



Memorandum



Miami-Dade County Office of the Inspector General
A State of Florida Commission on Law Enforcement Accredited Agency
19 West Flagler Street ♦ Suite 220 ♦ Miami, Florida 33130
Phone: (305) 375-1946 ♦ Fax: (305) 579-2656
Visit our website at: www.miamidadeig.org

To: Carlos A. Gimenez, Mayor
Miami-Dade County

From:  Christopher Mazzella, Inspector General

Date: March 13, 2013

Subject: Responsible Wage Violations Committed by Florida Fire Stopping, Inc. on the Marlins Stadium Project; Ref. IG11-13

Attached please find the Miami-Dade County Office of the Inspector General's (OIG's) administrative case closure report regarding the above-captioned matter. The OIG is forwarding a copy of our report to you because of the unresolved issues that are within your administrative purview.

By way of background, the Small Business Development Division (SBD) of the Regulatory and Economic Resources Department¹ (RER) violated Florida Fire Stopping, Inc. (FFI) for underpaying wages to several of its employees working on the Marlins Stadium Project. Four workers were underpaid a total of \$38,112. Moreover, FFI abandoned the project prior to completing its obligations under its contract and, thus, the restitution was made through the withholding of contract payments by the Stadium Developer. In addition, a 10% penalty was levied directly against FFI, which has gone totally ignored.

FFI's inaction throughout this matter is indicative of its aversion to take any responsibility. FFI ignored all *Notices of Violation* sent by SBD. FFI abandoned performance at the Stadium. FFI failed to show up at the Administrative Hearing on the wages issue. FFI did not take responsibility to pay its employees; and FFI has utterly ignored demands to resolve the \$3,811 penalty imposed by the County. In addition, the OIG has determined that during the time that it was providing construction services on the Marlins Stadium Project, FFI was in inactive status with the State of Florida. Recent Internet-search results indicate that the company is still open and active for business.

While restitution to the four workers was paid by the Marlins Stadium Developer LLC (through deductions paid to the first-tier subcontractors), the 10% penalty levied against

¹ The violations were actually issued by the Sustainability, Planning and Economic Enhancement Department prior to its merger into the newly created Regulatory and Economic Resources Department.

FFI pursuant to Sec. 2-11.16(d)(v) of the Code of Miami-Dade County has been ignored. Failure to satisfy the penalty shall deem the contractor not responsible to perform future County work so long as the penalty remains outstanding. Further, "If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for construction, alteration and/or repair, including painting or decorating of public buildings or public works for a period of three years."²

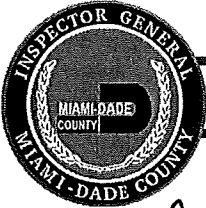
However, the County has yet to take any action. It has been over one year since the last notice to FFI (see Exhibit 4 to the attached OIG report). That notice stated that the three-year prohibition would be instituted if the penalty was not paid in a reasonable period of time. The OIG strongly believes that it is now time to formally administratively suspend FFI and place it on the Suspended/Debarred Contractors List.³ We trust that you will take the administrative action warranted to address FFI's willful and continuing non-compliance.

For your information, copies of the OIG closure report have been forwarded to two external agencies (the State Attorney's Office and the Department of Revenue) for their review.

cc: Jack Osterholt, Deputy Mayor/Director, Regulatory and Economic Resources Dept. (RER)
Alice Hidalgo-Gato, Division Director, Contract Monitoring and Compliance, RER
Jose Galan, Acting Division Director, Internal Services Department, Real Estate Division
Charles Anderson, Commission Auditor

² Note that this three-year prohibition is not a debarment, but an administrative suspension authorized by Administrative Order 3-39.


³ This was one of the original recommendations contained in the *Report and Recommendations of Administrative Hearing Officer*, see pages 5-6 of Exhibit 1 to the OIG Report.




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To:  Alan Solowitz, Deputy Inspector General

From:  Special Agent Michael T. Caldwell
Contract Oversight Specialist John Canepari

Date: February 25, 2013

Subject: Administrative Case Closure Report, Ref. IG11-13 – Marlins Stadium –
Florida Fire Stopping, Inc. – Responsible Wage Violations

INTRODUCTION & SYPNOPSIS

In March 2011, the Miami-Dade County Office of the Inspector General (OIG) began an investigation into allegations that Florida Fire Stopping, Inc. (FFI) was failing to pay some of its workers the proper hourly wage rate, per the Miami-Dade County Responsible Wages and Benefits Ordinance 90-143 (Section 2-11.16 of the Code of Miami-Dade County). The OIG initiated its investigation based on information provided to it by the Miami-Dade County Small Business Development Department (SBD). FFI was a subcontractor working on the Marlins Stadium project, under a contract that it had with Nagelbush Mechanical, Inc. (Nagelbush), a stadium mechanical contractor.

The OIG's investigation, conducted in parallel with SBD proceedings, substantiated the allegations. As part of the investigation, the OIG issued subpoenas and obtained sworn statements from the workers in question. The investigation determined that all four workers of FFI that worked on the Marlins Stadium project were paid substantially below the required hourly wage rate that they should have been paid, per the County's Responsible Wage Ordinance. The OIG provided the relevant information to SBD for its use.

In addition, we determined that FFI submitted to Nagelbush fraudulent Certified Payroll documents, during the course of its work on the Marlins Stadium. These Certified Payroll documents covered 47 weeks of work and contained fraudulent information, such as incorrect work classifications and hourly wage rates, and showed payroll deductions that were never actually deducted. When SBD pointed out to FFI that its Certified Payrolls were incorrect, FFI submitted revised Certified Payroll documents. These "corrected" documents were, in fact, still not correct. For example, FFI, on its revised Certified Payroll documents, eliminated employee payroll deductions in their entirety and showed that the total reported

work hours for the four employees for their time worked to date had been reduced by over 30%.

INVESTIGATIVE FINDINGS

Investigation Overview

This investigation was conducted in accordance with the *Principles and Standards for Offices of Inspector General, Quality Standards for Investigations* as promulgated by the Association of Inspectors General.

This investigation was predicated on allegations that SBD received from several workers employed by FFI who found out that FFI was not paying them the appropriate hourly wage rate that was required under the County's Responsible Wages and Benefits Ordinance.

During the course of the investigation, OIG Special Agents and Contract Oversight Specialists reviewed documents including, but not limited to:

- ◆ The contract between Hunt/Moss and Nagelbush
- ◆ The contract between Nagelbush and FFI
- ◆ Daily Reports
- ◆ Certified Payrolls (also entitled "U.S. Department of Labor Wage and Hour Division Payroll: sheets)
- ◆ Paychecks
- ◆ "Week Starting" time sheets
- ◆ Weekly Sign-In sheets
- ◆ IRS Form 1099s
- ◆ Back wage Affidavits

In addition, OIG Special Agents and Contract Oversight Specialists also issued subpoenas, and obtained sworn statements from current and former employees of FFI and Nagelbush. The OIG provided the relevant information to SBD for its use.

CONCLUSION & CASE CLOSURE RECOMMENDATIONS

The OIG investigation obtained credible evidence showing that FFI failed to pay its four employees working at the Marlins Stadium the proper hourly wage rate, per the County's Responsible Wages and Benefits Ordinance. In addition, the evidence shows that FFI terminated the employment of two of these workers who provided requested documentation to the SBD representative. Finally, FFI twice submitted fraudulent Certified Payroll documents (one original set and one "corrected" set that was still not correct) to Nagelbush covering 47 workweeks,

with incorrect work classifications, improper hourly wage rates, and incorrect deductions for its workers that participated in the construction of the Marlins Stadium.

The following actions have taken place:

- ◆ On April 27, 2011, SBD issued a *Notice to Cure to Subcontractor*, with attached documents, such as a Wage Analysis, Detailed Breakdown of Paid Wages Reported by FFI, and a *Backwages Affidavit Form*.
- ◆ On July 12, 2011, SBD issued a *Revised Notice to Cure to Subcontractor*, with attached Wage Analysis, stating that FFI owes the four workers a revised total of \$38,112.05 in backwages, as well as a revised penalty sanction of 10% of the underpayment amount equal to \$3,811.20.
- ◆ On August 23, 2011, SBD issued a *Notice of Violation to Subcontractor* to FFI.
- ◆ On November 29, 2011, an Administrative Hearing Officer held a hearing regarding an administrative appeal by Nagelbush regarding the subject *Notice of Violation to Subcontractor* and a finding that Nagelbush was responsible for its subcontractor's—FFI—actions. As such, payment of the wage underpayments would be deducted from amounts due Nagelbush.
- ◆ On December 19, 2011, the Administrative Hearing Officer issued her report regarding Nagelbush's appeal (see Attached Exhibit #1), including three recommendations:
 1. The *Notice of Violation* dated August 23, 2011 shall be upheld and that sufficient funds be withheld from the contract payments, as necessary to rectify the wage underpayments.
 2. A 10% penalty of the wage underpayment amount shall be assessed solely against FFI.
 3. FFI and its corporate principals shall be prohibited from bidding on or participating in County contracts for a period of three (3) years.
- ◆ On January 19, 2012, the County Mayor (see Attached Exhibit #2) concurred with the Administrative Hearing Officer's recommendations No. 1 and No. 2.

- ◆ On January 24, 2012, SBD issued a letter¹ (see Attached Exhibit #3) stating in part, "SBD ...requests that the Stadium Developer provide a check...for \$41, 027.62, which represents the underpayment amount of \$38,112.05 plus the employer contribution for corresponding payroll taxes equal to \$2,915.57...for deposit in SBD's Compliance Trust Fund Account..."

In addition, SBD noted that FFI is still responsible for the payment of the \$3,811.20 (10%) penalty to the County and, pursuant to the Responsible Wages and Benefits Code,² "If the required payment is not made within a reasonable period of time, the non-complying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts ... for a period of three (3) years." SBD concluded its letter by stating, "[FFI's] Failure to comply within 30 days of the date of this letter may result in the imposition of the stated sanction." (OIG emphasis)

- ◆ One week later, on February 1, 2012, SBD issued a second letter³ (see Attached Exhibit #4) stating in part, "SBD...has received \$41,027.62 from Marlins Stadium Developer, LLC for distribution to the four (4) employees included as underpaid in the August 23, 2100, *Notice of Violation* issued to Florida Fire Stopping, Inc....the funds will be deposited in SBD's Compliance Trust Fund Account for distribution to the employees..."

SBD, in this letter, again noted, "Florida Fire Stopping is still responsible for the payment of the \$3,811.20 penalty to the County. **As such the violation issued to Florida Fire Stopping, Inc. will remain open until this payment has been received.**" (SBD emphasis) SBD also reiterated the above-cited Code requirement related to the 3-year prohibition against FFI and its principals from bidding on or participating in County contracts, absent FFI making

¹ SBD letter to: Stadium Developer, Hunt/Moss (Stadium Construction Manager), Nagelbush (a stadium mechanical contractor), and FFI (subcontractor to Nagelbush)

² Code of Miami-Dade County, Section 2-11.16(d)(v) states in part, "A contractor or subcontractor who does not make the required payment of the underpaid wages or who does not pay any fine imposed hereunder shall not be deemed responsible to perform subsequent County construction contracts and shall be ineligible to be awarded such contacts for so long as the identified underpayment or any penalties imposed therefor remain outstanding, not to exceed three years...If the required payment is not made within a reasonable period of time, the noncomplying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three years."

³ SBD letter to: Stadium Developer, Hunt/Moss, and Nagelbush; copy to FFI.

the required payment "within a reasonable period of time." SBD concluded this letter by stating, "SBD will address the matter of the penalty with Florida Fire Stopping, Inc. directly."

- ◆ On April 2, 2012, each of the four subject FFI workers received a check from the County, on behalf of FFI, as full payment of the amounts owed to them by FFI and signed a *Wage Affidavit* releasing the County from any claims and/or liabilities that may result from the payment.

As of February 20, 2013, FFI has not made payment of the \$3,811.20 penalty to the County.

In addition, during our investigation, we requested information pertaining to FFI from the Florida Department of Revenue (DOR). In its letter to the OIG, dated March 21, 2011, DOR provided us with information for the period beginning with the 2nd quarter 2005 through the 1st Quarter 2009. DOR stated in part, "The business [FFI] became active on June 01, 2005 and inactive on March 31, 2009." (OIG emphasis) Therefore, it appears as though FFI may not have reported to the Florida Department of Revenue any revenues that it received in 2010 and 2011 from either the Marlins Stadium project, nor any other project that it may have worked on, during that period.

The OIG believes that the conduct of FFI should be brought to the attention of the Miami-Dade State Attorney's Office (SAO) and to the DOR. As such, the OIG intends to provide a copy of this report to both the SAO and the DOR for their information. In addition, the OIG suggests that SBD continue to seek payment of the penalty from FFI. If such action is determined to be fruitless, SBD should issue a final closure letter to FFI informing it that the County sanction will be enforced.

The OIG now considers this case closed since the four employees have received reimbursement for the wage underpayments in question.

MIAMI-DADE COUNTY ADMINISTRATIVE HEARING
November 29, 2011

IN RE:

**HUNT/MOSS, A JOINT VENTURE
NAGELBUSH MECHANICAL, INC.
FLORIDA FIRE STOPPING, INC.**

**PROJECT NO. BP-16
NEW MARLINS BALLPARK – PLUMBING – GENERAL BUILDING**

**NOTICE OF VIOLATION TO SUBCONTRACTOR OF VIOLATION OF THE
RESPONSIBLE WAGES AND BENEFITS ORDINANCES, §2-11.16 CODE OF MIAMI-
DADE COUNTY**

APPEAL OF NAGELBUSH MECHANICAL, INC.

REPORT AND RECOMMENDATIONS OF ADMINISTRATIVE HEARING OFFICER

This Cause was scheduled for hearing before the undersigned Administrative Hearing Officer on November 29, 2011 following a Notice of Violation to Subcontractor dated August 23, 2011 from the Department of Small Business Development to Hunt/Moss, A Joint Venture, Nagelbush Mechanical, Inc., and Florida Fire Stopping, Inc.

The Department of Small Business Development (hereinafter referred to as "DSBD") was represented by Rudolph Griffith, Esq. Also present on behalf of DSBD were Ms. Hidalgo-Gato, Ms. Anderson and Mr. Morales.

Nagelbush Mechanical, Inc. (hereinafter referred to as "Nagelbush") was represented by Mr. David B. Mankuta, Esq. Also present on behalf of Nagelbush were Mr. Glenn Elkes and Mr. Michael Kotait. During the hearing, Nagelbush also represented the interests of Hunt/Moss, A Joint Venture (hereinafter referred to as "Hunt/Moss"). No one appeared on behalf of Florida Fire Stopping, Inc (hereinafter referred to as Florida Fire Stopping).



DOCUMENTS PRESENTED & REVIEWED

In advance of the hearing, the undersigned was provided with copies of the following documents:

1. Letter from David Mankuta, Esq., to Rudolph Griffith dated November 22, 2011 on behalf of Nagelbush;
2. Notice of Violation to Subcontractor dated August 23, 2011;
3. Revised Notice to Cure to Subcontractor dated July 12, 2011 with attached Wage Analysis;
4. Notice to Cure to Subcontractor dated April 27, 2011 with attached Wage Analysis, Detailed Breakdown of Paid Wages Reported by Florida Fire Stopping (2), Backwages Affidavit Form and the Miami Dade County §2-11.16 Code of Miami-Dade County Wages and Benefits Schedule, Building Construction, for Insulators & Abestos Workers for the years 2010 and 2011;
5. Subcontract Agreement – Florida Fire Stopping, Inc.;
6. Responsible Wages and Benefits, Section 2-11.16 – County Construction Contracts, Implementing Order 3-24; and
7. Miami-Dade County Responsible Wages and Benefits, Section 2-11.16 of the Code of Miami-Dade County, Supplemental General Conditions, Wages and Benefits Schedule for 2010 and 2011.

ADMINISTRATIVE HEARING

This matter came before the Hearing Officer on November 29, 2011, in reference to an Administrative Appeal by Nagelbush of the recommendation of the DSBD to withhold sufficient contract funds on the project to protect the wages due to the employees of Florida Fire Stopping as stated in the August 23, 2011 Notice of Violation to Subcontractor.

At the time of the hearing, arguments were presented by both Nagelbush and the DSBD. The above-referenced documents were submitted as exhibits by DSBD. Additionally, Nagelbush submitted a copy of the invoice and payment log for Florida Fire Stopping for the above-referenced project.

FINDINGS OF FACT

The following findings of fact were undisputed at the hearing:

1. Nagelbush engaged the services of Florida Fire Stopping as a subcontractor on the Florida Marlins Ballpark Project, Bid Package #16 with the scope of work designated as "insulation".

2. Hunt/Moss, Nagelbush and Florida Fire Stopping were aware of their obligation to comply with the provisions of §2-11.16, entitled "County Construction Contracts" of the Code of Miami-Dade County and its Supplemental General Conditions / Wages and Benefits Schedule while working on the Florida Marlins Ballpark Project, Bid Package #16.

3. Section 2-11.16 (b)(ii) provides that county construction contracts shall "mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsection (i).

4. Section 2-11.16 (b)(vi) provides that county construction contracts shall "require the contractor and each subcontractor under him to keep, or cause to be kept, accurate written records signed under oath as true and correct showing the names, social security numbers, and craft classifications of all employees performing work on said contract, the hours and fractions of hours for every type of work performed by each employee, the combined dollar value of all wages, any contributions to benefit plans and payments made to each employee of the overall per hour rate required by this section..."

5. Florida Fire Stopping failed to comply with the above provisions of the Code and the Supplemental General Provisions by misclassifying and underpaying four employees. Additionally, Florida Fire Stopping was non-compliant by failing to maintain accurate payroll records.

6. A Notice to Cure and Revised Notice to Cure was submitted to Florida Fire Stopping on April 27, 2011 and July 12, 2011 respectively. Hunt/Moss and Nagelbush were also included on the Notices in compliance with the provisions of §2-11.16 of the Code of Miami-Dade County.

7. Hunt/Moss and Nagelbush relied on the certified payrolls submitted by Florida Fire Stopping and were unaware of Florida Fire Stopping's ongoing non-compliance with the provisions of §2-11.16.

8. Upon receiving notice from the DSBD of Florida Fire Stopping's non-compliance with §2-11.16, Nagelbush withheld further contract payments to Florida Fire Stopping.

9. The responses of Florida Fire Stopping failed to adequately address or correct the compliance issues outlined in the Revised Notice to Cure resulting in a Notice of Violation being issued on August 23, 2011, to Florida Fire Stopping, Nagelbush and Hunt/Moss asserting an underpayment of wages in the amount of \$38,112.05 and a 10% sanction of \$3,811.21.

10. Pursuant to §2-11.16 (b)(v) and (d)(v) and Paragraph 2. - "Liability for Unpaid Wages; Penalties; Withholding" of the Supplemental General Conditions, the DSBD recommended that an amount equal to the underpayment of wages and 10% sanction be withheld from the overall contract payment.

11. Florida Fire Stopping abandoned the project prior to completing its obligations under the contract.

12. Florida Fire Stopping has not corrected the underpayment of wages identified in the Notice of Violation or paid the 10% sanction assessed.

13. Nagelbush has incurred costs in a good faith effort to correct the work performed by Florida Fire Stopping and ensure completion of the scope of work that was to be performed by Florida Fire Stopping.

14. There is no dispute as to the employee classification and wage analysis calculations outlined in the Revised Notice to Cure and Notice of Violation, nor is there any dispute that the total underpayment of wages amounts to the sum of \$38,112.05.

15. Paragraph 4 entitled "Subcontracts" of the Supplemental General Conditions to §2-11.16 provides that "the prime contractor will be responsible for compliance by all subcontractors and their lower tier subcontractors with the clauses set forth in paragraphs 1 through 6 of this Supplemental General Conditions.

RECOMMENDATIONS

The findings establish that Florida Fire Stopping was a subcontractor of Nagelbush and Hunt/Moss during the period of time Florida Fire Stopping was non-compliant with the provisions of §2-11.16 and the Supplemental General Conditions thereto resulting in an undisputed wage underpayment in the amount of \$38,112.05. The findings further establish that in undertaking Project No. BP-16, New Marlins Ballpark, a county construction contract governed by §2-11.16, Hunt/Moss and Nagelbush are responsible for Florida Fire Stopping, their subcontractor.


Based on the above, it is recommended that the DSBD's Notice of Violation dated August 23, 2011 be upheld and that sufficient funds be withheld from the contract payments as necessary to rectify the wage underpayments to the four Florida Fire Stopping employees. Because there was no evidence presented that Hunt/Moss or Nagelbush were active in Florida Fire Stopping's non-compliance and given Nagelbush's good faith efforts to protect the project work following Florida Fire Stopping's abandonment to Nagelbush's financial detriment, it is recommended that no penalty or sanction be assessed against Hunt/Moss or Nagelbush. To the extent that it is feasible, the 10% penalty sanction should be assessed solely against Florida Fire Stopping.

Additionally, based on the findings that Florida Fire Stopping abandoned its contract obligations on this project, performed work that required corrective measures, failed to comply with the provisions of §2-11.16 and did not appear at the administrative hearing to refute or correct any of the above, it is further recommended that Florida Fire

Hearing Officer Report and Recommendations
In Re: Project No. BP-16, New Marlins Ballpark – Plumbing –General Building
Administrative Appeal of Nagelbush Mechanical, Inc
Hearing Date: November 29, 2011
Page 6 of 6

Stopping and its corporate principals be prohibited from bidding or participating in County contracts for a period of three (3) years.

Respectfully recommended this 19 day of December, 2011.



KAREN BZDYK, ESQ.
Administrative Hearing Officer
Florida Supreme Court Certified
Civil and County Mediator
Arbitrator

RCD
1-19-12
From RA

Memorandum



Date: January 13, 2012

To: Carlos A. Gimenez, Mayor

Thru: Jack Osterholt, Deputy Mayor/ Interim Director
Sustainability, Planning and Economic Enhancement Department

From: Mario Goderich, Assistant Director
Economic Enhancement
Sustainability, Planning and Economic Enhancement Department

Subject: Administrative Hearing Officer - Findings of Fact and Recommendations
Nagelbush Mechanical, Inc./Florida Fire Stopping, Inc.
Project No. BP16, New Marlins Ballpark – Plumbing/General Building

BACKGROUND

The attached Findings of Fact and Recommendation was issued by Administrative Hearing Officer Karen Bzdyk, Esq., arising from the Appeal of the Small Business Development (SBD) Division's determination that Florida Fire Stopping, Inc., a subcontractor to Nagelbush Mechanical, Inc. on the subject project, violated §2-11-16 of the Code of Miami-Dade County and Implementing Order 3-24.

ADMINISTRATIVE HEARING EXAMINER'S RECOMMENDATION

Pursuant to the Findings of Fact, Administrative Hearing Examiner Ms. Karen Bzdyk, Esq., made the following recommendation:

1. Notice of Violation dated August 23, 2011 be upheld and sufficient funds be withheld from the contract payments as necessary to rectify the wage underpayments
2. A 10% penalty sanction shall be assessed solely against Florida Fire Stopping, Inc.
3. Florida Fire Stopping and its corporate principals shall be prohibited from bidding or participating in County contracts for a period of three (3) years.

COUNTY MAYOR'S DECISION

The County Mayor or his designee may sustain, reverse, or modify the administrative decision, and shall have the sole discretion to determine the appropriate sanction to be imposed. The decision of the County Mayor shall be final unless the County Commission agrees in its sole discretion to review any such decision.

ACCEPT:

Carlos A. Gimenez
County Mayor

1/19/12
Date

REJECT:

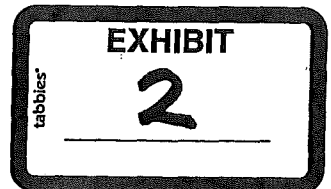
Carlos A. Gimenez
County Mayor

Date

Comments:

I concur with recommendations No. 1 and No. 2.

EXHIBITS



MIAMI-DADE COUNTY ADMINISTRATIVE HEARING
November 29, 2011

IN RE:

HUNT/MOSS, A JOINT VENTURE
NAGELBUSH MECHANICAL, INC.
FLORIDA FIRE STOPPING, INC.

PROJECT NO. BP-16
NEW MARLINS BALLPARK – PLUMBING – GENERAL BUILDING

NOTICE OF VIOLATION TO SUBCONTRACTOR OF VIOLATION OF THE
RESPONSIBLE WAGES AND BENEFITS ORDINANCES, §2-11.16 CODE OF MIAMI-
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At the time of the hearing, arguments were presented by both Nagelbush and the DSBD. The above-referenced documents were submitted as exhibits by DSBD. Additionally, Nagelbush submitted a copy of the invoice and payment log for Florida Fire Stopping for the above-referenced project.

FINDINGS OF FACT

The following findings of fact were undisputed at the hearing:

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3. Section 2-11.16 (b)(ii) provides that county construction contracts shall "mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsection (i).
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5. Florida Fire Stopping failed to comply with the above provisions of the Code and the Supplemental General Provisions by misclassifying and underpaying four employees. Additionally, Florida Fire Stopping was non-compliant by failing to maintain accurate payroll records.

6. A Notice to Cure and Revised Notice to Cure was submitted to Florida Fire Stopping on April 27, 2011 and July 12, 2011 respectively. Hunt/Moss and Nagelbush were also included on the Notices in compliance with the provisions of §2-11.16 of the Code of Miami-Dade County.

7. Hunt/Moss and Nagelbush relied on the certified payrolls submitted by Florida Fire Stopping and were unaware of Florida Fire Stopping's ongoing non-compliance with the provisions of §2-11.16.

8. Upon receiving notice from the DSBD of Florida Fire Stopping's non-compliance with §2-11.16, Nagelbush withheld further contract payments to Florida Fire Stopping.

9. The responses of Florida Fire Stopping failed to adequately address or correct the compliance issues outlined in the Revised Notice to Cure resulting in a Notice of Violation being issued on August 23, 2011, to Florida Fire Stopping, Nagelbush and Hunt/Moss asserting an underpayment of wages in the amount of \$38,112.05 and a 10% sanction of \$3,811.21.

10. Pursuant to §2-11.16 (b)(v) and (d)(v) and Paragraph 2. -"Liability for Unpaid Wages; Penalties; Withholding" of the Supplemental General Conditions, the DSBD recommended that an amount equal to the underpayment of wages and 10% sanction be withheld from the overall contract payment.

11. Florida Fire Stopping abandoned the project prior to completing its obligations under the contract.

12. Florida Fire Stopping has not corrected the underpayment of wages identified in the Notice of Violation or paid the 10% sanction assessed.

13. Nagelbush has incurred costs in a good faith effort to correct the work performed by Florida Fire Stopping and ensure completion of the scope of work that was to be performed by Florida Fire Stopping.

14. There is no dispute as to the employee classification and wage analysis calculations outlined in the Revised Notice to Cure and Notice of Violation, nor is there any dispute that the total underpayment of wages amounts to the sum of \$38,112.05.

15. Paragraph 4 entitled "Subcontracts" of the Supplemental General Conditions to §2-11.16 provides that "the prime contractor will be responsible for compliance by all subcontractors and their lower tier subcontractors with the clauses set forth in paragraphs 1 through 6 of this Supplemental General Conditions.

RECOMMENDATIONS

The findings establish that Florida Fire Stopping was a subcontractor of Nagelbush and Hunt/Moss during the period of time Florida Fire Stopping was non-compliant with the provisions of §2-11.16 and the Supplemental General Conditions thereto resulting in an undisputed wage underpayment in the amount of \$38,112.05. The findings further establish that in undertaking Project No. BP-16, New Marlins Ballpark, a county construction contract governed by §2-11.16, Hunt/Moss and Nagelbush are responsible for Florida Fire Stopping, their subcontractor.


Based on the above, it is recommended that the DSBD's Notice of Violation dated August 23, 2011 be upheld and that sufficient funds be withheld from the contract payments as necessary to rectify the wage underpayments to the four Florida Fire Stopping employees. Because there was no evidence presented that Hunt/Moss or Nagelbush were active in Florida Fire Stopping's non-compliance and given Nagelbush's good faith efforts to protect the project work following Florida Fire Stopping's abandonment to Nagelbush's financial detriment, it is recommended that no penalty or sanction be assessed against Hunt/Moss or Nagelbush. To the extent that it is feasible, the 10% penalty sanction should be assessed solely against Florida Fire Stopping.

Additionally, based on the findings that Florida Fire Stopping abandoned its contract obligations on this project, performed work that required corrective measures, failed to comply with the provisions of §2-11.16 and did not appear at the administrative hearing to refute or correct any of the above, it is further recommended that Florida Fire

Hearing Officer Report and Recommendations
In Re: Project No. BP-16, New Marlins Ballpark – Plumbing – General Building
Administrative Appeal of Nagelbush Mechanical, Inc
Hearing Date: November 29, 2011
Page 6 of 6

Stopping and its corporate principals be prohibited from bidding or participating in
County contracts for a period of three (3) years.

Respectfully recommended this 19 day of December, 2011.



KAREN BZDYK, ESQ.
Administrative Hearing Officer
Florida Supreme Court Certified
Civil and County Mediator
Arbitrator



miamidade.gov

**Sustainability, Planning and Economic
Enhancement Department**

111 NW 1 Street, 19th Floor
Miami, Florida 33128
T 305-375-3111 F 305-375-3160

January 24, 2012

Claude Delorme, Executive Vice President
Ballpark Development
Florida Marlins BallPark
2267 Dan Marino Boulevard
Miami, FL 33056

Via E-Mail and US Mail
cdelorme@marlins.com

Mr. Todd Willis, Project Program Coordinator
Hunt/Moss, A Joint Venture
1380 N.W. 6 Street, Unit 1
Miami, Florida 33125

twillis@mossemail.com

Mr. Michael Kotait, Senior Project Manager
Nagelbush Mechanical, Inc.
1800 Northwest 49th Street, Suite 110
Ft. Lauderdale, FL 33309

mkotait@nagelbush.com

Mr. Gaston Alonso, Jr., President
Florida Fire Stopping, Inc.
P.O. Box 558455
Miami, FL 33255

galonso@floridafirestop.com

Re: Project No. BP-16, New Marlins Ballpark – Plumbing – General Building

Dear Messrs. Delorme, Willis, Kotait and Alonso:

Attached please find the County Mayor's acceptance of the Administrative Hearing Officer's Recommendations arising from the appeal by Nagelbush Mechanical, Inc. of the August 23, 2011 Notice of Violation issued to Florida Fire Stopping for misclassification and underpayment of four (4) employees on the referenced project. The Mayor further authorized that sufficient funds be withheld from the contract payments as necessary to rectify the wage underpayments.

As such, the Small Business Development (SBD) Division of the Sustainability, Planning and Economic Enhancement Department hereby requests that the Stadium Developer provide a check payable to the Miami-Dade County Board of Commissioners for \$41,027.62, which represents the underpayment amount of \$38,112.05 plus the employer contribution for corresponding payroll taxes equal to \$2,915.57, from the contract proceeds for deposit in SBD's Compliance Trust Fund Account. The funds will be utilized to pay the affected employees the wages due.

Florida Fire Stopping is still responsible for the payment of the \$3,811.20 penalty to the County. Pursuant to the Responsible Wages and Benefits Code, "If the required payment is not made within a reasonable period of time, the non-complying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County



Messrs. Delorme, Willis, Kotait and Alonso
January 24, 2012
Page 2 of 2

contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years." In order to bring closure to this matter, Florida Fire Stopping must submit a check payable to Miami-Dade County Board of Commissioners for payment of the 10% sanction equal to \$3,811.20 (\$38,112.05 x 10%). Failure to comply within 30 days of the date of this letter may result in the imposition of the stated sanction.

Should you have any questions regarding this matter, please contact Alice Hidalgo-Gato, Contract Monitoring and Compliance, at (305) 375-3153.

Sincerely,



Mario Goderich, Assistant Director
Sustainability, Planning and Economic Enhancement Department

Enclosure

c: Ray Mehta, Project Manager, Nagelbush Mechanical, Inc.
David B. Mankuta, Atkinson, Diner, Stone, Mankuta & Plouch, PA
Michel Bussiere, Ballpark Development
Robert K. May, Project Executive, Hunt/Moss
Patrick S. Delano, Sr. Project Manager, Hunt/Moss
Christopher Mazzella, Inspector General
Jose Galan, Chief of Program Legislation, ISD
CMC NOV File

RCD
1-19-12
FEMA
RG

Memorandum



Date: January 13, 2012

To: Carlos A. Gimenez, Mayor

Thru: Jack Osterholt, Deputy Mayor/ Interim Director
Sustainability, Planning and Economic Enhancement Department

From: Mario Goderich, Assistant Director
Economic Enhancement
Sustainability, Planning and Economic Enhancement Department

Subject: Administrative Hearing Officer - Findings of Fact and Recommendations
Nagelbush Mechanical, Inc./Florida Fire Stopping, Inc.
Project No. BP16, New Marlins Ballpark – Plumbing/General Building

BACKGROUND

The attached Findings of Fact and Recommendation was issued by Administrative Hearing Officer Karen Bzdyk, Esq., arising from the Appeal of the Small Business Development (SBD) Division's determination that Florida Fire Stopping, Inc., a subcontractor to Nagelbush Mechanical, Inc. on the subject project, violated §2-11-16 of the Code of Miami-Dade County and Implementing Order 3-24.

ADMINISTRATIVE HEARING EXAMINER'S RECOMMENDATION

Pursuant to the Findings of Fact, Administrative Hearing Examiner Ms. Karen Bzdyk, Esq., made the following recommendation:

1. Notice of Violation dated August 23, 2011 be upheld and sufficient funds be withheld from the contract payments as necessary to rectify the wage underpayments
2. A 10% penalty sanction shall be assessed solely against Florida Fire Stopping, Inc.
3. Florida Fire Stopping and its corporate principals shall be prohibited from bidding or participating in County contracts for a period of three (3) years.

COUNTY MAYOR'S DECISION

The County Mayor or his designee may sustain, reverse, or modify the administrative decision, and shall have the sole discretion to determine the appropriate sanction to be imposed. The decision of the County Mayor shall be final unless the County Commission agrees in its sole discretion to review any such decision.

ACCEPT:

Carlos A. Gimenez
County Mayor

Date

1/19/12

REJECT:

Carlos A. Gimenez
County Mayor

Date

Comments:

I concur with recommendations No. 1 and No. 2.

EXHIBITS

MIAMI-DADE COUNTY ADMINISTRATIVE HEARING
November 29, 2011

IN RE:

HUNT/MOSS, A JOINT VENTURE
NAGELBUSH MECHANICAL, INC.
FLORIDA FIRE STOPPING, INC.

PROJECT NO. BP-16
NEW MARLINS BALLPARK – PLUMBING – GENERAL BUILDING

NOTICE OF VIOLATION TO SUBCONTRACTOR OF VIOLATION OF THE
RESPONSIBLE WAGES AND BENEFITS ORDINANCES, §2-11.16 CODE OF MIAMI-
DADE COUNTY

APPEAL OF NAGELBUSH MECHANICAL, INC.

REPORT AND RECOMMENDATIONS OF ADMINISTRATIVE HEARING OFFICER

This Cause was scheduled for hearing before the undersigned Administrative Hearing Officer on November 29, 2011 following a Notice of Violation to Subcontractor dated August 23, 2011 from the Department of Small Business Development to Hunt/Moss, A Joint Venture, Nagelbush Mechanical, Inc., and Florida Fire Stopping, Inc.

The Department of Small Business Development (hereinafter referred to as "DSBD") was represented by Rudolph Griffith, Esq. Also present on behalf of DSBD were Ms. Hidalgo-Gato, Ms. Anderson and Mr. Morales.

Nagelbush Mechanical, Inc. (hereinafter referred to as "Nagelbush" was represented by Mr. David B. Mankuta, Esq. Also present on behalf of Nagelbush were Mr. Glenn Elkes and Mr. Michael Kotait. During the hearing, Nagelbush also represented the interests of Hunt/Moss, A Joint Venture (hereinafter referred to as "Hunt/Moss"). No one appeared on behalf of Florida Fire Stopping, Inc (hereinafter referred to as Florida Fire Stopping).

DOCUMENTS PRESENTED & REVIEWED

In advance of the hearing, the undersigned was provided with copies of the following documents:

1. Letter from David Mankuta, Esq., to Rudolph Griffith dated November 22, 2011 on behalf of Nagelbush;
2. Notice of Violation to Subcontractor dated August 23, 2011;
3. Revised Notice to Cure to Subcontractor dated July 12, 2011 with attached Wage Analysis;
4. Notice to Cure to Subcontractor dated April 27, 2011 with attached Wage Analysis, Detailed Breakdown of Paid Wages Reported by Florida Fire Stopping (2), Backwages Affidavit Form and the Miami Dade County §2-11.16 Code of Miami-Dade County Wages and Benefits Schedule, Building Construction, for Insulators & Abestos Workers for the years 2010 and 2011;
5. Subcontract Agreement – Florida Fire Stopping, Inc.;
6. Responsible Wages and Benefits, Section 2-11.16 – County Construction Contracts, Implementing Order 3-24; and
7. Miami-Dade County Responsible Wages and Benefits, Section 2-11.16 of the Code of Miami-Dade County, Supplemental General Conditions, Wages and Benefits Schedule for 2010 and 2011.

ADMINISTRATIVE HEARING

This matter came before the Hearing Officer on November 29, 2011, in reference to an Administrative Appeal by Nagelbush of the recommendation of the DSBD to withhold sufficient contract funds on the project to protect the wages due to the employees of Florida Fire Stopping as stated in the August 23, 2011 Notice of Violation to Subcontractor.

At the time of the hearing, arguments were presented by both Nagelbush and the DSBD. The above-referenced documents were submitted as exhibits by DSBD. Additionally, Nagelbush submitted a copy of the invoice and payment log for Florida Fire Stopping for the above-referenced project.

FINDINGS OF FACT

The following findings of fact were undisputed at the hearing:

1. Nagelbush engaged the services of Florida Fire Stopping as a subcontractor on the Florida Marlins Ballpark Project, Bid Package #16 with the scope of work designated as "insulation".

2. Hunt/Moss, Nagelbush and Florida Fire Stopping were aware of their obligation to comply with the provisions of §2-11.16, entitled "County Construction Contracts" of the Code of Miami-Dade County and its Supplemental General Conditions / Wages and Benefits Schedule while working on the Florida Marlins Ballpark Project, Bid Package #16.

3. Section 2-11.16 (b)(ii) provides that county construction contracts shall "mandate the contractor to whom the contract is awarded, and any of its subcontractors performing any of the contract work, pay not less than the specified overall per hour rate adjusted over the term of the contract as provided in subsection (i).

4. Section 2-11.16 (b)(vi) provides that county construction contracts shall "require the contractor and each subcontractor under him to keep, or cause to be kept, accurate written records signed under oath as true and correct showing the names, social security numbers, and craft classifications of all employees performing work on said contract, the hours and fractions of hours for every type of work performed by each employee, the combined dollar value of all wages, any contributions to benefit plans and payments made to each employee of the overall per hour rate required by this section..."

5. Florida Fire Stopping failed to comply with the above provisions of the Code and the Supplemental General Provisions by misclassifying and underpaying four employees. Additionally, Florida Fire Stopping was non-compliant by failing to maintain accurate payroll records.

6. A Notice to Cure and Revised Notice to Cure was submitted to Florida Fire Stopping on April 27, 2011 and July 12, 2011 respectively. Hunt/Moss and Nagelbush were also included on the Notices in compliance with the provisions of §2-11.16 of the Code of Miami-Dade County.

7. Hunt/Moss and Nagelbush relied on the certified payrolls submitted by Florida Fire Stopping and were unaware of Florida Fire Stopping's ongoing non-compliance with the provisions of §2-11.16.

8. Upon receiving notice from the DSBD of Florida Fire Stopping's non-compliance with §2-11.16, Nagelbush withheld further contract payments to Florida Fire Stopping.

9. The responses of Florida Fire Stopping failed to adequately address or correct the compliance issues outlined in the Revised Notice to Cure resulting in a Notice of Violation being issued on August 23, 2011, to Florida Fire Stopping, Nagelbush and Hunt/Moss asserting an underpayment of wages in the amount of \$38,112.05 and a 10% sanction of \$3,811.21.

10. Pursuant to §2-11.16 (b)(v) and (d)(v) and Paragraph 2 -"Liability for Unpaid Wages; Penalties; Withholding" of the Supplemental General Conditions, the DSBD recommended that an amount equal to the underpayment of wages and 10% sanction be withheld from the overall contract payment.

11. Florida Fire Stopping abandoned the project prior to completing its obligations under the contract.

12. Florida Fire Stopping has not corrected the underpayment of wages identified in the Notice of Violation or paid the 10% sanction assessed.

13. Nagelbush has incurred costs in a good faith effort to correct the work performed by Florida Fire Stopping and ensure completion of the scope of work that was to be performed by Florida Fire Stopping.

14. There is no dispute as to the employee classification and wage analysis calculations outlined in the Revised Notice to Cure and Notice of Violation, nor is there any dispute that the total underpayment of wages amounts to the sum of \$38,112.05.

15. Paragraph 4 entitled "Subcontracts" of the Supplemental General Conditions to §2-11.16 provides that "the prime contractor will be responsible for compliance by all subcontractors and their lower tier subcontractors with the clauses set forth in paragraphs 1 through 6 of this Supplemental General Conditions.

RECOMMENDATIONS


The findings establish that Florida Fire Stopping was a subcontractor of Nagelbush and Hunt/Moss during the period of time Florida Fire Stopping was non-compliant with the provisions of §2-11.16 and the Supplemental General Conditions thereto resulting in an undisputed wage underpayment in the amount of \$38,112.05. The findings further establish that in undertaking Project No. BP-16, New Marlins Ballpark, a county construction contract governed by §2-11.16, Hunt/Moss and Nagelbush are responsible for Florida Fire Stopping, their subcontractor.

Based on the above, it is recommended that the DSBD's Notice of Violation dated August 23, 2011 be upheld and that sufficient funds be withheld from the contract payments as necessary to rectify the wage underpayments to the four Florida Fire Stopping employees. Because there was no evidence presented that Hunt/Moss or Nagelbush were active in Florida Fire Stopping's non-compliance and given Nagelbush's good faith efforts to protect the project work following Florida Fire Stopping's abandonment to Nagelbush's financial detriment, it is recommended that no penalty or sanction be assessed against Hunt/Moss or Nagelbush. To the extent that it is feasible, the 10% penalty sanction should be assessed solely against Florida Fire Stopping.

Additionally, based on the findings that Florida Fire Stopping abandoned its contract obligations on this project, performed work that required corrective measures, failed to comply with the provisions of §2-11.16 and did not appear at the administrative hearing to refute or correct any of the above, it is further recommended that Florida Fire

Stopping and its corporate principals be prohibited from bidding or participating in
County contracts for a period of three (3) years.

Respectfully recommended this 19 day of December, 2011.



KAREN BZDYK, ESQ.
Administrative Hearing Officer
Florida Supreme Court Certified
Civil and County Mediator
Arbitrator



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Sustainability, Planning and Economic
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February 1, 2012

Claude Delorme, Executive Vice President
Ballpark Development
Florida Marlins Ballpark
2267 Dan Marino Boulevard
Miami, FL 33056

cdelorme@marlins.com

Mr. Todd Willis, Project Program Coordinator
Hunt/Moss, a Joint Venture
1380 N.W. 6 Street, Unit 1
Miami, Florida 33125

twillis@mossemail.com

Mr. Michael Kotait, Senior Project Manager
Nagelbush Mechanical, Inc.
1800 Northwest 49th Street, Suite 110
Ft. Lauderdale, FL 33309

mkotait@nagelbush.com

Re: Project No. BP-16, New Marlins Ballpark – Plumbing – General Building

Dear Messrs. Delorme, Willis and Kotait:

The Small Business Development (SBD) Division of the Sustainability, Planning and Economic Enhancement Department has received \$41,027.62 from Marlins Stadium Developer, LLC for distribution to the four (4) employees included as underpaid in the August 23, 2011, Notice of Violation issued to Florida Fire Stopping, Inc., a subcontractor, on the referenced project. The funds will be deposited in SBD's Compliance Trust Fund Account for distribution to the employees.

While Marlins Stadium Developer has satisfactorily complied with this matter, Florida Fire Stopping, Inc. is still responsible for the payment of the \$3,811.20 penalty to the County. **As such the violation issued to Florida Fire Stopping, Inc. will remain open until this payment has been received.** Pursuant to the Code, "If the required payment is not made within a reasonable period of time, the non-complying contractor (or subcontractor) and the principal owners thereof shall be prohibited from bidding on or otherwise participating in County contracts for the construction, alteration, and/or repair, including painting or decorating of public buildings or public works for a period of three (3) years." SBD will address the matter of the penalty with Florida Fire Stopping, Inc. directly.

Should you have any questions, please contact Alice Hidalgo-Gato, Director of the Contract Monitoring and Compliance Unit, at (305) 375-3153.

Delivering Excellence Every Day



Messrs. Delorme, Willis and Kotait
February 3, 2012
Page 2

Sincerely,



Mario Goderich, Assistant Director
Sustainability, Planning and Economic Enhancement Department

c: Ray Mehta, Project Manager, Nagelbush Mechanical, Inc.
David B. Mankuta, Atkinson, Diner, Stone, Mankuta & Plouch, PA
Gaston Alonso, Jr., President, Florida Fire Stopping, Inc.
Michel Bussiere, Ballpark Development
Robert K. May, Project Executive, Hunt/Moss
Patrick S. Delano, Sr. Project Manager, Hunt/Moss
Christopher Mazzella, Inspector General
Jose Galan, Chief of Program Legislation, ISD
Hunt/Moss Compliance Item #0234
CMC File (\$38,112.05 Wages / \$2,915.57 payroll taxes)