




REVISED

**BOARD OF COUNTY COMMISSIONERS  
OFFICE OF THE COMMISSION AUDITOR**

**M E M O R A N D U M**

**TO:** Honorable Chairwoman Rebeca Sosa  
and Members, Board of County Commissioners

**FROM:** Charles Anderson, CPA  
Commission Auditor 

**DATE:** May 30, 2014

**SUBJECT:** **Audit of CSBE Participation and Utilization in a Sample of County Contracts**

---

We have conducted our Audit of CSBE Participation and Utilization in a Sample of County Contracts - New Marlins Ballpark and submit this report, which contains findings, recommendations, and management responses. Management substantially concurred with our findings and recommendations.

We thank the staff of the Internal Services Department, Division of Small Business Development for their cooperation and input throughout the review.

Please let me know if you need further information.

**Cc:** Honorable Carlos Gimenez, County Mayor  
R. A. Cuevas, Jr., County Attorney  
Edward Marquez, Deputy Mayor  
Lester Sola, Director, Internal Services Department  
Mary Cagle, Inspector General  
Cathy Jackson, Director, Audit and Management Services Department  
Gary T. Hartfield, Assistant Director, Internal Services Department  
Veronica Clark, Assistant to the Director, Internal Services Department  
Alice Hidalgo-Gato, Section Manager, Internal Services Department  
Laurie Johnson, SBD Supervisor, Internal Services Department  
Neil R. Singh, CPA, OCA Audit Manager

THIS PAGE INTENTIONALLY BLANK



**MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS**  
**OFFICE OF THE COMMISSION AUDITOR**

**AUDIT OF CSBE PARTICIPATION AND  
UTILIZATION IN A SAMPLE  
OF COUNTY CONTRACTS -  
NEW MARLINS BALLPARK**

**Project Number # 10-130125**

**May 30, 2014**

**Charles Anderson, CPA**  
Commission Auditor

**Auditors**

Rosa Gilbert, CIA, CGAP, CRMA  
Noel Aranha, CPA, CGMA, CRMA  
Neil R. Singh, CPA

Auditor-In-Charge  
Senior Auditor  
Audit Manager

**111 NW First Street, Suite 1030  
Miami, Florida 33128  
305-375-4354**

THIS PAGE INTENTIONALLY BLANK

## TABLE OF CONTENTS

<b>I.</b>	<b>Objective and Scope.....</b>	<b>1</b>
<b>II.</b>	<b>Methodology .....</b>	<b>1</b>
<b>III.</b>	<b>Background .....</b>	<b>1</b>
<b>IV.</b>	<b>Summary Results .....</b>	<b>3</b>
<b>V.</b>	<b>Findings and Recommendations</b>	
	Finding: Failure to impose prompt sanctions on firms that violated the Code .....	3
	Recommendations .....	4
	Management Response .....	4-5
	OCA Comments .....	5
<b>VI.</b>	<b>Opportunities for Improvement .....</b>	<b>6</b>
	Management Response .....	6
	OCA Comments .....	6
<b>VII.</b>	<b>Tables and Exhibits:</b>	
	Table I: Sample of projects selected for analysis.....	7
	Table II: CSBE firms that responded to OCA survey.....	8
	Table III: Close-out summary of projects .....	9-10
	Table IV: CSBE firms found not in compliance.....	11
	Exhibit I .....	12
	Exhibit II .....	13
	Attachment: ISD Management Response Memo.....	14

THIS PAGE INTENTIONALLY BLANK

## **I. OBJECTIVE AND SCOPE**

As part of the work plan approved by the Board of County Commissioners, the Office of the Commission Auditor (OCA) conducted the Audit of Community Small Business Enterprise (CSBE) Participation and Utilization in the Marlins Baseball Stadium Agreement (Marlin's contract).

The objective of the audit was to provide reasonable assurance that the CSBE participation and utilization in contracts meet or exceed the requirements of the Code of the County (Code) as indicated by Sec. 10-33.02 and Implementing Order No.: 3-22. The scope of the audit includes CSBE firms that participated on the Marlins' contract from October 1, 2009 through October 23, 2013.

## **II. METHODOLOGY**

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

To accomplish our audit objective, OCA gathered data through reviews of the Marlin's contract and related projects, County Ordinances, Implementing Orders and interviews with key personnel.

The Marlin's contract consisted of 64 sub contracts (projects) in addition to the Construction Manager contract, which are all under the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) code of building construction, general contractors, and operative builders (Table III). OCA selected 11 projects using random and judgmental sampling techniques (Table I). We examined the CSBE's firms listed as subcontractors to confirm compliance with the CSBE participation and utilization established by a review committee.

OCA sent 84 questionnaires to the CSBE participating firms. We requested information on unapproved deviations from the Schedule of Intent (SOI) and modifications of payment for work performed. Nineteen firms responded to our survey (Table II).

We also reviewed the Division of Small Business Development (SBD) April 5, 2013 and May 3, 2013 violations reports and close-out summary letters to gather additional information on unauthorized participation and utilization of the CSBEs. The SBD is currently under the Internal Services Department (ISD).

## **III. BACKGROUND**

Section 10-33.02 of the Code requires that not less than ten percent of the County's annual construction expenditures be expended on CSBE's. CSBE's are construction firms located within the County whose average annual gross revenues for the prior three years are under the following established maximum thresholds:

- Ten million dollars for Standard Industrial Classification (SIC) 15 - Building Construction, General Contractors and Operative Builders
- Six million dollars for SIC 16 - Heavy Construction, other than Building Construction
- Five million dollars for SIC 17 - Specialty Trade Contractors

CSBEs are categorized by the type of construction they perform in accordance with the two-digit SIC code, or the six-digit North American Industry Classification System (NAICS).

Firms are certified as CSBEs for three years and must submit a Continuing Eligibility Affidavit, along with supporting documents, annually for SBD's review of continued eligibility. Further, upon expiration of the three year certification, a Recertification Application needs to be submitted, along with supporting documents which includes three years of gross receipts, if the firm chooses to remain in the program.

CSBEs that exceed the size limits are graduated out of the program and notified of such by letter. Graduation is determined annually when the firms submit their Continuing Eligibility Affidavit and supporting documents on or before their certification eligibility date. Firms exceeding the size limits may complete any ongoing contracts, but may not obtain new contracts requiring small business certification.

The SBD promotes opportunities for small businesses and local workers on County contracts through enforcement of small business and workforce program goals, prompt payment policies, responsible and living wage requirements; small business certification and program measures; and small business outreach, technical bonding, and financial assistance. The SBD also enforces compliance with CSBE, Small Business Enterprise, Community Workforce, and Responsible Wages programs.

A review committee comprised of representatives from capital departments reviewed and initially approved preconstruction services goals for the Marlins' contract of 8.49% for CSBEs. The review committee members were from the following capital departments:

- Public Works and Waste Management
- Parks, Recreation and Open Spaces
- Aviation
- Water and Sewer
- Internal Services
- Seaport
- City of Miami
- Corrections and Rehabilitation

The Marlins Construction Manager submitted contract specifications for each project to SBD to review for small business availability and goals. This resulted in the overall review committee goal of 9.13 % which is detailed in Table III.

The Construction Manager established their independent contract goals which are also detailed in Table III. Their overall goal was 14.68% (Table III).

In March of 2005, the County, City of Miami, and the Florida Marlins executed a Memorandum of Understanding for the development of a new ballpark for the residents of the County. The



final Baseball Stadium Agreement was approved on March 23, 2009<sup>1</sup>. The stadium developer competitively selected the joint venture of Hunt/Moss Construction to serve as the Construction Manager for the project. The budgeted cost for the design, development, and construction of the ballpark was \$515 million.

#### **IV. SUMMARY RESULTS**

A review of the projects in our sample; the OCA survey responses; and the violations reports dated April 5, 2013 and May 3, 2013 revealed the following:

- There were significant delays in imposing sanctions for non-compliance. The period from the day of non-compliance found by SBD to the day the violation was recorded in the Violations Report varied from 202 days to 642 days (Table IV).
- The overall review committee's goal of CSBE participation and utilization in the Marlin's contract was 9.13%, the contract goal established by the Construction Manager was 14.68%, and as of October 23, 2013 the CSBE participation achieved was 15.67% (Table III). The review committee should maximize the percent of utilization of CSBEs in each contract.
- Deviations in small business participation made pursuant to executed Schedule of Intent and subcontracts agreements were submitted to SBD by the Construction Manager for approval. In cases where the Construction Manager requested a decrease in the percent of participation, deficits were assessed on those firms and penalties applied.
- All CSBE firms selected in our sample were certified as a CSBE at the time of bid submittal, bid award, and throughout the duration of the contract.
- A log created by SBD Contract Monitoring and Compliance Section showed that the SBD employee, assigned to conduct onsite interviews, questioned employees of CSBE firms corroborating their participation and utilization in the Marlin's contract. In cases where firms were found in non-compliance, a Notice of Intent to violate was sent.

#### **V. FINDING AND RECOMMENDATIONS**

**Finding:** Failure to impose prompt sanctions on firms that violated the Code.

OCA's review of participating firms in the Marlin's contract appearing in the Violations Report disclosed that SBD failed to impose prompt sanctions. Delays to record the sanctions in the Violations Report from the day SBD found the non-compliance, varied from 202 days to 642 days (Table IV).

In one of the firms sampled, Champion Painting Specialty Services Corp., SBD had found a non-compliance issue on July 14, 2010. The firm submitted monthly utilization reports that detailed payments to a CSBE for work the CSBE did not perform. However; a Notice of Intent to Violate was not mailed until February 11, 2011 and a Notice of Intent to Violate - Final Determination - was not mailed until June 6, 2011.

---

<sup>1</sup> Resolution R-318-09 related to the baseball stadium agreement dated March 23, 2009.

In another firm reviewed, Colasanti Specialty Services, SBD found a non-compliance issue on October 1, 2009 and a Notice of Violation was issued on March 18, 2010 because the firm attempted to comply with the CSBE requirements through misrepresentation and by submitting false information. The case was closed on June 25, 2013 without the violation being recorded since the period of three years prohibition from bidding or otherwise participating on County construction contracts had already expired. Since the firm's name was not listed in the Violations Report, it was still eligible to participate in other County contracts (Table IV).

We observed that some activities in the compliance process take several months and firms have numerous opportunities to respond to a violation making the work of the Compliance Division more laborious. The inability of SBD to process penalties promptly, allows unscrupulous firms, both prime and CSBE, to disregard the Code, continue to participate in contracts, be recertified, and bid for available County contracts, jeopardizing the objective of the CSBE program.

### **Recommendations:**

1. Compliance issues should be addressed immediately by SBD's management and should include the issuance of sanctions. Firms found in non-compliance should not be allowed to continue to participate in County contracts.
2. SBD should refer firms found in non-compliance to the Inspector General.

### **Management Response**

1. *ISD Small Business Development Division (SBD) must provide due process to firms suspected of violating the Code. The burden of proof is on the County and findings of non-compliance must be well documented before a violation is issued. Gathering of evidence and testimony from witnesses is an extensive process. Once initial findings are confirmed, SBD notifies the party of the alleged violation and provides them an opportunity to refute the findings at a compliance meeting and/or through the submittal of evidence to refute the findings. Closing out or resolution of a violation may often be more complex than finding the violation. The ensuing steps toward resolution may include holding compliance meetings, discussions with the County Attorney's Office, reviewing significant paperwork from multiple sources, meetings with firm's attorneys, holding sworn interviews and when requested conducting appeal hearings. Violations are not recorded on SBD's History of Violations Report until that process is exhausted and the violation is upheld in order to not jeopardize a firm's reputation or future prospects for work.*

*The report cites the El Champion Painting & Drywall Finishing Corp. (El Champion) case where El Champion was meeting a 7.04% CSBE goal through the performance of painting as a subcontractor to Schuff Steel Company (Schuff) on Project BP No. 10, New Marlins Ballpark Structural Steel Package. As part of its compliance monitoring on July 14, 2010 SBD reviewed a copy of the subcontract agreement between El Champion and Schuff and found that El Champion had contracted its scope of work to Zarnas Coating and Abatement Services, Inc. (Zarnas). Zarnas, a New Jersey Company with offices in Fort Lauderdale, specialized in applying specialized coatings to structural steel. Zarnas was included as an approved subcontractor in the contract Schuff issued to El Champion.*

*Based on a seven month investigation that involved gathering and review of payrolls, bank statements, invoices, change orders and releases of lien from Schuff, El*

*Champion, and Zarnas, and obtaining statements from witnesses, SBD issued a Notice of Intent to Violate (NOIV) to Schuff and El Champion on February 11, 2011 because it believed that El Champion did not perform the blasting and touch up painting on this project which was actually performed by Zarnas, and that documentation was prepared by El Champion and Zarnas to make it appear that El Champion had performed the work in order to comply with the CSBE goal. Both parties were provided 30 days to respond to the NOIV.*

*On March 11, 2011, both firms provided written responses refuting SBD's findings. Subsequently, on March 23, 2011, SBD and its Assistant County Attorney met with Schuff and its attorneys and on March 25, 2011, SBD and its Assistant County Attorney met with El Champion, to further discuss their respective responses. In consideration of the discussion at the meeting, the written responses from the firms and the revaluation of evidence gathered, on June 6, 2011, 52 working days after the compliance meetings, the Director of SBD determined that a violation was not warranted. As such, sanctions were not applicable.*

*The report also cites that the violation issued to Colasanti Specialty Services Contract on BP No. 3-C was never recorded in the Violations Report. On April 16, 2010, Colasanti requested the appointment of hearing officer to appeal the violation. The appeal hearing was not scheduled in order to not interfere with an investigation into the matter by the Miami-Dade Police Public Corruption Unit (MDPD) and the State Attorney's Office. On October 1, 2012, SBD was notified by MDPD that the State Attorney was going to draft a close-out memo for this investigation. As of today, SBD has not received it. If the violation had been heard by an administrative hearing officer and upheld, the violation would remain on record for three years. Since three years had passed since the appeal was requested, it was determined that the period of the violation had expired. In addition, Colasanti exceeded the CSBE and SBE participation requirements on BP No. 3-C. As such, SBD recommended and Deputy Mayor (SBD's Department Director at the time) concurred that the appeal not be heard and the violation be closed.*

*None of the firms listed on Table IV received any new work from the County after the issuance of the findings of non-compliance. Moreover, the Construction Manager Hunt Moss, JV had been considering Colasanti for additional work on the Marlins Stadium and did not proceed with the award as a result of SBD's violation.*

2. *The County Code has provisions included for instances of non-compliance. SBD applies the provisions accordingly. In instances in which there are findings/determinations of criminal acts, information is forwarded to the appropriate authorities.*

#### OCA Comments

The NOIV delays the issuance of sanctions. Since SBD provides training and continuing assistance to firms, deviations from the original contract without SBD approval should not be permitted. Please refer to the attached flow chart which details a process that eliminates the NOIV (Exhibit I, II).

The Office of the Inspector General (OIG) has subpoena power to conduct investigations and is authorized to detect, investigate and prevent fraud, waste, mismanagement and abuse of power in county projects, programs or contracts. Firms that are suspected of fraud, waste, abuse, and misconduct should be referred to the OIG to expedite the compliance process.

## **VI. OPPORTUNITIES FOR IMPROVEMENT**

1. The review committee should maximize the percent of utilization of CSBEs in each contract. The contract goal established by the Construction Manager was 14.68%, and the goal achieved was 15.67%, yet the overall review committee CSBE goal in the Marlin's contract was only 9.13% (Table III). As project #8 in Table III details, the contract goal was 31.80% and the goal achieved by the firm was 33.27%; however, the review committee CSBE goal was only 5.88%. (SBD's management stated that the review committee's goal was based on their review of the specifications provided by the Construction Manager and the availability of certified small businesses.)
2. Contracting Departments should review the Violations Report prior to issuing contract awards, during the contract period, and before the closure of a contract to ensure that violations and penalties are addressed as stipulated in the Code.
3. Increase outreach activities to inform the County small and minority-owned businesses of the advantage of the program and to increase the number of certified firms on the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) codes.

### Management Response

1. *It is SBD's mission to maximize CSBE utilization on every project. Each project scope and estimated value was reviewed thoroughly for sub-trade opportunities for Small Business participation. The sub-trade areas identified to support the Small Business measures were based on estimated value of the sub-trade which in many cases increased at time of award (after SBD's review).*
2. *Currently, contracting departments review the violation report before recommending an award of a contract. Throughout the performance of a contract, SBD copies contracting departments on all non-compliance letters and requests payments be withheld from final payment until matters are resolved where appropriate.*

### OCA Comments

Contracting departments should be aware of non-compliance issues in previous contracts and ensure that unpaid penalties and amounts due to the County are collected.

3. *ISD agrees with this recommendation and recently established a Business Opportunity & Education Section to increase our efforts in the areas of outreach.*

**Table I**  
Sample of Projects Selected for Analysis

<u>Sample #</u>	<u>Project No.</u>	<u>CSBE's Name</u>	<u>Type of Work Performed</u>
1	10	Champion Painting Specialty Services Corp. All American Pressure Cleaning and Painting, Co. Contex Construction Company, Inc.	Structural Steel
2	14	Agc Consulting Civil Engineers and General Contractors, Inc.	Stucco (Interior & Exterior)
3	15	Abc Construction, Inc.	Fire Protection System
4	17	Dodec, Inc. Thermal Flow, Inc.	Mechanical-General Building
5	21	Marvelous Electric, Inc. E-Tech Electric, Inc. Road Runner Electric, Inc.	Communications Infrastructure
6	24	Florida Electrical Contractors, Inc.	Security System
7	25	Abc Construction, Inc.	Elevators and Escalators
8	27	Florida Roofing Solutions, Inc.	Roofing
9	28	LAW Construction Group, Inc.	Seating
10	45	Commercial Interior Contractors Corp. Jorin Construction Management Company	Carpet/Resilient, Flooring/Access, Flooring/Wood Flooring
11	48	Right Way Painting, Inc.	Painting/Wall Covering

**Table II**  
CSBE Firms That Responded to OCA Survey

<u>Survey #</u>	<u>Project No.</u>	<u>Respondent Firms</u>	<u>Change of SOI</u>	<u>Received Full Payment?</u>
1	9	M.A.R Contracting, Inc.	N	N
2	10	Omega Steel Erectors, Inc	Y	N
3	10	Champion Painting Specialty Services Corp.	Y	N
4	13	Tru-Proof, Inc.	N	Y
5	15	Abc Construction	N	N
6	16	James P. Moran, Inc.	N	Y
7	16	Jampro Demolition, Inc.	N/A	N/A
8	18	Ruben Electric Technology, Inc.	Y	N
9	18	Road Runner Electric, Inc.	Y	N
10	18	Jador International Corporation	Y	N
11	21	Tropical Electric, Inc.	N	N
12	27	Florida Roofing Solutions Inc.	Y	N
13	38	G7 Holdings, Inc.	N	Y
14	41	Lunacon Engineering Group, Corp.	Y	Y
15	43	Isoscele Corp.	N/A	N/A
16	54	Baja Millworks, Inc.	N	Y
17	80	N.T.P. Site Development, Inc.	Y	Y
18	81	Rock Power Paving, Inc.	N	Y
19	82	Hi-Tech Concrete, Inc.	N	N

**ISD Response:** All deviations and payment issues were reviewed by SBD during the course of the project. See attached table with comments.

**Table III**  
Close out Summary of Projects as of 10/23/2013

		<b>A</b>	<b>B</b>	<b>C</b>	<b>B-A</b>	<b>C-A</b>
<u>Item #</u>	<u>Project No.</u>	<u>CSBE Review Committee Goal %</u>	<u>CSBE Contract Goal %</u>	<u>CSBE Goal Achieved %</u>	<u>Contract vs. Review Committee</u>	<u>Achieved vs. Review Committee</u>
	CM	8.49	8.91	9.3	0.42	0.81
1	1	12.00	15.41	29.47	3.41	17.47
2	2	0.00	0.00	0	0.00	0.00
3	3	15.00	42.49	32.72	27.49	17.72
4	6	100.00	100.00	90.02	0.00	(9.98)
5	7	3.95	9.49	9.85	5.54	5.90
6	8	5.88	31.80	33.27	25.92	27.39
7	9	6.00	6.40	26.28	0.40	20.28
8	10	4.12	4.42	4.66	0.30	0.54
9	11	10.00	15.00	16.42	5.00	6.42
10	12	6.00	6.00	5.11	0.00	(0.89)
11	13	15.00	15.00	7.33	0.00	(7.67)
12	14	15.00	15.00	18.46	0.00	3.46
13	15	10.00	5.14	5.29	(4.86)	(4.71)
14	16	19.00	23.00	24.06	4.00	5.06
15	17	9.41	10.07	12.39	0.66	2.98
16	18	15.00	20.05	17.05	5.05	2.05
17	20	7.00	10.00	9.72	3.00	2.72
18	21	20.00	20.00	18.15	0.00	(1.85)
19	22	13.00	13.00	17.77	0.00	4.77
20	23	12.00	12.00	13.08	0.00	1.08
21	24	20.00	25.00	30.83	5.00	10.83
22	25	1.00	0.97	0.97	(0.03)	(0.03)
23	26	20.00	22.02	32.18	2.02	12.18
24	27	11.00	17.00	4.87	6.00	(6.13)
25	28	1.00	1.00	1.41	0.00	0.41
26	29	2.00	9.83	11.76	7.83	9.76
27	32	1.00	5.15	5.7	4.15	4.70
28	35	13.00	13.00	13.47	0.00	0.47
29	37	15.00	40.80	48.23	25.80	33.23
30	38	3.00	3.00	3.82	0.00	0.82
31	39	15.00	17.00	17.15	2.00	2.15
32	40	0.00	11.28	11.28	11.28	11.28
33	41	20.00	20.00	30.96	0.00	10.96
34	42	8.00	8.00	8.59	0.00	0.59

**Table III (continued)**

	A	B	C	B-A	C-A	
Item #	Project	<u>CSBE Review Committee Goal %</u>	<u>CSBE Contract Goal %</u>	<u>CSBE Goal Achieved %</u>	<u>Contract vs. Review Committee</u>	<u>Achieved vs. Review Committee</u>
35	43	14.59	36.23	Pending close out	21.64	
36	44	0.00	0.60	0.86	0.60	0.86
37	45	16.00	20.13	11.05	4.13	(4.95)
38	46	19.92	19.92	20.47	0.00	0.55
39	48	16.00	16.00	16.08	0.00	0.08
40	50	11.00	15.00	18.74	4.00	7.74
41	51	0.00	0.00	0.00	0.00	0.00
42	54	14.00	14.30	14.91	0.30	0.91
43	57	2.00	2.00	4.10	0.00	2.10
44	60	5.00	6.80	7.07	1.80	2.07
45	61	0.00	0.00	0.00	0.00	0.00
46	61A	0.00	0.00	0.00	0.00	0.00
47	61B	0.00	0.00	0.00	0.00	0.00
48	61C	0.00	0.00	0.00	0.00	0.00
49	62	20.00	22.00	26.12	2.00	6.12
50	63	0.00	0.00	0.00	0.00	0.00
51	64	15.00	15.00	17.99	0.00	2.99
52	65	0.00	0.00	0.00	0.00	0.00
53	67	100.00	100.00	100.00	0.00	0.00
54	70	0.00	0.00	0.00	0.00	0.00
55	71	0.00	3.17	11.37	3.17	11.37
56	72	0.00	0.00	0.00	0.00	0.00
57	73	20.00	21.68	22.47	1.68	2.47
58	80	20.00	20.20	22.76	0.20	2.76
59	80A	23.00	23.39	24.26	0.39	1.26
60	81	18.00	26.00	27.13	8.00	9.13
61	82	16.00	19.00	20.22	3.00	4.22
62	84	13.00	15.00	17.25	2.00	4.25
63	85	10.00	10.00	10.37	0.00	0.37
64	<u>88</u>	<u>9.00</u>	<u>4.69</u>	<u>4.69</u>	<u>(4.31)</u>	<u>(4.31)</u>
-	-	<u>9.13</u>	<u>14.68</u>	<u>15.67</u>	<u>5.55</u>	<u>6.54</u>



**Table IV**  
CSBE Firms Found in Non-Compliance

<b>A</b>				<b>B</b>			<b>A-B</b>	
<b>Firm's Name</b>	<b>Date Non-compliance Found</b>	<b>Notice of Intent to Violate<sup>i</sup>/ Notice to Cure<sup>ii</sup></b>	<b>Notice of Intent to Violate-Final Determination</b>	<b>Notice of Violation<sup>iii</sup></b>	<b>Date Appeal Filed</b>	<b>Notification Date<sup>iv</sup></b>	<b>Date Recorded in Violations Report</b>	<b>Days Elapsed</b>
Cove Construction Group, LLC	10/1/2009	N/A	N/A	3/18/2010	None	4/21/2010	4/21/2010	202
Colasanti Specialty Services	10/1/2009	3/12/2010	N/A	3/18/2010	4/16/2010	N/A	N/A	-
Champion Painting Specialty Services Corp.	7/14/2010	2/11/2011	6/6/2011	N/A	N/A	N/A	N/A	-
Schuff Steal Company	7/14/2010	2/11/2011	6/6/2011	N/A	N/A	N/A	N/A	-
DKG & Associates, LTD	5/9/2011	2/9/2012	N/A	3/9/2012	None	6/21/2012	6/21/2012	409
DKG & Associates, LTD	5/29/2011	2/1/2012	N/A	3/9/2012	None	6/26/2012	6/26/2012	394
DKG & Associates, LTD	5/29/2011	1/27/212	N/A	3/9/2012	None	6/21/2012	6/21/2012	389
Florida Fire Stopping, INC	2/16/2011	4/27/2011 revised on 7/12/2011	N/A	8/23/2011	9/22/2011	2/1/2012	2/1/2012	350
LAW Construction Group Inc.	10/6/2011	4/25/2012 revised on 7/23/2012	N/A	10/11/2012	None	9/14/2012	9/14/2012	344
Superior Rigging and Erecting Co.	12/3/2010	7/12/2011	N/A	8/29/2011 revised on 11/30/2011	9/26/2011	9/5/2012	9/5/2012	642

<sup>i</sup> Notice of Intent to violate: used for small business program violations (30 days to respond and 14 days if requesting documents only).

<sup>ii</sup> Notice to Cure: used for wage violations (30 days to respond and 14 days if requesting documents only).

<sup>iii</sup> Notice of Violation: date that the firm was notified of violation (30days to respond).

<sup>iv</sup> Notification date: Date of letter notifying the firm that violation will be effective.

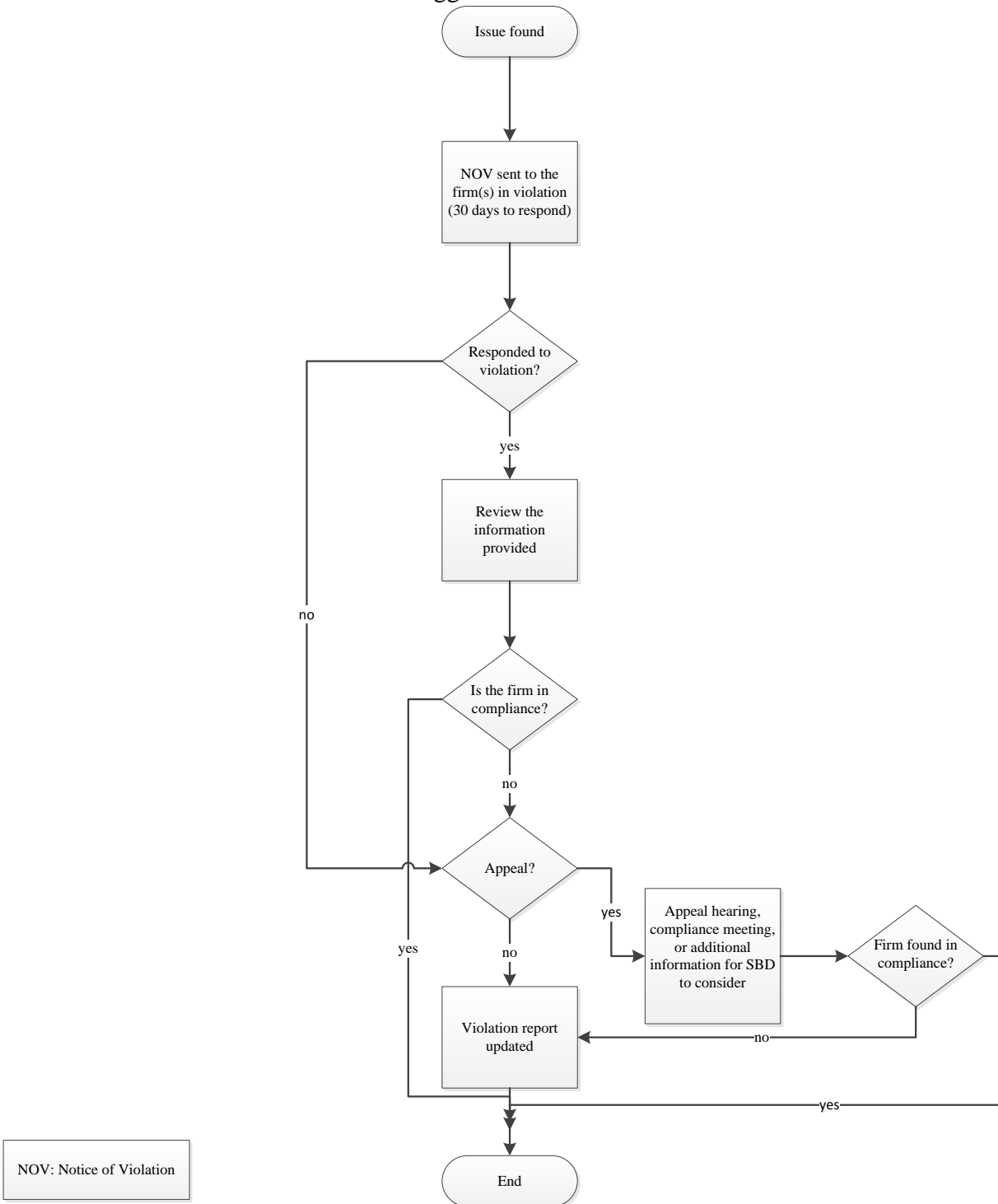
## Exhibit I

### Current Compliance Process



---

## Exhibit II Suggested Process



## Memorandum



**Date:** April 16, 2014

**To:** Charles Anderson, CPA  
Commission Auditor

**From:** Lester Sola, Director  
Internal Services Department

**Subject:** Internal Services Department (ISD) Response to Office of Commission Auditor (OCA)  
Audit of Community Small Business Enterprise (CSBE) Participation and Utilization in  
the Marlins Baseball Stadium Agreement

Thank you for the opportunity to respond to the Audit of Community Small Business Enterprise (CSBE) Participation and Utilization in the Marlins Baseball Stadium Agreement. Please see our responses to the issues raised.

**Finding 1:** Failure to impose prompt sanctions on firms that violated the Code.

**Recommendations:**

**1.1** Compliance issues should be addressed immediately by SBD's management and should include the issuance of sanctions. Firms found in non-compliance should not be allowed to continue to participate in County contracts.

**ISD Response:** ISD Small Business Development Division (SBD) must provide due process to firms suspected of violating the Code. The burden of proof is on the County and findings of non-compliance must be well documented before a violation is issued. Gathering of evidence and testimony from witnesses is an extensive process. Once initial findings are confirmed, SBD notifies the party of the alleged violation and provides them an opportunity to refute the findings at a compliance meeting and/or through the submittal of evidence to refute the findings. Closing out or resolution of a violation may often be more complex than finding the violation. The ensuing steps toward resolution may include holding compliance meetings, discussions with the County Attorney's Office, reviewing significant paperwork from multiple sources, meetings with firm's attorneys, holding sworn interviews and when requested conducting appeal hearings. Violations are not recorded on SBD's History of Violations Report until that process is exhausted and the violation is upheld in order to not jeopardize a firm's reputation or future prospects for work.

The report cites the El Champion Painting & Drywall Finishing Corp. (El Champion) case where El Champion was meeting a 7.04% CSBE goal through the performance of painting as a subcontractor to Schuff Steel Company (Schuff) on Project BP No. 10, New Marlins Ballpark Structural Steel Package. As part of its compliance monitoring on July 14, 2010 SBD reviewed a copy of the subcontract agreement between El Champion and Schuff and found that El Champion had contracted its scope of work to Zarnas Coating and Abatement Services, Inc. (Zarnas). Zarnas, a New Jersey Company with offices in Fort Lauderdale, specialized in applying specialized coatings to structural steel. Zarnas was included as an approved subcontractor in the contract Schuff issued to El Champion.

Based on a seven month investigation that involved gathering and review of payrolls, bank statements, invoices, change orders and releases of lien from Schuff, El Champion, and Zarnas, and obtaining statements from witnesses, SBD issued a Notice of Intent to Violate (NOIV) to Schuff and El Champion on February 11, 2011 because it believed that El Champion did not perform the blasting and touch up painting on this project which was actually performed by Zarnas, and that documentation was prepared



by El Champion and Zarnas to make it appear that El Champion had performed the work in order to comply with the CSBE goal. Both parties were provided 30 days to respond to the NOIV.

On March 11, 2011, both firms provided written responses refuting SBD's findings. Subsequently, on March 23, 2011, SBD and its Assistant County Attorney met with Schuff and its attorneys and on March 25, 2011, SBD and its Assistant County Attorney met with El Champion, to further discuss their respective responses. In consideration of the discussion at the meeting, the written responses from the firms and the revaluation of evidence gathered, on June 6, 2011, 52 working days after the compliance meetings, the Director of SBD determined that a violation was not warranted. As such, sanctions were not applicable.

The report also cites that the violation issued to Colasanti Specialty Services Contract on BP No. 3-C was never recorded in the Violations Report. On April 16, 2010, Colasanti requested the appointment of hearing officer to appeal the violation. The appeal hearing was not scheduled in order to not interfere with an investigation into the matter by the Miami-Dade Police Public Corruption Unit (MDPD) and the State Attorney's Office. On October 1, 2012, SBD was notified by MDPD that the State Attorney was going to draft a close-out memo for this investigation. As of today, SBD has not received it. If the violation had been heard by an administrative hearing officer and upheld, the violation would remain on record for three years. Since three years had passed since the appeal was requested, it was determined that the period of the violation had expired. In addition, Colasanti exceeded the CSBE and SBE participation requirements on BP No. 3-C. As such, SBD recommended and Deputy Mayor (SBD's Department Director at the time) concurred that the appeal not be heard and the violation be closed.

None of the firms listed on Table IV received any new work from the County after the issuance of the findings of non-compliance. Moreover, the Construction Manager Hunt Moss, JV had been considering Colasanti for additional work on the Marlins Stadium and did not proceed with the award as a result of SBD's violation.

**1.2:** SBD should refer firms found in non-compliance to the Inspector General.

**ISD Response:** The County Code has provisions included for instances of non-compliance. SBD applies the provisions accordingly. In instances in which there are findings/determinations of criminal acts, information is forwarded to the appropriate authorities.

## **OPPORTUNITIES FOR IMPROVEMENT**

1. The review committee should maximize the percent of utilization of CSBEs in each contract. The contract goal established by the Construction Manager was 14.68%, and the goal achieved was 15.67%, yet the overall review committee CSBE goal in the Marlin's contract was only 9.13% (Table III). As project #8 in Table III details, the contract goal was 31.80% and the goal achieved by the firm was 33.27%; however, the review committee CSBE goal was only 5.88%. (SBD's management stated that the review committee's goal was based on their review of the specifications provided by the Construction Manager and the availability of certified small businesses.)

**ISD Response:** It is SBD's mission to maximize CSBE utilization on every project. Each project scope and estimated value was reviewed thoroughly for sub-trade opportunities for Small Business participation. The sub-trade areas identified to support the Small Business measures were based on estimated value of the sub-trade which in many cases increased at time of award (after SBD's review).



2. Contracting Departments should review the Violations Report prior to issuing contract awards, during the contract period, and before the closure of a contract to ensure that violations and penalties are addressed as stipulated in the Code.

**ISD Response:** Currently, contracting departments review the violation report before recommending an award of a contract. Throughout the performance of a contract, SBD copies contracting departments on all non-compliance letters and requests payments be withheld from final payment until matters are resolved where appropriate.

3. Increase outreach activities to inform the County small and minority-owned businesses of the advantage of the program and to increase the number of certified firms on the Standard Industrial Classification (SIC) or North American Industrial Classification System (NAICS) codes.

**ISD Response:** ISD agrees with this recommendation and recently established a Business Opportunity & Education Section to increase our efforts in the areas of outreach.

**Table II – CSBE Firms that Responded to OCA Survey**

**ISD Response:** All deviations and payment issues were reviewed by SBD during the course of the project. See attached table with comments

Should you have further questions, please contact Gary Hartfield, Acting Division Director at 305-375-3124 or [OPP3@miamidade.gov](mailto:OPP3@miamidade.gov).

Attachment

c: Edward Marquez, Deputy Mayor  
Gary T. Hartfield, SBD Acting Division Director, ISD  
Jose Galan, Division Director, Real Estate Development Division

Table II with SBD comments

Survey #	Project No.	Respondent Firms	Change of SOI	SBD Comments	Received Full Payment	SBD Comments
1	9	M.A.R Contracting, Inc.	N	No response needed	N	On September 13, 2013 - SBD received proof of final payment of M.A.R. Contracting's contract balance.
2	10	Omega Steel Erectors, Inc.	Y	At Omega Steel's request the contract was terminated. June 6, 2011, SBD excused the 5.07% from the goal requirement.  On 6/6/2011, SBD approved a reduction in EI Champion's SOI from 7.04% to 3.47%	N	Schuff Steel (prime contractor) reported it incurred over \$150,000 to complete Omega's remaining scope of work. Back charges will exceed payment due to Omega
3	10	Champion Painting Specialty Service Corp.	Y		N	A Notice of Default was issued to EI Champion for not providing adequate man power, materials and equipment. Schuff Steel (prime contractor) completed the balance of EI Champion's work in order to meet a 72 hour notice issued by Hunt/Moss. The cost of completing EI Champion's work exceeded its contract balance.
4	13	Tru-Proof, Inc.	N	No response needed	Y	No response needed
5	15	ABC Construction	N	On April 14, 2010 - SBD approved a change in ABC's scope of work which reduced it's participation percentage from 12% to 5%	N	On July 1, 2013, SBD received proof ABC's contract was paid in full.
6	16	James P. Moran, Inc.	N	No response needed	Y	No response needed
7	16	Jampro Demolition, Inc.	N/A		N/A	
8	18	Ruben Electric Technology.	Y	On April 13, 2012, SBD approved an increase and decrease in Ruben's CSBE participation. Specifically, Ruben's scope increased because it was assigned work another CSBE declined. Ruben SOI percentage was increased from 2.20% to 4.80%. Ruben later withdrew from the contract and was subsequently terminated which reduced its SOI percentage from 4.80% to 2.69%. These deviations were approved by SBD.	N	Ruben reported it was owed \$280,868.63. Meisner Electric (prime contractor) provided Ruben and SBD with five (5) deduct change orders valued at \$1,547,317 for work performed by Meisner to complete Ruben's scope of work. Meisner also reported that Ruben's claims filed against Meisner payment and performance bond was denied. SBD has no purview over this matter.
9	18	Road Runner Electric, Inc.	Y	6/19/2013, SBD approved reducing Road Runner CSBE participation from 6.30% to 6.12% or \$1,450,000.00 because \$6,642,560.00 in change orders issued to Meisner Electric (prime) required no additional participation by Road Runner.	N	On April 23, 2013, SBD received proof Road Runner received all payments.



Table II with SBD comments

Survey #	Project No.	Respondent Firms	Change of SOI	SBD Comments	Received Full Payment	SBD Comments
10	18	Jador International Corporati	Y	Jador was scheduled to perform 2% or \$606,818.56 in CSBE Participation. However, due to a contractual dispute between Jador and Meisner (prime contractor), no work was performed by Jador after October 4, 2011. Jador's participation on the project totaled \$485,322.40 or 1.60%.		Jador reported it was owed \$108,437.74 in disputed work/billings. Meisner (prime contractor) provided SBD and Jador with change orders resulting in a revised contract amount for Jador of \$370,158.00. Payments to Jador and SBD's Compliance Trust Account totaled \$422,785.85, resulting in a negative contract balance of \$52,627.85. As of 6/27/2013, these disputes were apart of a litigation between Meisner and Jador of which SBD has no purview.
11	21	Tropical Electric, Inc.	N	No response needed	N	On October 1, 2010, SBD approved Parson's (prime) requests to terminate Tropical's contract, because the firm's requested to withdraw due to the manpower requirements needed to complete the
12	27	Florida Roofing Solutions, In	Y	Florida Roofing Solutions was scheduled to perform 17% in roofing work. On July 30, 2014 a Notice of Violation for the deficit is CSBE participation was issued.	N	On October 28, 2013, SBD provided with proof of final payment.
13	38	G7 Holdings, Inc.	N	No response needed	Y	No response needed
14	41	Lunacon Engineering Group	Y	Lunacon was scheduled to meet a 3% SBE goal. The firm's final SBE participation was 3.13%.	Y	No response needed
15	43	Isoscele Corp.	N/A	No response needed	N/A	No response needed
16	54	Baja Millworks, Inc.	N	No response needed	Y	No response needed
17	80	N.T.P. Site Development, In	Y	This firm was meeting a 1.50% SBE goal. Final participation 1.34%	Y	No response needed
18	81	Rock Power Paving, Inc	N	No response needed	Y	No response needed
19	82	Hi-Tech Concrete, Inc.	N	No response needed	N	On November 7, 2013, SBD received proof of final payment.