

Governance Audit
Of
Orlando Orange County Expressway Authority
On Behalf Of
Orlando Orange County Expressway Authority
Audit Committee

October 12, 2009



Governance Audit of Orlando-Orange County Expressway Authority

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GOVERNANCE AUDIT OF OOCEA

This limited governance audit was performed to identify issues related to governance, communications, and organization of the Orlando Orange County Expressway Authority (OOCEA, Authority or EA). The assignment was awarded to Vantage Consulting, Inc., (Vantage) of Cudjoe Key, Florida on August 18, 2009 by the OOCEA Audit Committee. Interviews and analysis commenced on August 25, 2009 and were completed on September 18, 2009. In total, 19 interviews were conducted. These included all current Board of Director Members, all Senior Management, many Director and Manager level employees, past Board members, members of the Citizens Advisory Commission and some former employees. Our data review was extensive and included: Board and Audit Committee meeting minutes from the last three years; all audits and action plans for recent independent audits; key letters, reports, Grand Jury documents, newspaper articles and other reports critical of OOCEA; Florida Transportation Commission (FTC) reports and ratings; Executive Director contract and salary-related documents. Vantage also reviewed key organizational, salary and governance documents for all toll authorities in Florida and governance best practices information in general. Our work is conducted under the 2003 version of Generally Accepted Government Auditing Standards (GAGAS) Performance Audit section. All finding statements start with a capital **F** and recommendation statements start with a capital **R** to highlight action items.

A. EXECUTIVE SUMMARY

The OOCEA has existed since 1963, growing from a small road building and operating entity to a major toll authority, with over 105 miles of roadways, 57 employees, almost \$250 million in annual revenues and a five-year work plan of over \$1.4 billion. OOCEA has become much more visible in the region, with greater scrutiny over its recent rate increase decision, the large proposed spending program and recent public embarrassment over campaign contributions and allegations of favoritism to certain firms. Simply stated, OOCEA can no longer operate under the radar, and while it has put many of the issues behind it, the public now demands greater transparency and input.

The purpose of this Governance Audit is to provide an assessment of board governance in relation to best practices and determine which, if any, enhancements may be recommended to the Board for implementation. This includes a review of structural design, including by-laws, committee responsibilities and reporting, code of conduct, and conformance with legal and regulatory requirements. The assessment includes a review of the definition and delineation of responsibilities between Board and Management, including practices as they relate to: strategic planning; operating and capital budgets; long-term financial planning; oversight of capital projects; approval of expenditures; meetings; and culture. The audit assesses the sources of information on which the Board makes decisions, and the processes by which the information reaches the Board. Finally it reviews the tools and processes the Board utilizes for organizational performance monitoring.

OVERALL CONCLUSIONS

As stated above, the OOCEA has been under an inordinate amount of stress due to a number of factors. While some of the stress may decrease as the Board and Management successfully communicate changes, as they are implemented, and demonstrate that the OOCEA is operating in a professional manner, it will take time before full public trust is achieved. With this perspective, we can conclude the following. The OOCEA, with its current governance structure, functions in an acceptable if not perfect manner. That said, there are a number of areas where improvements need to be made to meet the expectations of its stakeholders.

This report has seventeen findings and thirteen recommendations. Many of the findings highlight areas where changes are needed and are the support for the recommendations. Some of the key findings follow:

- Despite the criticism and issues surrounding the Board in recent years, the employees of OOCEA do a very good job of building and operating the toll system. While this audit did not directly address operational performance, Vantage was able to review enough data and reports to reach this conclusion. One of the most compelling documents is the FTC annual review of all turnpike authorities. In the latest review, OOCEA met or exceeded 14 of 17 performance measures in the latest annual *“Transportation Authority Monitoring and Oversight, FY 2008 Report”*.
- The Board and Management have all worked hard to improve both the actual and perceived culture at OOCEA. Vantage was impressed that every person interviewed had a singular objective of improving the OOCEA, even though many had different opinions as to how to accomplish this.
- Improved understanding of responsibilities of all Board Members and the Chairman. Our observation is that because recent Chairmen have served on the Board for extended periods of time and therefore had extensive knowledge of issues, policies and procedures, they assumed or were given greater responsibility for many activities. There is no evidence that this was an attempt to exert undue influence, but rather an attempt to move the OOCEA forward.
- The Board Committee system needs to be modified to ensure that each committee has a clearly defined mission, members are independent, and there are well defined procedures for conducting business and reporting results.
- There are a number of places where informal practices or dated policies and procedures need to be updated.
- The use of a formal Code of Conduct Policy and the relatively recent change to have the General Counsel report directly to the Board are strong positives.
- Improvement can be made in information flow and transparency between the Board, Board Committees and EA management.
- While there have been recent improvements in communication of audit action plan activities, there is room for improvement. Further, there are areas in operations, construction and engineering where increased audit activity may be warranted.
- The organizational structure of the EA has morphed over time into a structure with many layers, inconsistent titles, and small spans of control that should be addressed.

- The Executive Director Performance Review Procedure is assessed and an option for a formal procedure is presented.

A total of thirteen recommendations have been made in this report. To fully understand them, they should be read in the context of their total discussion, however, we provide them here for easy review.

R1 Defer any changes regarding OOCEA board size until a final decision is made on the Wekiva Parkway extension into other counties is concluded and discussions about a regional authority are complete or considered as part of the decision.

There is no overwhelming reason to increase the Board size at this time. Future decisions may drive changes, but there are other issues that should be addressed first. Changing the Board size will require legislative action.

Should a decision be made to increase Board size, legal opinion would be required as to how this can be accomplished. Later in the report, we discuss Board Committee structure and suggest an option should the Board size be increased to seven or more.

R2 Revise Section 1-1.008 of Procedures for Board meetings to clarify exactly how Board agenda items are set.

In revising this procedure we would propose the following.

- Any Board Member or Board Committee should have the right to request that items be included on the agenda. While an item may not be ready for final resolution, discussions of issues that are not fully analyzed may be awkward, but also provide a forum for discussion by all Board members and transparency with all stakeholders.
- The Executive Director can insert agenda items developed by the EA organization.
- All agenda items should be submitted at least one week before the board meeting and shared with the EA management team so that they can study the item, identify issues and be prepared to answer questions as they arise.
- EA management should have the appropriate director (or senior manager) available at board meetings to answer questions. These individuals should have all necessary information with them in order to be responsive. Board members who have complicated or technical questions should be urged to provide the question to the EA management team beforehand so they can be prepared.

R3 Reconfigure the four board committees in a manner that is consistent, balanced and meets the needs of the OOCEA on a going forward basis. In addition, restate the objectives and mission of each Committee so that they have a clear mandate as to responsibility and reporting requirements.

There are a number of ways that this can be accomplished. Vantage provides some examples for discussion.

Option 1 – Replace Employee with Outsider

The first option would be to keep the Committees at three members, but replace the third member with an outside person who has expertise in that area. The addition of an outside expert to the Committee would enhance decision making, assure independence from internal influence and increase public transparency.

Option 2 – Increase Committee Size to Five

This option uses the format currently in use by the Audit Committee. The Audit Committee format was well defined, with a clear mission and objectives. The greatest issue will be getting additional outside members for positions that do not pay any fees.

Option 3 – Committee Make-up of Three Board Members

This option would work if the Board size was increased to seven members or more so as to avoid the problem of having a majority of Board members on a committee. The advantage is that there are only Board members on each Committee. In most public corporations, all committee members are from the BOD.

Option 4 – Committee of the Whole

One option that should be discussed is having all Board members sit on each committee. Essentially, committee work would take place prior to Board meetings. While this would extend the length of time Board members would spend at the OOCEA offices, it would eliminate the need to attend committee meetings on another day of the month. All Board members would receive the same information from OOCEA staff and experts. Since not all committees meet monthly, it is likely that only two of the four committees would need to conduct business in any given month. By virtue of being at the same time as Board meetings, the public would be more likely to attend, increasing transparency and providing a view as to how major decisions are made. While the current Committee meetings are open to the public, there are very few attendees. Under this option, discussion, analysis and review would take place during the committee meeting and votes would take place as part of the formal Board meeting.

R4 Develop or identify a set of meeting procedures for use at Board and Committee meetings.

There are many types of procedures available for organizations such as the OOCEA that can be selected. The General Counsel is well suited to identify a set and propose them. The General Counsel is also well suited to act as Parliamentarian when questions arise.

R5 Continue with the review of all polices and procedures, identify areas where there are deficiencies and propose changes for the Board to consider.

We suggest that a survey of similar toll authorities be conducted to see how comprehensive their policies and procedures are. This should be followed by a logical evaluation of the exiting

topics and content. HR and Legal should opine on any labor laws or statutes that may warrant changes. The plan to review the Policies and Procedures Manual every two years also is sound.

R6 Formalize a process for analyzing agenda items to include all key departments within the authority.

Analysis of key economic, operational and public issues by all parts of the OOCEA organization will ensure that analysis is well vetted and questions can be answered at Board Meetings.

R7 Improve the current “Action Plan” for providing feedback on management responses and status on all internal and external audits.

The current reports go a long way toward providing the feedback and transparency needed. However, to improve transparency and provide a vehicle for feedback on disagreements, we suggest the following steps be added.

- In the response section. If the reply is “Underway”, specific details as to where the response is and what steps are being taken should be provided, along with a schedule for completion.
- If the response section indicates “disagreement or do not concur”, there should be an explanation as to why in the action plan, as well as in the body of the audit report. The organization providing the recommendation should have the opportunity to respond by withdrawing, altering or indicating disagreement with EA management.
- The Action Plan should continue to be updated quarterly as specified in the current Audit Committee policy. This revised status report should be provided to the Board, the organization that conducted the audit and should be made available to the public.

R8 Consider balancing audit plans and audit schedules to include both selection and conduct of major engineering, construction, operations and maintenance activities.

Generally, contracts with engineering and construction firms include clauses that allow audit of all records, including staffing, billing, materials procurement and other activities that directly correspond to the quality and cost of a given project. These provisions should be adhered to on a regular basis by the management team and Internal Audit should periodically look at management’s processes to verify they are working. Similarly, contractors who provide maintenance and operations services should be considered for audit by Internal audit on occasion to ensure that they comply with all provisions in the contracts.

R9 Develop a consistent policy for disseminating the minutes of Board Committee meetings to Board members in advance of scheduled Board meetings.

It is important that all members be made aware of the activities and decisions of Board Committees. One way to ensure this is to develop a consistent format and timing for transmitting minutes and other associated documents to all Board Members and to the Executive Director.

R10 Ensure that all details are provided to Board members on key issues prior to Board meetings.

EA personnel responsible for preparing Board agenda presentations and backup should assure that all detail available and potentially needed is provided. We recognize that there is a reasonable limit to the amount of information provided, but in the example of the Five-Year Plan, it seems that all relevant details should be provided well in advance. In addition, to providing hard copy data, briefings should continue to be offered as needed.

R11 Perform a comprehensive review of the EA organization with the goal of reducing the number of layers, increasing spans of control and determining whether all positions are necessary given today's cost control emphasis, and the upcoming implementation of the five-year plan.

This review could be done internally, but might be more effective if an outside facilitator is hired who is experienced with these efforts. In conjunction with this effort, job descriptions should be updated, based on future work load.

R12 Assess all positions before hiring to determine if a modified organization would provide for reduced cost while achieving an appropriate level of service.

During the last year, ten new positions were created at an annual salary level of just under \$1 million. These positions were formerly held by outside consultants and the Executive Director had an analysis prepared for each position. There are still a number of other positions that are being considered.

R13 Implement a structured, annual evaluation of the Executive Director, with input from all members of the Board in a manner that permits both positive and negative feedback in a transparent manner.

B. GOVERNANCE PRINCIPLES

In this section, good governance is discussed and best practices are presented. In the wake of the Enron debacle followed more recently by the Madoff scam, attention has been focused at both the public and private sector to develop governance standards that shelter stakeholders from fraud and mismanagement. Directors and Trustees need to adhere to a code of conduct that ensures open (transparency), honest (accountable and ethical) and professionalism (independence). This must be accomplished while still ensuring effective performance, productivity, and innovations.

Good Governance

Good governance, whether for public, private or non-profit institutions, can be defined as the process of decision-making and the process by which decisions are implemented.ⁱ The governance concept stems from an attempt to link the needs of the stakeholder to the actions taken by management to successfully achieve those needs. Representing the organization's stakeholders are Boards of Directors providing oversight and a degree of safeguard such that management remains committed and directed to the mission, goals and objectives of the organization.

Much has been written about governance. One study suggests that it entails eight critical factors that include:

1. participation;
2. legal Framework;
3. transparency;
4. responsiveness;
5. consensus;
6. accountability;
7. inclusiveness;
8. effectiveness and efficiency.

Another study pointsⁱⁱ to the integration of four key elements that make up the governance process, namely,

1. management;
2. control;
3. supervision;
4. accountability.

While these elements of governance help define what governance is, for a public body, like the Orlando-Orange County Expressway Authority, it is our belief that a best practice assessment of good government governance highlights the following attributes.

1. **Independence:** Board members should be professionals that represent the interest of the stakeholders and should have the wherewithal to understand the needs of the organization and the actions proposed by management to achieve those needs. The majority of Board members should be independent representatives as opposed to

ⁱ "What is Good Government?" prepared by the United Nations Economic and Social Commission for Asia and the Pacific.

ⁱⁱ "Government Governance: Corporate governance in the public sector, why and how?" The Netherlands Ministry of Finance, November 2000

executives of the organization. Best practices support the practice where the Chair of the Board is an independent member of the Board.

2. **Transparency:** Stakeholders, and the public at large, especially for governmental institutions, should be able to understand the workings of the agency and how and why critical decisions are made. Transparency is one of the best means to achieve public support and confidence, while also mitigating potential for fraud and mismanagement.
3. **Credibility (ethics):** The Board should clearly and unequivocally state its commitment to sound business practices and managerial professionalism. Best practices support the Board preparing and signing a Code of Conduct that should also be shared with the organization's management team.
4. **Accountability:** Decisions made by management and supported by the Board should be fully accountable. That means the basis for key decisions be derived from well documented and thoroughly vetted business plans, processes established to manage and control operations and capital expenditures and expenses and investments are accurately documented and provided to senior management in a timely manner. Best practices support the establishment of a Board level Audit Committee that routinely investigates and evaluates the financial soundness of the organization as well as the financial controls developed by management to assure reporting accuracy and project control.

Best Practices for Board-level Governance

Stating what good governance should be and how to achieve it requires an understanding of how boards have failed to achieve such attributes of good governance even though their stated objective was to do so. In 2004, the New York State Comptroller commissioned a study of Public Authority Governanceⁱⁱⁱ of New York's 640 public authorities, more than any other state and in fact, in our understanding, more than the aggregate of all other states. This study highlighted the findings of Professor Ira Millstein who was later chosen to Chair the Commission on Public Authority Reform, by noting:

"For many years, Ira M. Millstein, a noted attorney and professor, has offered direction for improved corporate governance. In 2003, Professor Millstein, along with Professor Paul W. MacAvoy, published a book entitled The Recurrent Crisis in Corporate Governance. The book combines law and managerial economics to propose reforms to develop effective governance of American corporations. While clearly targeted at the private sector, the work of Professors Millstein and MacAvoy has substantial implications for governance reform in public corporations and authorities.

The book notes, "To be effective requires that a board of directors has the ability to assess the corporation's environment, organization, personnel and political affairs, as well as resulting financial accounting practices. This ability is essential in many challenges and

ⁱⁱⁱ "Public Authority Governance in New York: Members of Boards of Directors", prepared by NYS Office of the Comptroller, August 2004

opportunities requiring knowledge sufficient to test management's initiatives and resulting performance."^{iv}

C. BOARD STRUCTURE, RESPONSIBILITY AND COMMITTEES

BOARD STRUCTURE

One of our requirements on this assignment is to review the structure of the Board. Further, some stakeholders have questioned whether the number of Board of Directors should increase. Two major points are made to suggest an increase is appropriate. First, more members would provide greater input and diversity of experience, broader discussions and the ability to have more members on Board Committees. (A seven-member board, would permit three members of the Board to sit on any Board Committee without having a majority present.) The second point is that when the Wekiva Parkway construction project extends beyond Orange County, into Seminole and Lake Counties, representation by those stakeholders might warrant a larger board.

Arguments against a larger Board are that they become more political and cumbersome as they get very large. Also, the decision on the Wekiva Parkway is not final and it is not clear how much representation would be appropriate or if it is best managed through a regional authority.

R1 Defer any changes regarding OOCEA board size until a final decision is made on the Wekiva Parkway extension in to other counties is concluded and discussions about a regional authority are complete or considered as part of the decision.

There is no overwhelming reason to increase the Board size at this time. Future decisions may drive changes, but there are other issues that should be addressed first. Changing the board size will require legislative action.

Should a decision be made to increase Board size, legal opinion would be required as to how this can be accomplished. Later in the report, we discuss Board Committee structure and suggest an option should the Board size be increased to seven or more.

D. ROLE AND AUTHORITY OF THE BOARD OF DIRECTORS

F1 There appears to be some uncertainty as to the actual responsibility of Board members and the Board Chairman.

All members of the OOCEA Board have identical voting power. It is important to make this simple statement because over time, the distribution of power among Board members and the Chairman can become distorted. A great deal of the feedback we received during our

^{iv} MacAvoy, Paul W. and Ira M. Millstein. "The Recurrent Crisis in Corporate Governance." Palgrave MacMillan. 2003.

^v Metropolitan Transportation Authority Press Release, "MTA Board Approves Corporate Governance Expert," June 26, 2003.

interviews was related to how the Board is managed, the actual and assumed authority of the Chairman, and the rights and responsibility of individual Board members. A history of the OOCEA Board makeup shows that some Board Chairmen served for extended periods of time and often took on responsibilities that go beyond the actual requirement of the position. This is a common occurrence with similar Boards and is often due to the level of experience the Chairman has, a lack of interest by other members of the Board, or simply decisions by the Board to vest broader responsibilities within the Chairman position.

History is to some degree responsible for how the Board currently functions. Generally, past Board Chairmen served for very long periods of time and assumed significant responsibility and actual authority as time went on. The current Board Chairman, who is the longest serving member of the Board with over seven years served, is the first in that position who is also Orange County Mayor. The County position has much more responsibility and separation of the duties can in fact be difficult on a day to day basis. Vantage is not implying in any way that any current or former Chairmen of the OOCEA did anything wrong. We simply want to clarify for all stakeholders what responsibility all members have. The responsibilities of the Board Chairman seem to reside in a number of statutes and policies. Some key excerpts from statutes and policies follow.

- **Florida Statutes Title XXVI, Chapter 348.753, Paragraph (3)(a)** “The authority shall elect one of its members as chair of the authority.... The chair, secretary and treasurer shall hold offices at the will of the authority.”
- **OOCEA Procedures for Board Meetings (Approved 2/28/08 Board Meeting) 1-1.006 Definitions, 3.** Chairman shall mean the member of the Board elected by the Authority to serve as Chairman. The Chairman shall be the presiding officer at all meetings of the Authority except that in the Chairman’s absence, the Vice chairman shall preside.
- **OOCEA Procedures for Board Meetings (Approved 2/28/08 Board Meeting) 1-1.006 Meetings, 1.** Regular Meetings - “Officers shall be elected annually at the regular meeting held in January.”
- **OOCEA Procedures for Board Meetings (Approved 2/28/08 Board Meeting) 1-1.006 Meetings, 2.** Special Meetings - Special Meetings may be called by (1) the Chairman at his/her discretion or (2) in the absence or incapacity of the Chairman by he Vice Chairman or (3) by any three (3) or more Board Members.
- **OOCEA Procedures for Board Meetings (Approved 2/28/08 Board Meeting) 1-1.006 Meetings, 3.** Emergency Meetings -Emergency Meetings may be called by (1) the Chairman at his/her discretion or (2) by any two or more Board Members.”
- **OOCEA Procedures for Board Meetings (Approved 2/28/08 Board Meeting) 1-1.008 Agendas for Regular and Special Meetings or Hearing 1.** Advance Preparation Required - An agenda for each regular and special meeting or hearing shall be prepared by the Authority sufficiently in advance of the meeting or hearing to ensure.....

- **OOCEA Procedures for Board Meetings (Approved 2/28/08 Board Meeting)**
1-1.008 Agendas for Regular and Special Meetings or Hearing 2 Form of Agenda –
The agenda shall list items to be resolved at the meeting, in the order in which they are considered. For good cause started items may be taken out of order with approval of the Chairman or presiding officer...
- **Audit Committee Charter** - Audit Committee Community member is recommended by the Authority Board Chairman and approved by a majority vote of the Authority.
- Please note other duties may be given to the Chairman that we did not address.

The following discussion addresses a number of issues that seem to have raised questions with one or more Board members.

Board Agenda Items

F2 There is uncertainty as to who can submit agenda items and whether items submitted by a Board Committee can be kept off the Board Agenda.

Our review of documents, including letters from former Board members, interviews with employees and Board members indicate that it is not clear as to how the Board Agenda should be set and whether any items submitted by a Board Committee or member can be kept off the agenda. As stated above, OOCEA Procedures for Board Meetings states that “An agenda for each regular and special meeting or hearing shall be prepared by the **Authority** sufficiently in advance of the meeting or hearing. Our reading would suggest that this is the functional responsibility of preparing the agenda and does not give sole authority to the Authority, exclusive of Board Committees, Board members or the Executive Director. Further, Vantage is not aware of any formal provisions that permit either the Executive Director or Chairman to exclude agenda items requested by others.

R2 Revise Section 1-1.008 of Procedures for Board meetings to clarify exactly how Board agenda items are set.

In revising this procedure we would propose the following.

- Any Board Member or Board Committee should have the right to request that items be included on the agenda. While an item may not be ready for final resolution, discussions of issues that are not fully analyzed may be awkward, but also provide a forum for discussion by all Board members and transparency with all stakeholders.
- The Executive Director can insert agenda items developed by his organization.
- All agenda items should be submitted at least one week before the board meeting and shared with the EA management team so that they can study the item, identify issues and be prepared to answer questions as they arise.
- EA management should have the appropriate director (or senior manager) available at board meetings to answer questions. These individuals should have all necessary information with them in order to be responsive. Board members who have complicated or technical questions should be urged to provide the question to the management team beforehand so they can be prepared.

F3 Responsibility for strategic planning, developing operating and capital budgets, long-term financial planning, oversight of capital projects is properly performed by EA employees.

While there may be some confusion over board agenda issues, there is a clear delineation between EA Management and the Board as to planning, operational, and project oversight responsibilities. It was clear that all Board members respected the fact that while they appoint the Executive Director, he runs the EA on a day-to-day basis.

F4 The drive to improve both the actual and perceived culture at OOCEA is appropriately shared by both the Board and Management.

The recent embarrassments of OOCEA have led to poor morale, increased public criticism, and concern as to the culture at OOCEA. Regular newspaper articles continue to claim that there is a culture of corruption and many individuals and outside groups have been critical of a lack of change by the Board and Management. In fact, all Board members and Management employees are acutely aware of these claims and have taken action to improve the culture within OOCEA. While one can argue as to whether the changes are adequate, there is evidence of changes that go directly to the improvement of culture at OOCEA. Specific actions include an expansion of the Audit Committee itself, an increase in internal audits, publication of Audit Action Plans, a move toward a salary survey, a formal Executive Director Performance Evaluation, increased public communication and an assessment of all salary levels and positions within the EA. In addition, major changes have been made to the procurement practices in response to previous audits.

E. BOARD COMMITTEE MAKEUP

F5 The authorization for, objectives and responsibilities of three of four Board Committees is inconsistent or nonexistent and needs to be addressed.

There are four Board Committees that provide analysis and input to the Board of OOCEA. These Board Committees including, descriptions and authorizations are:

Audit Committee - The Audit Committee Charter was adopted on October 27, 2004 and revised in January 2007 and November 2008 and is part of the OOCEA Policies and Procedures. The Audit Committee's primary function is to assist the Authority Board in fulfilling its oversight responsibilities by reviewing the financial information, systems of internal control which Management has established, the audit process, the process for monitoring compliance with laws and regulations and the Code of Ethics. In doing so, it is the responsibility of the Audit Committee to provide an open avenue of communication between the Authority Board, management, the Internal Auditor, and external auditors. The Audit Committee is provided specific authority to make recommendations to the Chief Financial Officer, the Executive Director and the Authority Board.

The Audit Committee shall be comprised of five voting members as follows.

- Two members of the Authority Board, each of which shall be nominated by an Authority Board member and appointed by majority vote of the Authority Board, which appointment may not be delegated.
- An employee of the City of Orlando appointed by the Mayor of the City of Orlando and approved by a majority vote of the Authority Board.
- An employee of Orange County appointed by the Mayor of Orange County and approved by a majority vote of the Authority Board.
- A member of the community recommended by the Authority Board Chairman and approved by a majority vote of the Authority.

Finance Committee – Is established through Permanent Rule 1-1.1 Finance Committee. As approved on September 26, 2007. A standing Finance Committee is created to provide the Board with recommendations regarding all finance and budget matters of the authority and such other matters as the Board may from time to time refer to the Finance Committee.

The Finance Committee shall be comprised of the Chairman of the Authority, the Secretary-Treasurer of the Authority, as the case may be, and a third member appointed by the Executive Director of the Authority.

Right-Of-Way Committee – The Property Acquisition and Disposition Procedures Manual, dated December 19, 2008 in Section 2.3 - Right of Way Committee states: A standing Right of Way Committee is appointed by the OOCEA to oversee and direct the right of way acquisition process. The purpose of the committee is to provide a forum for review and approval of property acquisition negotiations, proposed settlements, review of condemnation proceedings and mediation and other matters related to acquisition negotiations and settlements. The Committee is comprised of two (2) OOCEA Board Members and the Deputy Executive Director of Engineering and Operations. Two members of the Committee must be physically present at the meeting to constitute a quorum necessary to conduct business of the Committee. During right of way acquisition projects the Committee shall meet as required to review negotiations and provide direction to the acquisition staff and consultants. OOCEA General Counsel shall also attend Committee meetings and serve as an advisor to the Committee.

Operating Committee – No formal charter for the Operating Committee was found at the time of this report. Minutes from the very first meeting held on February 22, 1995 identify four representatives of the Expressway Authority and four representatives of FTS. The minutes stated that “The goal of the meeting was to establish an organizational structure of the committee and to draft the employee incentive plan.” Three teams were established: Quality Review Team; Financial Review Team; and Operations Management team. The balance of the minutes discussed an employee incentive plan and FTS management fee structure.

Currently, the Operating Committee consists of two Board members and the Deputy Executive Director of Engineering and Operations.

F6 The inclusion of the Deputy Executive Director of Engineering and Operations as a member of the Right-of-Way and Operating Committees is awkward at a minimum and consolidates power inordinately in a mid-management level employee of the OOCEA.

The Deputy Executive Director of Engineering and Operations sits as one of three members on the Right of Way and Operations Committees. From a governance standpoint this raises two issues.

First, having a mid-level employee as the third vote on a committee with two Board members can potentially place the employee in an awkward position. While the current Deputy Executive Director of Engineering and Operations is an experienced, long-time employee who can undoubtedly hold his own in any debate or critical vote, he is still an employee. Additionally, the third member of the Finance Committee can actually be any person named by the Executive Director.

The second issue is that the Deputy Executive Director of Engineering and Operations, by virtue of having direct managerial control over all construction, engineering and operating departments, which includes input into the evaluation of contracts and bid submittals, also, as a member of Board Committees, has input on the review of the firms and contracts he then manages. An example of this is the primary contact with the General Engineering Consultant PBS&J and HNTB Traffic and Earnings which are shown reporting directly to him on the organization chart.

R3 Reconfigure the four board committees in a manner that is consistent, balanced and meets the needs of the OOCEA on a going forward basis. In addition, restate the objectives and mission of each Committee so that they have a clear mandate as to responsibility and reporting requirements.

There are a number of ways that this can be accomplished. We provide some examples for discussion.

Option 1 – Replace Employee with Outsider

The first option would be to keep the Committees at three members, but replace the third member with an outside person who has expertise in that area. The addition of an outside expert to the Committee would enhance decision making, assure independence from internal influence and increase public transparency.

Option 2 – Increase Committee Size to Five

This option uses the format currently in use by the Audit Committee. The Audit Committee format was well defined, with a clear mission and objectives. The greatest issue will be getting additional outside members for positions that do not pay any fees.

Option 3 – Committee Make-up of Three Board Members

This option would work if the Board size was increased to seven members or more so as to avoid the problem of having a majority of Board members on a committee. The advantage is that there are only Board members on each Committee. In most public corporations, all committee members are from the BOD.

Option 4 – Committee of the Whole

One option that should be discussed is having all Board members sit on each committee. Essentially, committee work would take place prior to Board meetings. While this would extend the length of time Board members would spend at the OOCEA offices, it would eliminate the need to attend committee meetings on another day of the month. All Board members would receive the same information from OOCEA staff and experts. Since not all committees meet monthly, it is likely that only two of the four committees would need to conduct business in any given month. By virtue of being at the same time as Board meetings, the public would be more likely to attend, increasing transparency and providing a view as to how major decisions are made. While the current Committee meetings are open to the public, there are very few attendees. Under this option, discussion, analysis and review would take place during the committee meeting and votes would take place as part of the formal Board meeting.

Mission and Procedures Statement

Regardless of how the Committees are structured, they should all have very clearly defined missions, stated procedures for conducting the meetings and communicating results. This policy should also clearly indicate that when a Committee submits an item to be put on the agenda that this is done as requested.

Finally, consideration should be given to excluding the Chairman from membership on Board Committees. This is a common practice elsewhere and assures a broader division of power and input to the Board for decisions.

F. POLICIES AND PROCEDURES

BOARD MEETING PROCEDURES

F7 There are no formal or agreed upon procedures for conducting Board and Board Committee meetings.

We learned through interviews that the Board has not developed specific procedures for conducting meetings and have not adopted a common one such as “Robert’s Rules of Order”. While a number of common practices seem to have been adopted informally, it is important on occasions, where there are significant disputes, to have well defined rules and procedures.

R4 Develop or identify a set of meeting procedures for use at Board and Committee meetings.

There are many types of procedures available for organizations such as the OOCEA that can be selected. The General Counsel is well suited to identify a set and propose them. The General Counsel is also well suited to act as Parliamentarian when questions arise.

POLICIES AND PROCEDURES MANUAL

F8 There is a written policies and procedures manual in place, however, it has not had a comprehensive review to ensure that it is up-to-date and inclusive of all required topics.

The formal policies and procedures manual is organized into the following sections.

- Permanent Rules
- Business Development
- Miscellaneous
- Right of Way
- Executive
- Finance
- Operations
- Records Management
- Procurement
- Human Resources
- Information Technology
- Internal audit
- Legal

There is a great deal of inconsistency in style and content. For example, the Audit Committee description is extensive and well written, the ROW and Finance Committee descriptions are minimal and there is no description for the Operations Committee.

During interviews, we learned that a comprehensive review of the Policies and Procedures Manual is underway and that plans include conducting updates every two years in the future

R5 Continue with the review of all polices and procedures, identify areas where there are deficiencies and propose changes for the Board to consider.

We suggest that a survey of similar toll authorities be conducted to see how comprehensive their policies and procedures are. This should be followed by a logical evaluation of the exiting topics and content. HR and Legal should opine on any labor laws or statutes that may warrant changes. The plan to review the Policies and Procedures Manual every two years also is sound.

CODE OF CONDUCT

F9 OOCEA has implemented a code of conduct that meets all requirements for an organization of this type.

The current Code of Conduct is adequate and does not require any changes.

LEGAL AND REGULATORY REQUIREMENTS

F10 Addition of a General Counsel, who reports directly to the board, provides adequate oversight regarding legal and regulatory compliance issues.

This area appears to be adequately addressed and needs no changes.

G. TRANSPARENCY AND INFORMATION FLOW

F11 In the past, review and vetting of information provided to the Board for briefings or as part of Board Agenda packages, was often done informally.

One example cited by many employees and Board members was the payback analysis used to support the construction of the new office building. This analysis was prepared by the outside engineering firm, PBS&J, and reviewed by the Engineering Department, but was not reviewed by Finance Department, permitting an error in a spreadsheet to go undetected. The result was that the evaluation of the old versus new building was not done in a proper manner, leading to second guessing and continued criticism as to the economic justification of the building.

Currently management practice is to have all departments review information being provided to the Board. This is not a formal policy, only a practice that was put in place by the Executive Director.

R6 Formalize a process for analyzing agenda items to include all key departments within the authority.

Analysis of key economic, operational and public issues by all parts of the OOCEA organization will assure that analysis is well vetted and questions can be answered at Board Meetings.

F12 There has been concern expressed that the results of studies or audits are often not followed up on and communicated to stakeholders in a formal manner.

The Citizen's Advisory Council (CAC) and others have been critical of follow-up on past audits. Recently, with assistance of the external audit consultant Protiviti, the Authority has developed a log of all recommendations from all audits, with status and actions identified. Vantage reviewed the content of the 2009 Vehicle Issues Report, the 2008 Building Issues Report, the 2007 County Audit, the 2005 Limited County Audit, the 2009 Toll Revenue Audit and the July 2009 Citizen's Advisory Committee Report, as well as the current associated Action Plans. In general we find the Action Plans adequate but not optimal, hence the following recommendation.

R7 Improve the current “Action Plan” for providing feedback on management responses and status on all internal and external audits.

The current reports go a long way toward providing the feedback and transparency needed. However, to improve transparency and provide a vehicle for feedback on disagreements, we suggest the following steps be added.

- In the response section. If the reply is “Underway”, specific details as to where the response is and what steps are being taken should be provided, along with a schedule for completion.
- If the response section indicates “disagreement or do not concur”, there should be an explanation as to why in the action plan, as well as in the body of the audit report. The organization providing the recommendation should have the opportunity to respond by withdrawing, altering or indicating disagreement with EA management.
- The Action Plan should continue to be updated quarterly as specified in the current Audit Committee policy. This revised status report should be provided to the Board, the organization that conducted the audit and should be made available to the public.

F13 A review of areas audited or studied seems to focus on areas other than construction, engineering, maintenance and operations which is where the largest amount of money is spent and where the greatest risk of problems may occur.

A significant amount of the criticism in many audits and by outside stakeholders and former Board members address the costs of engineering and construction as well as the selection process. The point that needs to be understood is that the long term success of the OOCEA will only be attained if the engineering, construction, maintenance and operations is conducted in an open manner and with controls and oversight that is communicated to all stakeholders. In-depth audits of the process for selecting and consummating major agreements should be audited. Once contracts are in place, audits of work being performed should be conducted to verify that reporting, quality, controls and other key elements of project success are being performed properly.

R8 Consider balancing audit plans and schedule to include both selection and conduct of major engineering, construction, operations and maintenance activities.

Generally, contracts with engineering and construction firms include clauses that allow audit of all records, including staffing, billing, materials procurement and other activities that directly correspond to the quality and cost of a given project. These provisions should be adhered to on a regular basis by the management team and Internal Audit should periodically look at management’s processes to verify they are working. Similarly, contractors who provide maintenance and operations services should be considered for audit by Internal audit on occasion to ensure that they comply with all provisions in the contracts.

F14 Managers under the Deputy Executive Director of Engineering and Operations do not get many opportunities to provide direct information or feedback to other departments, the Executive Director, or the Board.

Under the current organization, these managers do not participate in Directors meetings every two weeks or provide direct information to the Board when requests are made.

F15 The amount and type of data provided to Board members from EA personnel and Board Committees appears to be inconsistent and does not always meet the desires of Board members.

Feed back from interviews and observations at Board meetings suggests that there are inconsistent practices regarding information provided to Board members. For example, the draft minutes of some Board Committee meetings are not provided to all Board members before the Board meeting. Also, we noted at the last Board meeting that one of the Board members had to request all of the detail associated with the five-year-plan.

R9 Develop a consistent policy for disseminating the minutes of Board Committee meetings to Board members in advance of scheduled Board meetings.

It is important that all members be made aware of the activities and decisions of Board Committees. One way to ensure this is to develop a consistent format and timing for transmitting minutes and other associated documents to all Board Members and to the Executive Director.

R10 Assure that all details are provided to Board members on key issues prior to Board meetings.

EA personnel responsible for preparing Board agenda presentations and backup should ensure that all detail available and potentially needed is provided. We recognize that there is a reasonable limit to the amount of information provided, but in the example of the Five-Year-Plan, it seems that all relevant details should be provided well in advance. In addition, to providing hard copy data, briefings should continue to be offered as needed.

H. EXPRESSWAY AUTHORITY ORGANIZATIONAL STRUCTURE

F16 The current structure of the EA management is not optimum for an organization of the size of the OOCEA.

A review of the organization raises many questions that warrant addressing. These include the following.

- The number of layers seem excessive. Currently there are as many as six layers of staffing in the EA organization. Modern organizations strive for as few layers of organization as possible, with as much transparency and communication as can be achieved. This is particularly true for the OOCEA which has faced recent criticism for poor communication and a lack of transparency. Further, with the current financial pressures, a restructuring of the organization may result in savings with no adverse drop-off in performance.
- There are different organizational titles for jobs at the same level. Three of the direct reports under the Deputy Executive Director, Finance, Administration and Planning are classified as Directors and one is the Chief Financial Officer. (Note: effective in September 2009, the Manager of Human Resources will also report directly to the Deputy Executive Director.) Under the Deputy Director of Engineering and Operations there is one Director and four direct reports who are classified as Managers. This is particularly puzzling given that the Engineering and Operations side of the organization controls the vast majority of money and resources and these Managers make more on average than the Directors do.
- The span of control for the Executive Director is relatively low given the size of the EA. Currently, the only direct management reports are two Deputy Executive Directors and the Manager of Public Relations and Communications. Spans of control for some key positions are:
 - Executive Director - 2;
 - Deputy Executive Director, Finance, Administration and Planning - 5;
 - Deputy Director of Engineering and Operations - 5;
 - Director of Business Development - 0;
 - Manager of Human Resources - 0;
 - Director IT - 6;
 - Director Procurement - 1;
 - Chief Financial Officer - 2;
 - Manager PR & Communications - 4 employees and 2 contractors;
 - Project Manager - 0;
 - Manager Toll Operations - 2 employees and 3 contractors;
 - Manager Expressway Operations - 0 employees and 3 contractors;
 - Director of Construction - 2 employees and 3 contractors;
 - Manager of Maintenance - 5 employees and 4 contractors.
- There are also a number of cases where a Director has a direct report who is a Manager who then manages the balance of the Department. These include the Manager of Procurement, and the Manager of Finance and Accounting.

F17 The Deputy Executive Director of Engineering and Construction has inordinate power and as currently organized, filters communication between his subordinates and other departments, senior management and the Board.

This organization has one director and four managers, despite the size, responsibility and authority on major projects these groupd have. His direct reports do not attend staff meetings and rarely provide information to the BOD directly. His position, as a voting representative on

the ROW and Construction Committees is awkward. Further, his subordinates are not part of the staff meetings and do not provide direct input to the Board when issues arise.

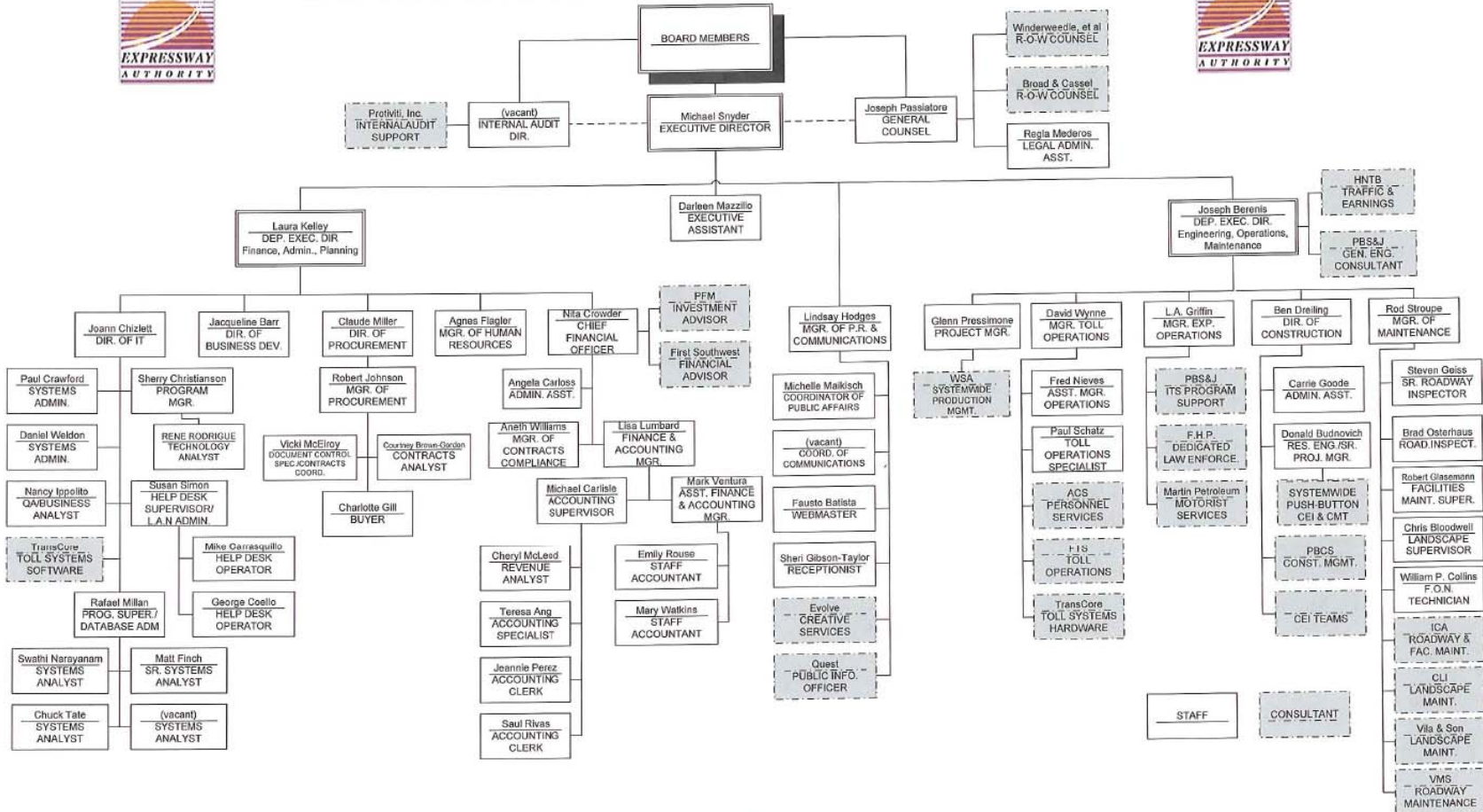
R11 Perform a comprehensive review of the EA organization with the goal of reducing the number of layers, increasing spans of control and determining whether all positions are necessary given today's cost control emphasis, and the upcoming implementation of the five-year-plan.

This review could be done internally, but might be more effective if an outside facilitator is hired who is experienced with these efforts. In conjunction with this effort, job descriptions should be updated, based on future work load.

R12 Assess all positions before hiring to determine if a modified organization would provide for reduced cost while achieving an appropriate level of service.

During the last year, ten new positions were created at an annual salary level of just under \$1 million. These positions were formerly held by outside consultants and the Executive Director had an analysis prepared for each position. There are still a number of other positions that are being considered.

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY



9/10/2009

I. EXECUTIVE DIRECTOR PERFORMANCE REVIEW

There has been recent discussion about annual job evaluations for the OOCEA Executive Director. A review of other Authorities in Florida, conducted by the OOCEA General Counsel, suggests a framework for how this might be accomplished in a manner that provides input from all Board members, provides both quantitative and qualitative input, is appropriate under the current contract, and is transparent.

Our understanding is that the current Executive Director contract requires an evaluation should a merit wage increase be considered in any given year. Historically, a memo with a subjective performance review was provided only in years when a merit raise was proposed. Conversely, one could argue that until an evaluation is complete, the Board cannot decide whether or how large a merit increase should be. Another issue is who should conduct the review. In fact, if all Board members have an equal authority, then they should all have input. The recommendations that follow are intended to serve as an example of how this performance review might be structured. Other alternatives can also be designed, however, we recommend that any approach be transparent to all employees and stakeholders, be fair to the Executive Director, provide a quantitative framework that supports any decisions and permits input from all Board members.

R13 Implement a structured, annual evaluation of the Executive Director, with input from all members of the Board in a manner that permits both positive and negative feedback in a transparent manner.

The evaluation would be conducted as follows.

- Develop an evaluation form similar to the one attached. It should contain five columns for each Board member with seven categories for evaluation criteria, an area for comments regarding either specific positive attributes or negative concerns that may warrant action, and a section for comments and recommendations.
- Five forms would be prepared by the General Counsel. These would be then provided to each of the Board members for their input.
- Once completed, the General Counsel would provide a summary of evaluations by category, with averages provided as well as a summary of comments and suggestions as to potential merit increases. (Each category would be weighted with a total of 100 points for all categories and each evaluation would be between 1 and 5 with 1 being the lowest rating and 5 being the highest. A rating of 3 would indicate minimally acceptable performance.)
- The comments could include accolades, recommendations for improvement or a recommendation that the contract be terminated or not extended.
- The Board would then meet as a Committee of the whole, with the General Counsel to discuss the results and any action or merit raise that is appropriate.
- Once a decision is made by the Board as to how to proceed, it would be presented at the next Board meeting. The summarized evaluation sheet with scores could be made public.

There are a number of ways to design an employee evaluation form, including numerous criteria for evaluation. The survey performed by the OOCEA General Counsel provides numerous sets of criteria. A system can be tailored for the OOCEA Executive Director, however, for the sake of discussing this we are using the Miami-Dade Expressway Authority format and descriptions taken from various sources.

OOCEA Executive Director Performance Evaluation for 2009 - Scoring Matrix

Key Task and Core Competency	Max Points	A	B	C	D	E	Ave
Vision, Mission and Strategy	11						
Accomplishment of Management Objectives	11						
Fiscal Management	11						
Operations Management	11						
Board Staff Relationship	11						
External Liaison and Public Image	11						
Performance Measures	34						

COMMENTS ON EMPLOYEE STRENGTHS AND SPECIFIC ASPECTS OF PERFORMANCE

RECOMMENDATIONS ON MERIT INCREASE OR OTHER ACTION

Evaluation Rating Scale

- 1 - Performance is consistently below expectations
- 2 - Performance sometimes meets expectations and needs improvement
- 3 - Performance consistently achieves minimal expectations
- 4 - Performance often exceeds expectations
- 5 - Performance far exceeds expectations

The following are the definitions of the Key Task and Core Competency Categories.

Vision, Mission and Strategies

Does the Executive Director (ED) work with the Board to develop a clear vision? Does the ED translate OOCEA missions into realistic goals and objectives? Does the ED work with both the Board and staff to develop a long-range plan? Does the ED understand what changes must take place for the OOCEA to accomplish its mission and realize its goals?

Accomplishments of Management Objectives

Has the ED successfully cultivated a qualified senior staff and provided a model for effective behavior? Has the ED built morale among the staff? Has the ED ensured that there are appropriate systems in place to facilitate day-to-day operations, including education and outreach, policy development, administration and operations, and resource development?

Fiscal Management

Is the ED knowledgeable regarding financial planning, budgeting, and management of the systems finances? Does the ED understand the overall financial picture? Have strategic and operational planning been linked to the budgeting process? Is there a clear and accurate communication of all accounting and financial issues to the Board?

Operations Management

Does the ED have adequate knowledge to effectively operate and organization like OOCEA? Is there a sound risk management system in place? Are there appropriate polices for personnel and staffing? Is the OOCEA in compliance with all legal and regulatory requirements?

Board/Staff Relationship

Is there an appropriate level of dialogue between the ED and both the Board and Staff so as to assure that the Board maintains a good knowledge of the OOCEA? Has the ED assured that there is an effective and collegial working relationship between staff and Board members?

External Liaison and Public Image

Does the ED maintain a positive professional image in the community and act as an ambassador? Does the ED cultivate effective relationships with community and business leaders, customers, public officials and relevant professional organizations? Is the ED an articulate and knowledgeable spokesman for the OOCEA? Is the EM knowledgeable about the public policy dimension of the OOCEA's work?

PERFORMANCE MEASURES

There are seventeen performance measures which are applied annually by the Florida Transportation Commission. These should be each be given a score of 2 points that are achieved when in compliance. For example, in 2008 OOCEA received passing grades on 14 of 17 items for a score of 28 out of 34.

