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HIGHLIGHTS

Highlights of City Auditor Report #1202, a report to the City Commission and City management

WHY THIS AUDIT WAS CONDUCTED

In May 2011, the MBE Office expressed concern that a prime contractor may have misrepresented the extent of use of minority business enterprise subcontractors on at least one City capital construction project during the bidding phase, construction phase, and final reporting phase. In response to the City Manager's request, we conducted an audit of selected capital construction projects (21 completed and 3 in progress) involving five prime contractors to determine the extent of noncompliance with the City's Minority Business Enterprise (MBE) Program policy and federal Disadvantaged Business Enterprise (DBE) Program regulations.

WHAT WE RECOMMENDED

We provided recommendations to address areas that should be improved in the City's MBE/DBE Program, including:

- 1) Review and revise the MBE policies and procedures, last revised in 1994, to clearly:
 - Describe compliance requirements and define key terms.
 - Define program intent and the types of services that are eligible for participation.
- 2) Improve the MBE/DBE program monitoring during and immediately after the project's completion.
- 3) Define what constitutes success in the MBE Program and implement ways to measure success.
- 4) Revised the City's MBE Project Completion Affidavit (Affidavit) to:
 - Improve accountability by separating the information being certified by the prime contractor and the subcontractor at the end of a project.
 - Implement higher level penalties for prime contractors and MBE/DBE subcontractors that submit false Affidavits.
- 5) Provide additional training opportunities for prime contractors and MBE/DBE subcontractors to better understand the program and requirements.
- 6) Review and implement prior audit recommendations related to program administration. Many issues identified in this report would have already been addressed if those recommendations had been previously implemented (see Reports No. 0501 and 1110).

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February 6, 2012

AUDIT OF COMPLIANCE WITH THE CITY'S MBE PROGRAM POLICY AND FEDERAL DBE POLICY FOR SELECTED CAPITAL CONSTRUCTION PROJECTS

WHAT WE CONCLUDED

The capital construction projects included in our audit involved the work of five prime contractors (Allen's Excavation, Inc.; M of Tallahassee, Inc.; North Florida Asphalt, Inc.; Sandco, Inc.; and Jimmy Crowder Excavating and Land Clearing, Inc.) on 21 completed projects and 3 projects in progress. Seventeen (17) of the 21 completed projects were MBE projects and four were DBE projects.

Based on our testing, we concluded that four of the five prime contractors incurred violations; one did not violate any policies (Jimmy Crowder Excavating and Land Clearing). Our conclusions included the following:

- On 21 completed projects, 15 of 31 (48%) of the MBE/DBE Affidavits were accurate, 14 of 31 (45%) were inaccurate due to ineligible amounts included in MBE/DBE participation and two were inaccurate due to bookkeeping or other errors.
- On 11 projects, four prime contractors incurred 13 violations of three City MBE policies:
 - Ten violations related to three prime contractors (Allen's, North Florida Asphalt, and Sandco) directly purchasing materials for MBE subcontractors. *[Note: No fines were imposed. City management notified the prime contractors and MBE subcontractors of the violations and implementation of enhanced monitoring. Also, the City will be revising the MBE policies to better meet the needs of the subcontractors related to procurement of materials.]*
 - Two violations related to one prime contractor (Allen's) included amounts paid to a MBE subcontractor (Unique Concrete Construction) for a broker's fee or commission solely to increase their MBE participation. *[Note: Allen's was fined by the City \$25,000 and Unique Concrete Construction was fined \$3,578 for these violations.]*
 - One violation related to one prime contractor (M of Tallahassee) included ineligible amounts paid to MBE subcontractor when the MBE subcontractor (Construction Support Southeast) did not perform any work other than to provide assistance procuring personnel, equipment, materials or supplies required for performance of the subcontract. *[Note: M of Tallahassee was fined by the City \$10,000 and Construction Support Southeast was fined \$9,134 for this violation.]*
- Two prime contractors (Allen's and North Florida Asphalt) incurred two violations of federal DBE regulations related to directly purchasing materials for DBE subcontractors and including that amount in their reported DBE participation. *[Note: City management notified the prime contractors and DBE subcontractors of these violations and will be implementing improved monitoring procedures for policy violations in future projects.]*

Office of the City Auditor

Audit of
Compliance with the City's MBE Program
Policy and Federal DBE Policy for Selected
Capital Construction Projects

AUDIT REPORT #1202

February 6, 2012



Copies of this audit report #1202 may be obtained from the City Auditor's web site (<http://www.talgov.com/auditing/auditreports.cfm>), by telephone (850 / 891-8397), by FAX (850 / 891-0912), by mail or in person (City Auditor, 300 S. Adams Street, Mail Box A-22, Tallahassee, FL 32301-1731), or by e-mail (auditors@talgov.com).

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Compliance with the City's MBE Program Policy and Federal DBE Policy for Selected Capital Construction Projects



Report #1202

February 6, 2012

Executive Summary

We performed audit procedures to answer specific questions related to reporting MBE or DBE subcontractor participation to be in compliance with City policies and federal regulations.

The Office of the City Auditor has responded to a request from the City Manager to audit compliance with the City Minority Business Enterprise (MBE) Program policy and federal Disadvantaged Business Enterprise (DBE) Program regulations for selected capital construction projects. In May 2011, the MBE Office expressed concern that a prime contractor may have misrepresented the extent of use of minority business enterprise (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, we were asked to select 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 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 first objective was to answer the following two questions to determine compliance with the City's MBE Program Policies and federal DBE Program regulations, as applicable, on each of the City projects selected.

Our first objective was to determine whether the submitted Affidavits for completed MBE and DBE projects were accurate, eligible, and in compliance with City MBE and federal DBE policies.

For MBE projects, of 26 tested Affidavits, 14 were accurate, 11 have at least one policy violation and one was wrong due to undetermined causes.

1) For the projects selected, were the amounts reported as paid to MBE subcontractors on the Affidavits and signed and submitted to the City by both the prime contractors and MBE subcontractors accurate, eligible, and in compliance with City MBE Policy Section 16.5.74?

We determined that of the 21 completed projects, 17 were MBE projects and the MBE participation goal was 10.5 percent (7.5 percent black-owned and 3.0 percent women-owned). We tested 26 MBE Affidavits and found that 14 were accurate. Eleven were inaccurate because they improperly included the costs of materials the prime contractors directly purchased for the MBE subcontractors in the MBE participation percentage violating City policy 16.5.74.e.1. The one remaining affidavit was inaccurate due to undetermined causes.

On three of the 11 inaccurate Affidavits, there were additional violations when the prime contractor also included in MBE participation either: 1) broker's fees or commission when the MBE subcontractor did not perform any work related to the broker's fee or commission; or 2) the cost for materials acquired or additional subcontracts made by the MBE subcontractor (which is not allowable) along with the fees and/or commissions paid to an MBE (which is allowable). In such instances, the only allowable amounts the prime contractor can claim for MBE participation is the fee/commission for acquiring the materials or additional services and not the materials themselves or the further subcontracted services acquired.

See Table 1 summarizing by prime contractor the number of MBE Affidavits that were accurate or inaccurate due to errors or policy violations.

Table 1
Summary of MBE Affidavit Violations and Errors
by Prime Contractor

Prime Contractors	Number of Accurate Affidavits	Number of Inaccurate Affidavits due to Errors	Number of Inaccurate Affidavits due to Policy Violations	Number of Affidavits Reviewed and Tested In Audit
Allen's Excavation, Inc.	0	1	4	5
M of Tallahassee, Inc.	8	0	1	9
North Florida Asphalt, Inc.	2	0	3	5
Sandco, Inc.	3	0	3	6
Jimmie Crowder Excavating and Land Clearing, Inc.	1	0	0	1
Totals	14	1	11	26

2) For the selected projects, were the amounts reported as paid to the DBE subcontractor on the Affidavits and signed and submitted to the City by both the prime contractors and MBE subcontractors, accurate, eligible, and in compliance with federal regulations 49 CFR 26.55?

Of the 21 completed projects, only four were DBE projects and the DBE participation goals varied on these projects from 10 percent to 23 percent. We tested five Affidavits on four projects and noted two Affidavits were inaccurate because two prime contractors improperly included the costs of materials the prime contractors directly purchased for the DBE subcontractors in the DBE participation. Federal DBE regulation 49 CFR Part 26, Section 26.55, was violated in two instances on two DBE projects. Also, two errors were made by one prime contractor when it 1) made an apparent bookkeeping error; and 2) submitted the incorrect Project Completion Affidavit forms for three subcontractors on the project (MBE forms instead of DBE forms). One of the three submitted MBE Affidavits was for a certified MBE subcontractor that was not also a certified DBE subcontractor. For this project, the City also erred by accepting the incorrect Affidavit forms.

For DBE projects, of five tested Affidavits, one was accurate, two had one policy violation and two were wrong due to errors.

See Table 2 summarizing by prime contractor the number of DBE Affidavits that were accurate or inaccurate due to errors or policy violations.

**Table 2
Summary of DBE Affidavit Violations and Errors
by Prime Contractor**

Prime Contractors	Number of Accurate Affidavits	Number of Inaccurate Affidavits due to Errors	Number of Inaccurate Affidavits due to Policy Violations	Number of Affidavits Reviewed and Tested In Audit
Allen’s Excavation, Inc.	1	0	1	2
M of Tallahassee, Inc.	0	0	0	0
North Florida Asphalt, Inc.	0	0	1	1
Sandco, Inc.	0	2	0	2
Jimmie Crowder Excavating and Land Clearing, Inc.	0	0	0	0
Totals	1	2	2	5

Appendices B through F provide additional detailed results of the review of the Affidavits for each of the 21 completed projects and three projects in progress by prime contractor. Appendix G provides a summary of the violations by prime contractor by project.

In summary, our audit showed the following results that were used by City management to impose penalties and fines:

- One prime contractor (Jimmie Crowder Excavating and Land Clearing) did not violate any policies.
- Three prime contractors (Sandco, North Florida Asphalt, and Allen’s Excavation) violated policies related to directly procuring materials for subcontractors. These prime contractors were made aware of their violations. No fines were leveled for these violations. Instead, the prime contractors and MBE/DBE subcontractors will be subject to enhanced monitoring and City MBE Program policies will be re-examined and revised as needed to better meet the needs of subcontractors related to procurement of materials.

- Two prime contractors (Allen's Excavation and M of Tallahassee) violated policies related to paying broker's fees or commission when the MBE subcontractor did not perform any work on the subcontract. These prime contractors were made aware of their violations and were fined \$25,000 and \$10,000 respectively. Additionally, the MBE subcontractors (Unique Concrete Construction and Construction Support Southeast) were made aware of their violations and were fined \$3,578 and \$9,134 respectively.

Our second objective was to assess the results of the above audit work, to obtain comments from prime contractors, MBE subcontractors, and City staff as to areas that need to be addressed in the City MBE program going forward, and to follow-up on previous audits performed and recommendations made to City management to improve the City's MBE and DBE Programs. The recommendations are as follows:

We provided seven recommendations to improve the City's MBE and DBE Programs.

- 1) The City needs to review and revise its MBE policies and procedures, last revised in 1994, to clearly describe compliance requirements and define terms used in the policy critical to understanding and implementing the MBE Program.
- 2) The City should clearly define program intent and the types of services that are eligible for participation in the MBE program, specifically as it relates to prime contractor use of "MBE general contractors." Our review showed some MBE general contractors sub-subcontract out, lease, and/or obtain services from others for a majority of the subcontracted work instead of performing the work themselves. In contrast, the current MBE program requires MBE subcontractors to perform the majority of work and limits the amount of work that can be sub-subcontracted to 49 percent. The issue in implementation is the City has not clearly defined the type of services an MBE general contractor might obtain under the term "subcontract." We recommend the City MBE Program place emphasis on assisting MBE subcontractors that are "in the business" of providing specific services for which they have knowledge and directly perform the majority of work. If there is need to allow MBE

general contractors to participate in the MBE program when that general contractor has no equipment or other employees and when that MBE general contractor primarily relies on acquiring goods and services from non MBE subcontractors, then the City needs to identify how such MBE general contractors contribute to the goal, purpose, and intent of the City's MBE program.

3) The City needs to timely and adequately monitor the MBE/DBE Program. Monitoring should be conducted during the construction phase and as soon as possible after the end of each project. Such monitoring could be done by the MBE Office, Public Works inspectors on-site, or a combination of both, to ensure that program participants are complying with program policies and performing the work as reported.

4) The City MBE program should define what constitutes success and implement ways to measure that success. The City MBE program has been in operation since 1991 and the City has yet to define what constitutes success and how to measure that success. Several prime contractors indicated to us that as currently designed and operated, few MBE's will ever "graduate" from the program. Additionally, many MBE subcontractors do not have adequate fiscal capacity or the bonding ability to work on large projects. The MBE's we identified as more successful were those that are in the business for which certified, have payroll, have their own equipment or access to additional equipment that may be needed, work with several prime contractors, and have the financial capacity to purchase their own materials. If the City continues the program, it needs to work with prime contractors and MBE subcontractors to identify innovative ways to achieve program intent and success.

5) The City's MBE Project Completion Affidavit (Affidavit) should be revised to separate the information being certified by the prime contractor and the subcontractor at the end of a project. While the prime contractor should know when a MBE/DBE subcontractor further sub-subcontracts out work on a project, the prime contractor would not normally know the dollar amount the MBE subcontractor further subcontracted. Both the prime contractor and subcontractor

should be responsible and held accountable for reporting their own information. We also recommend that management work with the City Attorney to identify higher level penalties for prime contractors and MBE/DBE subcontractors that submit false Affidavits to the City. Additionally, the City should ensure it is receiving the correct type of Affidavit (MBE vs. DBE) from the prime contractor at the end of the project.

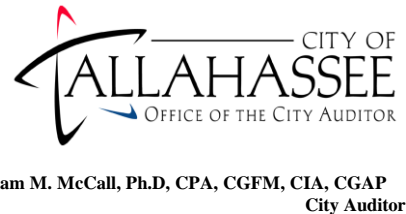
6) The City should provide additional training opportunities for prime contractors and MBE/DBE subcontractors to better understand the program, and Affidavit requirements, and subsequent revisions to the program and policies. We noted a lack of understanding of and the application of the City's MBE/DBE policies.

7) Lastly, City management should review City Auditor recommendations relating to administration of the MBE program included in Audit Report #1110, "Audit of the City's Vendor Incentive Program," dated May 6, 2011, and Audit Report #0501, "Inquiry into Compliance with the City Minority Business Enterprise Policy by M of Tallahassee, Inc., and its Subcontractors: Construction Support Southeast and Duggar Excavating, Inc.," dated October 21, 2004. Had recommendations made in Report #0501 been acted upon, many of the issues identified in this report would have already been addressed. Recommendations from those reports should be considered in future management actions.

We would like to thank and acknowledge the full and complete cooperation of key staff from various City offices and departments, including the City Attorney, MBE, Public Works, Procurement, and City executive managers, as well as management from the prime contractors and MBE/DBE subcontractors during the audit and development of this audit report. This audit process involved multiple meetings with all parties involved to obtain consensus on the interpretation and appropriate application of applicable MBE policies. One objective of this audit was to work with all of the above parties to identify issues that need to be addressed in the above programs and to obtain agreement on needed program improvements going forward.

As a result of the cooperation received, we believe a significant part of that objective has been achieved.

Compliance with the City's MBE Program Policy and Federal DBE Policy for Selected Capital Construction Projects



Report #1202

February 6, 2012

Scope, Objectives and Methodology

The purpose of this audit was to test the accuracy and eligibility of MBE or DBE participation amounts and the amount of work performed by MBE or DBE subcontractors reported to the City.

In May 2011, the MBE Office expressed concern that a prime contractor may have misrepresented the extent of use of minority business enterprise (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 City Manager requested the Office of the City Auditor to audit a selection of City capital construction projects and determine the accuracy and eligibility of MBE or DBE participation and amount of work performed by MBE or DBE subcontractors as submitted on certified Project Completion Affidavits (Affidavits).

To respond to the City Manager's request, we conducted an audit and reported our findings to the City Manager for review and follow up actions. Our two objectives were to:

- 1) Determine compliance with the City's MBE Program Policies and federal DBE Program regulations, as applicable, on each of the City projects selected. Specifically:
 - a. For the selected projects, 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

Additionally, based on our audit work, we provided recommendations to City management to improve the MBE and DBE Programs.

and submitted to the City, accurate, eligible, and in compliance with federal regulations 49 CFR 26.55?

2) Assess the results of the above audit work, obtain comments from prime contractors, MBE subcontractors, and City staff as to areas that need to be addressed in the City MBE program going forward, and review again previous audits performed and recommendations made to City management to improve the City's MBE and DBE Programs.

To answer these objectives, we reviewed documentation, interviewed involved prime contractors, subcontractors, City inspectors, and MBE administrators, and obtained an understanding of the work performed by five prime contractors and 13 MBE/DBE subcontractors on 24 judgmentally selected City construction projects completed and/or in progress between March 2003 and August 2011. The MBE/DBE participation amounts and percentages claimed were reported on Project Completion Affidavits (Affidavits) submitted by prime contractors to the City with final payment requests. The scope of this 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.

To answer the two objectives, we:

- Obtained a listing of the most recent City construction projects from the Public Works Engineering Division (including projects completed and in progress). There were 36 projects with contract dates ranging from March 2003 through October 2010.
- Interviewed City construction inspectors and judgmentally selected 24 projects to include in our review, including at least one project for each of the five main prime contractors performing capital construction work with the City.

- Obtained and reviewed copies of City contracts, winning bid-proposals, final payment documentation, and Affidavits for the selected projects.
- Interviewed owners and/or financial officers from each of the prime contractors and reviewed available documentation related to the selected projects, including subcontracts, payments made to MBE/DBE subcontractors and relevant project expenditures.
- Interviewed owners and/or financial officers from each of the MBE/DBE subcontractors and reviewed available documentation related to the selected projects, including sub-subcontracts, payments received from prime contractors, and relevant project expenditures.
- Reviewed applicable City MBE Program policies and federal DBE regulations and performed audit testing to identify instances of non-compliance.
- Interviewed City MBE administrators and City executive managers to clarify our understanding the MBE Program's intent and goals and proper application of Policy Sections 16.5.74.e, and federal regulation 49 CFR Part 26, Section 26.55.
- For the 24 projects, 21 were completed and had submitted Affidavits for the MBE/DBE subcontractors, and three were in progress and therefore had not submitted Affidavits. For the 21 completed projects, we judgmentally selected 31 from 49 available MBE/DBE Project Completion Affidavits from 13 MBE/DBE subcontractors to review. Table 3 below provides a summary of the number of projects and Affidavits available and tested in the audit. Table 4 shows the MBE/DBE subcontractors involved and the number of MBE and DBE projects included in testing. [Note that we also reviewed activities of two subcontractors on three projects still in progress.]

**Table 3
Number of Projects Reviewed and MBE/DBE
Subcontracts by Prime Contractor**

Prime Contractors	Number of MBE/DBE Completed Projects Reviewed in Audit (with Affidavits)	Number of MBE/DBE Projects In Progress Reviewed in Audit	Number of MBE/DBE Affidavits Available to Review In Audit	Number of MBE/DBE Affidavits Reviewed and Tested In Audit
Allen’s Excavation, Inc.	6	2	11	7
M of Tallahassee, Inc.	5	0	17	9
North Florida Asphalt, Inc.	4	0	7	6
Sandco, Inc.	5	1	13	8
Jimmie Crowder Excavating and Land Clearing, Inc.	1	0	2	1
Totals	21	3	50	31

**Table 4
MBE/DBE Subcontracts and the
Number of Projects Reviewed**

Subcontractor	Number of MBE Projects Tested	Number of DBE Projects Tested	Total Number of Projects Tested
Construction Support Southeast	4	0	4
Crosspoint Consulting & Construction	1	0	1
Florida Developers	2	0	2
Gaines & Sons	4	0	4
Greenways of America	1	0	1
Hale Contractors	1	0	1
Hawthorne Construction	3	1	4
Phoenix Fencing	0	1	1
Pinnacle Construction (a)	1	0	1
Rippee Construction	2	0	2
RJW Construction	3	0	3
Suzanne Diambra Landscaping	1	1	2
Unique Concrete Construction (b)	6	2	8
Totals	29 (c)	5	34 (c)

Notes: (a) One project was in progress, therefore no Affidavit was due.
 (b) Two projects were in progress, therefore no Affidavits were due.
 (c) The total number of projects tested with subcontractors (29 and 34) were greater than the number of projects tested in the audit (24) because there were multiple subcontractors on most projects.

Nineteen of the 24 projects we reviewed were required to follow the MBE Program Policy, and five projects were required to comply with federal DBE Program regulations. Table 5 shows the number of MBE projects and DBE projects by prime contractor.

Table 5
Number of City MBE Projects and Federal DBE Projects Reviewed in the Audit by Contractor

Prime Contractor	Number of MBE Projects Reviewed	Number of DBE Projects Reviewed	Total Number of Projects Reviewed
Allen's Excavation (1)	5	3	8
M of Tallahassee	5	0	5
North Florida Asphalt	3	1	4
Sandco (2)	5	1	6
Crowder Excavation	1	0	1
Total projects	19	5	24

Note (1): Two projects were still in progress.

(2): One project was still in progress.

Table 6 below shows the number of MBE and DBE Affidavits tested by contractor. There were projects in our review that had only one MBE/DBE subcontractor and projects that had multiple MBE/DBE subcontractors. We judgmentally selected 31 Affidavits on the 24 projects to test. Twenty-six Affidavits were on MBE projects and five Affidavits were on DBE projects.

**Table 6
Number of Affidavits Tested of City MBE Projects and Federal DBE Projects in the Audit by Contractor**

Prime Contractor	Number of MBE Affidavits Tested	Number of DBE Affidavits Tested	Total Number of Affidavits Tested
Allen’s Excavation	5	2	7
M of Tallahassee	9	0	9
North Florida Asphalt	5	1	6
Sandco	6	2	8
Crowder Excavation	1	0	1
Total Affidavits	26	5	31

Note (1): There is one Affidavit for each MBE/DBE subcontractor working on each project. We sometimes selected more than one Affidavit on a project to test.

We conducted this audit in accordance with the International Standards for the Professional Practice of Internal Auditing and Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The MBE Program is managed by the MBE Office in the Economic and Community Development Department. The goal is to institute and maintain a MBE program that provides for maximum utilization of MBEs in all aspects of the City’s procurement activity. The MBE Policy describes the program’s objectives, responsibility of organizational units, and lists MBE participation goals. The MBE Office also manages the City’s Disadvantaged Business Enterprise (DBE) Program to assist departments to comply with federal DBE regulations when receiving federal monies.

One barrier to MBE subcontractors is the ability to finance purchases of materials and obtain bond insurance.

One program objective is to help minority businesses develop and grow their financial capacity.

One of the MBE program objectives is to help minority businesses develop and grow their financial capacity in order to independently obtain 1) bond insurance on projects and 2) credit to procure materials and equipment needed to conduct the work on contracts and subcontracts. The lack of bonding and financial capacity is a common barrier impacting many minority businesses. The City Administrative Policies and Procedures Manual, “MBE Opportunity and Participation Policies and Procedures,” tries to address these barriers by encouraging prime contractors to work with the minority businesses to help develop their financial capacity.

To claim MBE participation, the policy requires MBE subcontractors to procure their own materials and equipment needed on a project rather than the prime contractors directly purchasing materials and equipment for the subcontractors. Prime contractors are allowed to provide assistance by paying the MBE subcontractors in advance for the cost of materials or by paying for materials by joint check (made to the MBE subcontractor and the materials provider). The MBE Office believes these methods of paying for materials are more likely to assist the MBE subcontractor establish credit than if the prime contractor paid for the materials themselves. These methods for paying subcontractors are also in agreement with payment methods under federal DBE policies.

Specific MBE policy sections that address what amounts can be included in the MBE participation are as follows:

City MBE Program Policy Section 16.5.74.e states:

One hundred percent (100%) of a general contractor’s (i.e. prime contractor) expenditures to a certified MBE subcontractor or manufacturer.

Two main MBE policies were violated during this audit. First, the prime contractor including in their MBE participation the costs of materials the prime contractor directly purchased for use by the MBE subcontractors.

Second, the prime contractor paying the MBE subcontractors a broker's fee or commission for either 1) buying materials and not performing any work on the project or 2) including amounts not paid to the subcontractor.

Prime contractors can include in their MBE participation all amounts paid to the MBE subcontractor if the MBE subcontractor directly pays for their own materials, equipment, and sub-subcontractors as long as the MBE subcontractor performs at least 51 percent of the subcontracted work. If the MBE subcontractor receives a reasonable (and not excessive) fee or commission for providing a bona fide service by procuring essential personnel, facilities, equipment, materials, or supplies, then only the amount of the fees or commissions received can be counted toward the prime contractors MBE participation percentage.

Prime contractors may also count toward its MBE goals the following expenditures to certified MBE firms that are not manufacturer or suppliers ...Fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer or a supplier in the materials and supplies, provided that the fee or commission is determined by the City to be reasonable and not excessive as compared with fees customarily allowed for similar services.

City MBE Program Policy Section 16.5.74.e.3.g states:

In no case shall a minority business subcontractor be allowed to subcontract any portion or portions of his work back to the prime contractor, either directly to, or through any other company or firm owned and/or controlled by the prime contractor.

Nor shall a minority business subcontractor be allowed to subcontract all or the majority of the subcontracted portion or portions of the work to another firm or firms. A minority business enterprise subcontractor shall be prohibited from engaging in a subcontractual agreement

with the sole intent of collecting a broker's fee or commission, and whose employees perform none of the direct labor or service activities specified in the contract.

City capital projects that receive federal funding must comply with federal DBE regulations. Similar eligibility criteria described above for projects that must meet MBE participation goals are applicable to projects that must meet DBE participation goals. Requirements of prime contractors and DBE subcontractors are more clearly defined than the City's MBE Program requirements.

The federal DBE regulations impacted in this audit were related to the amounts that were not directly paid to the DBE subcontractor, but were rather paid by the prime contractor.

Federal regulation 49 CRF Part 26, Section 26.55, states:

(a)(1) [Contractors can] count the entire amount of the portion of the construction contract that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE subcontractor for the work of the contract.

(a)(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the project.

(c)(1) Contractors cannot, however, count expenditures to a DBE subcontractor if the DBE is not performing a commercially useful function on that contract. To be commercially useful, "the DBE must be responsible, with respect to materials and supplies used on the contract, negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself."

(d)(1) The DBE must be responsible for the management and supervision of the entire trucking operating for which it is responsible on a particular contract, and there cannot

be a contrived arrangement for the purpose of meeting DBE goals.

Prime contractors are required to propose the MBE/DBE participation amounts prior to the project being awarded and then afterward to certify the amounts paid to the MBE/DBE subcontractors

When bidding for City projects, prime contractors are required to submit the amounts they propose to subcontract with MBE/DBE subcontractors on an MBE/DBE Utilization Summary form. The City Procurement Division and MBE Office use the proposed amounts to award MBE/DBE bid points which are part of the bid evaluation.

After projects are completed, prime contractors are required to submit with their final pay request an Affidavit signed by both the prime contractor and MBE/DBE subcontractor certifying: 1) the amount the prime contractor paid to the MBE/DBE subcontractor; 2) the amount and percent of work the MBE sub-subcontracted out to other subcontractors; and 3) the percent of work the MBE subcontractor performed on the project.

Federal regulation 49 CRF Part 26, Section 26.37, requires:

The City's DBE Program is to "include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs." Such a mechanism would include observing the type and amount of work the DBE subcontractor performs on each project.

In the event of non-compliance with the City's MBE Policy, the City can penalize the prime contractor and/or the MBE subcontractor in various ways, including but not limited to, assessment of fines, suspension from bidding on projects, and revocation of MBE certification.

Audit Questions and Results

Our review of 24 projects showed that four of the five prime contractors violated a least one of the City's MBE Program policies or the federal DBE Program policies in the MBE/DBE participation amounts reported to the City. In this section, we will answer in

summary each of the audit questions for each objective. Detailed results for each contractor by project are provided in the tables in Appendices B - F.

We noted that there was at least one policy violation in 15 of the 24 projects reviewed involving four of the five prime contractors reviewed.

Objective 1: Determine compliance with the City’s MBE Program Policies and federal DBE Program regulations, as applicable, on each of the City projects selected.

Question 1 - For the selected projects, were the amounts reported as paid to MBE subcontractors on the Affidavits and signed and submitted to the City by both the prime contractors and MBE subcontractors accurate, eligible, and in compliance with City MBE Policy Section 16.5.74?

Summary of Results

Of the 19 MBE projects, two were in progress at the time of our audit and 17 were completed. For the completed projects, prime contractors had submitted Project Completion Affidavits (Affidavits) certifying the amounts the prime contractors paid to MBE subcontractors, the percentage of work performed by the MBE subcontractors, and the amounts the MBE further sub-contracted to other businesses during the project.

We tested 26 submitted Affidavits for the 17 completed projects and found that 14 of the Affidavits were accurate, 11 were inaccurate due to policy violations (included ineligible amounts in the MBE participation), and one was inaccurate due to undetermined causes.

For the 11 inaccurate Affidavits due to policy violations, we identified two policies that were violated by three prime contractors and five MBE subcontractors relating to City MBE policy section 16.5.74.e that are described below.

During our initial audit work, we included one project completed by Jimmy Crowder Excavating and Land Clearing, Inc., (Jimmy Crowder Excavation) when a question was raised regarding program compliance. We tested the Affidavit, interviewed the

For MBE projects, our testing results of 26 Affidavits showed that 14 were accurate, 11 were inaccurate due to policy violations and 1 was inaccurate due to undetermined causes.

prime contractor and MBE subcontractor, and determined that no MBE Program policies were violated on that project. Accordingly, we did not include any additional projects performed by Jimmy Crowder in our audit testing.

Three prime contractors and five MBE subcontractors violated MBE Policy Section 16.5.74.e.1 on 10 of 17 completed projects when the prime contractor directly purchased materials for use by MBE subcontractors and improperly counted those costs of materials toward their MBE participation on the Affidavits.

We found 10 projects where four prime contractors were directly purchasing materials for MBE subcontractors violating MBE Policy Section 16.5.74.e.1

For all 10 MBE projects, the prime contractors directly purchased concrete for the subcontractors. Table 7 shows by contractor the number of MBE projects reviewed and the number of projects where the prime contractor purchased concrete for the MBE subcontractors and improperly counted the concrete cost in the MBE participation.

**Table 7
Number of MBE Projects Where Prime Contractors Directly Purchased Materials for Use by MBE Subcontractors**

Prime Contractor	Number of MBE Projects	Number of Projects where Prime Directly Purchased Materials for MBE Subcontractor	MBE Subcontractors Involved
Allen’s Excavation	4	4	1) Unique Concrete Construction
M of Tallahassee	5	0	n/a
North Florida Asphalt	3	3	1) Hawthorne Construction, 2) RJW Construction
Sandco	4	3	1) Hawthorne Construction 2) Crosspoint Consulting & Construction
Crowder Excavation	1	0	n/a
Total projects and Subcontractors	17	10	4 MBE subcontractors

Reasons for prime contractors directly purchasing materials for the MBE subcontractors included the MBE's lack of financial capabilities and the prime contractors' ability to obtain better pricing.

As stated in the background section, one way to increase a business's financial capacity is for MBE subcontractors to develop relationships with vendors and creditors by ordering and paying for materials needed on projects. The most common reasons the prime contractors purchased the concrete instead of the MBE subcontractor included:

- The subcontractors did not have available financing to pay for the materials up front and to then wait to be reimbursed after billing the prime contractors. Therefore, had the prime contractor not purchased the materials, several MBE subcontractors could not have participated in the program.
- One or more prime contractors stated they were not aware that paying for the materials was a violation of the MBE policies as they had followed this practice for several years. The prime contractors also asked why they had not been monitored by the City's MBE Office regarding this policy and had not been informed of the policy violations earlier.
- Some prime contractors saved money because they received better pricing than the subcontractors. At least one prime contractor (Sandco) asserted that their MBE subcontractors also benefited from this practice because the subcontractors ordered the quantity of concrete needed and were charged the discounted price. Further, Sandco paid the MBE subcontractors on an all-inclusive linear foot price rather than for only labor. In this case, the MBE subcontractors benefited from the discounted price directly instead of the prime contractor and the subcontractor also assumed all responsibility for the concrete ordered.

When prime contractors continually procure materials for MBE subcontractors, the prime contractors are further developing their relationship with the supplier, but the MBE subcontractors are not developing their business relationships with the supplier and building their financial capacity.

One prime contractor and one MBE subcontractor violated MBE Policy Section 16.5.74.e.3.a on one completed project when the prime contractors included in MBE participation not only the fees and/or commissions paid to an MBE (which is allowable) but also the cost for materials acquired or additional subcontracts made by the MBE subcontractor (which is not allowable).

According to MBE Program Policy Section 16.5.74.e.3.a, a MBE subcontractor can charge a reasonable fee or commission for providing a bona fide service including assistance in procuring essential services, materials or supplies for performance of the contract. In this case, only the fee or commission can be counted toward the MBE participation, not the cost of the acquired services, materials or supplies.

During our testing, we identified one project where a prime contractor paid a fee or commission to a MBE subcontractor to obtain essential services through a sub-subcontractual agreement and included the costs of those services, as well as the fee or commission toward their MBE participation. Specifically:

- M of Tallahassee submitted an Affidavit claiming to have paid Construction Support Southeast (CSS) \$108,244 for performing “Trucking, Pipe” work on a completed project (Kerry Forest Extension). The Affidavit falsely claimed that the MBE performed 53.7 percent of the work and sub-subcontracted \$50,100 (46.3%) to another contractor. During our testing, we determined that CSS did not perform any of the acquired paving work on the project. Instead CSS sub-subcontracted out 100 percent of the work to a third contractor to perform paving services, and M of Tallahassee paid CSS a \$2,660 fee or commission. Both M of Tallahassee and CSS violated the MBE Policy by claiming both the fee or commission and cost of the paving services in their MBE participation on the certified Affidavit and by

claiming CSS performed 53.7 percent of work on the project when they did not perform any work.

One prime contractor and one MBE subcontractor violated MBE Policy Section 16.5.74.e.3.g on two completed projects and on one project in progress when the prime contractor paid the MBE subcontractor a broker's fee or commission to engage in a sub-subcontractual agreement with the sole intent of collecting a broker's fee or commission and not performing any of the direct labor or service activities specified in the contract.

During our testing, we identified the following two different types of violations of this policy by Allen's Excavation and Unique Concrete Construction (Unique).

- First, Allen's submitted a certified Affidavit falsely claiming to have paid Unique \$141,974 to perform "concrete work, gabion stone work, and concrete curb work" on a completed project (Meginnis Creek). The Affidavit also falsely claimed that the MBE performed 100 percent of the work and sub-subcontracted \$69,000 (48%) to a third contractor. During our testing, we determined that Unique was properly paid \$35,784 for performing concrete work on the project. In addition, Unique was also improperly paid a \$2,843 broker's fee or commission and also improperly participated with Allen's to report that Unique sub-subcontracted out work to a third contractor. Contrarily, Unique did not sub-subcontract out the work; Allen's sub-contracted with the third contractor to construct gabion baskets for \$187,802. Additionally, Unique did not perform any work to construct the gabion baskets. Both Allen's and Unique violated the MBE Policy by falsely claiming that Unique sub-subcontracted with the third contractor and including this amount in Allen's MBE participation, falsely reporting Unique sub-subcontracted work with the third contractor, and paying Unique a broker's fee or commission.

- On one project that was still in progress (Emory Court/Dupont Drive), Allen's paid Unique a broker's fee or commission to sub-subcontract out specialized gabion basket work that Unique was never intended to perform. During our testing, we determined that Unique was invoicing Allen's 5 percent of each invoice for "overhead and profit" of the amount paid to the sub-subcontractor performing the specialized gabion basket work. Unique was not performing any work or expected to perform any work on the project associated with the sub-subcontract. We have been informed that gabion basket is specialized work and that Unique did not have the skills, knowledge, or experience to successfully construct gabion baskets.

As of June 15, 2011, Allen's had paid Unique a broker's fee or commission of \$7,879. Since this project has not yet been completed, a final Affidavit has not been submitted. However, the project work related to the gabion baskets was over 90 percent completed at the time of our review and therefore, it would not be possible for Unique to perform a majority of work constructing gabion baskets even if they acquired the expertise to do so. At the time our audit fieldwork was conducted, Allen's was violating the MBE Policy by paying Unique a broker's fee or commission on the Emory Court/Dupont Drive project.

- Second, on the Pump Station 36 Replacement Project, Allen's paid Unique a \$2,535 broker's fee or commission to allow Allen's to claim that Allen's paid Unique the original amount proposed on Allen's MBE Participation submitted with Allen's Bid Proposal. Instead, Allen's used the remaining money to purchase a large precast concrete structure materials not related to the concrete materials Allen's purchased for Unique's use on the project. Table 8 shows the breakdown of the MBE participation amounts claimed on the Affidavit. The final adjusted MBE participation for this project was only .3 percent of the

original project contract, much less than the 7.5 percent MBE black MBE participation goal.

**Table 8
Breakdown of Pump Station 36
Replacement Project MBE Participation**

Description	Amount	Percent of Project
Contract value (Between City and Allen's)	\$ 1,372,855	
Subcontract Value (Between Allen's and Unique)	\$ 102,965	7.5%
Concrete work paid to Unique →	\$ 1,584	
Remaining subcontract value	\$ 101,382	
Broker's fee/Commission paid to Unique (2.5% of remaining subcontract value) →	\$ 2,535	
Total amount paid to Unique and percent of Contract →	\$ 4,118	.3%
Standard Precast concrete structure separately purchased by Allen's	\$ 103,037	

Because only the amount paid to Unique for performing concrete work (\$1,584) could be counted toward Allen's MBE participation, the MBE participation was overstated on Allen's Affidavit by \$101,381. For this project, both Allen's and Unique submitted false information on the certified Affidavit.

We identified one violation of federal DBE rules when two prime contractors included the cost of materials they purchased directly for DBE subcontractors in their DBE participation.

Question 2 - For selected projects, were the amounts reported as paid to the DBE subcontractor on the Affidavits and signed and submitted to the City by both the prime contractors and MBE subcontractors, accurate, eligible, and in compliance with federal regulations 49 CFR 26.55?

Summary of Results

Of the five DBE projects tested, four were completed and one was in progress at the time of our audit. For the completed projects, prime contractors had submitted Project Completion Affidavits (Affidavits) certifying the amounts the prime contractors paid to DBE subcontractors, the percentage of work performed by the DBE

subcontractors, and the amounts the DBE further sub-subcontracted to other businesses during the project.

We noted two errors when one prime contractor erred by submitting incorrect Affidavit forms at the end of a DBE project and the City erred by accepting the wrong forms.

We tested five submitted Affidavits for the four completed projects and found that one Affidavit was accurate, two were inaccurate due to policy violations (including ineligible amounts in the MBE participation), and two were inaccurate due to errors on the Affidavits (one appeared to be inaccurate due to a bookkeeping error, one was due to the wrong Affidavit form being used).

Of the two inaccurate Affidavits due to policy violations, we identified one type of violation performed by two prime contractors and three DBE subcontractors.

Two prime contractors and two DBE subcontractors violated federal regulation 49 CRF Part 26, Section 26.55 on three of four completed projects when the prime contractor directly purchased materials for use by DBE subcontractors and improperly counted those costs of materials toward their DBE participation on the Affidavits.

Table 9 below shows the number of completed DBE projects we reviewed, the number of projects where prime contractors directly purchased materials for the DBE subcontractors and improperly counted the materials cost in the DBE participation, and the involved MBE subcontractors. The types of materials purchased included concrete and fence materials.

**Table 9
Number of DBE Projects Where Prime Contractors Directly Purchased Materials for Use by DBE Subcontractors**

Prime Contractor	Number of DBE Projects	Number of projects where Prime Directly Purchased Materials for DBE Subcontractor	MBE Subcontractors Involved
Allen’s Excavation	2	1	Unique Concrete Construction
M of Tallahassee	0	0	n/a
North Florida Asphalt	1	1	Hawthorne Construction
Sandco	1	0	n/a
Crowder Excavation	0	0	n/a
Total projects	4	2	2 MBE subcontractors

Federal regulation 49 CRF Part 26, Section 26.55 states that prime contractors can count the entire amount of the portion of the construction contract that is performed by the DBE's own forces, including the cost of supplies and materials obtained by the DBE subcontractor for the work of the contract. Since the materials had been purchased directly by the prime contractors and not the DBE subcontractors, the costs of the materials cannot be counted toward the DBE participation.

Additionally, during our review of the one project in progress (Frenchtown Stormwater) we noted that the Allen's, the prime contractor had purchased concrete for Unique, the DBE subcontractor. Subsequent to our fieldwork, Allen's has reported that Allen's has started using joint checks (made out to Unique and the materials supplier) to pay for concrete on this project. The MBE Office agrees that using joint checks complies with the DBE policies and can be counted toward DBE participation.

We noted two errors on the Affidavits: 1) One prime contractor made a .2 percent overstatement in participation; and 2) One prime contractor erred by submitting incorrect Affidavit forms at the end of a DBE project and the City erred by accepting the wrong forms.

On one DBE project involving three subcontractors, the prime contractor submitted, and the City accepted, two MBE Affidavits for DBE subcontractors that should have been submitted on DBE Affidavit forms. The form submitted for the third subcontractor was also an MBE Affidavit; however, that subcontractor was not a certified DBE. While that form was accepted as submitted, it was not considered in determining whether the Prime contractor met its DBE goals.

Sandco, Inc., was the prime contractor for the Airport Perimeter Road/Fence and Gate Improvements project (Airport Perimeter project). This was a DBE project. Sandco submitted MBE Project Completion Affidavit Forms with the final payment request for two subcontractors when it should have submitted on DBE Affidavit forms. The two subcontractors (Suzanne Diambra Landscaping and Florida Developers) were certified with the City as both MBEs and DBEs. The form for the third contractor was also an MBE Affidavit; however, that subcontractor (Phoenix) was only certified as a MBE, but not as a DBE. Accordingly, those payments were determined not to be eligible toward the Prime Contractor's DBE

participation percentage. Table 10 shows the DBE participation amounts proposed prior to the project and claimed after the project was completed.

Table 10
Amounts Prime Contractor Proposed and Claimed for MBE/DBE
Subcontractors and Amount Audit Determined Eligible for DBE
Participation on the Airport Perimeter Project

Subcontractor	Amount Prime Contractor Proposed for DBE Participation	Amount Prime Contractor Submitted as Paid on MBE Forms	Amount Audit Determined Eligible for DBE Participation
Suzanne Diambra Landscaping (3)	\$ 642,051	\$ 663,944	\$ 662,577
Florida Developers (1)	\$ 95,000	\$ 5,023	\$ 5,023
Phoenix Construction and Fencing (2)	\$ -	\$ 950,044	\$ -
Totals	\$ 737,051	\$ 1,619,011	\$ 667,600
Percent of original contract amount	23.9%		21.6%
Original contract amount	\$ 3,083,825		
DBE Goal for project	23.40%		

Notes: (1) Sandco's revised DBE participation for Florida Developers from \$0 to \$95,000 subsequent to the bid opening was approved by the City.
 (2) Phoenix, a non-DBE was substituted for another non-DBE fencing subcontractor after bid opening but prior to the project starting. This was approved was the City.
 (3) The amount determined eligible was \$1,367 (or .2%) less than claimed. This appeared to be a bookkeeping error.

For the Airport Perimeter Project, Sandco submitted MBE Affidavit forms instead of DBE Affidavit Forms for the DBE project, and the City erred in accepting incorrect forms for two of the three subcontractors. We determined that the DBE participation amount eligible for the project was \$667,600, 21.6 percent of the project total, which was just short of the 23.4 percent project DBE goal.

Objective 2: Assess the results of this audit, comments from prime contractors, MBE subcontractors, and City staff, and recommendations from previously performed audits, and provide recommendations to improve the City’s MBE and DBE Programs.

Summary of Recommendations

We provided seven recommendations to City management to improve the City's MBE/DBE programs.

During our audit, we identified seven areas in the City's MBE and DBE programs where improvements should be made. These areas are related to 1) updating the outdated MBE policies; measuring the MBE Program's success; 2) clarifying the types of services that are eligible to participate in the MBE program, specifically as it relates to "general contractors;" 3) improving the monitoring over the MBE/DBE Program activities; 4) defining what constitutes success and implement ways to measure that success; 5) improving the Project Completion Affidavit form submitted to the City; 6) providing additional training opportunities for prime contractors and MBE subcontractors; and 7) reviewing and considering past audit recommendations in future management actions. These seven recommendations are described in more detail below.

1) The City needs to review and revise its MBE policies and procedures.

The current MBE policies were last revised in 1993. In October 2004, the City Auditor recommended in a report related to compliance of the MBE Policy ("Inquiry into compliance with the City Minority Business Enterprise Policy by M of Tallahassee, Inc., and its Subcontractors: Construction Support Southeast and Duggar Excavating, Inc.," Report #0501) that the MBE policy be updated because there were policy sections that were outdated and other sections that were not being enforced due to practicality or lack of available resources. Also during that audit, the City had accepted a 2004 Disparity Study that management indicated would provide them "the basis for review and revisions to the City's MBE Policy." No changes were or have been made to the MBE Program or policies.

A second related audit was completed in May 2011 ("Audit of the City's Vendor Incentive Programs," Report #1110). In that report, the City Auditor again noted the current program and policy had not been updated since 1993. The MBE Program structure was based upon outdated policies and likely did not

comply with United States Supreme Court rulings related to race and gender neutral alternatives. The audit report also recommended that the program be reviewed to determine if it should be redesigned or at a minimum update the policies to meet the needs of the current business environment.

Over the last 17 years, the composition of MBE businesses in the Tallahassee area has changed, national legal challenges have forced changes in MBE programs across the county; however, the City's MBE Program and policies has not been updated accordingly. We recommend the MBE Program and policies be re-evaluated and revised 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.

The MBE Office and City management indicated that they are in the process of re-evaluating the City's MBE Program and policies and anticipate changes to the program to be completed.

2) *The City should clearly 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."*

Our review showed some audited prime contractors subcontracted with MBE general contractors to perform work under the City MBE Program. For the most part, these MBE general contractors are established businesses that perform a variety of work with their own equipment and employees. As a result; these MBE general contractors provide a needed service and directly perform 51 percent or more of contracted work as required by City MBE policies. However, we also noted one prime contractor, M of Tallahassee, often used an MBE general contractor, Construction Support Southeast, (CSS) to meet its MBE participation percentages. While the relationship between M of Tallahassee and CSS currently meets City MBE policies in form, that contractual relationship raises question as to whether

services provided are meeting the substance of the spirit and intent of the City MBE program. At the time of our review, CSS was a one-person business that subcontracted out, leased, and/or acquired services from others for a majority of needed work instead of directly performing the work with its own equipment and employees.

The contractual relationship between M of Tallahassee and CSS is presented below for management review and consideration for future changes to MBE program policies. As background, in October 2004, the Office of the City Auditor issued Audit Report #0501, Inquiry into Compliance with the City Minority Business Enterprise Policy by M of Tallahassee, Inc. and its Subcontractors: Construction Support Southeast and Duggar Excavating, Inc.” In that audit, we noted M of Tallahassee and CSS falsified the MBE Project Completion Affidavit, CSS did not perform construction work as represented by M of Tallahassee on the MBE Project Completion Affidavit, M of Tallahassee did not meet the MBE use requirement, and neither M of Tallahassee nor CSS should have signed the MBE Project Completion Affidavit certifying that the MBE performed the contracted work. The audit showed CSS received a 5 percent broker’s fee or commission on the project and performed none of the contracted work with its own labor.

In response to the audit findings, M of Tallahassee’s attorney responded by apologizing for any misunderstanding regarding M of Tallahassee’s utilization of MBE and stated any violation was certainly unintentional and not in contrast to the spirit of the City of Tallahassee MBE policies and procedures. Further, as a result of CSS’s involvement with M of Tallahassee, CSS had grown in its number of employees, broadened its expertise and size, and is now qualified to perform more extensive and varied work. The City of Tallahassee fined both M of Tallahassee and CSS for the policy violations noted above. Our three findings relating to M of Tallahassee and CSS are presented below.

First, M of Tallahassee and CSS have committed the same violation in 2004 and 2009. Comparing the above 2004 violations to the Kerry Forest Extension Project completed in March 2009, M of Tallahassee and CSS again submitted an MBE Affidavit that falsely claimed CSS performed work on that project relating to paving when in fact CSS did not perform any of the paving, CSS subcontracted out 100 percent of the work to a third party, and M paid CSS a brokers fee or commission. Both M of Tallahassee and CSS violated the MBE policy by claiming both the fee or commission paid and the cost of the paving in their Project Completion Affidavit when CSS did not perform any of the paving work. For this current violation, M of Tallahassee and CSS have again been fined by the City for substantially committing the same violations as noted in 2004.

Second, while we do not agree that M of Tallahassee and CSS's actions were consistent with the intent of the City MBE program, their actions were defensible as to form and therefore did not violate City MBE policies on four projects related to the amount of MBE participation claimed. Table 11 below shows four M of Tallahassee projects where Affidavits for CSS were tested, the amount CSS was paid, the amounts CSS paid others for materials or services for the projects, and CSS's estimated profit for each project.

Table 11
Services and Products Construction Support Southeast Provided on Four
M of Tallahassee Projects

Project Name	Type of work CSS was to have performed	Amount CSS Was Paid	Percent of MBE Participation Claimed	Materials Purchased	Temporary Labor Purchased	Trucking Services Purchased	Paving Sub-sub-contracted	Amount Earned by CSS
Providence Community Roadway Projects	Drainage work/structures, silt fence, labor	\$201,239	100%	\$ 98,875 (49%)	\$ 71,546 (36%)			\$ 30,818 (15%)
Kerry Forest Parkway Extension	Trucking, pipe	\$ 91,341	53.7%				\$ 88,681 (97%)	\$ 2,660 (3%)
E. Georgia @ Meridian Flood Mitigation	Hauling, drainage & labor	\$258,702	100%	\$ 120,784 (47%)	\$ 30,671 (12%)	\$ 80,162 (31%)		\$ 27,085 (10%)
Governors Square Blvd. Widening	Fencing, trucking, structure & pipe supply	\$114,143	100%	\$ 106,707 (93%)				\$ 7,436 (7%)
Totals		\$ 665,425		\$ 326,366	\$ 102,217	\$ 80,162	\$ 88,681	\$ 67,999

The above table shows that CSS estimated profit for the above four projects was between 7 percent and 15 percent of amounts paid to CSS by M of Tallahassee. Table 10 also shows that CSS paid between 85 percent and 97 percent of amounts received from M of Tallahassee to others. Of the \$665,425 CSS received from M of Tallahassee, CSS's estimated profit was \$67,999 and CSS paid others \$597,426. At first glance, this finding would raise the question of how CSS could meet the City's MBE participation requirements when it did not appear to perform 51 percent of the "subcontracted" services. The subcontracts with M of Tallahassee required CSS to provide materials and services such as pipe, trucking, labor, and fencing for one or more of the above projects. The affidavits completed by CSS for most of the above projects certified that CSS provided 100 percent of the pipe, fencing labor, and trucking for its subcontracts with M of Tallahassee. During our audit, we learned that CSS obtained labor from a non-MBE temporary labor service (and added five dollars per hour for CSS for each hour worked by each temporary laborer), CSS obtained hauling services from a non-MBE trucking company (and added five

dollars per hour for each hour of trucking provided), and pipe CSS purchased was laid with M of Tallahassee equipment and CSS temporary laborers. The temporary laborers were directed daily by M of Tallahassee supervisors and not by the CSS owner or employees. As a result, CSS had no direct involvement in providing the services or supervision of temporary laborers.

In discussions, M of Tallahassee and its attorney claimed that the trucking, pipe installation, and labor services obtained by CSS were not “subcontracts” as the term is currently defined by the City. Instead, they asserted CSS “acquired” the services. M of Tallahassee’s attorney was aware that trucking services obtained by CSS would not have met the DBE requirements for federally funded projects as CSS did not own its own trucks, use its own drivers, or supervise the trucking operation – requirements to claim DBE participation. Because the above projects involving trucking were City MBE projects, he correctly noted DBE policies should not be applied. Further, the M of Tallahassee attorneys correctly stated current City MBE policy does not prohibit M of Tallahassee’s and CSS’s actions and those policies allowed CSS to claim to have performed 100 percent of services provided. Our further review of City policies and the interpretation by the attorneys for M of Tallahassee supported their position. While we do not agree that M of Tallahassee and CSS’s actions were consistent with the intent of the City MBE program, their actions were defensible as to form. Accordingly, for those M of Tallahassee and CSS subcontracts where CSS “acquired” goods and services and did not technically “subcontract” for services, neither we nor the City could support citing M of Tallahassee or CSS for violating current City MBE policies (see Appendix C).

Third, the process followed by M of Tallahassee and CSS, while technically complying with current City MBE policies, results in significantly less direct participation by other certified MBE’s and falls well short of program intent. Table 12 shows the amount of work M of Tallahassee identified for CSS to perform as an MBE compared to work directly performed by CSS.

Table 12
Comparison of MBE Participation Claimed for and Amount Received by
Construction Support Southeast on Four M of Tallahassee Projects

Project Name	Total Amount of Contract for All Services	MBE Participation M identified for CSS	Percent of Participation M identified for CSS	Amount CSS Earned for Acquiring Services or Materials	Percent of Total Contract CSS Earned
Providence Community Roadway Projects	\$3,379,808	\$201,239	6.0%	\$30,818	.91%
Kerry Forest Parkway Extension	\$1,315,234	\$91,341	6.9%	\$2,660	.02%
E. Georgia @ Meridian Flood Mitigation	\$2,029,632	\$258,702	12.7%	\$27,085	1.3%
Governors Square Blvd. Widening	\$917,965	\$114,143	12.4%	\$7,436	.81%
Totals	\$7,642,639	\$665,425	8.7%	\$67,999	.89%

The above table shows M of Tallahassee identified between 6.0 percent and 12.4 percent of the total cost for each project for CSS to perform. The table also shows that when one considers CSS's estimated profit (\$67,999) as an MBE general contractor as compared to the amounts purchased from others (non-MBEs for materials or services), CSS only retained as profit between .02 percent and 1.3 percent of the total contracted work.

Since CSS did not utilize MBE subcontractors on these four projects, only CSS, the solely owned and operated MBE general contractor benefited from this arrangement. An alternative approach that would have better met the MBE Program intent and benefited more minorities would have been for M of Tallahassee to have subcontracted out work to a MBE general contractor having its own workforces to perform the services or with multiple MBE subcontractors to perform the various needed services, i.e., trucking, piping, fencing, and paving. When comparing the actions of M of Tallahassee (which technically complied with current City policies) to actions of other prime contractors (which did not comply with current City policies), those other contractor's actions resulted in significantly more direct assistance to multiple MBE's and better carried out the intent of the City MBE program.

Unfortunately, under the City's current policies an MBE general contractor can obtain all needed "services" outside the current definition of a "subcontractor" and with non-MBE suppliers of goods and services. In such circumstances, as was the case with M of Tallahassee and CSS, 100 percent of amounts paid to the MBE general contractor and the services they further obtain outside the current definition of "subcontract" could be claimed as MBE eligible.

In our opinion, the City MBE Policies should be revised to clearly address how general contractors "fit" into the City's MBE Program. We recommend the City's MBE Program be revised 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." If there is need to allow MBE general contractors to participate in the MBE program when that general contractor has no equipment or other employees, then the City needs to identify how such MBE general contractors contribute to the goal, purposes, and intent of the City's MBE Program.

3) *The City needs to timely and adequately monitor the MBE/DBE Program.*

The City has not consistently performed timely and adequate monitoring of the MBE/DBE participation of prime contractors and subcontractors over the years. In both the 2004 and 2011 audit reports, we noted that monitoring of MBE subcontractor performance on the projects should be improved. The MBE Administrator indicated that their monitoring efforts significantly decreased after a position in their office was eliminated in July 2008.

When the MBE Office became aware of potential violations related to this audit, they brought their concerns to the City Manager, who in turn asked the Office of the City auditor to audit compliance with MBE policies and DBE regulations on additional selected City capital construction projects.

In our opinion, many of the policy violations identified in this report could have been identified and addressed through basic monitoring activities, such as review of selected prime contractor and subcontractor documentation, and observations and direct inquiries on job sites. Such monitoring could be done by the MBE Office, Public Works inspectors on-site, or a combination of City departments in order to verify compliance with MBE Program policies.

To comply with the federal DBE regulations (49 CFR 26.37), the City's DBE Program is required to "include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs." Such a mechanism would include observing the type and amount of work the DBE subcontractor performs on each project.

In order to comply with federal DBE regulations and better monitor the MBE Program, we recommend that monitoring of MBE/DBE requirements be conducted during the construction phase and as soon as possible after the end of each project by the MBE Office, Public Works inspectors, or a combination of both, to ensure that program participants (prime contractors and subcontractors) are complying with program policies and performing the work as reported.

4) ***The City MBE program should define what constitutes success and implement ways to measure that success.***

As previously stated, the City MBE program has been in operation since 1991. The City has yet, however, defined what constitutes success and how to measure that success. Several prime contractors and some MBE subcontractors we interviewed indicated that the program succeeds when MBE subcontractors "graduate" from the program. Graduation would be achieved when the MBE subcontractor has established the financial capability to obtain bond insurance and credit to procure needed materials and equipment for jobs. This is only one example of a potential measure for success.

Without predefined measures for success, management is not able to determine whether the MBE program is meeting the City's intent and expectations, or whether changes to the program are needed. We recommend that 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.

5) The City's MBE Project Completion Affidavit (Affidavit) should be revised to separate the information being certified by the prime contractor and the subcontractor at the end of a project.

The current Affidavit used by the City requires both the prime contractor and MBE/DBE subcontractor to certify by signing and notarizing that the following information is "true and correct":

- The amount the prime contractor paid to the MBE for performing the described work on the subcontract;
- The percentage of subcontracted work the MBE performed;
- The name of the company the MBE sub-subcontracted with, if applicable;
- The amount the MBE paid on the sub-subcontract; and
- The percentage of work the MBE sub-subcontracted.

While the prime contractor should know when a MBE/DBE subcontractor further sub-subcontracts out work on a project, the prime contractor may not know the dollar amount the MBE subcontractor further sub-subcontracted. In order to hold each party accountable, the prime contractor and subcontractor should certify their own information. We recommend the MBE Office work with the City Attorney's Office 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.

We recommend that management work with the City Attorney to identify higher level penalties for prime contractors and MBE/DBE subcontractors that submit false Affidavits to the City. Related to this, we also recommend that the City implement processes to ensure that the correct Affidavit forms are submitted by prime contractors with their final payment request.

- 6) *The City should provide additional training opportunities for prime contractors and MBE subcontractors to better understand the MBE policies and requirements.***

Based on our discussions with prime contractors and subcontractors during this audit, we noted there was a lack of understanding by the prime contractors and MBE subcontractors of how to interpret and apply the City's MBE policies. To help prime and subcontractors fully understand the MBE policies and how they are to be applied, we recommend the MBE Office provide additional training opportunities for prime contractors and MBE/DBE subcontractors to better understand the program and Affidavit requirements, and subsequent revisions to the program and policies.

- 7) *Recommendations from prior related audit reports should be considered in future management actions.***

City management should review prior City Auditor recommendations relating to its administration of the MBE program included in Audit Report #1110, "Audit of the City's Vendor Incentive Program," dated May 6, 2011, and Audit Report #0501, "Inquiry into Compliance with the City Minority Business Enterprise Policy by M of Tallahassee, Inc., and its Subcontractors: Construction Support Southeast and Duggar Excavating, Inc.," dated October 21, 2004. Some of the recommendations are similar to those provided in this report.

The 2004 audit report made recommendations for *[reported updates are included in italics]*:

- The MBE Office to improve their record keeping to retain adequate documentation to support that the MBE vendor meets City MBE policy requirements to be properly certified. *[The MBE Administrator reports that the MBE Office has improved their record keeping; however, management acknowledged that certification documentation was lacking for one DBE subcontractor (Phoenix Construction and Fencing, LLC.) included in this audit.]*
- The MBE Office to revise the Affidavit form until it collects the appropriate information to assure the MBE Office that the prime contractor and the MBE subcontractor is certifying compliance with the City's MBE policy.
- The MBE Office to revise the MBE policy and all related forms be revised to specify the documentation that is acceptable to meet the City's requirement confirming the representation made in the bid proposal.
- The MBE Office to make the MBE Policy more easily available for contractors and participants to reference.
- The MBE Office to consider holding periodic mandatory workshops educating and refreshing prime contractors and MBE subcontractors as to the City's MBE requirements. *[The MBE Office annually provides workshops for prime and sub-contractors, but these trainings have historically focused more on MBE business growth and improvements instead of City MBE Program requirements and compliance.]*
- City management to assess the mission and performance outcomes of the MBE program and make revisions as needed to provide for an effective MBE program for the City, its prime contractors, and MBE subcontractors. Concerns about the business practices of MBE general contractors were used as an example of our concerns.

- City management to evaluate the MBE program and clarify the requirements and responsibilities of City departments and offices, such as the MBE Office, Public Works Engineering.

Related recommendations from the more recent 2011 audit report included *[reported updates are included in italics]*:

- City management consider replacing the MBE program with a Small Business Enterprise Program or if the MBE program continues, obtain a new Disparity Study, and update the MBE policy to include provisions identified during the audit.
- The MBE Office to increase monitoring of MBE participation of job sites.
- The MBE Office to make the MBE Policy more available to employees. *[The MBE Office posted the MBE Policy on the City's internal Intranet for employees to access as needed.]*
- City management to seek out qualified individuals to participate on the MBE Advisory Committee to increase their meeting frequency and effectiveness.

We recommend City management and the MBE Office consider these prior recommendations in their future management actions to address the issues and make improvements in the City's MBE Program.

Conclusion

Our audit showed that 45 percent of the Affidavits submitted to the City certifying the amounts paid to MBE/DBEs tested were inaccurate either due to policy violations or errors.

As requested, we conducted an audit of selected City capital construction projects, prime contractors, and MBE or DBE subcontractors to determine compliance with City MBE policies and federal DBE policies. We concluded the following:

- 1) We determined that 15 of 31 (48%) MBE/DBE Affidavits we tested on 21 completed projects were accurate, 14 of 31 (45%) were inaccurate due to ineligible amounts were included in MBE/DBE participation and two (7%) were inaccurate to bookkeeping errors or other unknown reasons.
- 2) Of the 17 completed MBE projects reviewed, four of the five prime contractors incurred 13 violations of three City MBE policies on 11 projects. We noted that one prime contractor (Jimmy Crowder Excavating and Land Clearing) did not violate any policies on the selected Affidavit reviewed. The 13 violations consisted of:
 - Ten violations were due to three prime contractors (Allen's, North Florida Asphalt, and Sandco) directly purchasing materials for MBE subcontractors and including that amount in their reported MBE participation. *[Note: City management notified the prime contractors and MBE subcontractors of these violations and that they will be subject to enhanced monitoring for MBE compliance during the next 12 months. Additionally, the City is considering revising the MBE policies to better meet the needs of the subcontractors related to procurement of materials]*
 - One violation was due to one prime contractor (M of Tallahassee) 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. CSS was fined \$9,134 in January 2012, for this violation and will be placed on suspension until the fine is paid.]*

- Two violations were due to one prime contractor (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 Excavation 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 was fined \$3,578 in January 2012, for this violation and will be placed on suspension until the fine is paid.]*

3) Of the four completed DBE projects reviewed, two of the five prime contractors incurred two violations of one federal DBE regulation on two projects. The two violations were due to two prime contractors (Allen's and North Florida Asphalt) directly purchasing materials for DBE subcontractors and including that amount in their reported DBE participation on two projects. *[Note: City management notified the prime contractors of these violations. North Florida Asphalt exceeded their DBE participation goals even when the ineligible amounts were removed; Allen's did not meet their DBE participation goals when the ineligible amounts were removed.]*

Table 13 shows a summary of the violations and penalties assessed by the City to the prime contractors and MBE sub-contractors.

Table 13
Summary of Violations and Penalties Assessed by the
City to Prime Contractors and MBE Sub-Contractors

MBE Policy Section Violated and Description	Prime Contractors (and Subcontractors) Violating Policy	Assessed Penalty
<u>16.5.74.e.1</u> : The cost of materials directly purchased by the prime contractor for use by the MBE sub-contractor was improperly included in the MBE Participation.	1) Allen’s Excavation (Unique Concrete Construction) 2) North Florida Asphalt (RJW Construction and Hawthorne Construction) 3) Sandco (Crosspoint Consulting & Construction, and Hawthorne Construction)	\$0 \$0 \$0
<u>16.5.74.e.3.a</u> : Fees and/or commissions paid to an MBE (which is allowable) but not the cost for materials acquired or additional subcontracts included in MBE participation (which is not allowed)	One instance – completed project Prime contractor: M of Tallassee MBE Subcontractor: Construction Support Southeast	\$10,000 <u>\$9,134</u>
<u>16.5.74.e.3.g</u> : MBE subcontractors are prohibited from accepting a broker’s fee or commission to engage in a sub-subcontractual agreement with the sole intent of collecting a broker’s fee or commission and not performing any of the direct labor or service activities specified in the contract.	Three instances – two completed projects and one project in progress. Prime contractor: Allen’s Excavation MBE Subcontractor: Unique Concrete Construction	\$25,000 <u>\$3,578</u>

Note: TBD – To be Determined.

We also provided seven recommendations to City management related to areas that need to be addressed in the City’s MBE and DBE Programs going forward. Appendix A provides management’s action plan steps to address these recommendations.

We would like to thank and acknowledge the full and complete cooperation of key staff from various City offices and departments, including the City Attorney, MBE, Public Works, Procurement, and City executive managers, as well as management from the prime contractors and MBE/DBE subcontractors during the audit and

development of this audit report. This audit process involved multiple meetings with all parties involved to obtain consensus on the interpretation and appropriate application of applicable MBE policies. One objective of this audit was to work with all of the above parties to identify issues that need to be addressed in the above programs and to obtain agreement on needed program improvements going forward. As a result of the cooperation received, we believe a significant part of that objective has been achieved.

***Appointed
Official's
Response***

City Manager:

This audit review was initiated in response to a request from the City Manager that the City Auditor review potential violations of the MBE policies as identified by the City's MBE Office. The final violations that were cited in this report and the sanctions that were ultimately applied were determined by a consensus of a committee which included the City Auditor and representatives from the City Manager's Office, City Procurement, the City Attorney's Office, the Economic and Community Development Department and the MBE Office. We appreciate the City Auditor's participation in this collaborative effort to identify violations of the policy and to provide recommendations for improvements to the MBE Program.

As noted in this report, the review of these selected projects identified violations of the policy as well as practices that violated the intent of the program. Some of the violators were required to pay fines and all were placed on enhanced monitoring for program compliance. On October 26, 2011 staff made a report to the City Commission outlining steps that would be taken to address the recommendations in the earlier audit report regarding the City's Vendor Incentive Programs and to address the preliminary findings from this audit review. That report stated that staff recommended continuation of the MBE program and institution of a Small Business Incentive Program (SBE) that would operate in conjunction with the MBE Program.

The October report also outlined a strategy in which the City would hold a series of meetings with prime contractors, subcontractors, private vendors and selected City staff to collect information and recommendations regarding improvements to the MBE Program. Those meetings are currently underway, and the results will be used to develop recommended changes to the MBE policy. These policy changes will be presented to the City Commission for consideration. A training program for both City Staff and private contractors will be instituted once the revisions to the MBE Program have been adopted. This strategy is consistent with the audit recommendations.

A number of the recommendations in this report have already been implemented. The Public Works Department is assisting the MBE Office in the monitoring of MBE participation in current City contracts. The City Attorney's Office has developed revised Affidavits for both the prime contractor and the MBE subcontractors which are now used on City Projects.

Finally, as was stated in our comments from the earlier audit report, the MBE and DBE Programs has been successful in one of their primary objects, which was to assist minority and woman owned businesses participate in City contracts and purchases. Between FY2008-FY2010 \$32 million has been awarded to MBE and DBE contractors and vendors. The City Commission has demonstrated through its policies that the investment of City dollars in construction and the purchase of goods and services should help support the growth of businesses and jobs in our community. The MBE Program, like the Local Preference Program, provides incentives to support local businesses.

We appreciated the assistance of the City Auditor's Department in this review. These recommendations are being incorporated into the current policy review.

Appendix A – Management’s Action Plan

Action Steps		Responsible Employee	Target Date
A.	To clarify MBE Program policies related to MBE subcontractors and general contractors		
	1. 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.	ECD and Ben Harris, MBE Office	Recommended policy revisions will be submitted to City Commission for consideration by April 25, 2012.
	2. 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.	ECD and Ben Harris, MBE Office	See comments item #1
	3. Consider prior audit report recommendations in future management actions to address the issues and make improvements in the City’s MBE Program.	ECD and Ben Harris, MBE Office	See comments item #1
B. Objective:	To evaluate the success of the MBE/DBE Programs		
	1. 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.	ECD and Ben Harris, MBE Office	Workshop meetings with prime and subcontractors will be completed by March 31, 2012.

C. Objective:	Improve Monitoring of MBE/DBE Program		
1. 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.	Ben Harris, MBE Office And Roger Moore, Construction Program Engineer, Public Works	Implemented	
2. 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.	Ben Harris, MBE Office and City Attorney’s Office	Implemented, revised affidavits are being used.	
3. Consider prior recommendations in their future management actions to address the issues and make improvements in the City’s MBE Program.	Ben Harris, MBE Office	See item #1	
D. Objective:	Provide training opportunities for prime contractors and MBE/DBE subcontractors		
1. MBE Office develop and provide training opportunities on the City’s MBE policies and their application.	Ben Harris, MBE Office	Training will take place after revised policy has been adopted by City Commission. A target date can be established after adoption.	

Appendix B –Review of Selected Capital Projects with Prime Contractor - Allen’s Excavation, Inc.

Allen’s Excavation, Inc. - We reviewed six completed projects and two projects in progress.

MBE Subcontractors included: Unique Concrete Construction, LLC (Unique) Greenways of America, Inc. (Greenways)
 Hale Contracting, Inc. (Hale). Florida Developers, Inc.

**Comparison of Amounts Allen’s Paid to MBE
 According to Affidavit vs. Documentation from Prime Contractor and MBE**

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor’s Documentation	Amount Paid to MBE per MBE’s Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Pump Station 36 Replacement Project (Contract 1973, \$1,372,855) MBE Goal: 10.5%	Unique: \$102,965 Affidavit date: 1/15/10	Unique: Labor: \$ 4,118 Concrete: \$ 7,381 Precast: \$103,037 Total: \$ 114,536	Unique: Labor: \$1,584 2.5% of unpaid contract: \$2,535 Total: \$4,119	Yes – 1) <i>Materials directly purchased by Allen’s should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1.</i> 2) <i>Allen’s paid MBE a 2.5% (\$2,535) ‘broker’s fee’ for <u>not</u> performing work and allowing the amounts to be included in the MBE participation on the Affidavit. This violated MBE Policy Section 16.5.74.e.3.g.</i>	Yes – <i>Unique Affidavit was overstated by \$101,381 (\$102,965 - \$1,584)</i> <i>Audit-adjusted MBE Participation based on original contract value was 0.1%</i>

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
<p>Connie Drive Flood Relief (Contract 1547, \$2,792,372) MBE Goal: 10.5%</p>	<p>Unique: \$209,428 Affidavit date: 11/21/08 Greenways:\$83,772 Affidavit date: 2/4/09</p>	<p>Unique: Labor: \$39,200 Materials: <u>\$41,217</u> Total \$80,417 Greenways: \$66,325</p>	<p>Unique: Labor: \$39,200 Concrete: \$18,938 Erosion matting: \$26,129 Concrete Cable cells:<u>\$101,629</u> Total \$185,896 Greenways: \$66,325</p>	<p><i>Yes – Materials directly purchased by Allen's and costs of other non-related materials should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1.</i> No violations identified.</p>	<p><i>Yes – Unique Affidavit was overstated by \$170,228 (\$209,428 -- \$39,200).</i> <i>Yes – Greenways Affidavit was overstated by \$17,447 (83,772 – 66,325)</i> <i>Audit-adjusted MBE Participation based on original contract value was 3.8%</i></p>
<p>CK Steele (Contract 1685, \$317,250) DBE Goal: 10.8%</p>	<p>Unique: \$40,608 Affidavit date: 9/29/08</p>	<p>Unique: Labor: \$ 11,968 Concrete:<u>\$ 70,846</u> Total: \$ 82,814</p>	<p>Unique: Labor: \$ 11,968 Concrete: <u>\$ 51,197</u> Total: \$ 63,165</p>	<p><i>Yes – Materials directly purchased by Allen's should not have been included in DBE participation. This violated federal regulation 49 CFR Part 26, Section 26.55</i></p>	<p><i>Yes – Unique Affidavit was overstated by \$28,640 (\$40,608 – 11,968)</i> <i>Audit-adjusted MBE Participation based on original contract value was 3.8%.</i></p>
<p>Joe Louis Street (Contract 2199, \$384,533) MBE Goal: 10.5%</p>	<p>Unique: \$28,624 Affidavit date: 10/29/10</p>	<p>Unique: Labor: \$ 14,779 Concrete:<u>\$ 11,112</u> Total: \$ 25,892</p>	<p>Unique: Labor: \$ 14,779 Materials: <u>\$ 11,112</u> Total: \$ 25,892</p>	<p><i>Yes – Materials directly purchased by Allen's should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1.</i></p>	<p><i>Yes – Unique Affidavit was overstated by \$13,845 (\$28,624 – \$14,779)</i> <i>Audit-adjusted MBE Participation based on original contract value was 10.2%</i></p>

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor's Documentation	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Lake Bradford (Contract 2115, \$132,607) DBE goal: 10%	Unique: \$36,271 Affidavit date: 9/6/10	Unique: Labor: \$ 36,272 Concrete: \$ <u>23,037</u> Total: \$ 59,309	Unique: Labor: \$ <u>36,272</u> Total: \$ 36,272	No, amounts reported appeared accurate.	No, Unique - OK. <i>DBE Participation based on original contract value was 27.4%</i>
Meginnis Creek (Contract 1632, \$1,892,984) MBE Goal: 10.5%	Unique: \$141,974 Paid to the sub-subcontractor Epsec: \$69,000 (48%) Affidavit date: 11/21/08	Unique: Labor: \$ 35,784 Materials: \$ 39,418 Epsec: \$187,802	Unique: Labor: \$ 35,784 Materials: \$ <u>39,418</u> Total: \$ 75,202	<p><i>Yes -</i></p> <p><i>1) Materials directly purchased by Allen's should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1.</i></p> <p><i>2) Unique did not perform 51% of the work on the project violating MBE Policy Section 16.5.74.e.3.g</i></p> <p><i>3) Unique collected a commission as part of the sub-subbing of gabion basket work to Epsec, Inc., violating MBE Policy Section 16.5.74.e.3.g</i></p>	<p><i>Yes – Unique Affidavit incorrect.</i></p> <p><i>1) Allen's included ineligible materials in the amount paid to Unique. Affidavit was overstated by \$106,190 (\$141,974 – 35,784)</i></p> <p><i>2) Unique indicated they sub-subbed out \$69,000 to Epsec. Unique did not sub-sub out any work; Allen's subcontracted with Epsec to do the entire gabion basket work, but falsely reported \$69,000 as being sub-subbed by MBE.</i></p> <p><i>Audit-adjusted MBE Participation based on original contract value was 4.9%</i></p>

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor's Documentation	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Emory Court/Dupont Drive (Contract 2340, dated 10/25/10, for \$6,272,942) MBE Goal: 10.5%	Unique: Not available yet. Project is still in progress.	Unique Subcontract is for: \$470,488 Amount to be paid to the sub-subcontractor BioMass: \$261,051 (55%) Other work identified to be performed by Unique but was subbed out to others.	Unique subcontract is for: \$470,488 Amount to be paid to sub-subcontractor BioMass: \$217,259 (46%) Paid as of 6/9/11: To Unique: \$ 7,879 To BioMass: <u>\$153,581</u> \$161,460 Unique is estimated to receive: Labor: \$87,108 Commissions: <u>\$10,863</u>	Yes <i>1) Unique is not projected to perform 51% of the work on the project. It is estimated that Unique will perform 18%. If subcontract continues as projects, this will violate MBE Policy Section 16.5.74.e.3.g</i> and <i>2) Unique is collecting a 5% commission as part of the sub-subbing of gabion basket work to BioMass. This violates MBE Policy Section 16.5.74.e.3.g</i>	Project is still in progress. No affidavit issued yet.
Frenchtown (Contract 2250, dated 5/12/10, for \$3,143,343) DBE Goal: 21%	Unique: Not available yet. Project is still in progress.	Unique Subcontract is for: \$124,000.	Unique: Paid as of 6/3/11: Labor: \$25,737 Materials: Unknown	Cannot determine until the end of the project.	Project is still in progress. No affidavit issued yet.

Conclusions - Allen’s Excavation:

Of the six completed projects reviewed:

Allen’s Summary for Completed Projects in Review

Total Completed Projects Contract Amounts	Total MBE/DBE Participation Amounts Claimed on Final Affidavit	Amount Audit Tested on Affidavits Paid to MBE/DBE Subcontractor	Participation Amount that Should be Disqualified on the Affidavits Based on Audit Testing	Audit – Adjusted (a) Total Eligible MBE/DBE Participation (based on tested and non-tested Affidavit amounts)
\$6,892,601	\$ 725,023 (10.5% of total projects)	\$643,642 (89% of total MBE participation)	\$437,731 (68% of amount audit tested)	\$287,292 (4.2% of total projects) (Note b)

Note (a) Audit-Adjusted Eligible MBE/DBE participation includes those amounts determined eligible during audit testing and the MBE/DBE participation amounts that were not tested.

Note (b) - For MBE projects, the City’s goal for MBE participation is typically 10.5 %. There were 3 DBE projects with varying DBE goals (CK Steele – 10% DBE goal, Lake Bradford, 10% DBE goal, and Frenchtown, 21% DBE goal). The amount determined of eligible MBE/DBE participation (\$287,292) includes the MBE/DBE participation determined eligible during audit testing **and** the MBE/DBE participation amounts not tested of completed projects.

There were also two projects in progress:

Allen’s Summary for Projects in Progress in Review

Total Contract Amounts for Projects in Progress	Total MBE/DBE Participation Amounts Proposed s (Per MBE Utilization Forms)	Amount on MBE/DBE Proposal Included in Test by Audit	Total Amount Paid to MBE/DBE Subcontractors to Date	Potential Issues Identified to Date
\$ 9,686,285	\$ 999,993 (10.3% of total projects in progress)	\$496,208 (49% of total proposed MBE participation)	\$187,197	1) In one project (Emory Court), MBE is receiving commission for sub-subbing out work. 2) In one project (Emory Court), MBE is projected to work less than the required 51% of the subcontracted amount.

Conclusions - Allen's Excavation (continued)

Number of Policy violations: Three policies were violated in four ways:

- 1) On four completed MBE projects (Pump Station #36, Connie Drive, Joe Louis Street, Meginnis Creek) , materials directly purchased by Allen's should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1.
- 2) On one of two DBE projects (CK Steele), materials directly purchased by Allen's should not have been included in the DBE participation. This violated federal regulation 49 CFR Part 26, Section 26.55, and reduced the DBE participation to only 3.8% of the 10.8% DBE participation goal. Allen's exceeded the 10.8% DBE participation goal on the second DBE project (Lake Bradford).
- 3) On one completed project (Meginnis Creek) and one project in progress (Emory Court), Unique did not and is not projected to perform 51% of the work on the projects. This violates MBE Policy Section 16.5.74.e.3.g
- 4) On three projects, the MBE received a commission for either not performing work, just purchasing materials and/or claiming to sub-sub out work (Pump Station #36, Meginnis Creek, Emory Court). This violates MBE Policy Section 16.5.74.e.3.g.

City Action. City Management determined that:

- Allen's would be fined \$25,000 for these violations for the violations associated with the Meginnis Creek Project.
- Unique Concrete Construction was fined \$3,578 for the violations associated with the Meginnis Creek Project.
- The City will enhance monitoring of both Allen's and Unique Concrete Construction on City projects to ensure future compliance with City MBE Policies.

Appendix C –Review of Selected Capital Projects with Prime Contractor M of Tallahassee

M of Tallahassee, Inc. - We reviewed five completed projects.

MBE Subcontractors included: Construction Support Southeast, Inc (CSS) Gaines & Sons Striping, Inc. (Gaines & Sons)
 Florida Developers, Inc. Rippee Construction, Inc. (Rippee)
 Quest Corporation of America, Inc.

**Comparison of Amounts M of Tallahassee Paid to MBE
 According to Affidavit vs. Documentation from Prime Contractor and MBE**

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Providence Community Roadway Project (Contract 2201, \$3,379,808) MBE Goal: 10.5%	CSS: \$201,239 Affidavit date: 4/8/11 Gaines & Sons: \$58,206 Sub-sub: \$18,478 (32%)	CSS: M paid CSS \$201,239. Interviews support M's knowledge that CSS is procuring the materials and labor for the project. Gaines & Sons: We reviewed documentation and saw no issues.	CSS: Paid by M: \$201,239 Amounts paid by CSS: \$71,546 Labor finders \$98,017 Pipe \$ 858 Other materials \$170,421 Gaines & Sons: We reviewed documentation and saw no issues.	No, CSS It was determined that the amounts the MBE subcontractor paid for services and equipment were eligible to be included in the MBE participation. No, Gaines & Sons. Documentation reviewed looked OK	No, CSS No, Gaines & Sons' OK MBE Participation based on original contract value was 10.9%

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
<p>Kerry Forest Parkway Extension (Contract 1769, \$1,315,324) MBE Goal: 10.5%</p>	<p>CSS: \$108,244 CSS paid to the sub-subcontractor: \$50,100 (46%) Affidavit date: 3/25/09 Gaines & Sons: \$68,139</p>	<p>CSS: \$91,341 Note: M of Tallahassee acknowledged that the Affidavit was overstated by \$16,903 due to a book-keeping error (a voided check had not been removed from the amount paid to CSS.) Gaines & Sons: We reviewed documentation and saw no issues.</p>	<p>CSS: \$91,341 CSS paid to the paving company: \$88,681 Gaines & Sons: \$68,139</p>	<p><i>Yes, The amount the MBE subcontractor sub-subcontracted out for paving (\$88,681) did not qualify for MBE participation. The prime contractor can only count the fees charged by the MBE subcontractor for procuring the paving services. (MBE Policy Section 16.5.74.e.3.a).</i> <i>The paving sub-subcontract also violated MBE Policy Section 16.5.74.e.3.g in that the MBE subcontractor is not allowed to subcontract all or the majority of the sub-contracted portion or portions of the work to another firm or firms.</i> Gaines & Son's – OK</p>	<p><i>Yes, The only amount that was eligible to claim for MBE participation was \$2,660 (\$91,341 less \$88,681).</i> <i>The MBE participation on the Affidavit was overstated by \$105,584 (\$108,244 – 2,660)</i> Gaines & Son's – OK <i>Audit-adjusted MBE Participation based on original contract value was 10.1%</i></p>

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
McKeithen St/Hayward Dr. (Contract 1997, \$408,200) MBE Goal: 10.5%	Rippee: \$42,104 Affidavit date: 12/1/09 Gaines & Sons:\$5,853 Sub-sub: \$2,000 (34%)	Rippee: We reviewed documentation and saw no issues. Gaines & Sons: (We did not review this documentation at M of Tallahassee)	Rippee: \$42,104 Gaines & Sons:\$5,853	No, Rippee. Documentation reviewed looked OK No, Gaines & Sons. Documentation reviewed looked OK	No, Rippee OK No, Gaines & Sons OK MBE Participation based on original contract value was 17.6%
Governor's Square Blvd Widening Project (Contract 1684, \$917,965) MBE Goal: 10.5%	CSS: \$114,143 Affidavit date: 10/28/08	CSS: Interviews support M's knowledge that CSS is procuring the materials for the project.	CSS: Paid by M: \$114,143 Paid out by CSS: \$105,557 for pipe <u>\$ 1,150</u> for fence \$106,707 total	No, CSS It was determined that the amounts the MBE subcontractor paid for services and equipment were eligible to be included in the MBE participation.	No, CSS MBE Participation based on original contract value was 22.3%
East Georgia at Meridian Flood Mitigation (Contract 2015, \$2,029,632) MBE Goal: 10.5%	CSS: \$258,702 Affidavit date: 2/26/10 Rippee:\$100,716	CSS: \$258,702 Interviews support M's knowledge that CSS is procuring the materials, hauling, and labor for the project. Rippee: We reviewed documentation and saw no issues.	CSS: Paid by M: \$258,701 Paid out by CSS: \$30,671 Labor \$120,784 for pipe <u>\$80,162</u> for hauling \$231,617 total Rippee: We reviewed documentation and saw no issues.	No, CSS It was determined that the amounts the MBE subcontractor paid for services and equipment were eligible to be included in the MBE participation. No, Rippee. Documentation reviewed looked OK	No, CSS OK No, Rippee OK MBE Participation based on original contract value was 18.7%

Conclusions –M of Tallahassee:

We reviewed five projects and determined the following:

Total Project Contract Amounts	Total MBE Participation Amounts Claimed on Final Affidavits	Amount Audit Tested on Affidavit Paid to MBE Subcontractor	Participation Amount that Should be Disqualified on the Affidavits Based on Audit Testing	Audit – Adjusted (a) Total Eligible MBE Participation (based on tested and non-tested Affidavit amounts)
\$8,050,929	\$1,263,546 (15.7% of total projects)	\$957,347 (76% of total MBE participation)	\$105,584 (11% of amount Audit tested)	\$1,157,962 (14.4% of total projects) (Note b)

Note (a) Audit-Adjusted Eligible MBE participation includes those amounts determined eligible during audit testing and the MBE participation amounts that were not tested.

Note (b) - For MBE projects, the City’s goal for MBE participation is typically 10.5 %. The amount of eligible MBE participation (\$650,092) includes the MBE participation determined eligible during audit testing **and** the MBE participation amounts not tested.

Number of Policy violations: Two policies were violated on one of the five projects reviewed.

- 1) On one of the five completed MBE projects (Kerry Forest Parkway Extension) the amount sub-subcontracted by the MBE subcontractor for paving violated MBE Policy Sections 16.5.74.e.3.a and 16.5.74.e.3.g. After adjusting the MBE participating by removing the ineligible amounts, M of Tallahassee obtained 10.1% of the 10.5% MBE participation goal on this \$1.3 million project.

City Actions. City Management determined that:

- M of Tallahassee would be fined \$10,000 for the violations on the Kerry Forest Parkway project. Additionally, the City will enhance monitoring of M of Tallahassee projects to ensure compliance with the MBE policies.
- Construction Support Southeast, Inc. was fined \$9,134 for the violations on the Kerry Forest Parkway project.
- The City will enhance monitoring of both M of Tallahassee and Construction Support Southeast on City projects to ensure future compliance with City MBE Policies.

Appendix D –Review of Selected Capital Projects with Prime Contractor – North Florida Asphalt

North Florida Asphalt, Inc. - We reviewed four completed projects.

MBE Subcontractors included: RJW Construction, Inc. (RJW) Hawthorne Construction Company, Inc. (Hawthorne)
 Suzanne Diambra Landscaping (Diambra)

**Comparison of Amounts North Florida Asphalt Paid to MBE
 According to Affidavit vs. Documentation from Prime Contractor and MBE**

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Macomb Street (Contract 2171, \$344,304) MBE Goal: 10.5%	RJW: \$25,400 Affidavit date: 7/2/10 Hawthorne: \$21,320	RJW: \$23,053 Hawthorne: \$21,320	RJW: Labor: \$11,539 Materials: \$ 9,908 Total: \$ 21,447 (Involved a “trade-out” of \$11,000) Hawthorne : \$21,320	Yes - Materials directly purchased by N. FL Asphalt should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1 No – Hawthorne	Yes, Affidavit was overstated by \$13,861 (\$25,400 - \$11,539) No, Hawthorne OK <i>Audit-adjusted MBE Participation based on original contract value was 9.5%</i>
Bond Community (Contract 1724, \$2,483,754) MBE Goal: 10.5%	RJW: \$146,156 Affidavit date: 4/19/10	RJW: Labor: \$92,964 Materials: \$105,224 Total: \$198,188	RJW: Unknown – written documentation not available. RJW verbally confirmed that N. FL Asphalt purchased materials for RJW.	Yes - Materials directly purchased by N. FL Asphalt should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1	Yes, Affidavit was overstated by: \$53,192 (\$146,156 - \$92,964) <i>Audit-adjusted MBE Participation based on original contract value was 5.2%</i>

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Royal Oaks (Contract 535, \$209,162) MBE Goal: 10.5%	RJW: \$18,422 Affidavit date: 12/12/03 Diambra: \$40,808	RJW: Unknown - documentation not available Diambra: Unknown - documentation not available	RJW: Labor: \$10,696 Materials: Cost Unknown RJW verbally confirmed that N. FL Asphalt purchased materials for RJW. Diambra: \$40,809	Yes - Materials directly purchased by N. FL Asphalt should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1 No - Diambra	Yes, Affidavit was overstated by: \$7,726 (\$18,422 - \$10,696) No, Diambra appeared OK Audit-adjusted MBE Participation based on original contract value was 24.6%
IdleWild Drive Sidewalks (Contract 2210, \$257,988) DBE goal: 10%	Hawthorne: \$88,334 Affidavit date: 12/14/10	Hawthorne: Labor: \$56,162 Materials: <u>\$32,172</u> Total: \$88,334	Hawthorne: Unknown – written documentation not available. Hawthorne verified that N FL Asphalt purchased concrete for Hawthorne.	Yes - Materials directly purchased by N. FL Asphalt should not have been included in DBE participation. This violated federal regulation 49 CFR Part 26, Section 26.55	Yes, Affidavit was overstated by: \$32,172 (\$88,334 - \$56,162) Audit-adjusted DBE Participation based on original contract value was 21.8%

Conclusions –North Florida Asphalt:

We reviewed four completed projects and determined:

Total Completed Project Contract Amounts	Total MBE/DBE Participation Amounts Claimed on Final Affidavits	Amount Audit Tested on Affidavit Paid to MBE Subcontractor	Participation Amount that Should be Disqualified on the Affidavits Based on Audit Testing	<u>Audit – Adjusted</u> (Note a) Total Eligible MBE/DBE Participation (based on tested and non-tested Affidavit amounts)
\$3,295,208	\$377,528 (11.5% of total projects)	\$340,440 (90% of total MBE participation)	\$106,951 (31% of amount Audit Tested)	\$270,587 (8.2% of total projects) (Note b)

Note (a) - Audit-Adjusted Eligible MBE/DBE participation includes those amounts determined eligible during audit testing and the MBE/DBE participation amounts that were not tested.

Note (b) - For MBE/DBE projects, the City’s goal for MBE participation is typically 10.5 %. The amount of eligible MBE/DBE participation (\$286,329) includes the MBE/DBE participation determined eligible during audit testing **and** the MBE/DBE participation amounts not tested.

Number of Policy violations: Two policies were violated:

- 1) On each of the three MBE projects (Macomb Street, Bond Community, and Royal Oaks), materials directly purchased by N. FL Asphalt should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1. After adjusting the MBE participation by removing the ineligible amounts, North Florida Asphalt only met the 10.5% MBE participation goals on one of the three projects (Royal Oaks). North Florida Asphalt only obtained 9.5% on the Macomb Street project and 5.2% on the Bond Community project.
- 2) On the one DBE project (Idlewild Drive), materials directly purchased by North Florida Asphalt should not have been included in the DBE participation. While this violated federal regulation 49 CFR Part 26, Section 26.55, after adjusting the DBE participation by removing the ineligible amounts, North Florida Asphalt still exceeded the 10% DBE participation goal on the project.

City Actions. City Management determined that North Florida Asphalt would not be fined for these violations for the following reasons:

- All violations were related to procuring materials for the MBE subcontractor.
- North Florida Asphalt expressed a desire to help the MBE subcontractors and did not believe they were violating the policy.
- When the ineligible expenses were disallowed, North Florida Asphalt exceeded the MBE/DBE participation goals on two projects.

The MBE Office provided alternative ways for North Florida to assist the MBE subcontractor procure materials and will enhance monitoring of North Florida Asphalt projects to ensure future compliance with the MBE policies.

Appendix E –Review of Selected Capital Projects with Prime Contractor –Sandco, Inc.

Sandco, Inc. - We reviewed five completed projects and one project in progress.

MBE Subcontractors included: Suzanne Diambra Landscaping (Diambra) Hawthorne Construction Company, Inc. (Hawthorne)
 Florida Developers, Inc. (FL Developers) Pinnacle Construction Support Group (Pinnacle)
 Gaines & Sons Striping, Inc. (Gaines & Sons) Crosspoint Consulting & Construction (Crosspoint)
 Tallahassee Contractors, Inc Phoenix Fencing & Construction, LLC (Phoenix)

**Comparison of Amounts Sandco Paid to MBE
 According to Affidavit vs. Documentation from Prime Contractor and MBE**

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Orange Avenue (Contract 1564, \$5,374,996) MBE Goal: 10.5%	Hawthorne: \$438,778 Affidavit date: 12/5/08	Hawthorne: Labor: \$222,517 Materials <u>\$198,897</u> Total: \$421,414	Hawthorne: Amounts unknown. Documentation not provided, but Hawthorne verified that Sandco purchased concrete for Hawthorne.	Yes – Materials directly purchased by Sandco should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1	Yes, Affidavit was overstated by the cost of materials included in the MBE participation amounts, \$216,261 (\$438,778 - \$222,517). Audit-adjusted MBE Participation based on original contract value was 11.8%

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
<p>Welaunee Phase 2</p> <p>(Contract 1229, \$6,380,004)</p> <p>MBE Goal: 10.5%</p>	<p>FL Developers: \$310,052 Affidavit date: 6/8/07</p> <p>Gaines & Sons: \$181,831 Affidavit date: 8/3/07</p> <p>Hawthorne: \$314,818 Affidavit date: 8/8/07</p>	<p>FL Developers: We reviewed available documentation and saw no issues.</p> <p>Gaines & Sons: We reviewed available documentation (was not complete) and saw no issues.</p> <p>Hawthorne: Labor: \$165,768 Materials <u>\$149,050</u> Total: \$314,818</p>	<p>FL Developers: \$310,052</p> <p>Gaines & Sons: We reviewed available documentation (was not complete) and saw no issues.</p> <p>Hawthorne: Documentation not provided, but Hawthorne verified that Sandco purchased concrete for Hawthorne.</p>	<p>No, FL Developers</p> <p>No, Gaines & Sons</p> <p><i>Yes – Materials directly purchased by Sandco should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1.</i></p>	<p>No, FL Developers OK</p> <p>No, Gaines & Sons OK</p> <p><i>Yes, Affidavit was overstated by the cost of materials included in the MBE participation amounts, \$149,050 (\$314,818 - \$165,768).</i></p> <p><i>Audit-adjusted MBE Participation based on original contract value was 10.3%.</i></p>
<p>White Dr / Mission Rd</p> <p>(Contract 1106, \$5,009,137)</p> <p>MBE Goal: 10.5%</p>	<p>FL Developers: \$351,161 Affidavit date: 8/3/07</p>	<p>FL Developers: We reviewed available documentation and saw no issues.</p>	<p>FL Developers: Documentation was not complete. We only saw payments for \$330,000</p>	<p>No, appears OK. There was not enough documentation available to determine total compliance.</p>	<p>Appears OK, there was not enough documentation available to determine total compliance.</p>

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Airport Perimeter Road/Fence (Contract 491, \$3,083,826) DBE goal: 23.41%	Diambra: \$663,944 Affidavit date: 9/27/05 Phoenix: \$950,044 Affidavit date: 8/9/05	Diambra: We reviewed available documentation and saw no issues. Phoenix: \$860,891	Diambra: \$662,577 Phoenix: Unknown – Documentation not available. Company dissolved in 2008.	No (minor overstatement, \$1,367 or .2%) No	<p><i>Yes, an MBE Affidavit was submitted instead of a DBE Affidavit. The submitted Affidavit was overstated by a small amount, \$1,367. *</i></p> <p><i>Sandco submitted a MBE Affidavit. Since the project was a DBE project, the amount paid to Phoenix was not eligible for DBE participation.</i></p> <p><i>Audit-adjusted DBE Participation based on original contract value was 20.9%</i></p>
Pump Station #101 (Contract 2117, \$315,016) MBE Goal: 10.5%	Crosspoint: \$281,342 Affidavit date: 9/13/10	Crosspoint: Labor: \$224,628 Materials <u>\$ 80,106</u> Total: \$304,734	Crosspoint: Documentation not provided, but Crosspoint verified that Sandco purchased materials for Crosspoint. Note: Crosspoint is no longer a certified MBE.	<p><i>Yes – Materials directly purchased by Sandco should not have been included in MBE participation. This violated MBE Policy Section 16.5.74.e.1.</i></p>	<p><i>Yes, Affidavit was overstated by the cost of materials included in the MBE participation amounts, \$56,714 (\$281,342 - \$224,628).</i></p> <p><i>Audit-adjusted MBE Participation based on original contract value was 80.3%</i></p>

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Gaines Street Corridor Reconstruction – Segment 1 (Contract 2257, \$3,763,866) MBE Goal: 10.5%	Pinnacle: \$300,000 (MBE Utilization Form) Amount spent as 6/30/11: \$354,772	Pinnacle: \$ 392,868 subcontracted amount) Pinnacle sub-subbed to Hawthorn. Sandco paid Pinnacle \$278,727 (71% of total paid to Pinnacle as of 8/1/11) from June 2010 – June 2011	Pinnacle paid to Hawthorne: Labor: \$127,895 Materials: <u>\$ 36,210</u> Total \$164,105	No, at this point in the project, Pinnacle has sub-subbed out 33% of the project to Hawthorne (\$127,895/\$392,868). Pinnacle is also paying for the concrete used by Hawthorne. This is not a violation of MBE program policies.	Project is still in progress. No affidavit issued yet.

Conclusions –Sandco:

Sandco's Summary for Completed Projects in Audit Test

Total Project Contract Amounts	Total MBE/DBE Participation Amounts Claimed on Final Affidavits	Amount Audit Tested on Affidavits Paid to MBE/DBE Subcontractor	Participation Amount that Should be Disqualified on the Affidavits Based on Audit Testing	Audit – Adjusted (Note a) Total Eligible MBE/DBE Participation (based on tested and non-tested Affidavit amounts)
\$20,162,979	\$4,461,148 (22.13% of total projects)	\$3,491,970 (78% of total MBE/DBE participation)	\$1,373,436 (39% of amount Audit tested)	\$3,087,712 (14.9% of total projects) (Note b)

Note (a) Audit-Adjusted Eligible MBE/DBE participation includes those amounts determined eligible during audit testing and the MBE/DBE participation amounts that were not tested.

Note (b) - For MBE projects, the City's goal for MBE participation is typically 10.5 %. For one DBE project (Airport Perimeter), the DBE goal was 23.41%. The amount determined of eligible MBE/DBE participation (\$3,087,712) includes the MBE/DBE participation determined eligible during audit testing **and** the MBE/DBE participation amounts not tested.

We also looked at 1 project in progress in our review. (See next table).

Sandco’s Summary for One Project in Progress in Audit Test

Total Contract Amounts for Project in Progress	Total MBE Participation Amounts Proposed for Project in Process (Per MBE Utilization Forms)	Amount on MBE Proposal Included in Test by Audit	Total Amount Paid to MBE Subcontractors to Date	Potential Issues Identified to Date
\$ 3,763,866	\$ 641,800 (17% of total projects in progress)	\$300,000 (47% of total proposed MBE participation)	\$392,867 (10.4% of total contracts in progress)	We noted no potential issues to date related to this project in progress.

Number of Policy violations: One policy was violated:

- 1) On three of the four completed MBE projects (Orange Avenue, Welaunee Phase 2, and Pump Station #101), materials directly purchased by Sandco should not have been included in MBE participation. While this violated MBE Policy Section 16.5.74.e.1, after adjusting the MBE participation by removing the ineligible amounts, Sandco still exceeded the 10.5% MBE participation goals on two projects (Orange Avenue and Pump Station #101) and was within .2% on the Walaunee Phase 2 project.

Errors on Affidavits: We identified two errors related to Affidavits on the Airport Perimeter project. First, one minor error was noted in the Diambra Affidavit where the overstated participation amount appeared to a bookkeeping error. Secondly, Sandco submitted the wrong Affidavit forms with the final payment request for the DBE project; MBE Affidavits were submitted instead of the required DBE Affidavits. The City erred by accepting the incorrect forms.

City Action: City Management determined that Sandco would not be fined for these violations because even when the ineligible expenses were disallowed, Sandco still generally met or exceeded the MBE/DBE participation goals. The City will enhance monitoring of Sandco projects to ensure future compliance with the MBE policies and to ensure the correct Affidavits are submitted with the final payment requests.

Appendix F –Review of Selected Capital Projects with Prime Contractor –Jimmy Crowder Excavation

Jimmy Crowder Excavating and Land Clearing, Inc.

We reviewed one project in response to comments made by inspectors during interviews.

MBE Subcontractors included: Hale Contracting, Inc. (Hale) Florida Developers, Inc.

**Comparison of Amounts Jimmie Crowder Excavation Paid to MBE
According to Affidavit vs. Documentation from Prime Contractor and MBE**

Project Name, Contract Amount, and MBE/DBE Goal	Amount Paid to MBE per Affidavit	Amount Paid to MBE per Prime Contractor Documentation's	Amount Paid to MBE per MBE's Documentation	Were Policies Violated?	Were there Issues with Affidavit(s)?
Lipona Road (contract 1991, \$2,199,233) MBE Goal: 10.5%	Hale:\$70,068 Affidavit date: 2/14/2011	Hale: \$70,673	Hale: MBE verbally confirmed the amount reported on the Affidavit.	No, appeared OK.	<i>Yes, amount recorded on Affidavit was understated by \$605. (1)</i>

Conclusions: No violations.

Note (1) Crowder did record \$605 less on the Affidavit than amount paid to Hale, but that looks to be more of bookkeeping error than anything intentional. The understatement does not violate any policies.

Appendix G – Summary of Violations by Prime Contractor by Project

Contractor	Project Name	Contract Date	MBE or DBE	MBE or DBE Project Goal (A)	Original Contract Value (B)	Total MBE/DBE Participation Claimed at End of Project (Affidavit) (C)	Amount MBE/DBE Participation Tested in Audit (D)	Amount MBE/DBE Participation Determined Eligible by Audit (E)	Percent MBE/DBE Participation Determined by Audit (E/B) (F)	Diff bet/w MBE/DBE Goal % and Audit Determined Eligible % (F-A)	Amounts Tested in Affidavits that were Overstated (E-C)	Violated MBE or DBE policies?	Policy(s) Violated
Allen's	Pump Station 36	3/27/09	MBE	10.5%	\$ 1,372,855	\$ 102,965	\$ 102,965	\$ 1,584	0.1%	-10.4%	\$ 101,381	Yes -2 policies	City 16.5.74.e.1; City16.5.74.e.3.g
Allen's	Connie Drive Flood Relief	6/22/07	MBE	10.5%	\$ 2,792,372	\$ 293,200	\$ 293,200	\$ 105,525	3.8%	-6.7%	\$ 187,675	Yes -1 policy	City 16.5.74.e.1
Allen's	CK Steele Driveway	3/17/08	DBE	12.8%	\$ 317,250	\$ 40,608	\$ 40,608	\$ 11,968	3.0%	-9.8%	\$ 28,640	Yes - 1 policy	49 CFR Part 26, Section 26.55
Allen's	Joe Louis Street	3/8/10	MBE	10.5%	\$ 384,533	\$ 53,215	\$ 28,624	\$ 39,370	10.3%	-0.2%	\$ 13,845	Yes - 1 policy	City 16.5.74.e.1
Allen's	Lake Bradford Rd	3/9/10	DBE	10.0%	\$ 132,607	\$ 36,271	\$ 36,271	\$ 36,271	27.4%	17.2%	\$ 0	No	
Allen's	Meginnis Creek	1/2/08	MBE	10.5%	\$ 1,892,984	\$ 198,764	\$ 141,974	\$ 92,574	4.9%	-5.7%	\$ 106,190	Yes - 2 policies	City 16.5.74.e.1; City16.5.74.e.3.g
Allen's	Emory court / Dupont Dr	10/25/10	MBE	10.5%	\$ 6,272,942	in progress	\$ 470,471	in progress	in progress	in progress	in progress	Yes - 1 policy	City16.5.74.e.3.g
Allen's	Frenchtown Stormwater Improvements	5/12/10	DBE	21.0%	\$ 3,413,343	in progress	\$ 25,737	in progress	in progress	in progress	in progress	No	
Allen's	total completed				\$ 6,892,601	\$ 725,023	\$ 643,642	\$ 287,292	4.1%		\$ 437,731	68% of amounts tested were overstated	
Allen's	total in progress				\$9,686,285		\$ 496,208						
M of Tallahassee	Providence Community	3/5/10	MBE	10.5%	\$ 3,379,808	\$ 369,252	\$ 259,445	\$ 369,252	11.5%	1.0%	\$ 0	No	
M of Tallahassee	Kerry Forest Parkway	7/28/08	MBE	10.5%	\$ 1,315,324	\$ 237,808	\$ 176,384	\$ 132,224	10.1%	-0.4%	\$ 105,584	Yes - 1 policy	City16.5.74.e.3.a
M of Tallahassee	E. Georgia @ Meridian	6/3/09	MBE	10.5%	\$ 2,029,632	\$ 379,602	\$ 359,418	\$ 379,602	18.7%	8.2%	\$ 0	No	
M of Tallahassee	McKeithen / Hayward	4/28/09	MBE	10.5%	\$ 408,200	\$ 71,920	\$ 47,957	\$ 71,920	17.6%	7.1%	\$ 0 -	No	
M of Tallahassee	Governors Square Blvd. Widening	3/17/08	MBE	10.5%	\$ 917,965	\$ 204,964	\$ 114,143	\$ 204,964	22.3%	11.8%	\$ 0	No	
M of Tallahassee	total completed				\$ 8,050,929	\$ 1,263,546	\$ 957,347	\$ 1,157,962	14.3%		\$ 105,584	11% of amounts tested were overstated	

Appendix G – Summary of Violations by Prime Contractor by Project (continued)

Contractor	Project Name	Contract Date	MBE or DBE	MBE or DBE Project Goal (A)	Original Contract Value (B)	Total MBE/DBE Participation Claimed at End of Project (Affidavit) (C)	Amount MBE/DBE Participation Tested in Audit (D)	Amount MBE/DBE Participation Determined Eligible by Audit (E)	Percent MBE/DBE Participation Determined by Audit (E/B) (F)	Diff bet/w MBE/DBE Goal % and Audit Determined Eligible % (F-A)	Amounts Tested in Affidavits that were Overstated (E-C)	Violated MBE or DBE policies?	Policy(s) Violated
Sandco	Orange Ave Extension	7/9/07	MBE	10.5%	\$ 5,374,996	\$ 851,278	\$ 438,778	\$ 635,017	11.8%	1.3%	\$ 216,261	Yes - 1 policy	City 16.5.74.e.1
Sandco	Welaunee Blvd - II	3/9/06	MBE	10.5%	\$ 6,380,004	\$ 806,701	\$ 806,701	\$ 657,651	10.3%	-0.2%	\$ 149,050	Yes - 1 policy	City 16.5.74.e.1
Sandco	Mission / White Rd -I	10/6/05	MBE	10.5%	\$ 5,009,137	\$ 874,373	\$ 351,161	\$ 874,373	17.5%	7.0%		No	
Sandco	Airport Perimeter	3/19/03	DBE	23.4%	\$ 3,083,826	\$ 1,619,011	\$ 1,613,988	\$ 667,600	20.9%	-1.75%	\$ 946,388	Yes - 1 policy	49 CFR Part 26, Section 26.55
Sandco	Pump Station 101	10/21/09	MBE	10.5%	\$ 315,016	\$ 309,785	\$ 281,342	\$ 253,071	80.3%	69.8%	\$ 56,714	Yes - 1 policy	City 16.5.74.e.1
Sandco	Gaines Street	6/1/10	MBE	10.5%	\$3,763,866	in progress	\$ 300,000	in progress	in progress		in progress	No	
Total completed					\$ 20,162,979	\$ 4,461,148	\$ 3,491,970	\$3,087,712	14.9%		\$1,373,436	39%of amounts tested were overstated	
Total in progress					\$3,763,866		\$ 300,000						
North Florida Asphalt	Macomb St	2/2/10	MBE	10.5%	\$ 334,304	\$ 46,720	\$ 46,720	\$ 32,859	9.5%	-1.0%	\$ 13,861	Yes - 1 policy	City 16.5.74.e.1
North Florida Asphalt	Bond II & III Community	5/22/08	MBE	10.5%	\$ 2,483,754	\$ 183,254	\$ 146,156	\$ 130,062	5.2%	-5.3%	\$ 53,192	Yes - 1 policy	City 16.5.74.e.1
North Florida Asphalt	Royal Oak Channel	8/6/03	MBE	10.5%	\$ 209,162	\$ 59,230	\$ 59,230	\$ 51,504	24.6%	14.1%	\$ 7,726	Yes - 1 policy	City 16.5.74.e.1
North Florida Asphalt	Idlewild Sidewalk	3/8/10	DBE	10.0%	\$ 257,988	\$ 88,334	\$ 88,334	\$ 56,162	21.8%	11.8%	\$ 32,172	Yes - 1 policy	49 CFR Part 26, Section 26.55
total completed					\$ 3,295,208	\$ 377,538	\$ 340,440	\$ 270,587	8.2%		\$ 106,951	31%of amounts tested were overstated	
Crowder Excavation	Lipona Road	4/23/09	MBE	10.5%	\$ 2,199,233	\$ 243,733	\$ 70,068	\$ 243,733	10.4%	-0.1%	\$ 0	No	
Totals completed for all Contractors					\$40,600,950	\$ 7,070,988	\$5,503,467	\$5,047,286			\$2,023,702	37%of amounts tested were overstated	
Totals in progress for all Contractors					\$13,450,151	n/a	\$ 796,208	n/a			n/a		
Totals for all projects In audit					\$54,051,101	\$ 7,070,988	\$6,299,675	\$5,047,286			\$2,23,702		