

# **Audit**

## **Follow-up**

**As of May 31, 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 #1211

June 19, 2012

### **Summary**

This is the first follow-up on the Audit of Compliance with the City's MBE Program Policy and Federal DBE Policy for Selected Capital Construction Projects (Report #1202, issued February 6, 2012). Three of eight action plan steps were due as of March 31, 2012. Economic & Community Development (ECD) management reports that significant progress has been made toward revising the Minority Business Enterprise (MBE) program, but as of May 31, 2012, none of the three action plan steps due have been completed. The completion date for each of the three action steps due was amended to be October 1, 2012. These steps included:

- 1) 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;
- 2) 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
- 3) Increasing the level of penalties for submitting false information and developing two separate Affidavits, one for prime contractors and one for MBE/DBE subcontractors to complete with the information necessary to determine compliance with the MBE/DBE policies.

In audit report #1202, we worked very closely with key staff from various City offices and departments to determine whether violations of the City's MBE policies and federal DBE policies had occurred. We determined there were 13 violations of three City MBE policies and two violations of one federal DBE regulation when ineligible amounts were included in

MBE/DBE participation reported to the City on MBE/DBE Affidavits for 14 of 21 construction projects reviewed. These violations included:

- One prime contractor committed two violations by paying a MBE subcontractor a broker's fee or commission solely to increase their MBE participation. The prime contractor and MBE subcontractor were fined \$25,000 and \$3,578, respectively, by the City. Both have paid the fines.
- One prime contractor committed one violation by including ineligible amounts paid to a MBE subcontractor when the MBE subcontractor did not perform any work other than to provide assistance procuring personnel, equipment, materials, or supplies required for performance of the subcontract. The prime contractor and MBE subcontractor were fined \$10,000 and \$9,134, respectively, by the City. To date, only the prime contractor has paid the fine.
- Three of five prime contractors committed 10 violations of two City MBE policies and one Federal DBE regulation by directly purchasing materials for MBE or DBE subcontractors and then improperly claiming the purchases for MBE/DBE participation. Enhanced monitoring will be performed by City staff; no fines were imposed.

We provided recommendations to address areas that should be improved in the City's MBE/DBE Program, including reviewing and implementing prior audit recommendations related to the MBE Program administration. Management proposed eight action plan steps to address our recommendations. Three of those action plan steps were due by March 31, 2012.

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 MBE 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 #1211*

This is our first 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 action plan steps due for completion as of March 31, 2012. To determine the status of the action

plan steps, we interviewed staff and reviewed relevant documentation.

## *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 submit 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 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 will remain on suspension until the fine is paid.]
- 2) Two violations were due to one prime contractor 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 were 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, three being due for completion by March 31, 2012. The status of the three action plan steps due is provided in Table 1 below.

**Table 1  
Action Plan Steps from Audit Report #1202  
Due as of March 31, 2012, and Current Status**

Action Plan Steps Due as of March 31, 2012	Current Status
<b>To Evaluate the Success of the MBE/DBE Programs</b>	
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>In Progress.</b> Management reports that the policy revision is substantially completed and the policy is currently being reviewed by the City Attorney’s Office and City Departments. The MBE Office held seven focus group meetings with affected businesses and City employees to assist management identify barriers and recommendations to improve the City’s efforts. The completion date has been amended to October 1, 2012.</li> </ul>
<b>To Improve Monitoring of the MBE/DBE Programs</b>	
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>In Progress.</b> Management reports that the MBE Office staff and Public Works Inspection staff are working together to conduct scheduled and unscheduled project monitoring visits. Public Works field inspectors are monitoring for MBE participation as part of their regular project site inspections. Training sessions are also being scheduled for Code and other ECD field staff to cross-train them for assistance with onsite monitoring. The completion date has been amended to October 1, 2012.</li> </ul>
<ul style="list-style-type: none"> <li>• 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 subcontractors to complete with the information necessary to determine compliance with the MBE/DBE policies.</li> </ul>	<ul style="list-style-type: none"> <li>❖ <b>In Progress.</b> New forms and documentation have been created and implemented which includes new affidavit forms which provide for legal penalties if falsified. Management reports that the policy revision is substantially completed and the policy is currently being reviewed by the City Attorney’s Office. The proposed policy revisions include definitions and penalty levels for policy violations. The completion date has been amended to October 1, 2012.</li> </ul>

Table Legend:

• Issue to be addressed from the original audit

❖ In progress

## *Conclusion*

As described above, of the three action plan steps that were to be completed as of March 31, 2012, none have been completed, but management reported significant progress had been made on each. The completion dates were amended accordingly.

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:**

This audit was initiated based on concerns raised by City staff regarding contractor compliance with the City's MBE policy. City staff worked closely with the City Auditor in this audit including the development of recommended penalties for those found in violation of the policy. The action plan submitted in the original audit report identified 8 action items. The majority of those items have been completed. The outstanding items involve revisions to the City's MBE policy and programs. City staff have conducted focus group meetings with MBE and non-MBE contractors and subcontractors, professional consultants and City staff and collected information on how the current policy is working and recommendations for improvements. At the same time staff has enhanced contract compliance monitoring through use of field staff from various City

Departments. Forms and affidavits associated with verification of MBE participation have been revised to allow for substantial penalties if falsified.

The revised MBE policy is being expanded to include Small Business Enterprises (SBE's) and will be coordinated with City procurement. The proposed policy revisions are being developed with input from the City Attorney and other City Departments. There will also be an opportunity for the Minority Business Enterprise Advisory Committee and the focus group participants to comment on the proposed policy revisions. This input will be considered in shaping the final policy recommendations which will be presented to the City Commission for consideration. The completion date for adoption of the policy has been adjusted to allow for the revisions to be properly vetted.

As noted in the Audit Follow-up penalties were assigned to all the contractors and subcontractors that were found to be in non-compliance with the policy. The penalties were adjusted based on the severity of the offense. Four of the violators were issued fines and three have paid those fines. The contractor that has not paid their fine has been barred from participation in future City contracts until the fine is paid.

We appreciate the assistance of the City Auditor's Department in identifying areas for improvement in the City's MBE policy. The items identified in the original audit report will be addressed in the revised policy which will be submitted to the City Commission.

Copies of this audit follow-up #1211 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](mailto:auditors@talgov.com)).

Audit follow-up conducted by:

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