

City of Miami

VICTOR I. IGWE, CPA, CIA
INDEPENDENT AUDITOR GENERAL



Telephone (305) 416-2040
Telecopier: (305) 416-2046
E-Mail: lag@ci.miami.fl.usa

June 30, 2009

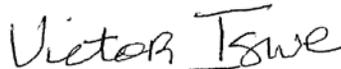
Honorable Members of the City Commission
City of Miami
3500 Pan American Drive
Coconut Grove, FL 33133-5504

Re: Audit of the Capital Projects Funded with Homeland Security, Neighborhood Improvements, Capital Projects and Infrastructure Improvements Bond Proceeds and Other Funding Sources – Phase No. 4: The Job Order Contract Program
Audit No. 09-005

In accordance with the provisions of Section 48 of the City Charter, the Office of the Independent Auditor General (OIAG) performed an audit of capital improvement/construction projects funded with Homeland Defense, Neighborhood Improvements, Capital Projects and Infrastructure Improvements bond proceeds (HD), as well as with other funding sources Phase # 4. The audit's primary focus for this phase was the City of Miami's Job Order Contract (JOC) program. This report is the fourth of multiple audit reports that we plan on conducting throughout the life of the HD funded capital projects and throughout the duration of other selected City of Miami (City) capital construction/improvement projects.

The audit covered the period of April 1, 2007 through March 31, 2008, and selected transactions prior and subsequent to this period.

Sincerely,



Victor I. Igwe, CPA, CIA
Independent Auditor General
Office of Independent Auditor General

Cc: The Honorable Mayor Manuel A. Diaz
Pete Hernandez, City Manager
Members of the Audit Advisory Committee
Members of the Bond Oversight Board
Roger Hernstadt, Assistant City Manager, Office of the City Manager
Bill Anido, Assistant City Manager, Office of the City Manager
Larry Spring, Assistant City Manager/Chief Financial Officer
Peter W. Korinis, Chief Information Officer
Julie O. Bru, City Attorney
Squire, Sanders and Dempsey, L.L.P., Bond Counsel
Priscilla A. Thompson, City Clerk
Ola Aluko, Director, Capital Improvements & Transportation Department
William W. Bryson, Chief, Fire-Rescue Department
Maurice Kemp, Deputy Chief, Fire-Rescue Department
Diana Gomez, CPA, Director, Finance Department
Michael J. Boudreaux, Director, Strategic Planning, Budgeting and Performance
Pilar Saenz, CIP Assistant Director
Gary Fabrikant, CIP Assistant Director
David Mendez, CIP Assistant Director
Audit Documentation File

**AUDIT OF CAPITAL PROJECTS FUNDED WITH HOMELAND DEFENSE,
NEIGHBORHOOD IMPROVEMENTS, CAPITAL PROJECTS AND
INFRASTRUCTURE IMPROVEMENTS BONDS AND OTHER**

**FUNDING SOURCES REPORT NO. 4:
THE JOB ORDER CONTRACT PROGRAM
FOR THE PERIOD OF APRIL 1, 2007, THROUGH MARCH 31, 2008**

TABLE OF CONTENTS

INTRODUCTION4

SCOPE AND OBJECTIVES.....6

METHODOLOGY7

OVERALL AUDIT CONCLUSION.....8

SUMMARY OF AUDIT FINDINGS.....9

CAPITAL IMPROVEMENTS & TRANSPORTATION (CIP) DEPARTMENT.....9

 THERE WERE NO CHANGE ORDERS THAT DOCUMENTED SIGNIFICANT INCREASES AND
 DECREASES TO THE JOB ORDER (SHENANDOAH TRAFFIC CIRCLES – PHASE I)9

 LACK OF PROPER CONTRACTOR EVALUATION DURING THE JOC CONTRACTOR SELECTION
 PROCESS.....9

 LACK OF EVIDENCE OF COMPLIANCE WITH DAVIS-BACON ACT.....10

 LACK OF EVIDENCE OF COMPLIANCE WITH ENVIRONMENTAL ASSESSMENT REQUIREMENTS
 10

AUDIT FINDINGS AND RECOMMENDATIONS11

 CAPITAL IMPROVEMENTS & TRANSPORTATION (CIP).....11

 THERE WERE NO CHANGE ORDERS THAT DOCUMENTED SIGNIFICANT INCREASES AND
 DECREASES TO THE JOB ORDER (SHENANDOAH TRAFFIC CIRCLES – PHASE I)11

 LACK OF PROPER CONTRACTOR EVALUATION DURING THE JOC CONTRACTOR SELECTION
 PROCESS.....17

 CIP AND FIRE-RESCUE DEPARTMENTS20

 LACK OF DAVIS-BACON ACT COMPLIANCE DOCUMENTATION20

 LACK OF EVIDENCE OF COMPLIANCE WITH ENVIRONMENTAL ASSESSMENT REQUIREMENTS
 23

INTRODUCTION

This is the fourth report detailing the results of our ongoing audit of City of Miami (City) capital improvement/construction projects (capital projects) funded with Homeland Defense, Neighborhood Improvements, Capital Projects and Infrastructure Improvements bond (HD) proceeds and other funding sources. On November 13, 2001, the voters of the City of Miami in a ballot approved the issuance of \$255 million of limited ad valorem tax bonds to be used for capital projects and infrastructure improvement. Proceeds from the sale of said bonds are authorized to be expended as follows:

Public Safety	\$ 31,000,000
Parks and Recreation	127,000,000
Streets and Drainage	54,000,000
Quality of Life	38,000,000
Historic Preservation	5,000,000
Total	<u>\$ 255,000,000</u>

The schedules below indicate that as of September 30, 2008 (FY08), \$203 million of the HD bonds have been issued; and the total outstanding balance of the obligation was \$90,058,765 or 38% of the \$235,393,765 in general obligation bonds outstanding. Construction-in-progress was \$255,670,214 or 24% of the City's total capital assets of \$1,058,764,539.

	FY 2008			FY 2008
	Amount Issued	Outstanding Balance		
Total of General Obligation Bonds	\$ 454,906,406	\$ 235,393,765	Total Capital Assets	\$ 1,058,764,539
Homeland Defense/Neighborhood CIP (HD) Bonds	203,186,406	90,058,765	Construction-in-progress	255,670,214
% of Total General Obligation Bonds	45%	38%	% of Total Capital Assets	24%

In an effort to procure timely and effective maintenance and construction services for HD Bond funded projects, the City solicited bids from prospective Job Order Contract (JOC) contractors on April 13, 2005 and eighteen JOC contractors were selected. According to the 2005-2006 Capital Plan, there were 635 capital projects totaling \$1.46 billion. Of the 635 projects, 122 were active construction projects consisting of 84 regular “hard-bid” projects (or 69%) and 38 JOC projects (or 31%), which totaled \$198.5 million (13.6%) and \$42.4 million (2.9%) respectively.

Currently, there are 501 capital projects totaling \$1.6 billion. Of the 501 projects, 109 are active construction projects consisting of 85 “hard-bid” projects and 24 JOC projects, which total \$243.8 million (15.2%) and \$35 million (2%), respectively. The various types of JOC projects and their respective amounts are as follows:

Description	Amount (million)
Streets & Sidewalks	\$ 22.2
CRA	4.0
Parks & Recreation	4.9
Storm sewer	2.3
General Government, Public Safety, Public Facilities	1.6
Total	<u><u>\$ 35.0</u></u>

It should also be noted that \$1.16 billion (or 72.7%) of the projects are designated as “future” projects (\$517.5 million) and projects in the “design” phase (\$646.9 million). There are 227 “future” projects (45.3%) and 97 projects (19.4%) in the “design” phase.

SCOPE AND OBJECTIVES

This audit was performed pursuant to the authority set forth in Section 48, of the City Charter, entitled: "Office of the Independent Auditor General" (OIAG), and was conducted in accordance with the OIAG's Fiscal Year 2009 Audit Plan. This report is the fourth of multiple audit reports that we plan on conducting throughout the life of the Capital Projects and Infrastructure Improvements bond (HD) funded capital projects and throughout the duration of other selected City of Miami (City) capital construction/improvement projects. The audit covered the period of April 1, 2007, through March 31, 2008, and selected transactions prior and subsequent to this period. In general, the audit focused on the following objectives:

- Determine whether procurements/expenditures of HD bond proceeds and other funding sources are in compliance with applicable statutes, ordinances, resolutions, and best practices.
- Ascertain the adequacy of City Management's controls and procedures in ensuring continued compliance with related laws, resolutions, bond indentures, bond covenants, and reporting requirements.
- Determine if construction contractors for Job Order Costing (JOC) projects were selected through a competitive selection process as provided in Section 255.20, Florida Statutes and also in accordance with the JOC "Project Manual" dated March 2005.
- Determine whether Job Order project expenditures included extraneous items. For those items that appear to be extraneous, verify existence through observation if said items can be readily and easily identified.
- Determine if prevailing wages were paid for work performed for federally funded capital projects in accordance with the Davis-Bacon Act (DBA).
- Determine if federally funded capital projects were in compliance with environmental regulations.

METHODOLOGY

We conducted this performance audit in accordance with *Generally Accepted Government Auditing Standards*. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence in order to provide a reasonable basis for our findings and conclusion 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. The audit methodology included the following:

- Interviewed and made inquiries of appropriate City personnel and independent consultants; reviewed applicable agreements, resolutions, ordinances, and other legislative documents, financial records, bond covenants, offering statements, tax compliance certificate, State Statutes, Federal Rules, City policies and procedures, in order to gain an understanding of the internal controls, assess control risk, and plan audit procedures.
- Performed substantive testing consistent with the audit objectives, including but not limited to the examination, on a test basis, of applicable transactions and records.
- Drew conclusions based on the testing and made corresponding recommendations.

OVERALL AUDIT CONCLUSION

Overall, the JOC program, as currently utilized by the City of Miami, seems to be an effective procurement method for expediting the commencement and completion of City projects. However, CIP staff did not verify that contractors possessed a current “Certificate of Competency” issued by Miami-Dade County, which is required by contract documents; and contractors’ previous clients were not contacted to provide feedback as to the quality and timeliness of completed projects

SUMMARY OF AUDIT FINDINGS

CAPITAL IMPROVEMENTS & TRANSPORTATION (CIP) DEPARTMENT

THERE WERE NO CHANGE ORDERS THAT DOCUMENTED SIGNIFICANT INCREASES AND DECREASES TO THE JOB ORDER (SHENANDOAH TRAFFIC CIRCLES – PHASE I)

Although the construction task items listed in both the job order and payment requisition totaled \$962,096, there was no evidence of change orders documenting the significant increases and decreases to the job order task items, which were reflected in the payment requisitions. The increases to the job order ranged from **\$1,492** for site utilities (or a **3.8%** increase) to **\$107,285** for asphalt (or a **145.3%** increase between the job order and the payment requisition). Decreases to the job order ranged from **\$1,190** for surveys (or a **3.08%** decrease) to **\$96,694** for demolition (or a **71.3%** decrease between the job order and the payment requisition).

LACK OF PROPER CONTRACTOR EVALUATION DURING THE JOC CONTRACTOR SELECTION PROCESS

- There was no evidence that CIP staff verified that the 12 contractors had a “Certificate of Competency” issued by the County Building Code compliance Off (BCCO). When we searched the appropriate County BCCO web-site, we found no evidence of current “Certificates of Competency” for 4 (or 33.33%) of the 12 contractors tested. The said 4 contractors were selected to complete projects totaling \$13,495,535 (or 14.2%).
- For 6 (or 50%) of the 12 contractors tested, there was no listing of projects started/completed as of the year 2000 that would have evidenced 5 years of experience as required per the "Project Manual"; furthermore, there was no evidence of letters of reference and/or “Performance Evaluation Surveys”

completed by previous customers. The said 6 contractors were selected to complete projects totaling \$35,554,810 (or 37.4%).

- There was no evidence that the contractors' expertise/experience, existing workload, and past performance in completing City projects was reviewed and considered before the contractors were selected for the 37 projects totaling \$95.3 million.

LACK OF EVIDENCE OF COMPLIANCE WITH DAVIS-BACON ACT

There is no evidence of compliance with Davis Bacon Act (DBA) relative to 2 projects funded via Florida Department of Transportation (FDOT) Local Agency Program (LAP) Agreements.

LACK OF EVIDENCE OF COMPLIANCE WITH ENVIRONMENTAL ASSESSMENT REQUIREMENTS

There is no evidence of compliance with environmental assessment requirements.

AUDIT FINDINGS AND RECOMMENDATIONS

CAPITAL IMPROVEMENTS & TRANSPORTATION (CIP)

THERE WERE NO CHANGE ORDERS THAT DOCUMENTED SIGNIFICANT INCREASES AND DECREASES TO THE JOB ORDER (SHENANDOAH TRAFFIC CIRCLES – PHASE I)

When preparing a JOC project's price proposal, JOC contractors are contractually obligated to use the City's Construction Task Catalog (CTC), which contains unit quantities and prices of tasks required to complete a project's detailed scope of work (DSOW). The "extended price" of each line item that comprises one of the CTC sections (e.g. concrete, masonry, electrical, etc.) is equal to: the **quantity** per the CTC multiplied by the **unit price** per the CTC multiplied by the JOC contractor's **adjustment factor**. The "adjustment factor" (e.g. 1.2319) includes the contractor's overhead and profit and is applied to each task item, as described above, to derive the total price of the proposal.

The approved project proposal becomes the basis for a job order contract (JOC) between the City and a contractor for a specified project. Upon approval, the JOC and the related proposal then becomes the basis for issuing a purchase order (PO). The PO serves as the contractor's "Notice to Proceed" with the project, and also obligates the City to pay for only the applicable itemized tasks as listed on the agreed upon and approved job order/proposal documents. Accordingly, JOC contract provisions mandate that contractor's monthly invoices or "Applications for Payment" (payment requisitions) shall "show a complete breakdown of project components, the quantities completed and the amount due, together with such supporting evidence as may be required by City."

As described in Sections 19.1 and 37.1-37.3 of the JOC "Project Manual", existing site conditions could change a project's DSOW and alter the actual amount of work performed or quantities installed at the site. Therefore, in order to facilitate

accountability and monitoring of project costs, including the percentage/rate at which projects are completed, such differences between actual quantities installed and those listed in the job order/proposal documents shall be appropriately reviewed, authorized and documented through a new job order contract or change order process pre-approved by City management prior to performance of any additional work.

OBSERVATIONS

A typical JOC proposal can consist of hundreds of line items; therefore, as part of our testing of the JOC proposal review process, we selected five (5) projects to review including the Shenandoah Traffic Calming Circles – Phase I project with an approved job order proposal of 654 items. Although the construction task items listed in both the job order and payment requisition totaled \$962,096, there was no evidence of change orders documenting the significant increases and decreases to the job order task items, which were reflected in the payment requisitions. Such increases/decreases reflect changes to the detailed scope of work (DSOW) that should have been appropriately documented in order to facilitate accountability to the public. The increases to the job order ranged from **\$1,492** for site utilities (or a **3.8%** increase) to **\$107,285** for asphalt (or a **145.3%** increase between the job order and the payment requisition). Decreases to the job order ranged from **\$1,190** for surveys (or a **3.08%** decrease) to **\$96,694** for demolition (or a **71.3%** decrease between the job order and the payment requisition).

After conducting field measurements of asphalt and concrete, which reflected the most significant increases of 145.3% and 63.19%, respectively, from job order amounts, we noted the following discrepancies:

- **Asphalt** - Based on the average square yardage (SY) of the intersections in which asphalt milling (removing old asphalt) and installation were performed (see schedule that follows), the quantities actually milled and installed exceeded the quantities listed in the job order by 140 SY and 107 SY per intersection,

respectively. As a result, based on an adjustment factor of 1.2319 and a unit price of \$0.90/SY for milling and \$7.15/SY for installation, the true cost (based on our field measurements) of asphalt milling and installation per traffic circle totaled \$8,545 as opposed to \$7,448 (per job order). Although the City received **14.7% more** installation of asphalt per traffic circle as compared to the quantity proposed in JOC (see the table below), the City still paid the proposed (JOC) amount totaling \$73,819. There was no evidence of change orders documenting this significant increase to the job order task items, which were reflected in the payment requisitions.

Asphalt Milling & Installation Quanties Analysis

	Average per Field Meas.	Average per Job Order	Increase Over Job Order
Asphalt Milling			
Square Yardage (SY)	891	751	140
\$0.90/SY x 1.2319 ADJ Factor	\$ 987.86	832.64	155.22
Asphalt Installation			
Square Yardage (SY)	858	751	107
\$7.15/SY x 1.2319 ADJ Factor	\$ 7,557.34	6,614.87	942.47
Total Asphalt Line Items	\$ 8,545.20	\$ 7,447.51	\$ 1,097.68

% Increase of Asphalt Received per Field Measurements 14.74%

% Increase of Asphalt Received per Payment Requisition 145.34%

- Concrete** - Based on the average linear footage (LF) of the intersections in which curb installation was performed (see the schedule below), the quantities actually installed were less than the quantities listed in the job order by 47 LF per intersection. As a result, based on an adjustment factor of 1.2319 and a unit price of \$16.42/LF, the true cost (based on our field measurements) of curb installation per traffic circle totaled \$7,545 as opposed to \$8,496 (per job order). Although the City received **11.2% less** curb installation of concrete per traffic circle as compared to the quantity proposed in JOC (see the table below), the City still paid the full proposed (JOC) amount totaling \$176,447. There was no evidence of

change orders documenting this significant decrease to the job order task items, which were reflected in the payment requisitions.

Concrete Quantities Analysis

	Average per Field Meas.	Average per Job Order	Decrease of Job Order Amt
Curb Installation			
Linear Footage (LF)	373	420	(47.00)
\$16.42/LF x 1.2319 ADJ Factor	\$ 7,544.97	8,495.68	(950.71)
Total Concrete Line Item	<u>\$ 7,544.97</u>	<u>\$ 8,495.68</u>	<u>\$ (950.71)</u>

% Decrease of Concrete Received per Field Measurements -11.19%

% Increase of Concrete Received per Payment Requisition 63.19%

- **Other Items** – There was no evidence of negative change orders (as required by the JOC Project Manual), documenting the following quantity decreases with respect to pavers, landscaping, striping/signage, and demolition totaling **\$166,927**:

Our field measurements indicated that the City received 526 square feet more pavers (2,488 SF per the job order/proposal as compared to the 3,014 SF field measurements). Although the City received 21.1% more SF of pavers, the City still paid the full proposed (JOC) amount totaling \$31,063.

Also, we noted that the prices reflected in the SOV/payment requisition for landscaping and striping/signage were significantly less than those of the job order/proposal by 28.42% (or **\$32,408**) and 37.02% (or **\$35,655**), respectively. The reduction in the landscaping was evident and we noted that one circle location had no landscaping while another circle was relatively smaller than the other circles and required significantly less landscaping.

Lastly, we noted a significant reduction in demolition reflected in the payment requisition (71.3% or **\$96,694**) as compared to the job order/proposal. Since old asphalt/concrete must be demolished in order to install the new asphalt/concrete items, we expected to see an increase in demolition commensurate with the increases in asphalt and concrete noted on the SOV/payment requisition (as discussed above).

Upon audit inquiry, we were informed that the significant differences between the job order and payment requisition task items were due to the fact that the projects were constructed during the tenure of the previous CIP Director and former JOC consultant when contractors were simply paid the lump sum price of a project as stated in the PO and job order. Consequently, when there were reductions to the DSOW, there were no corresponding adjustments through change orders. Also, there were no CIP procedures in place to ensure that job order items “rolled up” into, or agreed with the items listed in the payment requisitions; and, the former JOC consultant did not use independent estimates as the basis for reviewing proposals and confirming task quantities. Lastly, there were no procedures in place to ensure that the required quantities of items installed/received were documented and attached to monthly payment requisitions.

The lack of change orders and documentation of the task item quantities installed/received that would have evidenced the significant increases and decreases to the job order appears to make the said increases/decreases questionable. As such, the City could have paid for items/quantities it never received. However, per discussions with CIP, reductions to the DSOW for all current projects are being followed-up with change orders that will reduce the project’s cost. Also, there is a new JOC consultant who reviews proposals with independent estimates prepared by CIP staff.

Recommendation

In order to document receipt of actual item quantities at the project site, it is advisable that CIP reinstitute the practice of requiring construction managers (CM) to submit “Daily Work Reports” which list quantities and activities that CM’s observe being installed/constructed and performed. The reports could then be attached to payment requisitions and be reviewed and approved by CM supervisors and the CIP Director.

Auditee’s Response and action plan.

The auditee concurred with this finding and recommendation. Please see written response on Page 25.

LACK OF PROPER CONTRACTOR EVALUATION DURING THE JOC CONTRACTOR SELECTION PROCESS

Pursuant to Bid Number 04-05-048 issued on April 2005, eighteen (18) JOC contractors were selected to complete various horizontal (e.g. road construction) and vertical (e.g. building improvements/renovation) construction projects. According to the City's JOC "Project Manual", JOC contractors should have at least 5 years of experience, be licensed/certified by the State of Florida and have a "Certificate of Competency" issued by the Building Code Compliance Office (BCCO) of Miami-Dade County (County). In addition, best practices require contractors' skill sets and previous experience to be evaluated and verified. For instance, the U.S. General Service Administration (GSA) requires previous clients to complete a "Contractor Performance Report." Lastly, after a contractor is selected to become a City JOC contractor and before a contractor is selected to complete a specific project, the City's "JOC Training and Reference Manual", which was prepared by the Gordian Group on behalf of the City, requires that a contractor be selected "based on type of work...., past performance and existing work load."

OBSERVATIONS

We reviewed the files of twelve (12) contractors, who performed work on thirty-seven (37) projects, to determine whether their skill sets, licenses, experience with similar projects, and financial capacity were documented and evaluated by the Capital Improvements and Transportation Department (CIP) during the JOC contractor selection process as well as during the process of selecting a contractor to complete a specific project. According to the 2006 through 2008 Capital Improvement Plans the estimated total cost of the projects was \$95.3 million. Our audit tests disclosed the following deficiencies:

- There was no evidence that CIP staff verified that the 12 contractors had a "Certificate of Competency" issued by the County BCCO. When we searched the appropriate County BCCO web-site, we found no evidence of current "Certificate

of Competency” for 4 (or 33.33%) of the 12 contractors tested. The said 4 contractors were selected to complete projects totaling \$13,495,535 (or 14.2%).

- For 6 (or 50%) of the 12 contractors tested, there was no listing of projects started/completed as of the year 2000 that would have evidenced 5 years of experience as required per the "Project Manual"; furthermore, there was no evidence of letters of reference and/or “Performance Evaluation Surveys” completed by previous customers. The said 6 contractors were selected to complete projects totaling \$35,554,810 (or 37.4%).
- There was no evidence that the contractors’ expertise/experience, existing workload, and past performance in completing City projects was reviewed and considered before the contractors were selected for the 37 projects totaling \$95.3 million. However, CIP has indicated that, going forward, it will document the rationale for selecting contractors for specific projects in memorandums that will be placed in respective contractors’ files.

Upon audit inquiry, the current CIP management stated that the above deficiencies were the result of the policies and procedures in place at the time (April 2005) when the original eighteen (18) JOC contractors were selected to complete various horizontal (e.g. road construction) and vertical (e.g. building improvements/renovation) construction projects, pursuant to Bid Number 04-05-048. In addition, CIP management stated that as the contract for the said JOC contractors expire in 2009 and 2010, a new pool of contractors will be vetted and selected. Management indicated that the requirements relative to letters of references and/or completion of forms by previous customers that confirms the required level of expertise, capacity, and possession of a current “Certificate of Competency” have already been implemented and used in other procurements in the CIP department. As such, the new pool of JOC contractors to be vetted and selected will be subject to those requirements.

Recommendation:

None. As noted above the current CIP management indicated that the appropriate procedures have been already been implemented.

Auditee's Response and Action Plan.

Management indicated that the requirements relative to letters of references and/or completion of forms by previous customers that confirms the required level of expertise, capacity, and possession of a current "Certificate of Competency" have already been implemented and used in other procurements in the CIP department. As such, the new pool of contractors to be vetted and selected will be subject to those requirements. See auditee's written response on page 25.

CIP AND FIRE-RESCUE DEPARTMENTS

LACK OF DAVIS-BACON ACT COMPLIANCE DOCUMENTATION

Title 29, Part 3.3 (b) of the Code of Federal Regulations (29 CFR 3.3 (b)) requires that workers that work on federally funded projects be paid market or prevailing wages for the geographical area in which the work is performed. Accordingly, contractors (and their sub-contractors) for federally funded projects are required to “furnish each week a statement with respect to the wages paid each of its employees engaged in work during the preceding weekly payroll period.” The statement should be submitted to the City’s Department of Capital Improvements and Transportation (CIP) and it should be signed or executed by the contractor and/or sub-contractor.

The City of Miami (City) receives federal funding through State of Florida (State) Department of Transportation (FDOT) Local Agency Program (LAP) Agreements. According to the City’s financial statements for the fiscal year ended September 30, 2007 (FY 2007), a total of \$1,299,379 of federal pass-through funds from FDOT were disbursed in connection with the Miami River Greenways (B-40691/B-40692) and NE 4th Avenue (B-30357) projects. The City also receives federal funding through several Federal Emergency Management Agency (FEMA) grant agreements. Also, according to the City’s financial statements for the FY 2007 there was \$2,859,115 of federal expenditures for the Flagami Area Drainage Improvement (Flagami) project (B-50695) pursuant to two (2) FEMA grant agreements.

The FDOT LAP Manual requires recipients of federal funding to provide documentation of compliance with DBA as required by 29 CFR 3.3(b) of the Code of Federal Regulations. Also, DBA compliance language is required to be included in FEMA grant agreements pursuant to Title 44, Part 13.36 (i)5 of the Code of Federal Regulations (44 CRF 13.36 (i) 5). However, it should be noted that on September 8, 2005 the President of the United States (the President) issued Proclamation No. 7924, which suspended the

provisions of DBA following the aftermath of Hurricane Katrina. However, on November 3, 2005 the President revoked the proclamation and reinstated the DBA provisions effective November 8, 2005.

OBSERVATION

We requested but were not provided with “wages reports” to evidence that workers that worked on FDOT and FEMA federally funded projects (as described above) were paid market or prevailing wages for the geographical area in which the works were performed, as required by Title 29, Part 3.3 (b) of the Code of Federal Regulations (29 CFR 3.3 (b)). In response to our audit inquiry, the CIP Director stated that he relies on the State Department of Emergency Management and the City’s FEMA Hazard Mitigation Specialist in the Fire-Rescue Department for the interpretation of FEMA rules and regulations. He noted that said responsible officials have opined that FEMA funded projects are exempt from compliance with DBA requirements pursuant to FEMA’s “Public Assistance Guide (Guide)” dated June 2007. Upon further audit inquiry, the State and City Fire Chief also stated that the DBA requirements may apply to contracts initiated/led solely by other Federal Agencies such as U.S. army Corps of Engineers but not for contracts initiated/led by the State, Counties and/or Municipalities. However, if the intent of the DBA provisions is to ensure that all workers that work on federally funded projects are paid market or prevailing wages for the geographical area in which the work is performed, it is unclear why federal funds disbursed through pass-throughs (via State, Counties and/or Municipalities) will be subject to different compliance requirements. It is also unclear why the City’s Community Development Department, which receives and disburses HUD funds including pass-through monies, has long complied with DBA compliance requirements.

The lack of compliance with the provisions of Title 29, Part 3.3 (b) of the Code of Federal Regulations could potentially expose the City to the risk of such disbursements being questioned in the event of program specific audit by the guarantor.

Recommendation:

We recommend that the CIP and the Fire-Rescue Departments should seek direct guidance from the responsible federal agencies and obtain written directives in support of any exemptions to Title 29, Part 3.3 (b) of the Code of Federal Regulations (29 CFR 3.3(b)). Upon receipt of such direction, the appropriate policies and procedures should be implemented.

Auditee's Response and action plan.

The CIP Director indicated that he plans to convene a meeting with the City's FEMA Hazard Mitigation Specialist in the Fire-Rescue Department to further investigate and ensure that the proper procedures are being followed. The Fire Chief noted that his department will continue to seek a direct response from the federal level to further assure compliance. See auditee's written responses on Page 26.

LACK OF EVIDENCE OF COMPLIANCE WITH ENVIRONMENTAL ASSESSMENT REQUIREMENTS

As described above, the City receives federal funding through FDOT LAP and several FEMA grant agreements. Pursuant to Title **23 CFR 771.109 (c)**, “The Administration in cooperation with the applicant has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administration in accordance with the CEQ regulations.” Also, in accordance with Title 44, Part 10 (10.9(a) (Preparation of environmental assessments) (**44 CFR 10.9 (a)**), “The Regional Director (of FEMA) shall begin preparation of an environmental assessment as early as possible after the determination that an assessment is required. The Regional Director may prepare an environmental assessment at any time to assist planning and decision-making.”

OBSERVATION

An environmental assessment prepared by a competent professional will determine whether hazardous substances at prospective project site or sites are present in quantities within statutory limitations and whether remedial action under any federal, state or local legal requirements concerning such substances is required. A provision in two (2) Florida Department of Community Affairs (DCA) Disaster Relief Funding Agreements state that the “Sub grantee (the City) represents that to the best of its knowledge any hazardous substances at its project site or sites are present in quantities within statutory limitations, and do not require remedial action under any federal, state or local legal requirements concerning such substances. Sub grantee further represents that the presence of any such substance or any condition at the site caused by the presence of any such substance shall be addressed in accordance with all applicable legal requirements.” Likewise, language in the 2 FDOT LAP agreements states that: “The Agency (the City) will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department for any loss incurred in connection therewith...”

However, we requested but were not provided with any “environmental assessment report” to evidence that environmental assessments were prepared by competent professionals who could determine whether hazardous substances at prospective FDOT and FEMA project sites were present in quantities within statutory limitations and whether remedial action under any federal, state or local legal requirements concerning such substances was required.

Recommendation

We recommend that the CIP Department implement the appropriate policies and procedures to ensure that environmental assessments are prepared by competent professionals who could determine whether hazardous substances at prospective project sites are present in quantities within statutory limitations and whether remedial action is required. The CIP Department should seek direct guidance from federal agencies with regards to environmental assessment compliance.

Auditee’s Response and action plan.

See auditee’s responses on Page 26 and 27.

CITY OF MIAMI, FLORIDA
INTER-OFFICE MEMORANDUM

TO: Victor I. Igwe, CPA, CIA
Auditor General
Office of Independent Auditor General

DATE: 5/6/09 – Revised 5/12/09 FILE:

SUBJECT: Audit No. 09-005 of Capital Projects

FROM: Ola O. Aluko, Director
Capital Improvements Program (CIP)

REFERENCES:

ENCLOSURES:

Please find below CIP's response to Audit No. 09-005 for the Capital Projects Funded with Homeland Security, Neighborhood Improvements, Capital Projects and Infrastructure Improvements Bond Proceeds and Other Funding Sources – Phase No. 4: The Job Order Contract (JOC) Program

THERE WERE NO CHANGE ORDERS THAT DOCUMENTED SIGNIFICANT INCREASES AND DECREASES TO THE JOB ORDER (SHENANDOAH TRAFFIC CIRCLES – PHASE I)

The above referenced finding does not indicate overpayment, but more so improper documentation; therefore, we agree with the finding. However, as noted to the staff Auditor, the City retained a Program Manager to manage the Capital Improvements and Transportation Program (including Job Order Contracting JOC) during the time period of said audit (4/07 – 3/08). The city opted not to renew the firm's contract and as of March 31, 2008, they were relieved of said services. The City has retained another Program Manager that provides support services to the department. Furthermore, field inspections were conducted to re-verify installed work against the payment requisitions.

The practice pertaining to JOC was revised by CIP Senior Management. CIP has since implemented a new policy pertaining to the subject matter. This is also evidenced by the staff Auditor's comment in this audit. Majority of the staff Auditor's recommendations had already been implemented by the new JOC Administrator and CIP senior management continues to review other recommendations to improve management of the JOC Program.

LACK OF PROPER CONTRACTOR EVALUATION DURING THE JOC CONTRACTOR SELECTION PROCESS

We agree with the finding; however, as indicated by the staff Auditor as part of this audit, the JOC selection process was conducted in 2005 and managed by the Program Manager that was retained to manage the "Program" during that time. As noted by the staff Auditor, CIP had already implemented and continues to implement new processes pertaining to subject matter.

The current JOC contracts will soon expire. During the next selection process, CIP will manage this process and will ensure that the required evaluation process and other criteria are followed in accordance to the required guidelines.

LACK OF DAVIS-BACON ACT COMPLIANCE DOCUMENTATION

CIP disagrees with this audit finding. As noted by the staff auditor, "Upon audit inquiry, a State Department of Emergency Management official and a City FEMA Hazard Mitigation Specialist stated that the Flagami Storm Drainage project.... is exempt from DBA compliance pursuant to a June 2007 FEMA "Public Assistance Guide". Staff relies on guidance from the City's FEMA liaison and other State Officials for the interpretation of FEMA rules and regulations as it pertains to their projects. As a result of this finding, CIP will convene a meeting with the City's FEMA liaison to further investigate and ensure that the proper procedures are being followed.

ENVIRONMENTAL COMPLIANCE SHOULD BE CONFIRMED BY CIP STAFF

CIP will take this under advisement.

cc: Pilar Saenz, Assistant Director
Gary Fabrikant, Assistant Director
David Mendez, Assistant Director
Lewis Blake, Senior Staff Auditor

CITY OF MIAMI, FLORIDA
INTER-OFFICE MEMORANDUM

TO: Lewis R. Blake, CPA, CIA, Senior Staff Auditor
Office of the Independent Auditor General

DATE: June 18, 2009

FILE:

SUBJECT: Audit of Capital Projects
Phase 4

REFERENCES: Audit No. 08-013

FROM:


William W. Bryson, Director
Department of Fire-Rescue

ENCLOSURES: 1

In response to your letter dated June 1st, 2009, I understand your concern and potential ambiguity associated with the information as initially presented. However after further research and investigation the following information and references are now available for your review. The Hazard Mitigation and Pre-Disaster Mitigation Grants fall under the scope of the Davis Bacon Act. Each of these grants is considered Public Assistance Grants. Per FEMAS's Public Assistance Policy Digest, FEMA 321/ January 2008, page 30: "**The Davis-Bacon Act requires Federal agencies to pay workers under contract to them the "prevailing wage" based on the local union wage scale defined by the U.S. Department of Labor. Generally, the provisions of the Davis-Bacon Act do not apply to State or local contracts for work completed using public assistance funds under the Stafford Act.** However, the provisions may apply to contracts led by other Federal agencies, such as the U.S. Army Corps of Engineers. If a State or local government incorporates prevailing wage rates of the U.S. Department of Labor as part of its normal practice for all contracts, regardless of funding source, then those rates would be eligible".

Additionally, the Division of Emergency Management contacted the State of Florida Division of Emergency Management and received the following interpretation from Mr. Steve Juszczuk, Mitigation Analyst (850) 922-5010: "Davis-Bacon & prevailing wage rates only apply if a contractor is dealing directly with the Federal government. FEMA grants come into the state, and then the state disburses funds to its sub-grantees. ***"The State is a middle-man, so our sub-grantees (cities, counties, etc) are not required to pay prevailing wages for any work that is contracted by a sub-grantee"***.

We will continue to seek a direct response from the federal level to further assure compliance. However, at this time it is our belief with the information gathered that we remain completely compliant with all applicable laws and regulations.

WWB/MLK/RKD/II