



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Bertha Henry, County Administrator

From: John W. Scott, Inspector General *JWS*

Date: September 6, 2012

Subject: **OIG Closing Memorandum Re: *Allegations that a Prime Contractor Made Fraudulent Misrepresentations of County Business Enterprise Program Subcontractor Participation, Ref. OIG 12-011***

The purpose of this memorandum is to inform you that the Broward Office of the Inspector General (OIG) has concluded its investigation into allegations that a prime contractor had engaged in misconduct by fraudulently misrepresenting a subcontractor's intent to participate on a \$223,884 Broward County Aviation Department (BCAD) airport landscape enhancement project (Project) administered pursuant to the County Business Enterprise (CBE) Program.

The OIG investigation partially substantiated the allegations of misconduct. We determined that ELAN Landscape, Inc., (ELAN), the Project's prime contractor, submitted misleading information to the County's Office of Economic and Small Business Development (OESBD), including a CBE Letter of Intent (LOI) bearing the false signature of the office manager (Office Manager) for a certified CBE subcontractor (the Certified CBE). A notary employed by ELAN admitted to misconduct by improperly certifying the signature. We also determined that after the project was completed, ELAN submitted a Final Utilization Report (FUR), which misrepresented the scope of work performed by the Certified CBE, but did not purport to exaggerate ELAN's compliance with its CBE participation commitment. The Certified CBE had, in fact, participated on the Project. Accordingly, while the OIG certainly does not condone ELAN's actions, we have concluded that a report would not assist the County in preventing similar future misconduct.¹

Background

On January 18, 2011, ELAN was awarded BCAD Contract No. Z0859507C1, (Contract), in the amount of \$223,884, to perform landscape enhancement for the Project. The Contract contained a CBE allotment. In its December 2011 bid, ELAN submitted a CBE Schedule of Participation which appended two LOIs—one of which was the signed LOI for the Certified CBE, which

¹ In contrast with our findings in OIG 11-025, where a vendor caused false statements to be made to the OESBD that allowed it to receive over \$400,000 in payments designated for a certified CBE that did not, in fact, participate in the project, and did not consent to representations about its participation.

John W. Scott, *Inspector General*

One North University Drive, Suite 111 • Plantation, Florida 33324 • (954) 357-7873 • Fax 954-357-7857

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represented that it would provide 1% CBE participation on the Project. The second LOI was for another certified CBE, which represented that it would provide 25% CBE participation on the Project.² The LOI that ELAN submitted for the Certified CBE bears the signature of Moshe Morgenstern, ELAN's owner and the Office Manager. Both LOIs were notarized by Jessica Dudley, ELAN's administrative manager, on the same date.

On September 1, 2011, after reviewing ELAN's Monthly Utilization reports, a BCAD OESBD specialist (the Specialist) sent an email to ELAN advising that absent any additional payments to the CBEs, it would have a CBE expenditure deficiency. At the time, ELAN had reported a payment to the Certified CBE in the amount of \$4,000. Ms. Dudley responded via a September 12, 2011 email, which she copied to Mr. Morgenstern, stating that the Certified CBE had agreed to perform additional "watering services" for \$2,000 in additional fees. On May 1, 2012, ELAN submitted the FUR, upon which "Watering" was added to the "Description of Work" category for the Certified CBE, and the "Amount Paid to Date" was increased from \$4,000 to \$6,000.

The LOI Bore a False Signature and There Were No Additional Services

At the close of the Project in May 2012, as part of the final CBE compliance review, the Specialist sent a Payment Verification Request (PVR) to the Certified CBE asking that it confirm that it had received \$6,000 in payments, and that it had provided goods or services on the Project. On May 4, 2012, the Certified CBE responded in the PVR that it had not received any money from ELAN related to the Project and the Office Manger confirmed that fact in a subsequent conversation with the Specialist, and also stated that she did not sign the LOI.

The OIG investigation confirmed that the signature did not belong to a representative of the Certified CBE. During the investigation, Ms. Dudley admitted to OIG Special Agents that she notarized the Office Manager's purported signature on the LOI without the signatory being present, and that she made no attempt to verify the authenticity of the signature. She also stated she did not know who affixed the signature to the LOI. Mr. Morgenstern also told OIG Special Agents that he did not know how the LOI came to be signed, or by whom.

The FUR did not Exaggerate the Value of the CBE's Participation in the Project

The OIG was able to confirm that ELAN had purchased \$6,000 of sod from the Certified CBE during the time period in which it undertook the Project. Mr. Morgenstern stated that this was the first bid ELAN had ever submitted pursuant to the CBE program requirements. He stated that he had contacted the Certified CBE, with whom ELAN had done business for over 20 years, in advance of the bid and discussed their participation, and that thereafter ELAN had purchased over \$6,000 of sod from it in connection with the project. However, because the Certified CBE does not normally install the sod, it was unaware of the purpose for which the sod was purchased and was unable to confirm to the Specialist that it had been paid in conjunction with a specific project. During interviews with OIG Special Agents, the Office Manager acknowledged that Mr. Morgenstern had entered into discussions with the Certified CBE to provide sod for the Project, and that given the long business relationship the Certified CBE has had with ELAN, she believed

² The LOI for the second CBE was legitimate, as was its CBE participation throughout the Project.

that whoever signed her name did so to “move the process along,” rather than with any intent to defraud. She also stated that she does not consider herself or the certified CBE to have been harmed as the result of her unauthorized signature. The Office Manager also produced two invoices which reflected that the Certified CBE had delivered a total of \$6,000 worth of sod to ELAN in July 2011.³

With regards to the representation that the Certified CBE performed watering services, the Office Manager informed OIG Special Agents that the Certified CBE never provided any watering services on the Project, a fact also admitted to by both Ms. Dudley and Mr. Morgenstern. Instead, they stated, ELAN added “watering” on the FUR solely to remedy what they believed was only a reporting deficiency. A review of the email communications between the Specialist and Ms. Dudley revealed that, as a result of miscommunications and misunderstandings, Ms. Dudley came to believe that she could not amend the amount of \$4,000 that ELAN had initially reported as the cost of sod, despite having actually paid \$6,000. Mr. Morgenstern admitted that he falsely reported the addition of watering as a means to meet the requirement to identify additional CBE expenditures, but stated that since ELAN had purchased \$2,000 more sod from the Certified CBE than originally estimated, he did not think the misrepresentation was significant.

Conclusion

The OIG investigation revealed that although ELAN failed to comply with CBE Program procedures, the Certified CBE fully participated in the Project, so that the County’s CBE commitment goals were met, and the integrity of the Project was not materially compromised. However, Florida law prohibits a notary public from notarizing a signature on a document unless the signatory appears before the notary public at the time of notarization, and provides civil penalties for infractions. Accordingly, the OIG, under separate cover, will provide a copy of this memorandum to the appropriate Florida executive authority for its independent assessment of misconduct by Ms. Dudley and Mr. Morgenstern.

cc: Pamela Madison, Acting Director, Broward Office of Economic
and Small Business Development

³ She also explained that normally the Certified CBE did not enter into written contracts with ELAN, and had not done so in connection with the Project. We note that although the Contract required that ELAN enter into written agreements with the CBEs, the County has acknowledged (in connection with related OIG investigations) that until recently, the OESBD has been deficient in monitoring compliance with that requirement.