

**FOLLOW-UP AUDIT OF THE
ORANGE COUNTY
COURTHOUSE
CONSTRUCTION –
MINORITY/WOMEN BUSINESS
ENTERPRISE ISSUES**

**Report by the
Office of County Comptroller**

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**Report No. 355
December 2004**

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December 28, 2004

Richard T. Crotty, County Chairman
And
Board of County Commissioners

We have conducted a follow-up of the Audit of the Orange County Courthouse Construction Minority/Women Owned Business Enterprise (M/WBE) Issues. Our original audit included the period of January 1, 1995 to May 31, 1996. The prior audit report contained numerous recommendations for improvement that dealt with processes used by the County to measure, track, and monitor Minority-owned and Women-owned business participation. These items were followed up as part of this review. However, recommendations for improvement that specifically dealt with the completion of the courthouse were not part of this follow-up. Testing of the status of the previous Recommendations for Improvement for selected items was performed for the period October 1, 2003 through February 29, 2004. Our follow-up audit was conducted in accordance with generally accepted government auditing standards and included such tests as we considered necessary in the circumstances.

The accompanying Follow-Up to Previous Recommendations for Improvement, for selected items, presents a summary of the previous conditions and the previous recommendations. Following the recommendations is a summary of the current status as determined in this review.

We appreciate the cooperation of the personnel of the Business Development Division during the course of the audit.

Martha O. Haynie, CPA
County Comptroller

c: Ajit Lalchandani, County Administrator

**IMPLEMENTATION STATUS OF
PREVIOUS RECOMMENDATIONS
FOR IMPROVEMENT**

Follow-up of Audit of the Orange County Courthouse Construction – Minority/Women-owned Business Enterprise Issues
 Status of Previous Recommendations for Improvement

NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS			
		IMPLEMENTED	PARTIALLY IMPLEMENTED	NOT IMPLEMENTED	NOT APPLICABLE
1.	We recommend the County ensures the following:				
A)	All levels of management comply with written certification policies and procedures to prevent certification of ineligible businesses; and	✓			
B)	Decisions to override written operating policies and procedures are properly documented.				✓
2.	We recommend the County obtains a workforce report from each contractor for each month the contractor was on site.		✓		
3.	We recommend the County ensures the Construction Manager prepares cumulative workforce reports to show results from the inception of the project up to the present. Such reports must include reports from all contractors on site during the period.	✓			
4.	We recommend the County verifies that the Construction Manager accurately reports monthly workforce statistics for minorities.	✓			
5.	We recommend the County:				
A)	Ensures the Construction Manager (or contractor) uses its best efforts to get trade contractors to extend subcontracts to M/WBEs who provide letters of intent to perform;	✓			

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 Status of Previous Recommendations for Improvement

NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS			
		IMPLEMENTED	PARTIALLY IMPLEMENTED	NOT IMPLEMENTED	NOT APPLICABLE
5. B)	Modifies the current letter of intent to perform (or replace it with a more balanced agreement) to require the trade contractor to show that a good faith effort was made to contract with the M/WBE; and,	✓			
C)	Establishes written policies and procedures to ensure that trade contractors comply with the revised letter of intent to perform (or other agreement).	✓			
6.	We recommend the County:				
A)	Ensures that each M/WBE evaluation letter contains a clause requiring the submission of a copy of the contract or purchase order issued to the M/WBE; and,	✓			
B)	Conducts timely follow-up activities to obtain copies of contracts or purchase orders issued to M/WBEs.	✓			
7.	We recommend the County:				
A)	Takes appropriate steps to ensure numbers reported for M/WBE participation are accurate;	✓			
B)	Ensures that minutes of M/WBE Executive Committee meetings are obtained and reviewed for accuracy with evidence of this review maintained; and,	✓			
C)	Devotes adequate resources to monitoring M/WBE activities and reports.	✓			

INTRODUCTION

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Scope and Methodology

The audit scope was limited to an examination of the status of the previous audit recommendations for improvement, for selected issues, from the Audit of the Orange County Courthouse Construction M/WBE Issues issued in January 1998.

First, we reviewed the prior audit report and determined the status of Recommendations for Improvement that dealt with processes used by the County to measure, track, and monitor Minority-owned and Women-owned business participation. Regarding these issues, we performed the following procedures:

We reviewed sample applications for M/WBE certification to ensure that documentation was maintained to support the certification of the M/WBE status.

We selected a sample of project contracts with M/WBE participation, which were active during the audit period to ensure that the on-site contractor maintained and submitted accurate workforce reports.

We also used the project contracts noted above to ensure that:

1. The construction manager made efforts to get trade contractors to extend subcontracts to M/WBE's who provided letters of intent;
2. The County has modified the letter of intent to perform to require trade contractors to show that a good faith effort was made to contract with an M/WBE; and,
3. The County has established written policies and procedures to ensure that trade contractors comply with the revised letter of intent to perform.

Further, from the sample projects selected above, we ensured that all M/WBE evaluation letters contained a clause requiring the submission of a copy of the contract or Purchase Order issued to the Business Development Division (BDD).

INTRODUCTION



We reviewed the BDD's monitoring procedures to ensure the following:

1. Appropriate steps are taken to ensure numbers reported on workforce reports for M/WBE participation are accurate;
2. Minutes from M/WBE Executive Committee meetings are obtained, reviewed, and documented; and,
3. Adequate resources have been devoted to monitoring M/WBE activities and reports.

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1. Adequate Documentation Should Be Kept on File to Support Certification of M/WBEs

During our previous review, we noted that the certification denial was reversed for one woman-owned business without any documentation on file to show reasons for reversing a decision to deny the company certification.

We Recommend the County ensures the following:

- A) All levels of management comply with written certification policies and procedures to prevent certification of ineligible businesses; and,
- B) Decisions to override written operating policies and procedures are properly documented.

Status:

- A) Implemented. We tested 21 M/WBE certification files at the BDD and found that all files contained proper documentation to support the certification of the M/WBE firm. We reviewed copies of the certificate issued by the BDD as well as the Re-Certification Time Analysis/Sign-off sheet used by the BDD in the certification process.
- B) Not Applicable. We did not note any instances in which operating procedures were overridden.

2. All Contractors On-Site Should Submit Workforce Reports

During our previous audit, we noted contractors did not always submit workforce reports as required on the contract. We reviewed all the individual contractor workforce reports for a sample of two months (November 1995 and May 1996). We found that in November 1995, 45 percent (15 of 33) of the contractors did not submit workforce reports, and in May

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1996, 39 percent (14 of 36) of the contractors did not submit workforce reports.

We Recommend that the County obtains a workforce report from each contractor for each month the contractor was on site.

Status:

Partially Implemented. During our review, we noted that the BDD received the workforce report from each contractor for each month the contractor was on site with the exception of Contract No. Y2-705, Lancaster Road Roadway Reconstruction and Drainage Improvements. On this contract, the prime contractor did not provide the BDD any monthly workforce reports for any of the sub-contractors on the project. There were at least four M/WBE firms for the sub-contracts/purchase orders on file. For this test we reviewed a total of 52 applicable workforce reports submitted from the 5 contractors during the audit period.

BDD policies and procedures require contractors to submit monthly workforce reports to the Compliance Officer. The BDD is not in compliance with their policies and procedures for monitoring the workforce reports.

We also noted that two projects (Y3-708 and Y3-776) contained workforce reports that were not properly completed. The prime contractor's monthly workforce reports for October 2003 and February 2004, on contract Y3-708, contained the same address for all employees and did not record their social security numbers. A sub-contractor's monthly workforce report for October 2003 on contract Y3-708 did not contain the workers' social security number or the hours worked by the four employees recorded on the form. They only listed total hours for the four employees in the summary section of the report. The four employees worked a total of 42 hours for the period reported. Two sub-contractors' workforce reports for the months of October 2003 and February 2004 did not list the employees' address.

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We also noted that a sub-contractor on contract Y3-776 submitted workforce reports (for the December 2003 and January 2004 report periods) that did not contain an address or social security number for the employees listed.

The contractors should complete all required information on the workforce report.

We Again Recommend the County obtains a workforce report from each contractor for each month the contractor was on site. In addition, the County should ensure that contractors have completed all required information on the monthly workforce reports.

Management's Response:

To ensure full implementation of this recommendation on current and future contracts involving monthly workforce reports, the BDD management team will do the following:

- A) Conduct a training workshop within the next thirty days with the entire BDD staff to ascertain that everyone has a complete understanding of how to review monthly workforce reports and verify that all the required information is submitted accurately on the reports. This will include but not be limited to verifying the employee's correct address, social security number and number of hours worked are recorded on the reports.
- B) BDD Management will conduct monthly audits of the Senior Contract Administrators' workforce reports for the next ninety days. Thereafter, quarterly audits will be conducted in adherence to standard operating procedures.



3. Monthly Consolidated Workforce Reports Should Show Cumulative Results

During the prior audit, we found that the monthly consolidated workforce reports submitted by the Courthouse Construction Manager showed only a snapshot picture of one month's activity each month. Since the incentive fees to be paid to the Construction Manager are based upon the total points accumulated at the end of the project, cumulative data is needed to show how well the Construction Manager is progressing toward the goals. This data is not maintained by the County on a monthly basis.

We Recommend the County ensures the Construction Manager prepares cumulative workforce reports to show results from the inception of the project up to the present. Such reports must include reports from all contractors on site during the period.

Status:

Implemented. We tested 52 workforce reports from the five contractors reviewed for the audit period. All of the workforce reports recorded cumulative hours worked.

4. Reported Workforce and Labor Hours Percentages for Minorities Should Be Accurately Stated

During our prior audit, we reviewed workforce reports submitted by the contractors for the months of November 1995 and May 1996. Our review found that reported percentages of minority workers were overstated by three percent and eight percent, respectively. Further, Minority labor hours were overstated by nine percent for the month of May 1996.

We Recommend the County verifies that the Construction Manager accurately reports monthly workforce statistics for minorities.

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Status:

Implemented. We tested workforce reports from the five contractors reviewed for the audit period. All of the workforce reports accurately reported the labor hours and percentages.

5. The County Should Ensure the Construction Manager Uses Its Best Efforts to Get Trade Contractors to Allow M/WBEs to Participate in Contracts to the Extent Stated in Letters of Intent to Perform

During our prior review, we noted instances where contracts did not materialize to M/WBE subcontractors although the M/WBEs, at the request of the trade contractors, had executed letters of intent to perform and the letters were accepted by the trade contractors. A letter of intent to perform is an undertaking from the M/WBE to perform work. The trade contractor's signature represents a mere acceptance of the M/WBEs undertaking. The letter, however, shows the amount of proposed M/WBE participation in the trade contractor's scope of work.

A review of a sample of 18 letters of intent to perform totaling \$7,183,289 executed by M/WBE subcontractors with ten trade contractors revealed that no contracts resulted to M/WBE subcontractors in six cases and the amounts were significantly reduced in four cases.

We Recommend the County:

- A) Ensures the Construction Manager (or contractor) uses its best efforts to get trade contractors to extend subcontracts to M/WBEs who provide letters of intent to perform;
- B) Modifies the current letter of intent to perform (or replace it with a more balanced agreement) to require

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the trade contractor to show that a good faith effort was made to contract with the M/WBE; and,

- C) Establishes written policies and procedures to ensure that trade contractors comply with the revised letter of intent to perform (or other agreement).

Status:

- A) Implemented. Of the 31 M/WBE eligible letters of intent that we reviewed in the five contract files, all had executed contracts or purchase orders on file.
- B) Implemented. Section 3, subsection e), of the Invitation For Bids, document “Mandatory Good Faith Documentation Requirements” adequately addresses the good faith effort.
- C) Implemented. BDD Policies and Procedures on Construction and Supplies/Commodities Contracts, requires the bidders to document good faith efforts if M/WBE goals have not been achieved.

6. The Department Should Strengthen Controls for Obtaining Copies of Contracts Arising From Letters of Intent to Perform Executed Between Trade Contractors and Proposed M/WBE Subcontractors

During our prior audit, we reviewed contracts and letters of intent to perform and noted the following:

- A) We reviewed M/WBE participation evaluation letters for a sample of 10 trade contractors proposing to use M/WBEs as subcontractors. We found that eight of the evaluation letters contained no clause requiring the Construction Manager or the Trade Contractor to provide the Business Development Department with a copy of the contract or purchase order resulting from the letter of intent to perform.

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- B) Contracts or purchase orders resulting from the letters of intent to perform were not on file in eight of the applicable 11 cases.

Operating procedures require that each evaluation letter contain a clause requesting the Construction Manager or trade contractor to give the Department a copy of the contract or purchase order that results from the letter of intent to perform.

We Recommend the County:

- A) Ensures that each M/WBE evaluation letter contains a clause requiring the submission of a copy of the contract or purchase order issued to the M/WBE; and,
- B) Conducts timely follow-up activities to obtain copies of contracts or purchase orders issued to M/WBEs.

Status:

- A) Implemented. Attachment C-3, of the Invitation For Bids packet, contains a sample or template copy of a Letter of Intent that the contractor is requested to put on his/her company letterhead. This letter states that “a subcontract and/or purchase order will be executed with this firm and a copy of the agreement will be sent to the Orange County Business Development Division.”
- B) Implemented. Each of the contract files we reviewed contained an activity log that lists the dates and times that the BDD contacted the contractor in regards to missing or late documentation, such as the contracts or purchase orders.



7. The County Should Improve Monitoring, Reviewing, Documenting, and Reporting M/WBE Activities

During our prior audit, we reviewed monitoring procedures used by the BDD and noted the following:

- A) The BDD used the reported figures by the Construction Manager without checking the numbers for accuracy or completeness. Further, we noted inconsistencies in the data used from month-to-month.
- B) The BDD did not have minutes for the M/WBE Executive Committee meetings on file for 15 of the 17 months reviewed. In addition, the BDD did not have evidence that these minutes were reviewed for accuracy of the matters discussed.

We Recommend the County:

- A) Takes appropriate steps to ensure numbers reported for M/WBE participation are accurate;
- B) Ensures that minutes of M/WBE Executive Committee meetings are obtained and reviewed for accuracy with evidence of this review maintained; and,
- C) Devotes adequate resources to monitoring M/WBE activities and reports.

Status:

- A) Implemented. We noted that the labor hours and percentages were correctly reported.
- B) Implemented. The meetings are held once a month at the BDD's office location. The Administrative Assistant at the BDD is responsible for filing the minutes on a monthly basis. We reviewed the log and noted that each month's minutes were maintained for

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the audit period covering October 1, 2003 through February 29, 2004. The minutes document the proceedings and attendance.

- C) Implemented. BDD staff that are assigned to monitor County construction contracts for M/WBE participation now maintain an activity log in the file that chronologically lists the actions that have been taken on the file to date.