

Inquiry into

Compliance with the City Minority Business Enterprise Policy by M of Tallahassee, Inc., and its Subcontractors: Construction Support Southeast and Duggar Excavating, Inc.



Report # 0501

October 21, 2004

Request for Inquiry

The Office of the City Auditor is responding to a request made from the Office of the City Manager to review compliance with the City Minority Business Enterprise (MBE) policy by M of Tallahassee, Inc., (M of Tallahassee) and its subcontractors: Construction Support Southeast (CSS) and Duggar Excavating, Inc. (Duggar). Allegations have been made that M of Tallahassee misrepresented the use of minority business subcontractors on construction projects awarded to M of Tallahassee as the prime contractor. On July 28, 2004, the Office of the City Manager, by letter, made M of Tallahassee aware of the following allegations:

1. M of Tallahassee falsified the minority documentation (MBE Project Completion Affidavit) for the East Park Avenue Phase I/ Richview Road / Blair Stone Road at Governor's Square (East Park Avenue) project.
2. CSS, listed by M of Tallahassee as a minority business enterprise subcontractor, did not perform work on the East Park Avenue project as represented by M of Tallahassee on the MBE Project Completion Affidavit. As such, M of Tallahassee did not meet their MBE use requirement for this project.
3. M of Tallahassee paid CSS 5% of the amount billed by Jimmy Jones Construction (JR Jones) for work done by JR Jones under their contract with CSS on the East Park Avenue project.
4. CSS contracts were merely M of Tallahassee contracts having had the name

changed on the contract to read Construction Support Southeast.

5. Duggar, listed as a minority business enterprise subcontractor, did not perform landscape work on the East Park Avenue project as represented by M of Tallahassee on the MBE Project Completion Affidavit. As such, M of Tallahassee did not meet their MBE use requirement for this project.

On August 4, 2004, the Attorney for M of Tallahassee responded to the allegations.

Summary

We have reviewed the allegations and conclude that CSS and Duggar, MBE subcontractors to M of Tallahassee, violated the City of Tallahassee MBE policy for the East Park Avenue project. As a result, M of Tallahassee, the prime contractor, did not meet its MBE use requirement for the East Park Avenue project. Our expanded review of other projects concluded that Duggar also violated the City MBE policy for the Blair Stone Road Northern Extension project.

For the East Park Avenue project, CSS subcontracted out more than a majority of their contract to JR Jones, a violation of the City MBE policy. CSS ultimately received 5% of the total amount paid by M of Tallahassee. JR Jones was paid approximately 95% of total payments and performed 100% of the construction work.

M of Tallahassee had numerous opportunities to be aware of CSS's actions as a result of working closely with CSS from the time of project proposal to project completion, having knowledge of the contract between CSS and JR Jones, and by issuing joint checks to CSS and JR Jones. We conclude that neither M of

Tallahassee nor CSS should have signed the MBE Project Completion Affidavit certifying that the MBE performed the work.

Also, for East Park Avenue, Duggar subcontracted out landscaping work to Marty Ard Landscaping (Ard). Ultimately, Duggar paid Ard 68% of total amounts paid by M of Tallahassee to Duggar for this project. For the Blair Stone Road Northern Extension project, Duggar paid/owes Ard 70% of total amounts paid/due by M of Tallahassee for this project, also a violation of the City MBE policy. For both of these projects, Ard performed more than 90% of the work.

No documentation or testimony was provided to support a finding that M of Tallahassee either participated in or was aware of the actions of Duggar. We conclude that Duggar should not have signed the MBE Project Completion Affidavit certifying the MBE performed the work. We also conclude that M of Tallahassee was not aware of the violations by Duggar at the time the MBE Project Completion Affidavit was signed. Notwithstanding, M of Tallahassee should have more closely monitored this MBE subcontractor.

M of Tallahassee provided a contract form for CSS to develop their contract with other subcontractors. We conclude that this was not a violation of any City policy.

Duggar was approved by the City MBE Office to do the above two landscaping projects even though they had not certified Duggar as a landscaping company. When the mistake was realized, the City MBE Office met with Duggar to prevent the error on future projects. At the time the meeting took place, it did not appear that the City MBE Office was aware of the extent of noncompliance by Duggar on the East Park Avenue and the Blair Stone Road Northern Extension projects.

As a result of these findings, we have included specific recommendations for management's consideration relating to the City MBE Program. We believe that a more detailed review of the City MBE Program would be beneficial to management and City contractors. Therefore, we have included this topic as a suggested audit for the 2005-2006 fiscal year.

These allegations and recommendations are further described in this report.

Background

City of Tallahassee Administrative Policies and Procedures Manual, Section 16.5, provides the MBE Opportunity and Participation Policies and Procedures. The policy states in part that it is the intent and policy of the City Commission to institute and maintain an MBE program that provides for maximum utilization of minority business enterprises in all aspects of the City's procurement activity. Further, the section describes MBE objectives, responsibility of organizational units, and lists MBE participation goals.

For purposes of this inquiry, the following policy was the criteria that we referred to in the determination of MBE compliance by the prime contractors and their MBE subcontractors.

City of Tallahassee MBE Policy No. 16.5.74(g) states:

"Nor shall a minority business subcontractor be allowed to subcontract all or the majority of the subcontracted portion or portions of the work to another firm or firms. A minority business enterprise subcontractor shall be prohibited from engaging in a subcontractual agreement with the sole intent of collecting a broker's fee or commission, and whose employees perform none of the direct labor or service activities specified in the contract."

At our request, M of Tallahassee provided financial information that shows City projects contracted with M of Tallahassee; the amounts paid by the City; and amounts M of Tallahassee paid/owed MBE subcontractors.

From this information we prepared Exhibit 1 on the next page. It shows that M of Tallahassee has provided in excess of \$49 million in services to the City. Of that, payments by M of Tallahassee to MBE subcontractors total \$6,764,650. This represents 14% of total City payments to M of Tallahassee.

**Exhibit 1
City Contracts with M of Tallahassee**

City projects Contracted with M of Tallahassee	Contract Date	Amount City Paid M of Tallahassee	Amount M of Tallahassee Paid/Due to all MBE Contractors	MBE Amounts Included in Review	Notes
Blair Stone Road Northern Extension	7/2/01	\$ 19,437,259	\$ 2,604,335	\$ 2,518,535	(1)
East Park Avenue	11/27/01	\$ 11,122,957	\$ 2,262,222	\$ 1,051,430	(1)
Northeast Area Roadway/Drainage Improvements	7/25/02	\$ 17,386,052	\$ 1,719,676	\$ 1,020,578	(2)
Truett/Collins Drainage Improvements	3/10/03	\$ 1,379,988	\$ 178,416	\$ 128,931	(2)
Totals		\$ 49,326,256	\$ 6,764,650	\$ 4,719,474	
% of the Total Amount City Paid M of Tallahassee			14%	10%	

Source: M of Tallahassee

Notes: (1) Amounts paid/due to CSS and Duggar included in the review.
(2) Amounts paid/due to CSS only included in the review.

As shown in Exhibit 1, M of Tallahassee paid CSS and Duggar a total of \$3,569,965 on the East Park Avenue and Blair Stone Road Northern Extension projects. Of that, we consider \$1,706,380 to be questioned costs that did not meet M of Tallahassee’s MBE use requirement. This amount represents 3.46% of total City payments to M of Tallahassee and 25% of payments made to all MBE’s by M of Tallahassee.

City staff interviewed during our review indicated that M of Tallahassee has been both responsive and responsible on their projects. M of Tallahassee has continually met high standards in quality of construction and in their willingness and ability to work with City staff and with the public.

Scope, Objectives, and Methodology

The scope of this work included a review of projects known as East Park Avenue, Blair Stone Road Northern Extension, Northeast Area Roadway/Drainage Improvements, and Truett/Collins Drainage Improvements for the period July 2001 to June 2004. For these projects, we reviewed selected records significant to our audit objectives maintained by M of Tallahassee, CSS, Duggar, Ard, and City Offices of MBE and Public Works. We also conducted interviews with representatives of the above companies, of JR Jones, and of City staff as considered appropriate.

The objectives of this inquiry are to review the allegations (listed above in the Request for Inquiry Section), to review the response from the M of Tallahassee Attorney, and report our findings to the City Manager for review and follow up actions. In addition,

recommendations are made for management’s consideration for MBE Program improvement.

The methodology followed to address each allegation and the response of the M of Tallahassee Attorney was to review related records and to conduct interviews of company representatives. City staff interviewed included project inspectors, the City landscape architect, and the Director of the Office of Economic Development and staff in the Office of MBE.

Our procedures were conducted in accordance with Generally Accepted Government Auditing Standards and Standards for the Professional Practice of Internal Auditing, as appropriate.

Allegations, M of Tallahassee Attorney Response, and Findings

Allegation 1 - M of Tallahassee falsified the minority documentation (MBE Project Completion Affidavit) for the East Park Avenue Phase I/ Richview Road / Blair Stone Road at Governor’s Square (East Park Avenue) project.

Response from M of Tallahassee Attorney - M of Tallahassee apologizes for any misunderstanding regarding their utilization of MBE. Their failure to diligently administer the purchase of materials relative to the CSS contract contributed to this confusion, and may have contributed to a technical violation by the MBE subcontractor. Any violation was certainly unintentional and not in contrast to the spirit of the City of Tallahassee’s MBE policies and procedures.

Findings – We conclude that neither M of Tallahassee nor its subcontractor CSS should have signed the MBE Project Completion Affidavit certifying that the MBE had performed the work on East Park Avenue. As we discuss

more fully in Allegation 2 below, CSS violated the City MBE policy for the East Park Avenue project. At the time M of Tallahassee signed the Project Completion Affidavit, they were aware of the noncompliance by CSS.

Allegation 2 - Construction Support Southeast (CSS), listed by M of Tallahassee as a minority business enterprise subcontractor, did not perform work on the East Park Avenue project as represented by M of Tallahassee on the MBE Project Completion Affidavit. As such, M of Tallahassee did not meet their MBE use requirement for this project.

Response from M of Tallahassee Attorney - By simply requiring CSS to purchase the materials utilized in the contract, M of Tallahassee could have ensured strict compliance with the City's MBE requirement that an MBE subcontractor not subcontract all or a majority of the work.

M of Tallahassee apologizes for any misunderstanding regarding their utilization of MBE. Their failure to diligently administer the purchase of materials relative to the CSS contract contributed to this confusion, and may have contributed to a technical violation by the MBE subcontractor. Any violation was certainly unintentional and not in contrast to the spirit of the City of Tallahassee's MBE policies and procedures.

Findings - CSS violated the City MBE policy. Our review showed that on October 10, 2001, CSS entered into a contract with M of Tallahassee (the prime contractor) to perform work on the East Park Avenue project as an MBE contractor in the amount of \$613,401. Subsequently, on November 7, 2001, CSS subcontracted this work to JR Jones in the amount of \$576,001. As a result of change orders, payments subsequently increased to \$766,519, with JR Jones ultimately receiving \$730,018 and CSS, the MBE contractor, receiving \$36,501.

Our review showed that JR Jones was paid approximately 95% of total payments and performed 100% of the construction work for this project, while CSS received approximately 5% of the total amount paid by M of Tallahassee.

Table 1 in Appendix A shows the amounts for the original contract, amended contract, and the ultimate distribution of payments from M of

Tallahassee to CSS and from CSS to JR Jones.

As a result, CSS was in violation (noncompliance) with the City MBE policy in two ways: (1) CSS subcontracted out all of the work to JR Jones and (2) CSS employees performed none of the direct labor or service activities specified in the contract. Furthermore, CSS had minimal involvement in the supervision and accountability for this contracted work.

We reviewed other contracts in which CSS was an MBE contractor for M of Tallahassee. Based upon our review, it appears that for those contracts CSS performed such work as an MBE contractor and was in compliance with the City MBE policy.

Allegation 3 - M of Tallahassee paid CSS 5% of the amount billed by Jimmy Jones Construction (JR Jones) for work done by JR Jones under their contract with CSS on the East Park Avenue project.

Response from M of Tallahassee Attorney - By simply requiring CSS to purchase the materials utilized in the contract, M of Tallahassee could have ensured strict compliance with the City's MBE requirement that an MBE subcontractor not subcontract all or a majority of the work.

M of Tallahassee apologizes for any misunderstanding regarding their utilization of MBE. Their failure to diligently administer the purchase of materials relative to the CSS contract contributed to this confusion, and may have contributed to a technical violation by the MBE subcontractor. Any violation was certainly unintentional and not in contrast to the spirit of the City of Tallahassee's MBE policies and procedures.

Findings – Our review showed that JR Jones was paid approximately 95% of total payments and performed 100% of the construction work for this project, while CSS received approximately 5% of the total amount paid by M of Tallahassee.

Details related to this allegation are discussed previously in Allegation 2 and supported by Table 1 in Appendix A.

Allegation 4 - CSS contracts were merely M of Tallahassee contracts having had the name

changed on the contract to read Construction Support Southeast.

Response from M of Tallahassee Attorney - CSS has performed work for M of Tallahassee as an MBE on road construction projects on many City road construction projects. As a result of the company's involvement with M of Tallahassee, CSS has grown in its number of employees, broadened its expertise and size, and is now qualified to perform more extensive and varied work. M of Tallahassee has particularly aided Mr. Ed Clark and CSS in establishing itself as a viable business.

Findings - We have concluded that M of Tallahassee did share its contract form with CSS, which was then used by CSS to subcontract work with JR Jones on the East Park Avenue project. This is not a violation of any City policy.

We reviewed the contracts between M of Tallahassee and CSS, M of Tallahassee and other subcontractors, and between CSS and JR Jones. The contract form used by CSS to subcontract work with JR Jones on the East Park Avenue project was provided by M of Tallahassee. The CSS Vice-President and M of Tallahassee Contract Manager indicated in interviews that the M of Tallahassee contract form was provided to CSS to assist in developing the subcontract between CSS and JR Jones.

The contract form does include some very specific language related to assessing dues to subcontractors that are not members of the Florida Transportation Builders Association for Florida Department of Transportation projects. Since this was a City of Tallahassee project and not a Florida Department of Transportation project, this clause was not applicable.

Additional Allegations

In reviewing the above allegations and the responses from the M of Tallahassee Attorney, we also addressed two additional allegations (A & B) not listed in the City letter to M of Tallahassee on July 28, 2004.

Additional Allegation A - M of Tallahassee listed CSS as one of their Black MBE subcontractors to obtain the MBE points for the East Park Avenue project when they never intended for CSS to perform the subcontracted work.

Testimony and documentation provided did not substantiate the allegation that M of Tallahassee intended, on July 12, 2001, when they submitted their proposal to the City for the East Park Avenue project, to recommend to CSS to subcontract with JR Jones to perform all of the work M of Tallahassee identified for CSS.

However, from July 2001, and especially October 2001 forward, there was minimal involvement by CSS in the negotiation, oversight, and accountability of CSS's subcontractor, JR Jones.

Prior to March 2002, the time when the M of Tallahassee Attorney stated that M of Tallahassee became aware of a possible MBE problem with CSS, there appeared to be numerous earlier opportunities for M of Tallahassee to be aware of this potential violation of the City MBE policy. M of Tallahassee should have contacted the City to request substitution of its MBE as allowed by City policy or to request guidance and direction.

We cannot conclude that M of Tallahassee obtained the MBE points for this project when they never intended for CSS to perform the subcontracted work. However, we have determined that M of Tallahassee did not comply with MBE Policy Section 16.5.74, in that they did not satisfy their overall MBE goal. The policy does provide a provision (Section 16.5.8) that would have allowed M of Tallahassee to substitute another MBE firm to perform the work in place of CSS, but they did not take that course of action.

Additional Allegation B - M of Tallahassee, the prime contractor, was aware of the actions of CSS and participated in CSS's contractual relationships with JR Jones.

We conclude that M of Tallahassee was aware of the actions of CSS. M of Tallahassee became aware at least as early as October 2001. This is earlier than March 2002; the date M of Tallahassee's Attorney indicated that M of Tallahassee should have been aware that CSS was delegating the majority of the contract to JR Jones.

Sequence of Events

Our review of the sequence of events leading up to and after the date of the contract between CSS and JR Jones showed substantial earlier

involvement by M of Tallahassee in these contracts and earlier opportunities for M of Tallahassee to seek guidance from the City. That sequence of events and their significance is provided below.

July 11, 2001. JR Jones submitted to M of Tallahassee a detailed price proposal for various tasks to be performed on East Park Avenue.

July 12, 2001. M of Tallahassee submitted a proposal to the City on East Park Avenue and identified CSS as one of their MBE contractors. The prices submitted by M of Tallahassee for work to be performed by CSS were, for the most part, the prices previously submitted by JR Jones and increased by approximately 5%. We have been shown nothing from CSS to support the assertion (by the Vice-President of CSS and the Contract Manager of M of Tallahassee) that CSS submitted its own price proposal for the East Park Avenue project. By identifying CSS as a Black MBE in the amount of \$610,000 along with \$127,762 for work to be done by two other Black MBE's, M of Tallahassee received 7.5 points.

July 16, 2001. M of Tallahassee submitted a confirming representation of MBE participation to the City. Our interviews indicated that the submitted form was prepared by M of Tallahassee and not CSS. For other MBE's of M of Tallahassee, the confirming representation of MBE participation submitted to the City appears to have been prepared by the MBE and on the MBE's letterhead. This is not to say that CSS disagreed with submission of the form. However, it does indicate the lack of involvement of CSS in the preparation of the form committing CSS to perform the described work.

August 21, 2001. The City Commission accepted the bid from M of Tallahassee as the proposal with the highest points. The prime contractor will typically wait until this acceptance before executing any related subcontracts.

October 10, 2001. CSS entered into a contract with M of Tallahassee for work in the amount of \$613,401. The contract provided that CSS could not further subcontract any part or all of the work except with written approval of M of Tallahassee and further no such subcontracting

shall relieve CSS of any obligation identified in the contract.

The work that CSS agreed to do on October 10, 2001 was different than the work described on the form submitted to the City on July 16, 2001. At the same time, JR Jones entered into a separate contract with M of Tallahassee in the amount of \$496,324 to perform much of the work previously identified for CSS to perform. JR Jones stated that prior to October 2001 they were not aware that some of the work they had proposed to perform for M of Tallahassee in July 2001 had subsequently been identified for CSS to perform.

October 23, 2001. Thirteen days after October 10, 2001, an M of Tallahassee employee sent JR Jones the CSS and JR Jones contract from an M of Tallahassee FAX machine. The proposed subcontract was between CSS and JR Jones in the amount of \$567,001. The contract form was one normally used by M of Tallahassee but in this instance CSS's name was substituted. CSS stated that an M of Tallahassee employee had given them the contract form in order for CSS to hold JR Jones to the same requirements as they were held to by M of Tallahassee for related work.

We noted that the proposed amounts on the CSS and JR Jones contract were the original prices proposed by JR Jones. Also, the contract between CSS and M of Tallahassee was basically the JR Jones original prices increased by 5%. In that JR Jones prices were used as the basis for contract amounts, it indicates that M of Tallahassee had made CSS aware of the JR Jones prices and therefore had reason to believe that CSS would be contracting with JR Jones.

November 7, 2001. JR Jones stated that an M of Tallahassee employee delivered the subcontract between CSS and JR Jones to their office for signature. This delivery further indicates that in November 2001, M of Tallahassee knew of the contract between CSS and JR Jones.

During interviews, JR Jones also stated the same M of Tallahassee employee picked up the executed contract. In our interview with the M of Tallahassee employee, he stated that he could not remember, but it is possible that he did deliver the contract. This information also supports the view that M of Tallahassee had documents in their possession in November

2001 that showed CSS's intent to contract with JR Jones to perform approximately 95% of the contracted work – a violation of the City MBE policy.

Subsequent to the execution of the CSS and JR Jones contract, interviews have shown that CSS had minimal involvement in the contract with JR Jones and subsequent change orders. In interviews, JR Jones stated that they saw CSS's Vice-President on the East Park Avenue job one time. Likewise, the City of Tallahassee inspector on the job stated that he never saw the CSS Vice-President on the job.

In contradiction, we were informed by the CSS Vice-President that the work on East Park Avenue was near the work CSS was performing on Blair Stone Road. Further, he periodically went by the site although he may not have spoken to JR Jones on each occasion. An M of Tallahassee employee stated that he also saw the CSS Vice-President on-site on East Park Avenue.

December 16, 2003. CSS signed the MBE Project Completion Affidavit submitted to the City at the end of the project, certifying, "the MBE contractor had performed the work described above..." Documentation submitted to us does not support the affidavit in that CSS contracted out all of the work – a violation of the City MBE policy.

August 4, 2004. The Attorney representing M of Tallahassee responded to the allegation. He stated "as a result of (1) CSS requesting M of Tallahassee to issue joint checks to CSS and JR Jones sometime prior to March 2002 and (2) the resulting revision to the CSS and JR Jones contract, M of Tallahassee should have been aware that CSS was delegating a majority of the contract to JR Jones." The Attorney further stated that M of Tallahassee did not monitor the relationship with the subcontractor as closely as it should have.

In summary, we conclude that for the East Park Avenue project M of Tallahassee had involvement and knowledge of the CSS and JR Jones contract significantly earlier than acknowledged by the M of Tallahassee Attorney. In this instance, M of Tallahassee should have contacted the City of Tallahassee regarding known circumstances and should have requested approval to substitute another

Black MBE on this project or to request other guidance and direction.

In interviews, we inquired as to why CSS would enter into a contract with JR Jones when it was clear by looking at the contract alone, it was a violation of the City MBE policy. We were informed that CSS initially had been overly optimistic in thinking that CSS could do the job and then they fell behind on other work and realized they could not also work on the East Park Avenue project. The CSS Vice-President stated that he looked at the Blair Stone Road segments as one big project and believed that in doing other work on Blair Stone Road segments, CSS would satisfy overall the intent of the City MBE program. While this may have been the rationale, we note that each segment of Blair Stone Road was bid separately and MBE points were awarded accordingly. There were different prime contractors proposing for each job and MBE points were therefore important for each contracted project.

Allegation 5 – Duggar, listed as a MBE subcontractor, did not perform landscape work on the East Park Avenue project as represented by M of Tallahassee on the MBE Project Completion Affidavit. As such, M of Tallahassee did not meet their MBE use requirement for this project.

Response from M of Tallahassee Attorney - The contract between M of Tallahassee and Duggar was for \$294,150. Duggar further subcontracted with Ard in the amount of \$143,958. The M of Tallahassee attorney concluded, "Duggar Excavating, Inc. did perform the landscaping work with the aid of a subcontractor. The MBE sub-contractor does not appear to have subcontracted 'all or the majority' of the work to a sub-contractor."

Findings – Based upon documents provided and interviews conducted, we conclude that Duggar violated the City MBE policy by subcontracting out a majority of work to another firm. As a result and as of the end of the East Park Avenue project, M of Tallahassee did not meet their MBE use requirement. Based upon this finding, we expanded our review to include landscaping that Duggar performed on the Blair Stone Road Northern Extension project and came to the same conclusion. For that project, Duggar subcontracted out 100% of the work to Ard.

No documentation or testimony was provided to support a finding that M of Tallahassee listed Duggar as a Female MBE knowing they would or could not perform. Also, no documentation or testimony was provided to indicate that M of Tallahassee was aware of, or inquired about, potential MBE noncompliance during the period of the contracts. Testimony from other contractors, City inspectors, and the City landscape architect supports the view that Ard was the only landscaping company continuously on-site. This same observation should have been made by M of Tallahassee as the prime contractor responsible for selecting Duggar as their MBE landscape subcontractor.

Duggar was approved by the City MBE Office to do the above two landscaping projects even though they had not certified Duggar as a landscaping company. When the mistake was realized, the City MBE Office met with Duggar to prevent the error on future projects. At the time the meeting took place, it did not appear that the City MBE office was aware of the extent of noncompliance by Duggar on the East Park Avenue and the Blair Stone Road Northern Extension projects.

Sequence of Events

July 12, 2001. M of Tallahassee listed Duggar as a Female MBE contractor to perform landscaping in their response to the Request for Proposal for the East Park Avenue project. The amount of work listed for Duggar was \$294,150 and M of Tallahassee received 3 MBE points for using a Female MBE.

On this same day, Ard's records showed they submitted a \$277,553 price proposal to Duggar for this project. Also, records showed that Duggar increased the Ard price proposal by approximately 3% and submitted a price proposal to M of Tallahassee in the amount of \$285,958.

October 10, 2001. Duggar contracted with M of Tallahassee to perform work on East Park Avenue. The contract provided that Duggar could not further subcontract any part or all of the work except with written approval of M of Tallahassee and further no such subcontracting shall relieve Duggar of any obligation identified in the contract.

October 24, 2001. Duggar subcontracted with Ard in the amount of \$143,958 for landscaping,

irrigation, and grassing work. This subcontract represents 48.94% of Duggar's contract with M of Tallahassee. Duggar provided M of Tallahassee a copy of the Ard subcontract.

February 14, 2002 to January 20, 2004. M of Tallahassee made payments to Duggar amounting to \$284,810 (a previous change order in January 2002 reduced the original contract of \$294,150 by \$9,340). Records provided by M of Tallahassee for our review showed that all checks written by M of Tallahassee were made payable to Duggar only. (This is different than the previously discussed process between M of Tallahassee and CSS where joint checks were written to CSS and its subcontractors).

We obtained copies of checks written to Ard for the East Park Avenue project from Duggar. Total payments by Duggar amounted to \$206,112 with \$194,382 being paid to Ard and \$11,730 being paid to other vendors. The amount paid to Ard is \$50,400 more than the \$143,958 shown in the Duggar contract with Ard. As a result, Ard was paid 68% of the M of Tallahassee amended contract amount. Previously, Duggar contracted with Ard for 48.94% of this project. Looking at his project in terms of total payments made by Duggar to all vendors, payments to Ard accounted for 94% of Duggar payments. Also, based upon information provided by Duggar, profit to Duggar on this contract was \$78,700. This information is summarized in Table 2 in Appendix A.

Table 2 shows that Duggar paid other vendors \$11,730. The vendor was Gainous Labor located in Cairo, Georgia. Based upon interviews with the City inspector on the East Park Avenue project, he stated that about 10 laborers worked on this project and it was not possible to tell which employees worked for Ard as compared to Duggar. He stated that he saw no Duggar trucks on-site and all of his communication about the job was with employees of Ard.

December 12, 2001 to September 24, 2004. In view of Duggar's noncompliance on East Park Avenue, we obtained information from Duggar and Ard for the Blair Stone Road Northern Extension project. The contract amount between M of Tallahassee and Duggar was originally \$709,300 and was subsequently reduced to \$654,950. Duggar subcontracted

with Ard in the amount of \$347,492, or 48.99% of the contract (City policy prohibits MBE's from subcontracting out more than the majority, i.e. more than 50 percent of a project). Total amounts paid/owed by M of Tallahassee to Duggar on this project amount to \$654,950. Amounts paid/owed by Duggar to Ard for this contract actually amount to \$460,645 (includes approximately \$51,000 still owed to Ard) with all project payments (100%) being made to Ard. The amount paid to Ard is \$113,153 more than Duggar's contract with Ard. As a result, Ard will receive 70.3% of the amended contract amount, a violation of the City MBE policy. Looking at this project in terms of total payments made by Duggar, amounts paid/owed to Ard account for 100% of Duggar payments. Based upon information provided by Duggar, profit to Duggar on this contract was \$194,305. In summary, for the above two contracts, Duggar will receive a total of \$939,761 and based upon payment information provided, Duggar appears to have realized \$273,005 in profit for these two projects. Information relating to this contract is shown on Table 3, Appendix A of this report.

As of the end of the East Park Avenue project, M of Tallahassee did not meet their MBE use requirement. No documentation or testimony was provided to indicate that M of Tallahassee was aware of, or inquired about, potential MBE noncompliance by Duggar.

M of Tallahassee provided for our review copies of their Duggar files. There was nothing contained therein to indicate that M of Tallahassee was aware of any violation by Duggar during the period of the contract. Based upon our interviews with City inspectors, contractors, and the City landscape architect on-site, we were told that Ard was the only landscaping subcontractor that they saw on-site for the above two projects,

The above observation also should have been made by M of Tallahassee as the prime contractor responsible for selecting Duggar as their MBE landscape subcontractor. M of Tallahassee had supervisory staff on site at both locations and met periodically with Ard regarding landscaping progress, and had opportunity to inquire of Duggar why they were not on-site on a frequent and consistent basis. For the Blair Stone Northern Extension project,

Duggar informed us that Ard performed all work for that project.

We have reviewed the MBE Project Completion Affidavit signed by M of Tallahassee and Duggar for the East Park Avenue project. As of the close of our audit fieldwork, an affidavit for the Blair Stone Northern Extension project had not been submitted to the City.

The Affidavit for the East Park Avenue project was signed by both M of Tallahassee and Duggar and certifies

“That the MBE has performed the work described above; has been paid \$284,810 by the Contractor.”

We conclude that Duggar should not have signed the MBE Project Completion Affidavit certifying they performed the work on East Park Avenue. Documentation and testimony provided did not support a finding that M of Tallahassee was aware of violations by Duggar at the time they signed the affidavit.

Lastly, Ard stated that M of Tallahassee did not suggest to them to contract with Duggar nor did Ard ever have any conversation with M of Tallahassee that Duggar may be in violation of the City MBE policy.

We conclude that M of Tallahassee, as the prime contractor, has significant responsibility to monitor its MBE subcontractors and to demonstrate to the City its efforts to comply with the City MBE policy. As a result, as of the end of both of the above contracts, M of Tallahassee did not meet Female MBE use requirements.

Other Reportable Issues and Recommendations

During our review, we noted some additional issues related to the MBE program. These issues are provided below along with recommendations to enhance the program.

Issue 1

MBE vendor certification documentation retained in the MBE Office was not adequate to support that the MBE firm met all the City's requirements. Examples of missing documentation included:

- Completed MBE Certification Checklist
- Insurance information

- Re-certification announcement letters
- Official tax returns
- Financial statements

We recommend that the MBE office improve their record keeping to retain adequate documentation to support that the MBE vendor meets City MBE policy requirements to be properly certified.

Issue 2

The MBE Project Completion Affidavit is completed by the prime contractor and then notarized as signed by the prime contractor and the MBE subcontractor. The form that was used during the projects included in this review did not clarify what work was performed by the MBE subcontractor and the amount of work the MBE paid to other subcontractors. The MBE Office has since revised the MBE Project Completion Affidavit form and our office has provided additional input to further clarify the amount of work performed on the project by the MBE subcontractor and the amounts they paid to subcontractors.

We recommend that the MBE Office continue to revise the MBE Project Completion Affidavit form until it collects the appropriate information to assure the MBE Office that the prime contractor and the MBE subcontractor is certifying compliance with the City MBE policy.

Issue 3

The City's MBE Policy Section 16.5.74(d) and all related forms should be revised to reflect current operations regarding acceptable documentation required to confirm the MBE representation made in the bid proposal. This policy requires that "the low bidder shall provide to the City a written contract/agreement executed between the prime and minority subcontractor confirming the representation made in the bid proposal" within two (2) working days after the bid opening.

We have been informed that the City has not required executed contracts/agreements because, at that point, the City has not officially contracted with the prime contractor. For the East Park Avenue project, the City Commission accepted M of Tallahassee's bid on August 27, 2001, whereas the executed written contract/agreements with the MBE subcontractors were due to the City on July 16, 2001. However,

there is an expectation that the MBE subcontractor is aware and committed to the project if the prime is awarded the contract by the City. Therefore, the City has followed the practice of accepting MBE price proposals presented on the MBE's letterhead and accepted by the prime contractor.

We have also been informed that the MBE Policy is not easily available to Prime Contractors and MBE companies. While City bid documents refer to the MBE Policy, it has not been included for their review.

We recommend that the MBE policy and all related forms be revised to specify the documentation that is acceptable to meet the City's requirement confirming the representation made in the bid proposal. In addition, we recommend that the MBE Policy be made easily available for contractors and participants to reference. Prime contractors and MBE subcontractors may also benefit from periodic mandatory workshops educating and refreshing them as to the City's MBE requirements.

Issue 4

The City should assess the mission and performance outcomes of the MBE program and make revisions as needed to provide for an effective MBE program for the City, its prime contractors, and MBE subcontractors. The MBE policy, originally adopted in 1991, was last revised in June 1994.

During our review of projects, MBE documentation, and interviews with MBE Office staff, prime contractors, and MBE subcontractors, we determined that there were sections within the MBE policy that were not being enforced due to practicality or lack of available resources. Other policy sections appeared to be outdated. One example would be the ability of General Contractors to meet the requirement of the policy stating that the MBE subcontractor must have employees that perform some of the "direct labor or service activities specified in the contract." Concerns have been expressed that this contradicts usual business practices of general contractors in that they typically subcontract out parts of projects to various contractors in order to complete a project, instead of performing the work with their own employees. In this case, general contractors would have a difficult time

meeting the requirement of performing all or a majority of the work.

In May 2004, the City accepted the "City of Tallahassee Disparity Study" final report that included analyses of minority and woman-owned business enterprise participation in the City's procurements and the availability of minority and woman-owned businesses to do business with the City. The report also included a review of current legal requirements related to the MBE program.

We recommend that the City evaluate the findings and recommendations provided in the report and revise the City's MBE program accordingly to comply with applicable legal and/or economic factors provided and clarify the requirements and responsibilities of those parties involved including:

- City departments and offices, such as the MBE Office and Public Works Engineering Division
- Prime contractor
- MBE subcontractors

Conclusion

We would like to thank all individuals and contractors involved for their assistance and input during our review.

Response From Appointed Officials

City Manager: We greatly appreciate the assistance of the City Auditor in this matter. This "Audit Inquiry" was initiated at the request of the City Manager's Office after it became aware of allegations of violations to the City's MBE Policy. The City is completing Phase II of a "Disparity Study" which will provide the basis for review and revisions to the City's MBE Policy. The information provided here will be incorporated into the recommendations for revisions to the Policy. Further, the MBE Office will review and strengthen their record keeping and documentation requirements per your recommendations.

Response From M of Tallahassee and MBE Subcontractors

M of Tallahassee and their MBE subcontractors, CSS, and Duggar, were provided an opportunity to review the report findings and to provide a written response for the record.

The Attorney for M of Tallahassee provided a written response that is on file and available as a public record. CSS and Duggar did not provide a written response.

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

This Inquiry was conducted by:
 Beth Breier, CPA, CISA, Sr. IT Auditor
 Sam McCall, CPA, CIA, CGFM, CGAP, City Auditor

APPENDIX A

Table 1
East Park Avenue Phase I - Richview Road / Blair Stone Rd. at Governor's Square
Sub-Contract Between M of Tallahassee and CSS

Original Contract Amount	Amended Contract Amount	Amount M Paid to CSS	Amount CSS Paid to JR Jones	Difference (amount retained by CSS)
\$ 613,401	\$ 766,519	\$ 766,519	\$ 730,018	\$ 36,501
% of Amended Contract amount		100%	95%	5%

Table 2
East Park Avenue Phase I - Richview Road / Blair Stone Rd. at Governor's Square
Sub-Contract Between M of Tallahassee and Duggar

Original Contract Amount	Amended Contract Amount	Amount M Paid to Duggar	Amount Duggar Paid to Marty Ard	Amount Duggar Paid to Other Vendors	Profit and Percentage Difference
\$ 294,150	\$ 284,811	\$ 284,811	\$ 194,382	\$ 11,730	\$ 78,700
% of Amended Contract Amount		100%	68%	4%	28%
% of Total Payments by Duggar			94%	6%	

Table 3
Blair Stone Road Northern Extension
Sub-contract Between M of Tallahassee and Duggar

Original Contract Amount	Amended Contract Amount	Amount M Paid/Due to Duggar	Amount Duggar Paid/Due to Marty Ard	Profit and Percentage Difference
\$ 709,300	\$ 654,950	\$ 654,950	\$ 460,645	\$ 194,305
% of Amended Contract Amount		100%	70%	30%
% of Total Payments by Duggar			100%	