

Audit Follow-up

As of November 30, 2012



Sam M. McCall, Ph.D., CPA, CGFM, CIA, CGAP
City Auditor

Compliance with the City's MBE Program Policy and Federal DBE Policy for Selected Capital Construction Projects (Report #1202 issued February 6, 2012)

Report #1304

January 23, 2013

Summary

This is the second follow-up on the Audit of Compliance with the City's Minority Business Enterprise (MBE) Program Policy and Federal Disadvantaged Business Enterprise (DBE) Policy for Selected Capital Construction Projects (Report #1202, issued February 6, 2012). All eight action plan steps from the audit report were due to be completed by November 30, 2012. Economic & Community Development (ECD) management reports that three of the eight action plan steps due have been completed and significant progress has been made toward revising the Minority Business Enterprise (MBE) program addressed in the remaining five steps.

The completed steps included:

- 1) Implementing monitoring procedures during the construction phase and at the end of each project to ensure that program participants are performing the work as reported; and
- 2) Prior audit report recommendations are being considered in future management actions to address the issues and make improvements in the City's MBE Program (this step encompassed two action plan steps).

The remaining five action plan steps are dependent upon the approval and adoption of the revisions that will be made to the MBE/DBE Program. The completion date for the remaining steps was amended from October 1, 2012, to March 31, 2013. These steps included:

- 1) Re-evaluating and revising the MBE Program and policies to clearly describe program goals and objectives and compliance requirements and define terms used in the policy critical to understanding and implementing the MBE Program.
- 2) Re-evaluating and revising the MBE policies to define program intent and the types of services that are eligible for participation in the MBE Program, specifically as it relates to "MBE general contractors" as appropriate.

- 3) Working with participants of the MBE Program, both prime contractors and MBE subcontractors, to define what constitutes success, and develop measures to assess the program's success report of the MBE/DBE Programs' level of success.
- 4) Increasing the level of penalties for submitting false information on the MBE Utilization Certification. The MBE Office, working with the City Attorney's Office, decided to continue to use one Affidavit to be signed by both the prime contractor and subcontractor (instead of separate Affidavits). The revised Affidavit is being used and states "under penalties of perjury, the undersigned declares that he or she has read the foregoing Certification and that the facts stated in it are true." After the policy revisions are implemented, management will need to review the new Affidavits to ensure it requires all information needed to determine compliance with the revised policy.
- 5) Developing and providing training opportunities on the revised City's MBE policies and their application. The MBE Office has been providing various trainings since May 2012 with Public Works inspection staff, Code Enforcement staff, prime contractors and MBE subcontractors. Additional training will be conducted as needed as policy revisions are adopted by the City Commission.

We appreciate the cooperation and assistance provided by the MBE Office staff and ECD management during this audit follow-up.

Scope, Objectives, and Methodology

We conducted this audit follow-up in accordance with the International Standards for the Professional Practice of Internal Auditing and Generally Accepted Government Auditing Standards. Those standards require we plan and perform the audit follow-up to obtain sufficient, appropriate evidence to provide a

reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit follow-up objectives.

Original Report #1202

The scope of report #1202 was in response to the City Manager’s request to determine compliance with the City’s MBE Program Policies and federal DBE Program regulations, as applicable, on each of the City projects selected. To do this, we judgmentally selected and tested 24 City construction projects completed and/or in progress between March 2003 and August 2011 to determine:

- a. Were the amounts reported as paid to MBE subcontractors on the Affidavits signed by both the prime contractors and MBE subcontractors and submitted to the City, accurate, eligible, and in compliance with City MBE Policy Section 16.5.74.e?
- b. For DBE projects, were the amounts reported as paid to the DBE subcontractor on the Affidavits signed by both the prime contractors and subcontractors and submitted to the City, accurate, eligible, and in compliance with federal regulations 49 CFR 26.55?

The scope of the original audit was to determine if the selected Affidavits were accurate and claimed MBE/DBE participation amounts were eligible. We did not examine the City’s bid proposal process related to these 24 projects to determine if the bids were properly awarded based on eligible MBE/DBE participation percentages.

Report #1304

This is our second follow-up on action plan steps identified in audit report #1202. The purpose of this follow up is to report on the progress and status of efforts to complete all action plan steps due for completion by November 30, 2012. To determine the status of the action plan steps, we reviewed relevant documentation and interviewed staff.

Background

In May 2011, the MBE Office expressed concern that a prime contractor may have misrepresented the extent of use of MBE subcontractors on at least one City capital construction project during the bidding phase, construction phase, and final reporting phase. To determine the extent that misrepresentations may have also involved additional prime contractors, the Office of the City Auditor was asked to audit additional City

capital construction projects with prime contractors that have been awarded City contracts.

We judgmentally selected five prime contractors and the related MBE subcontractors for 21 completed capital construction projects and three projects in progress and reviewed 31 Project Completion Affidavits. Prime contractors and MBE subcontractors submitted signed Project Completion Affidavits at the end of projects to certify the amounts paid to MBE or DBE subcontractors, the amount of work performed by the MBE or DBE subcontractor, and the amounts the MBE or DBE subcontractor further sub-subcontracted out to other businesses.

Our audit results showed the following key violations and/or issues:

- 1) One violation was due to one prime contractor (M of Tallahassee, Inc.) included ineligible amounts paid to an MBE subcontractor when the MBE subcontractor did not perform any work other than providing assistance in procurement of essential personnel, equipment, materials or supplies required for performance of the subcontract. The only amounts that were eligible to be counted toward MBE participation were the fees for making the purchases, not the costs of the materials or services themselves. [Note: City management notified M of Tallahassee of this violation and fined M of Tallahassee \$10,000 and will impose enhanced monitoring of future projects. M of Tallahassee paid the fine in October 2011 and is permitted to bid on and be awarded City contracts. Construction Support Southeast, Inc. was fined \$9,134 in January 2012 for this violation and has not yet paid the fine. Until CSS pays the fine, the City will not directly contract with CSS or allow prime contractor payments to CSS to count toward MBE participation.
- 2) Two violations were due to one prime contractor when Allen’s Excavation, Inc. (Allen’s) included the amounts paid to a MBE subcontractor for a broker’s fee or commission solely to increase the MBE participation. [Note: City management notified Allen’s of these violations and fined Allen’s \$25,000 and will impose enhanced monitoring of future projects. Allen’s paid the fine in October 2011 and is permitted to bid on and be awarded City contracts. Unique Concrete Construction, Inc. was fined \$3,578 in January 2012 for this violation and subsequently paid the fine.]
- 3) Forty-five percent (45%) of the MBE/DBE Affidavits we tested on 21 completed projects were inaccurate due to ineligible amounts included in MBE/DBE participation.

- 4) Ten violations were due to three prime contractors (Allen’s; North Florida Asphalt, Inc.; and Sandco, Inc.) directly purchasing materials for MBE subcontractors and including that amount in their reported MBE participation.
- 5) Two violations were due to two of the five prime contractors (Allen’s and North Florida Asphalt) directly purchasing materials for DBE subcontractors and including that amount in their reported DBE participation.

Previous Conditions and Current Status

In report #1202, we provided recommendations to City management related to areas that need to be addressed in the City’s MBE and DBE Programs going forward. Management’s Action Plan consisted of eight action plan steps due for completion before or by November 30, 2012. The status of the eight action plan steps due is provided in Table 1 below.

**Table 1
Action Plan Steps from Audit Report #1202
Due as of November 30, 2012, and Current Status**

Action Plan Steps Due as of November 30, 2012	Current Status
To Clarify MBE Program Policies Related to the MBE Subcontractors and General Contractors	
<ul style="list-style-type: none"> • Re-evaluate the MBE Program and policies and revise accordingly to clearly describe program goals and objectives and compliance requirements and define terms used in the policy critical to understanding and implementing the MBE Program. 	<ul style="list-style-type: none"> ❖ In progress. The MBE Office reported they have substantially completed the revision to the MBE policies to define program intent and the types of services that are eligible for participation in the MBE Program, specifically as it relates to “MBE general contractors” as appropriate. The proposed revisions are awaiting review and input from the City Attorney’s Office. The completion date has been amended to March 31, 2013.
<ul style="list-style-type: none"> • Re-evaluate and revise the MBE policies to define program intent and the types of services that are eligible for participation in the MBE program, specifically as it relates to “MBE general contractors” as appropriate. 	<ul style="list-style-type: none"> ❖ In progress. See explanation above.
<ul style="list-style-type: none"> • Consider prior audit report recommendations in future management actions to address the issues and make improvements in the City’s MBE Program. 	<ul style="list-style-type: none"> ✓ Completed. Management reports that they have taken the prior audit report recommendations into consideration in their actions.
To Evaluate the Success of the MBE/DBE Programs	
<ul style="list-style-type: none"> • City management work with participants of the MBE Program, both prime contractors and MBE subcontractors, to define what constitutes success, and develop measures to assess the program’s success report of the MBE/DBE Programs’ level of success. 	<ul style="list-style-type: none"> ❖ In Progress. The MBE Office reported they have substantially completed the revision to the MBE policies to define program intent and the types of services that are eligible for participation in the MBE Program, specifically as it relates to “MBE general contractors.” The proposed revisions are awaiting review and input from the City Attorney’s Office. The completion date has been amended to March 31, 2013.
To Improve Monitoring of the MBE/DBE Programs	
<ul style="list-style-type: none"> • MBE Office work with Public Works Inspection staff to implement monitoring procedures during the construction phase and at the end of each project to ensure that program participants are performing the work as reported. 	<ul style="list-style-type: none"> ✓ Completed. Public Works worked with the City Attorney’s Office and MBE Office to revise the MBE forms to be submitted by contractors with their proposal to report progress payments during the project. Additionally, Public Works inspectors are required to periodically record in their daily logs observations of MBE contractors on the work site.
<ul style="list-style-type: none"> • MBE Office work with the City Attorney’s Office to increase the level of penalties for submitting false information and to develop two separate Affidavits, one for prime contractors and one for MBE/DBE 	<ul style="list-style-type: none"> ❖ In progress. Management decided to use one Affidavit to be signed by both the prime contractor and subcontractor (instead of separate Affidavits). The revised Affidavit is being used and states “under penalties of perjury, the undersigned declares that he or

<p>subcontractors to complete with the information necessary to determine compliance with the MBE/DBE policies.</p>	<p>she has read the foregoing Certification and that the facts stated in it are true.” After the policy revisions are implemented, management will need to review the new Affidavits to ensure it requires all information needed to determine compliance with the revised policy. The proposed policy revisions include definitions and penalty levels for policy violations. The completion date has been amended to March 31, 2013.</p>
<ul style="list-style-type: none"> Consider prior recommendations in their future management actions to address the issues and make improvements in the City’s MBE Program. 	<p>✓ Completed. MBE management reports that they have taken the prior audit report recommendations into consideration in their actions.</p>
<p>To Provide Training Opportunities for Prime Contractors and MBE/DBE Subcontractors</p>	
<ul style="list-style-type: none"> MBE Office develop and provide training opportunities on the City’s MBE policies and their application. 	<p>❖ In progress. The MBE Office has provided various trainings since May 2012 with Public Works inspection staff, Code Enforcement staff, prime contractors and MBE subcontractors. Additional training will be conducted as needed as policy revisions are adopted by the City Commission. The proposed policy revisions are awaiting review and input from the City Attorney's Office. The completion date has been amended to March 31, 2013.</p>

Table Legend:

- Issue to be addressed from the original audit

❖ In progress.

✓ Completed.

Conclusion

As described above, three of the eight action plan steps have been completed as of November 30, 2012. The remaining five action plan steps are dependent upon the approval and adoption of the revisions that will be made to the MBE/DBE Program. The completion date for the remaining four action steps due was amended from October 1, 2012, to March 31, 2013.

We appreciate the cooperation and assistance provided by the MBE Office staff and ECD management during this audit follow-up.

Appointed Official’s Response

City Manager:

The subject audit was initiated at the request of the City Manager to investigate suspected violations of the City MBE Program. The audit identified policy violations by several prime and subcontractors. Fines and/or sanctions were assessed against the prime and subcontractors that were found to have violated the MBE policy. The action plan which resulted from the

audit called for steps to strengthen the policies and procedures used to monitor MBE policy compliance and to re-evaluate and update the overall MBE policy.

The contract monitoring process has been strengthened by utilizing Public Works inspection staff to assist the MBE staff in performing on-site project monitoring. Code Enforcement staff are also being cross-trained to assist in on-site monitoring. Also, there have been revisions in the documents for payment requests and MBE compliance affidavits to strengthen MBE monitoring and enforcement.

The City has conducted a number of workshops with contractors, vendors and City staff to evaluate the current MBE policy and solicit recommendations for how the policy can be enhanced. Those recommendations were compiled and a revised MBE policy has been drafted and is undergoing internal review. The draft revised policy will include the addition of a Small Business Enterprise (SBE) component. We anticipate that the revised policy will be submitted for review and approval by the City Commission in the first quarter of FY 2013.

Copies of this audit follow-up #1304 or audit report #1202 may be obtained from the City Auditor’s website (<http://talgov.com/auditing/index.cfm>) or via request by telephone (850 / 891-8397), by FAX (850 / 891-0912), by mail or in person (Office of the City Auditor, 300 S. Adams Street, Mail Box A-22, Tallahassee, FL 32301-1731), or by e-mail (auditors@talgov.com).

Audit follow-up conducted by:

Beth Breier, CPA, CISA, Audit Manager
 Sam M. McCall, Ph.D., CPA, CGFM, CIA, CGAP, City Auditor