they should be used to reduce the total project cost.”

Note the underlined words in the first cited section: “... has already been received ...” The TDC funds were received last fall; the FEMA funds were received this July.

The semantics of “who got what first from whom” doesn't come to bare upon whether the funds need to be returned, but more upon to which agency they should be returned. Section VI(2) would further embolden FEMA's stance these duplicated funds ought be returned to that agency, given that the TDC funds were received well in advance of the FEMA funds.

Were the City to return the funds to the TDC, a subsequent FEMA audit would very likely determine its policies require the funds be returned to FEMA under Section VII(2,1), and expect immediate reimbursement; irregardless of the City having already returned a like amount to the TDC. The end result would be City having returned the excess funds to the TDC, and losing an equal amount when later having to make a duplicate restitution to FEMA, as well.

AMOUNT:

FEMA's policy (9525.3 Sec. VII, A, 1) notes funds from other sources may be applied to the “non-federal” cost share. Of the \$187,500 received from the TDC grant, \$53,893.16 will be used to offset the City's 12.5% share, and a like amount to offset the States 12.5% match.

FEMA then applies the remaining TDC grant balance of \$79,713.68 to lower the overall project cost. The FEMA project cost then decreases from \$431,145.28 to \$351,431.60. FEMA then obligates its 75% share to the City, amounting to 263,574.

Since the City has already received \$323,358.96 from FEMA for this project, it will need to return \$59,785.26.

The State's 12.5% match of \$53,893.16 has been in the process of being paid to the City, but hasn't yet been received. Per the FEMA project closeout, this payment from the State to the City will be negated. Should this City inadvertently receive this payment, it'll need to be returned to the State. **UPDATE:** A few days ago, it was discovered the City has received these funds from the State via direct deposit.

BUDGET IMPACT:

None of these FEMA/State funds have been carried forward as anticipated revenues. Therefore returning the \$60k won't negatively impact the current budget. The budget will receive a positive impact of \$263,574 in unanticipated revenues. These retained revenues will be returned to the fund from which spent, Fund 103 Fort Taylor Surcharge.

The same is true of the State's 12.5% match of \$53,893.16 received this month.

Currently	
	FEMA Grant
Federal portion (75%)	\$ 323,358.96
State portion (12.5%)	\$ 53,893.16
	<u>\$ 377,252.12</u>
City match (12.5%)	\$ 53,893.16
Total Project Cost	\$ 431,145.28
Received	
FEMA/State	\$ 377,252.12
TDC	\$ 187,500.00
	<u>\$ 564,752.12</u>
Total Project Cost	\$ 431,145.28
Total Received	\$ 564,752.12
Excess received	\$ 133,606.84

TDC Grant	\$ 187,500.00
Minus State Cost Share	\$ (53,893.16)
Minus City Cost Share	\$ (53,893.16)
	<u>\$ 79,713.68</u>

Anticipated Revision	
Total Project Cost	\$ 431,145.28
Minus TDC \$	\$ (79,713.68)
Eligible Total	<u>\$ 351,431.60</u>
Federal portion (75%)	\$ 263,573.70
Pmt.s Received	\$ (323,358.96)
	<u>\$ (59,785.26)</u>
Amt. Returned	
FEMA	\$ 59,785.26
State	\$ -
Total Returned	\$ 59,785.26

Obligated vs. Eligible
\$230,370.88