



MEMORANDUM

To: Governing Board of the Solid Waste Disposal and Recyclable Materials Processing Authority of Broward County, Florida

From: Jamie A. Cole, Esq

Date: February 7, 2024

RE: Delegation of Power to Contract – Meeting of 02/21/2024

An issue has arisen regarding the process for entering into contracts. Under Section 8.2.6 of the Interlocal Agreement (“Interlocal Agreement”) creating the Solid Waste Disposal and Recyclable Materials Processing Authority of Broward County, Florida (the “Authority”), the Governing Board “has power and authority to . . . [e]nter into agreements for services in any amount, subject to applicable law.” Section 8.3 sets forth the powers of the Executive Committee but does not include the power to enter into contracts. Section 8.2.12(a) gives the Governing Board the power to approve bylaws that would, through delegation of authority, set forth “powers and authority of the Executive Committee or Executive Director to approve and execute contracts for goods, services, and real property.” By-laws have not yet been prepared or approved by the Governing Board but will be prepared in the near future once an Executive Director is in place.

In the interim period until by-laws are approved and an Executive Director is hired, the lack of authority of the Executive Committee to enter into contracts is problematic for several reasons. First, there would be operational issues caused by the delay in entering into contracts because the Governing Board does not meet often. Second, the County Ethics Code prevents elected officials from serving on selection committees. The Authority recently issued an RFP for a master plan consultant. The Executive Committee plans to directly rank and select the

consultant and enter into a contract with it. So long as the Executive Committee has the power to enter into that contract, it is the final purchasing authority, and the County Ethics Code provision does not apply. If it does not have the power and is instead merely making a recommendation to the Governing Board, the Executive Committee could be viewed as acting as a selection committee.

Accordingly, we recommend that the Governing Board specifically delegate to the Executive Committee the power to enter into following agreements and matters (i) the Agreement with the County for holding of the Authority's Funds, (ii) the Agreement with the Broward League of Cities for Administrative Services, (iii) the Agreement with MGT for Executive Director search, (iv) the Employment Agreement with the Executive Director, (v) the Agreement with the Interim Authority Counsel (which has been previously delegated), (vi) the Agreement with the Consultant for development of the Master Plan, and (vii) any other agreement for services or goods not to exceed \$100,000.00 in a calendar year or in the aggregate.

If you have any questions regarding the matters presented above, please contact me.