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City Auditor

HIGHLIGHTS

Highlights of City Auditor Report #1609, a report to the City Commission and City management

WHY THIS AUDIT WAS DONE

In November 2015, the City Auditor's Office was advised by City management that a MBE subcontractor working on a City project alleged that his company had not been used to render the full value of services provided by the initial City contract. The value of services to be rendered, which were not provided, approximated \$100,000 according to the MBE subcontractor. City management asked that the City Auditor's Office review the circumstances to determine if the allegation was substantiated. City management also asked the City Auditor's Office validate that a final check offered to the MBE subcontractor by the non-MBE subcontractor, under whom the MBE subcontractor worked on the project, represented payment for services rendered on the project. Specifically, City management requested the City Auditor's Office verify that the offered check did not represent a consolation (or fraudulent) payment offered to the MBE contractor. In addition to addressing the noted allegation and concern, the City Auditor also addressed compliance with City MBE Policy for the project and the adequacy of the City MBE Office's management, monitoring, and oversight of the project.

WHAT WE CONCLUDED

Our inquiry showed the prime contractor, through its own resources and those of its subcontractors, exceeded the total MBE participation (dollar value) required for the project. However, a significant part did not count as contractual participation because approval to add four MBE entities used on the project was not requested from and/or approved by the City MBE Office. Because the MBE participation did not meet contractual requirements, the prime contractor may be in breach of contract and subject to City-imposed sanctions.

Also, the City MBE Office did not adequately monitor MBE activity on the project. Specifically, indications of likely noncompliance were not identified and acted on. Further, the MBE Office did not respond to a request to substitute MBE entities. Lastly, the MBE Office did not track MBE participation for the last 16 months of the project construction period.

Notwithstanding those issues, our audit showed no evidence of any fraudulent or inappropriate payments (or offers).

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March 2, 2016

Inquiry into Compliance with the City MBE Policy by certain contractors and subcontractors on the Upper Lake Lafayette Nutrient Reduction Facility Project

Our inquiry showed a contractor did not comply with all MBE participation requirements established by a City contract and the City MBE Office did not adequately monitor and oversee MBE participation on the applicable project. However, no evidence of bribes or other inappropriate payments were found.

WHAT WE RECOMMENDED

Recommendations were made to address the issues and concerns identified through this audit inquiry. Those recommendations included the following:

- Because the prime contractor did not meet contractually required MBE participation requirements for the project addressed by this audit inquiry, City management should consult with the City Attorney's Office to ascertain whether sanctions and penalties are appropriate. Consideration should be given to all circumstances in making that determination.
- Upon resolution of pertinent issues, the City MBE Office should work with applicable parties (prime contractor, non-MBE subcontractor, and applicable MBE subcontractors) to ensure proper payment is made for all services rendered on the project.
- City MBE Office staff should be trained to timely identify and respond to indications that MBE participation goals (requirements) for a project are in jeopardy of not being met.
- City MBE Office staff should be required to provide a direct and timely written response to a request received from a contractor to substitute or otherwise change contractually established MBE participation goals for specific MBE entities. To further ensure responses are proper and appropriate, the MBE Office planned response to such requests should be reviewed and approved by the Assistant City Manager for Administrative and Professional Services before being submitted to the requesting contractor.
- The City MBE Office should complete the necessary training on the previously implemented software application for monitoring MBE participation and commence using that application to timely track and monitor MBE participation on applicable City projects.

We would like to thank staff in the City MBE Office, staff in applicable City Underground Utilities divisions, and proprietors and staff of the contractors and subcontractors for their assistance and cooperation during this audit inquiry.

Office of the City Auditor

Inquiry into



T. Bert Fletcher, CPA, CGMA
City Auditor

Compliance with the City Minority Business Enterprise Policy by certain contractors and subcontractors on the Upper Lake Lafayette Nutrient Reduction Facility Project

Report #1609

March 2, 2016

Executive Summary

Our inquiry showed a contractor did not comply with MBE participation requirements established for two MBE entities in its City contract for the Upper Lake Lafayette Nutrient Reduction Facility (ULLNRF) Project. The City MBE Office did not adequately monitor and oversee MBE participation on that project. However, there was no evidence of any bribes or other inappropriate payments or offers.

Overview. The City Auditor's Office was advised by City management in November 2015 that a MBE subcontractor (Florida Developers, Inc.) working on the ULLNRF project alleged that his company had not been used to render the full value of services provided by the terms of the initial contract executed by the City. The value of the services to be rendered, which were not provided, approximated \$100,000 as alleged by the MBE subcontractor.

City management asked that the City Auditor's Office review the circumstances to ascertain if the MBE subcontractor's allegation was substantiated. City management also asked that the City Auditor's Office validate that a final check in the amount of \$3,633 offered to the MBE subcontractor by the non-MBE subcontractor, under whom the MBE subcontractor worked on the project (Allen's Excavation, Inc.), represented payment for

services rendered on the project. Specifically, management requested the City Auditor's Office verify that the offered check did not represent a consolation payment, or fraudulent bribe, offered to the MBE subcontractor by the non-MBE subcontractor.

A decision was made by the City Auditor that, in addition to the allegation and concern, the inquiry would also address compliance with City MBE Policy for the project and the adequacy of City MBE Office's management, monitoring, and oversight of the project.

As of the end of our audit fieldwork in early February 2016, the City was withholding payment of the remaining \$123,617 owed the prime contractor (Council Contracting, Inc.) for completion of the project. The MBE Office indicated the final payment was being withheld until this audit was completed and a resolution of applicable audit issues was determined. Withholding of that final payment was authorized pursuant to the terms of the City's contract with the prime contractor.

Audit Inquiry Procedures. To meet our audit objectives we:

- Met and discussed project activity with:
 - The proprietor and agent of the applicable MBE subcontractor (Florida Developers, Inc.) that made the allegation.
 - Proprietors or agents of the prime contractor (Council Contracting, Inc.)

for the project and the applicable non-MBE subcontractor (Allen's Excavation, Inc.) that was the subject of the allegation.

- The City's MBE Office.
- City project construction management staff.
- Reviewed City payments to the prime contractor and related documentation.
- Obtained and reviewed project payments/receipts and related support (invoices) made available by both the applicable MBE subcontractor and the applicable non-MBE subcontractor.
- Reviewed available project records at the City's MBE Office.

Audit Inquiry Results. Council Contracting, Inc. (Council) as the prime contractor, through its own efforts and those of its non-MBE subcontractor (Allen's Excavation, Inc.), hired and paid certified MBE contractors a total of \$695,295 for work on the ULLNRF project. Additionally, as a certified female MBE entity, Council also expended and reported additional MBE participation in the amount of \$285,000. The total of those two amounts is \$980,295. That total exceeds the planned total MBE participation (\$712,500) established in the initial contract executed with the City.

Notwithstanding that circumstance, because a significant part of that participation was performed by certified MBE entities that were not addressed in the initial contract and also not approved as substitutes by the City MBE Office, that part (in the amount of \$445,241) does not count as authorized MBE participation for this project. Based on terms and provisions established by the City contract with Council, actual MBE participation was \$178,846 short of established goals. That shortage pertained to two MBE subcontractors addressed in the City contract with Council. Specifically, the value of services rendered by

Florida Developers on the project was \$100,452 less than contractual levels, while the value of services rendered by another MBE entity (Unique Concrete Construction LLC) was \$78,394 less than contractual levels. Accordingly, we determined the allegation made by Florida Developers was valid. As a result, Council, as the prime contractor, may be in breach of contract and subject to City-imposed sanctions and penalties.

We also found that the City MBE Office did not adequately manage and monitor MBE participation in the ULLNRF project. Specifically, indications of likely noncompliance (red flags) were not adequately identified and acted on by the City MBE Office. Additionally, the City MBE Office did not provide a response approving or disapproving a direct written request to substitute MBE entities (i.e., add a new MBE entity and reduce participation levels for others). Lastly, the City MBE Office did not track MBE participation for the last 16 months of the project construction period. This lack of adequate management and oversight likely contributed to the noncompliance by the contractor as to the contractually required MBE participation.

Lastly, our analyses of records at both the applicable non-MBE subcontractor (Allen's Excavation, Inc.) and MBE subcontractor (Florida Developers, Inc.) and related payments showed no evidence of a bribe or other inappropriate payment or payment offer.

Recommendations. City management should consult with the City Attorney's Office to determine whether sanctions and penalties should be applied to Council, as the prime contractor, for lack of compliance with contractually established MBE participation levels (goals). City management should also work with applicable parties (Council, Allen's, and Florida Developers) to ensure proper payment is made for all services rendered by Florida Developers.

Most importantly, we also recommend improvements in the MBE Office’s management and oversight of capital projects involving contractually and policy established MBE participation. Recommendations include: (1) training MBE Office staff to timely identify and respond to indications that MBE participation goals are in jeopardy of not being met; (2) MBE Office staff providing direct and timely written responses to requests received from, or on behalf of, prime contractors to substitute or otherwise change contractually established MBE participation goals for specific MBE entities; with proposed decisions regarding such requests being reviewed and approved at the Assistant City Manager level; and (3) use of the previously implemented software application acquired to track and monitor MBE participation on City projects.

Acknowledgement. We would like to thank and acknowledge the cooperation and assistance from staff in the City MBE Office, staff in applicable City Underground Utilities divisions, and proprietors and staff of the contractors and subcontractors during this audit inquiry.

Scope, Objectives, and Methodology

The Office of the City Auditor is an independent appraisal activity within the City organization for the review of operations as a service to the City Commission and to management. Accordingly, we periodically respond to requests from City management to independently review instances of potential fraudulent activity and potential violations of established City policies or good business practices.

Our scope of work for this audit inquiry included a review of certain activity regarding Minority Business Enterprise (MBE) participation in the City’s Upper Lake Lafayette Nutrient Reduction Facility Project (ULLNRF project). Work on that project started in January 2013 and was

approved by City staff as completed in October 2015. Our work focused on addressing an allegation made by a MBE subcontractor in November 2015 that another subcontractor (not a MBE) had inappropriately not used his (MBE subcontractor’s) services to the extent required by the applicable contract, and, as a result his revenues for the project were approximately \$100,000 less than they should have been.

Another concern expressed by City management in connection with the allegation was the risk of inappropriate payments being made by the non-MBE subcontractor to the MBE subcontractor. Specifically, if the non-MBE subcontractor did not meet its contractual obligations to the MBE subcontractor, there is a risk that the non-MBE subcontractor would offer or make payments to the MBE subcontractor for services not rendered in an effort to prevent disclosure of their contractual noncompliance. Such inappropriate “consolation” payments for that purpose would likely be considered fraudulent (i.e., bribery).

Based on those circumstances, the objectives of our audit inquiry were to:

- Objective 1: Determine if the ULLNRF project contractor and subcontractors complied with City MBE Policy and related contractual requirements.
- Objective 2: Determine if payments from (or offered by) the non-MBE subcontractor made to the applicable MBE subcontractor were substantiated by evidence of services actually rendered by that MBE subcontractor (i.e., the payments were not fraudulent or otherwise inappropriate).
- Objective 3: Determine the adequacy of the City MBE Office’s management, monitoring, and oversight of MBE participation in the ULLNRF project.

To accomplish our objectives, we obtained an understanding of the City MBE Policy in effect at the time the contract for the ULLNRF project

was executed. We also reviewed the City contract executed for the ULLNRF project. Furthermore, we:

- Met and discussed project activity with the proprietor and agent of the applicable MBE subcontractor that made the allegation described in a previous paragraph.
- Met and discussed project activity with proprietors or agents of the prime contractor for the project and the applicable non-MBE subcontractor that was the subject of the allegation addressed in a previous paragraph.
- Met with and discussed project activity with the City's MBE Office, including that office's monitoring of and oversight efforts on the project.
- Met with and discussed project activity with staff within the City's Water Resources Engineering and Inspection Division and Stormwater Management Division (divisions within Underground Utilities) responsible for management and oversight of project construction activities.
- Reviewed City payments to the contractor and related documentation (invoices, MBE utilization forms, final payment affidavits, etc.) for the project.
- Obtained and reviewed payments/receipts and related support (invoices) made available by both the applicable MBE subcontractor and the applicable non-MBE subcontractor.
- Reviewed available project records at the City's MBE Office.
- Reviewed certain project construction records provided by the City's Engineering and Inspection Division.

We conducted this inquiry 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 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 objectives.

Background

INITIAL ALLEGATION AND CONCERN

The City Auditor's Office was advised by City management in November 2015 that a MBE subcontractor (Florida Developers, Inc.) working on the ULLNRF project alleged that his company had not been used to render the full value of services provided by the terms of the initial contract executed by the City. The value of the services to be rendered, which were not provided, approximated \$100,000 as alleged by the MBE subcontractor.

Furthermore, the MBE subcontractor provided City management a copy of a check in the amount of \$3,633 from the non-MBE subcontractor under whom the MBE subcontractor worked on the project (Allen's Excavation, Inc.), payable to the MBE subcontractor. Based on accompanying documentation, that check represented payment for the unpaid balance (remaining retainage) owed for services rendered by the MBE subcontractor on the project. The correspondence from the non-MBE subcontractor attached to the copy of the check also indicated the actual check would be provided to the MBE subcontractor after the MBE subcontractor signed and returned to the non-MBE subcontractor a final waiver and release of lien for the project.

City management asked that the City Auditor's Office review the circumstances to ascertain if the allegation was substantiated. City management also asked that the City Auditor's Office validate that the check in the amount of \$3,633 represented payment for services rendered on the project by the MBE

subcontractor, and did not represent a consolation payment, or fraudulent bribe, offered to the MBE subcontractor by the non-MBE subcontractor.

A decision was made by the City Auditor that, in addition to the allegation and concern, the inquiry would also address compliance with City MBE Policy for the project and the adequacy of City MBE Office’s management, monitoring, and oversight of the project.

As of the end of our audit fieldwork in early February 2016, the City was withholding payment of the remaining \$123,617 owed the prime contractor (Council) for completion of the project. The MBE Office indicated the final payment was being withheld until this audit was completed and a resolution of applicable audit issues was determined. Withholding of that final payment was authorized pursuant to the terms of the City’s contract with Council.

CITY MBE POLICY

The current City MBE Policy was adopted by the City Commission in October 1991. That policy was most recently amended by the City Commission in January 2015. Because the ULLNRF project was started in January 2013 and related contract executed in late December 2012, this inquiry will address the MBE Policy that was in effect prior to the January 2015 revisions, as that prior policy version governed MBE actions for the project and related contract.

The stated objective of the City MBE Program is to remedy the effects of past discrimination as found in a disparity study, by assisting certified minority businesses with identifying and participating in City procurement opportunities. In accordance with that objective, the City established, through the policy, MBE participation goals. For large City capital projects (greater than \$100,000), the policy provides for a goal of a minimum of 7.5% participation by certified African American contractors and 3% participation by certified female contractors. To help realize those goals,

the policy provides that prime contractors bidding on City capital projects will receive additional points (consideration) in the evaluation of their bids/proposals, if the bids/proposals provide for African American and female participation at or above the noted minimum levels. Such participation may be provided through (1) subcontracts with certified MBE (African American and/or female) entities and/or (2) the prime contractor’s own resources in the event the prime contractor is a certified MBE entity.

To be eligible to participate as a “certified” MBE entity, an application with appropriate documentation must be submitted to the City MBE Office. Such documentation includes, among other things, evidence of an existing business and minority status such as driver license, voter registration card, birth certificate, etc. If approved, the MBE entity will be assigned a certification number. Certified MBE contractors (entities) must be recertified annually to continue their status and program participation.

In those instances where the prime contractor is awarded the contract and received bid/proposal evaluation points based on planned use of specific certified MBE entities through subcontracts (i.e., MBE subcontractors), the MBE Policy specifically provided that it is the intent to ensure that those MBE subcontractors identified in the prime contractor’s bid/proposal (which is incorporated into the executed City contract) are the actual MBE entities used on the project. However, with the prior written approval from the City MBE Office, a prime contractor may substitute the original MBE subcontractor identified in the bid/proposal with another certified MBE subcontractor upon a written statement of good cause. Examples of good cause include an original MBE subcontractor going out of business or otherwise being incapable of completing the contemplated work. The MBE Policy also stated that prime contractors, who substitute MBE entities without the written approval of the MBE Office, may be

subject to breach of contract and that dollars spent with the unauthorized MBE subcontractors will not be counted towards satisfaction of the MBE goals as established in the bid/proposal that was incorporated into the related City contract.

Contractors that violate the provisions of the MBE Policy may be subject to:

- Removal from the City’s MBE directory of certified MBE firms.
- Removal from the City’s list of authorized vendors.
- Temporary suspension from bidding or proposing on City contracts.
- Permanent suspension from bidding or proposing on City contracts.
- Assessment of damages (e.g., fines).

There was a circumstance applicable to the project addressed in this audit inquiry (ULLNRF project) that was not addressed in the version of the MBE Policy in effect for that project. Specifically, the prime contractor (Council) subcontracted a large portion of the work to another non-MBE entity (Allen’s Excavation, Inc.). That non-MBE entity (a general contractor) used the services of two of the MBE entities (subcontractors) identified in the prime contractor’s bid/proposal and related contract executed with the City. Those two MBE subcontractors worked under and were paid by the non-MBE subcontractor (Allen’s). The remaining MBE firms identified in the bid/proposal and related contract executed with the City worked under and were paid directly by the prime contractor (Council). In other words, an additional “contract tier” was established by the prime contractor, which was used to achieve part of the intended/contracted MBE participation. This is further explained in the subsequent section of this report that describes the contracts relating to the ULLNRF project.

In regard to the unique circumstance addressed in the previous paragraph, the MBE Policy, as amended in January 2015, specifically prohibits a prime contractor from claiming MBE participation by subcontracting a significant portion of the work to a non-MBE entity. However, that policy revision was effective after the project and contract covered in this audit inquiry had been started and executed. Therefore it is not considered applicable to the circumstances addressed by this audit inquiry.

ULLNRF PROJECT DESCRIPTION

The purpose of the Upper Lake Lafayette Nutrient Reduction Facility (ULLNRF) project was to convert a wet retention pond located at the low portion of Weems Road to an alum-enhanced stormwater treatment system. Such conversion is intended to improve the pollution removal efficiencies of the treatment process and reduce pollutant loads in stormwater discharges from the pond that flow into Upper Lake Lafayette. Completion of the project should allow the City to also achieve compliance with U.S. Environmental Protection Agency (EPA) requirements for reduction of pollutants from stormwater runoff.

The primary improvements consisted of modifying the configuration of the existing stormwater pond, constructing in-ground concrete tanks for mixing alum (a chemical compound) with stormwater, and constructing an operations building in which to store the alum and to house necessary equipment. The City previously assumed ownership of the existing stormwater pond in 2008.

Specific project activities included: excavation and hauling dirt and materials from the worksite; hauling other materials to the worksite; construction related to the operations building, the alum feed system, an air mixing system, a remote stormwater metering system, and three water quality monitoring systems; building a concrete sidewalk and aluminum handrails; constructing and/or installing concrete box culverts, storm sewer main and lines, and

drainage ditches; installing fencing; and landscaping and sodding appropriate locations.

Because certain stormwater conveyance improvements were needed on some adjacent property for the project to be successful, contract activities also included filling in an existing holding pond on an adjacent property, reconstructing a portion of a paved asphalt parking lot on a neighboring commercial property, and making other drainage improvements on adjacent properties.

CONTRACTS FOR ULLNRF PROJECT

The City issued a request for proposals (RFP) from interested contractors in August 2012 for the ULLNRF project. Responses (proposals) from five contractors were received and evaluated by the City. As part of the evaluation process, consideration was given to proposed MBE participation included in each contractor’s proposal.

The lowest (in terms of cost) and best proposal was determined to be the one submitted by Council Contracting, Inc. (Council). Accordingly, a contract in the amount of \$5,647,300 was executed between the City and Council in December 2012.

The proposal and executed contract with Council provided for MBE participation as provided by City MBE Policy – a minimum of 7.5% African American and 3% female. As stated in the Council proposal and executed contract with the City, the required MBE participation was to be achieved through multiple subcontracts with certified MBE entities, as shown in Table 1 that follows:

TABLE 1 – ULLNRF Project				
MBE Participation Goals Established in Initial Council Proposal and Related Executed Contract				
	<u>MBE</u>	<u>Work Description</u>	<u>Value of Work to be Done (Goals)</u>	<u>MBE Category (Note 1)</u>
1	Florida Developers, Inc.	Hauling & Excavating	\$190,300	AA
2	Unique Concrete Construction LLC	Concrete Work	\$170,000	AA
3	RDS Drywall & Acoustics LLC	Drywall Acoustics Framing	\$46,730	AA
4	Concrete Services Unlimited	Concrete Building	\$20,470	AA
5	Council (Note 2)	General Contract Work	\$285,000	F
TOTALS			\$712,500 (Note 3)	
<i>Note 1:</i>	<i>AA is African American; F is female.</i>			
<i>Note 2:</i>	<i>The prime contractor was to provide those services directly, as the prime contractor was a certified female-owned MBE firm.</i>			
<i>Note 3:</i>	<i>Of that total, \$427,500 is AA (7.5% of contract total) and \$285,000 is female (5% of contract total); as a result, required MBE Policy minimums were met.</i>			

The prime contractor (Council) subsequently entered into a subcontract with a non-MBE entity to perform a significant amount of the work. That non-MBE entity was Allen’s Excavation, Inc. (Allen’s). That contract provided for Allen’s to complete work valued at \$4,747,954, representing 84% of the value of all work to be done on the project. (As previously described in this report, the current MBE Policy does not allow for the prime contractor to subcontract out a significant portion of the work to a non-MBE

entity and still receive credit for MBE participation. However, the MBE Policy in effect at the time this project was started and the related contracts executed did not preclude the prime contractor from claiming MBE participation under those circumstances.)

Under the arrangements between the prime contractor (Council) and the non-MBE subcontractor (Allen’s), some of the African American MBE entities identified in the contract with the City worked directly under and were paid by Council and the others worked directly under and were paid by Allen’s. These arrangements are shown in Table 2 below.

	<u>MBE</u>	<u>Work Description</u>	<u>Value of Work Intended to be Done (Goals)</u>	<u>Entity Overseeing and Paying the MBE</u>
1	Florida Developers, Inc.	Hauling & Excavating	\$190,300	Allen’s
2	Unique Concrete Construction LLC	Concrete Work	\$170,000	Allen’s
3	RDS Drywall & Acoustics LLC	Drywall Acoustics Framing	\$46,730	Council
4	Concrete Services Unlimited	Concrete Building	\$20,470	Council

As addressed further in a subsequent section in this report, Allen’s also hired additional certified African American and female MBE entities to complete part of the project work for which it had contracted with Council to complete. Those additional firms are shown in Table 3 that follows.

	<u>MBE</u>	<u>Work Description</u>	<u>Value of Work Actually Performed on Project (Note A)</u>	<u>Category of MBE entity</u>
1	Ideal Steel Erection	Steel Work	\$358,171	African American
2	Capital City Contracting LLC	Concrete Work	\$24,064	African American
3	Delacy Farm Sod	Sodding	\$59,131	Female
4	Persica Landscaping	Landscaping	\$3,875	Female
<i>Note A:</i>		As reported by the prime contractor (Council); the non-MBE subcontractor (Allen’s); and the noted MBE firms on their final payment affidavits submitted to the City.		

As explained later in this report, neither Allen’s nor Council obtained written approval from the City MBE Office to add and include these additional MBE entities on the project. As a result and as provided by City MBE Policy, the value of this additional MBE participation did not count towards the initial MBE participation goals established in the original Council proposal and contract executed with the City.

CITY MBE OFFICE

For the period and circumstances addressed by this audit inquiry, the City MBE Office was organizationally housed within the City Department of Economic and Community Development (ECD). The MBE Office was comprised of a MBE Administrator and two administrative specialists. The MBE Administrator reported directly to the Assistant Director of ECD.

The MBE Administrator responsible for this project subsequently retired from City

employment, effective December 1, 2015, a few weeks after the ULLNRF project was completed. Notwithstanding his retirement, the former MBE Administrator was available to answer our audit inquiries during this engagement, for which we were appreciative. One of the two administrative specialists was named by City management as interim MBE Administrator.

The responsibilities of the City MBE Office and MBE Administrator include the following:

1. Direct and manage the MBE Office.
2. Enforce MBE Policy.
3. Promote MBE participation within the City.
4. Maintain appropriate relationships with businesses, MBE entities, and other groups.
5. Work with Procurement Services, the City Engineer, City department heads, and other City officials to increase MBE participation.
6. Work with and provide counseling to certified MBE entities and potential MBE entities.
7. Maintain statistical information on the City MBE Program.
8. Monitor and ensure compliance with federal, state, and local laws and regulations related to MBE entities.
9. Prepare annual report and information brochures and publish a MBE directory.

Inherent in the responsibility to enforce MBE Policy (item 2 in previous list) is monitoring City capital projects involving MBE participation on an ongoing basis for the purpose of ensuring MBE participation on those projects is in accordance with City MBE Policy and specific MBE participation goals established for those projects.

MBE UTILIZATION CERTIFICATION
FORMS

As a means to demonstrate that MBEs are being utilized and paid pursuant to the stated goals and terms, the City contract executed with Council (prime contractor) required appropriate certifications from Council during the contract period as to the payments made to MBE subcontractors for their services rendered on the project. The standard form provided by the City and used by Council for that purpose was the “Minority Business Enterprise Utilization Certification – Progress Payment” form (monthly MBE utilization forms). Those forms were submitted to the City by Council with its periodic pay requests (e.g., generally monthly) for work completed on the project. A different form was prepared and submitted for each MBE subcontractor. For each participating MBE, the form showed the status of that MBE’s work, to include:

- Value of work subcontracted with the MBE entity.
- Total value of subcontracted work completed to date by the MBE entity.
- Amount paid to date to the MBE entity for work completed.
- Remaining balance owed to the MBE entity.

That form is to be signed by both the prime contractor and the applicable MBE entity as their assertions that the reported information is accurate and true.

In addition to the monthly MBE utilization forms, the contract required Council to provide a “Final Payment Affidavit” at the conclusion of the project for each MBE entity identified in the contract to work on the project. On the final payment affidavit both the contractor and applicable MBE certify, by signature, the amount paid to the MBE entity for work performed on the project. Those amounts can be compared to

the contractually established participation goals to determine if those goals were met.

PRIOR AUDITS OF CITY MBE ACTIVITY

The Office of the City Auditor has conducted several previous audits that addressed the City's MBE Program. Those prior audits include the following:

1. Audit of Compliance with the City's MBE Program Policy and Federal DBE Policy for Selected Capital Construction Projects (Report #1202, dated February 6, 2012). In that audit we reported, among other things, that utilization forms/final payment affidavits submitted by Allen's Excavation, Inc. (Allen's) were substantially incorrect; and that there was a lack of monitoring by the City MBE office as to whether MBE participation was in accordance with policy and contractual terms.
2. Audit of the City's Vendor Incentive Programs (Report #1110, dated May 2011). In that audit we reported, among other things, that the City MBE Office did not have documentation to show that payments made by prime contractors to MBE subcontractors were being tracked and compared against MBE participation goals established in the applicable contracts. Additionally, we reported the need for more frequent site visits by the MBE Office to verify MBE participation.
3. Inquiry into Compliance with the City MBE Policy by M of Tallahassee, Inc., and its Subcontractors: Construction Support Southeast and Duggar Excavating, Inc. (Report #0501, dated October 21, 2004). In that audit we reported various instances of noncompliance with City MBE Policy, including work intended to be performed by MBE entities being sub-subcontracted out by certain MBE entities to non-MBE entities, with that work inappropriately being reported and claimed as MBE participation.

Those prior audit reports, to some extent, indicated lack of adequate oversight of the City MBE Program for applicable construction contracts. As explained subsequently in this report, the results of our current inquiry show continuing concerns with the adequacy of the City MBE Office's management and oversight of applicable City construction projects.

OBJECTIVE #1: Compliance with City MBE Policy

Our first audit objective was to determine if the ULLNRF project contractor and subcontractors complied with City MBE Policy and related contractual requirements pertaining to MBE participation. To make that determination we answered the following questions:

1. Were MBE participation goals established in the City contract executed with Council (prime contractor) met?
2. Did all MBE participation on the project as reported by Council on monthly MBE utilization forms and final payment affidavits count towards contractual and MBE Policy requirements?

QUESTION No. 1

As previously explained in the background section of this report, four African American MBE entities were identified in the City contract with Council for participation on the ULLNRF project. Two of those four entities were supervised directly by Council, and two were supervised by Allen's, which subcontracted with Council to perform a majority of the project work. Notwithstanding that two of the MBE entities were supervised and paid by Allen's, Council as the prime contractor with the City, was still responsible for ensuring participation goals for all four MBE entities were met.

As shown in Table 4 below, MBE participation goals were met for the two MBE subcontractors supervised by Council, but participation goals were not met for the two MBE subcontractors supervised by Allen's.

TABLE 4 Contract Compliance MBE Participation (NOTE 1)							
	<u>MBE</u>	<u>Entity Supervising and Paying the MBE</u>	<u>Work Description</u>	<u>Value of Work Intended to be Done (Goals per Contract)</u>	<u>Value of Work Done (NOTE 2)</u>	<u>Difference</u>	<u>Contract Goals Met?</u>
1	Florida Developers, Inc.	Allen's	Hauling & Excavating	\$190,300	\$89,848	\$100,452	NO (only 47% of goal met)
2	Unique Concrete Construction LLC	Allen's	Concrete Work	\$170,000	\$91,606	\$78,394	NO (only 54% of goal met)
3	RDS Drywall & Acoustics LLC	Council	Drywall Acoustics Framing	\$46,730	\$46,730	None	YES
4	Concrete Services Unlimited	Council	Concrete Building	\$20,470	\$21,870	None (more than required amount performed)	YES
Totals				\$427,500	\$250,054	\$178,846 (NOTE 3)	
<i>NOTE 1:</i>		This table does not reflect MBE participation by Council as a certified female MBE entity. That participation met the contractually established goal of \$285,000.					
<i>NOTE 2:</i>		Amounts from Final Payment Affidavits, as adjusted based on audit analysis for Florida Developers, Inc.					
<i>NOTE 3:</i>		This represents the value of required participation <u>not</u> met by the two respective firms.					

As shown in Table 4, **MBE participation for the two MBE entities that were supervised and paid by Allen's was \$178,846 less than contractually established goals and minimums. Additionally, as shown by Table 4, the initial allegation made by Florida Developers, Inc., as described in the background section of this report, was founded.** Specifically, the value of services rendered by Florida Developers, Inc., was \$100,452 less than the amount to be rendered per the contract.

As part of our audit inquiry, we determined that Allen's (as the prime contractor's non-MBE

subcontractor) requested in March 2013 that the City MBE Office approve the substitution of some of the work, initially intended to be performed by Florida Developers and Unique Concrete Construction LLC, to a different MBE entity (Ideal Steel Erection). In that correspondence, Allen's indicated that after the substitution, the amount of remaining work to be performed by Florida Developers would approximate \$90,000. For Unique Concrete Construction LLC, the correspondence indicated the remaining work would approximate \$25,000. As shown by Table 4, the proposed revised

amount for Florida Developers did approximate the value of services actually rendered (\$89,848). For Unique Concrete Construction LLC, Table 4 shows that the value of services actually rendered (\$91,606) exceeded the proposed revised amount of \$25,000, but was still less than the value established in the initial contract (\$170,000).

The correspondence also indicated the value of work to be performed by the substituted MBE entity (Ideal Steel Erection) would approximate \$300,000; thereby ensuring total MBE participation on the project met the total contracted MBE participation. The actual value of services rendered by Ideal Steel Erection on the project totaled \$358,171.

However, no evidence was obtained through a review of records or discussions with applicable staffs at the City MBE Office or affected contractors to show the City MBE Office approved and authorized that substitution. As previously described and explained in the background section of this report, unless prior written approval from the City MBE Office is provided for such substitutions, the contractor is still bound by the participation goals (established for each specific MBE entity) expressed in the initial contract.

In summary, contractually established MBE participation goals for two MBE subcontractors were not met. Because the contractually established MBE participation levels were not met and documented approval for substitutions of MBE entities was not provided by the City MBE Office, ***the contractor (Council) may be in breach of contract and subject to appropriate City-imposed sanctions and penalties.*** Potential sanctions and penalties are noted in the background section of this report.

QUESTION No. 2

As shown in Table 3 within the background section of this report and as repeated again below in Table 5, additional certified MBE entities were hired by Allen’s Excavation to complete portions of the project work for which it

(Allen’s) was responsible. Monthly MBE utilization forms and final payment affidavits were completed and submitted by Council to the City for that participation.

TABLE 5 Additional MBE firms hired by Allen’s to complete ULLNRF project work				
	<u>MBE</u>	<u>Work Description</u>	<u>Value of Work Actually Performed on Project (Note A)</u>	<u>Category of MBE firm</u>
1	Ideal Steel Erection	Steel Work	\$358,171	African American
2	Capital City Contracting LLC	Concrete Work	\$24,064	African American
3	Delacy Farm Sod	Sodding	\$59,131	Female
4	Persica Landscaping	Landscaping	\$3,875	Female
Total Value			\$445,241	
Note A:	As reported by the prime contractor (Council); the non-MBE subcontractor (Allen’s); and the noted MBE firms on their final payment affidavits submitted to the City.			

As noted previously, Allen’s, on behalf of Council (prime contractor), requested approval from the City MBE Office to use Ideal Steel Erection as a substitute for part of the work to be performed by Florida Developers and Unique Concrete Construction LLC. However, as reported, no such approval was provided. Accordingly, the MBE participation of \$358,171 attributable to Ideal Steel Erection does not count towards the contractually established MBE goals.

In regard to the other three MBE entities shown in Table 5 above (Capital City Contracting LLC, Delacy Farm Sod, and Persica Landscaping), Allen’s indicated in response to our inquiry on this matter that they did not request approval from the City MBE Office on behalf of Council

to include those as authorized MBEs on the ULLNRF project. Furthermore, Allen’s and Council acknowledged that because such approval was not requested and provided, that the value of the respective services (totaling \$87,070) does not count towards the MBE participation goals established in the initial contract with the City.

In summary, some MBE participation reported by Council on monthly MBE utilization forms and final payment affidavits did not count towards contractual and MBE Policy requirements. Accordingly, although there was additional project participation by four other certified MBE entities, the value of that additional participation in the amount of \$445,241 does not count towards the participation goals established in the initial contract with the City.

SUMMARY AND RECOMMENDATION

In summary, Council as the prime contractor, through its own efforts and those of its non-MBE subcontractor (Allen’s), hired and paid certified MBE contractors a total of \$695,295 (comprised of the \$250,054 in Table 4 and \$445,241 in Table 5). Additionally, as a certified female MBE entity, Council also expended and reported additional MBE participation in the amount of \$285,000. The total of those two amounts is \$980,295. That total exceeds the planned total MBE participation established in the initial contract executed with the City (\$712,500, see Table 1 within this report). Notwithstanding that circumstance, because a significant part of that participation was performed by certified MBE entities that were not included in the initial contract and also not subsequently approved as substitutes by the City MBE Office, that part does not count as authorized MBE participation for this project. Based on terms and provisions established by the City contract with Council, actual MBE participation was \$178,846 short of established goals. As a result, Council, as the prime contractor, may be in breach of contract and subject to City-imposed sanctions and penalties.

After reviewing all circumstances and issues identified in this audit inquiry, we recommend City management consult with the City Attorney’s Office to ascertain whether sanctions and penalties are appropriate. If deemed appropriate, such sanctions and penalties should be applied.

OBJECTIVE #2: Inappropriate payments

Our second audit objective was to determine if payments from (or offered by) the non-MBE subcontractor (Allen’s) made to the applicable MBE subcontractor (Florida Developers) were substantiated by evidence of services actually rendered. Inherent in that objective was to determine if any of the payments made (or offered) to Florida Developers by Allen’s represented a bribe, or consolation payment, for not having used their services to the extent intended in the initial contract.

To complete that audit objective, we obtained and reviewed payments/receipts and related support (invoices) made available by both Florida Developers and Allen’s. ***Our analysis showed that there was no evidence of a bribe or consolation payment.***

Specifically, our audit analysis showed the total value of services provided by Florida Developers on the ULLNRF project was \$89,848. Payments made by Allen’s to Florida Developers to date totaled \$85,308, leaving a balance owed of \$4,540 for services rendered. As noted in the background section of this report, Allen’s provided Florida Developers with a copy of a check made payable to Florida Developers in the amount of \$3,633 for what Allen’s believed at the time to be the balance owed for services rendered. However, based on our audit analysis, Allen’s now agrees that it owes Florida Developers a balance of \$4,540 (\$907 more than the \$3,633) for services rendered on the project.

SUMMARY AND RECOMMENDATION

There was no evidence of a bribe or consolation payment. Allen's agrees that it still owes Florida Developers a balance of \$4,540 for services rendered on the ULLNRF project. Upon resolution of pertinent issues, the City MBE Office should work with applicable parties (Council, Allen's, and Florida Developers) to ensure proper payment is made for all services rendered.

OBJECTIVE #3: MBE Office Management and Oversight

Our third audit objective was to determine if the City MBE Office adequately managed and monitored MBE participation in the ULLNRF project. Adequate management and monitoring for the project would have included:

- Ongoing review of MBE participation in the project based on monthly MBE utilization forms submitted to the City by, or on behalf of, the prime contractor (Council). Such forms were included with the periodic (monthly) pay requests submitted to the City by Council for work completed.
- Onsite monitoring to review and ascertain actual MBE activity on the project, as well as any related issues.
- Timely and appropriate responses to email inquiries or other correspondence submitted by contractors, non-MBE subcontractors, and MBE subcontractors as to project difficulties and concerns relating to participating MBE entities; to include providing a written response to requests from the prime contractor to add MBE entities and change participation goals for other MBE entities (i.e., substitute MBE entities).

Our audit inquiry showed the City MBE Office did perform some management and monitoring of MBE participation on the ULLNRF project. Specifically:

- MBE Office files contained records identifying applicable contractors and subcontractors (non-MBE and MBE), as well as contractually established MBE participation goals for the project.
- MBE Office files contained copies of many of the monthly MBE utilization forms submitted by or on behalf of Council.
- The MBE Office tracked MBE participation using an Excel worksheet for a portion of the project period; with that reported participation compared to contractually-established participation goals.
- MBE Office staff conducted two site visits in March 2014, during project construction.
- The MBE Office corresponded at various times with contractors and subcontractors, or was otherwise copied on correspondence between those contractors, subcontractors, and/or City staff overseeing project construction.

Notwithstanding those oversight activities, *we found the City MBE Office's overall management and monitoring of MBE activity on the ULLNRF project was not adequate.* The inadequacy was attributable to the City MBE Office not properly responding to indications of MBE participation issues documented in correspondence or records submitted or copied to that office (red flags). Additionally, there was no evidence that the MBE Office provided a written response approving or disapproving Allen's request to add a new MBE entity and to reduce the participation intended for two initial MBE entities. Lastly, we found the tracking of MBE participation by the City MBE Office for the ULLNRF project to be incomplete. Each of those circumstances is described further below.

RED FLAGS

Allen's and Florida Developer's documented disagreements: Our review of available records at the MBE Office and records provided by both

Allen’s and Florida Developer’s, as well as discussions with proprietors and agents of Allen’s and Florida Developer’s and discussions with City MBE and ULLNRF project oversight staff, showed there was some disagreements regarding the quality and/or ability of Florida Developers’ work efforts at different times during the almost three-year project. Specifically:

- In a September 19, 2013, letter addressed to Florida Developers, Allen’s informed Florida Developers that their effort to complete part of their contracted work (reconstruction of a parking lot) was untimely, and that some of the other work had been substandard in regard to means and methods. Florida Developers contested most of those allegations in a separate letter addressed to Allen’s, dated September 26, 2013. After Florida Developers placed a new project supervisor on the construction site and agreed to certain actions, Allen’s agreed to continue their working relationship on the project.
- In a May 20, 2014, email from Allen’s to City project construction oversight staff, Allen’s asserted that Florida Developers had quoted higher-than-market unit prices for part of the planned excavation and transport (hauling) of soil on the project site. Allen’s implied in the letter that because of the higher-than-market quoted unit prices, it was not reasonable to use Florida Developers for the related work. The letter further implied the purpose of the letter was to demonstrate Allen’s good faith intentions to use Florida Developers to meet the contracted MBE participation goals.
- In an October 12, 2015, letter addressed to the City MBE Office at the end of the project, Allen’s asserted that because of the unforeseen large and frequent rains during the project, that it had not been feasible to use Florida Developers for much of the planned excavation and hauling work. In that letter, Allen’s also stated they would be “glad

to exceed (their MBE participation) goal on a future job by \$100,000 (subcontracted) to Florida Developers.”

In response to that letter, Florida Developers acknowledged, in a separate letter addressed to the City MBE Office dated November 6, 2015, that the rains made the project difficult to complete; but, Florida Developers also stated in that letter a different approach would have allowed them to complete the amount of work planned in the initial contract.

The scope of this audit inquiry did not address the validity of the implications made by Allen’s in the noted instances or the validity of Florida Developers’ responses to those implications. However, because City MBE Office and construction project staff had been copied on or sent those communications, we concluded in this inquiry that *adequate evidence was available to the City MBE Office through this correspondence to show there were legitimate concerns as to whether the contractually established MBE participation goal for Florida Developers was going to be met.* Based on the dates of the first two implications, the City MBE Office had sufficient time to evaluate and consider appropriate actions that may have mitigated the likelihood of noncompliance with contractually established MBE participation goals.

MBE utilization forms: Monthly MBE utilization forms attached to periodic pay requests and available to the MBE Office (copies thereof were sometimes included in MBE Office project files) showed:

- During the project, participation by two of the initial MBE entities (Florida Developers and Unique Concrete Construction LLC) working under Allen’s was far less than the levels established in the contract.
- Use of four additional MBE entities that had not been approved by the City MBE Office (see Table 3 in this report). In those instances

Allen's was reporting that use, on behalf of Council, to the City as MBE participation.

There is no legal or contractual requirement to preclude contractors' use of additional MBE entities. ***However, the reporting of that additional participation on standard MBE utilization forms, along with concerns identifiable from other monthly utilization forms for the original MBE entities as noted above, were indications that compliance with MBE participation goals as established in the contract were at risk of not being met.*** Had those forms been timely accessed and/or reviewed, the City MBE Office would have had sufficient time to evaluate and consider appropriate actions that may have mitigated the likelihood of noncompliance with contractually established MBE participation goals.

NOT RESPONDING TO A DIRECT REQUEST TO SUBSTITUTE MBE ENTITIES

In March 2013, Allen's, on behalf of Council, requested the MBE Office approve the addition of a new MBE entity, Ideal Steel Erection, to the project. In that request Allen's indicated the scope and value of work to be performed by two other MBE entities (Florida Developers and Unique Concrete Construction LLC) established in the initial contract might be reduced as a result of the addition of Ideal Steel Erection.

The City MBE Office responded to that request that they (MBE Office staff) wanted more time to review the proposed contract with Ideal Steel Erection before agreeing to the terms and conditions in that contract. The City MBE Office also indicated in their response that they wanted to know how the addition of the new MBE entity impacted the scope of work and dollar value on the existing MBE subcontracts (identified in the initial contract between Council and the City).

In response to that City MBE Office request, Allen's stated in an email addressed to the MBE Office that the amount of work to be performed

by Ideal Steel Erection would approximate \$300,000, and the work originally contracted for Florida Developers and Unique Concrete Construction LLC would be adjusted to approximately \$90,000 and \$25,000, respectively (i.e., reduced by approximately \$100,000 and \$145,000, respectively).

We found no evidence that the City MBE Office provided a documented response to Allen's that either approved (authorized) or disapproved (denied) the request to add Ideal Steel Erection and/or to reduce the amount and value of work to be performed by Florida Developers and Unique Concrete Construction LLC. Additionally, in our discussions and meetings on this matter, neither City MBE Office staff nor Allen's or Council's proprietors/agents recalled that such approval or disapproval was provided (in writing or otherwise) by the City MBE Office.

As previously noted in this report, because of the lack of documented approval from the City MBE Office the prime contractor (Council) could not count the value of services rendered by Ideal Steel Erection towards MBE participation on the project, nor reduce the initial level of participation established for Florida Developers and Unique Concrete Construction LLC. As a result, the prime contractor may be found in breach of contract for not meeting contractually established MBE participation goals and may be subjected to sanctions and penalties.

Not following through on a direct request from a contractor to add or substitute MBE entities on a project demonstrates a lack of oversight and management responsibility by the City MBE Office. Furthermore, not providing a response to such a request could be construed to be misleading to the requesting contractor and increases the risk that the contractor will misinterpret or improperly assume the intent of the City MBE Office.

TRACKING MBE PARTICIPATION

For this and other City projects, the MBE Office tracked MBE participation using an Excel

worksheet. The worksheet was updated periodically based on MBE participation identified by MBE Office staff on monthly MBE utilization forms submitted by or on behalf of applicable contractors. For the ULLNRF project, our review of the Excel worksheet as of the end of our audit inquiry fieldwork in January 2016 showed that it had not been updated for project activity since May 2014, which was approximately 16 months before the project was substantially completed in September 2015. **Accordingly, MBE participation during the last 16 months of project construction (May 2014 through August 2015) was not tracked for purposes of monitoring compliance with contractually established MBE participation goals.** If MBE participation levels had been tracked on a current and ongoing basis, additional evidence would have been available to the MBE Office as to likely noncompliance with contractual requirements.

As reported in our *Final Audit Follow-Up on the Audit of the City's Vendor Incentive Programs* (report #1424, issued August 19, 2014), the City MBE Office purchased a new software application to facilitate tracking and monitoring MBE participation on individual City projects. That application was acquired in April 2014. However, as of the end of our current audit inquiry fieldwork in January 2016 (21 months later) that software application had not yet been utilized. In response to our inquiry on this matter, the MBE Office indicated the application was installed but staff had not been trained on its use. The MBE Office indicated plans were for staff training to be conducted in March 2016.

SUMMARY AND RECOMMENDATION

The City MBE Office did not adequately manage and monitor MBE participation in the ULLNRF project. Specifically, indications of likely noncompliance (red flags) were not adequately identified and acted on by the City MBE Office. Also, the City MBE Office did not provide a response approving or disapproving a direct written request to substitute MBE entities (i.e.,

add a new MBE entity and reduce participation levels for others). Lastly, the City MBE Office did not track MBE participation for the last 16 months of the project construction period. This lack of adequate management and oversight likely contributed to the noncompliance by the contractor as to the contractually required MBE participation.

We acknowledge that, subsequent to the start of this audit inquiry, City management transferred the City MBE function from the former Department of Economic and Community Development to the recently created Department of Administrative and Professional Services. That organization change will result in different oversight of the MBE function. In addition to that change, we also recommend the following:

- City MBE Office staff be trained to timely identify and respond (take appropriate actions) to indications that MBE participation goals for a project are in jeopardy of not being met.
- City MBE Office staff be required to provide a direct and timely written response to a request received from a contractor to substitute or otherwise change contractually established MBE participation goals for specific MBE entities. To further ensure responses are proper and appropriate, the MBE Office planned response to such requests should be reviewed and approved by the Assistant City Manager for Administrative and Professional Services before being submitted to the requesting contractor.
- The City MBE Office complete necessary training on the previously implemented software application for monitoring MBE participation and commence using that application to timely track and monitor MBE participation on applicable City projects.

Conclusions and Recommendations

Our audit inquiry showed the prime contractor (Council), through its own resources and those of its' subcontractors, exceeded the total MBE participation required for the ULLNRF project. However, a significant part of that participation did not count as contractual participation because approval to add four additional MBE entities was not requested from and/or approved by the City MBE Office. As a result, Council, as the prime contractor, may be in breach of contract and subject to City-imposed sanctions and penalties.

Furthermore, we determined the City MBE Office did not adequately monitor and oversee MBE participation in the ULLNRF project. Specifically, indications of likely noncompliance were not timely identified and acted on by the City MBE Office. Also, the City MBE Office did not respond to a request to substitute MBE entities (i.e., to add a new MBE entity and reduce contractually established participation for two other MBE entities). Lastly, the City MBE Office did not track MBE participation in the ULLNRF project for the last 16 months of the project construction period. This lack of adequate management and oversight likely contributed to the noncompliance by the prime contractor as to the contractually established MBE participation levels (goals).

Notwithstanding those issues, our audit analyses showed no evidence of any fraudulent or inappropriate payments (or offers of payment) by the non-MBE subcontractor (Allen's) to the applicable MBE subcontractor (Florida Developers).

Recommendations were made to address the issues and concerns identified through this audit inquiry. City management prepared an action plan to address those recommendations. That action plan is included as Appendix A to this report.

We would like to thank and acknowledge the cooperation and assistance from staff in the City MBE Office, staff in applicable City Underground Utilities divisions, and proprietors and staff of the contractors and subcontractors during this audit inquiry.

Appointed Official's Response

City Manager:

We appreciate the City Auditor's work on this audit and for his recommendations contained in the report. We are also pleased that the report did not identify any evidence of bribes or other inappropriate payments or offers. Claims of this type are taken seriously and the City Auditor acted rapidly in reviewing the allegations.

The audit raises serious issues concerning the lack of management and oversight exhibited by the MBE Office with this contract. As this is not the first audit conducted by the City Auditor that has identified issues with management and oversight of the MBE Office, we will be taking actions to ensure that issues are addressed and that management and oversight of the MBE process are strengthened. The recent retirement of the MBE Administrator gives us opportunities to assess MBE operations and implement changes that will improve our MBE program and processes.

As the audit indicates, the contractor did not meet the MBE participation goals for the two identified MBE subcontractors and therefore may be in breach of contract. However any city-imposed sanctions or penalties are mitigated by the MBE Office's lack of responsiveness to the request by the contractor to amend the list of approved MBE subcontractors to be used on the project. As noted in the audit, early in the process the contractor requested a substitution of the MBE's, but there is no record of the MBE Office providing a response approving or disapproving the request. This is one of many issues related to lack of oversight and communication with the vendor exhibited by the MBE Office.

In addition it is noted that although the approved participation goals for the two identified MBE vendors were not met, overall the project exceeded MBE participation in the amount of \$267,795. This was accomplished by the addition of several certified MBE subcontractors which raised the level of MBE participation above that proposed in the original contract. Had the MBE Office approved the use of these additional MBE subcontractors, there would have been no contract violation.

For the reasons stated above, and in consultation with the City Attorney, we are not recommending that any penalties be imposed on the prime contractors.

This audit has identified continuing deficiencies in the MBE Offices monitoring and oversight of City contracts. The recent reorganization provides an opportunity to improve the MBE Office operations with a greater focus on efficiency and operations.

We appreciate the Auditor's work and the cooperation of the MBE office and other departments that were impacted by this audit.

Copies of this Inquiry (Report #1609) may be obtained at the City Auditor's web site (<http://www.talgov.com/auditing/auditing-auditreports.aspx>) or via request by telephone (850 / 891-8397), by FAX (850 / 891-0912), by mail or in person (City Auditor, 300 South Adams Street, Mail Box A-22, Tallahassee, FL 32301-1731), or by e-mail (auditors@talgov.com).

This Inquiry was conducted by:
T. Bert Fletcher, CPA, CGMA, City Auditor

Appendix A – Management’s Action Plan		
Action Steps	Responsible Employee	Target Date
A. Objective: Determine any appropriate sanctions and penalties for MBE Policy noncompliance		
1) City Management will consult with the City Attorney’s Office to ascertain what, if any, sanctions and penalties will be assessed the prime contractor for not complying with City MBE policy regarding MBE participation.	City Manager and City Attorney	Completed February 2016
B. Objective: Enhance MBE Office management and oversight activities		
1) Training will be provided to MBE Office staff in regard to timely identifying and responding to indications that MBE participation goals are in jeopardy of not being met on a City project.	Assistant City Manager Administrative & Professional Services	June 30, 2016
2) MBE office staff will be required to provide direct and timely documented responses to requests received from a contractor to substitute or otherwise change contractually established MBE participation goals.	MBE management	March 31, 2016
3) Response to contractor requests to substitute or otherwise change contractually established MBE participation goals will be approved by the Assistant City Manager for Administrative and Professional Services.	Assistant City Manager Administrative & Professional Services	Ongoing as of March 31, 2016
4) Necessary training on the previously implemented PRISM software application will be provided to and completed by MBE Office staff.	MBE management	June 30, 2016
5) After completion of the training addressed in the previous action plan step, the MBE Office will use the PRISM application to track and monitor MBE participation on applicable City projects.	MBE management	Ongoing as of June 30, 2016
C. Objective: Ensure MBE entities are properly paid for work performed		
1) MBE office staff will follow through to see that Florida Developers is paid for the total value of services rendered on the project (i.e., unpaid balance of \$4,540).	MBE management	March 31, 2016