

FINAL REPORT

Duty Free Concession Agreement

I. INTRODUCTION

The Office of the Inspector General (OIG) reviewed the Duty Free Concession Agreement (Duty Free Agreement) administered by the Miami-Dade Aviation Department (MDAD). The Duty Free Agreement is the contract that allows one entity to operate and manage all of the tax and duty free shops at Miami International Airport. The successful proposer operates as a concession, which pays rent, a minimum annual guarantee, and a percentage of its gross sales to MDAD. The Duty Free Agreement was awarded in 1995 to the joint venture firm Miami Airport Duty Free Joint Venture (MADFJV). MADFJV is comprised of five joint venture partners, four of which are Disadvantaged Business Enterprises (DBEs). The original term of the Agreement was for an initial five (5) years with five (5) one (1) year options-to-renew, which was later amended to a 10 year term.

MADFJV's proposal included providing thirty-four percent (34%) Disadvantaged Business Enterprises (DBE) participation on the Agreement. The DBE participation was to be fulfilled by MADFJV's four DBE partners. MADFJV's commitment of 34% DBE participation was made part of the Duty Free Agreement.

During the entire process of developing the Request for Qualifications (RFQ), evaluation of proposals, and evaluation of recommendations for award, the Board of County Commissioners (BCC) repeatedly directed that **the DBE participation had to be real, meaningful and legitimate.** The successful proposer, MADFJV, repeatedly illustrated in its concessionaire proposal, and in presentations before the BCC, how its DBE joint venture partners would participate in the Duty Free Agreement. MADFJV repeatedly stressed that its DBE participation would be real.

The OIG's review of the Duty Free Agreement and associated documents found that the four (4) DBE joint venture partners have been allocated over \$14 million in revenues by MADFJV since 1995 (see Exhibit 1) but have not performed any actual work, or provided any actual services as outlined in the Duty Free Agreement. The DBE joint venture partners' participation in the operation and management of MIA's duty free shops has been neither real, or meaningful nor legitimate, as required by governing authorities to the Agreement. This failure in participation is in contravention to what was directed and expected by the BCC and violates provisions of the Agreement between MADFJV and MDAD regarding DBE participation.

II. BACKGROUND

In March 1995, MDAD advertised a Request for Qualifications (RFQ) for a "Concession Agreement for Operation of Nonexclusive Duty and Tax Free Concession, Terminal Building, Miami International Airport." The RFQ was extensively reviewed and discussed by County staff and the BCC at various public meetings. Multiple changes and amendments were made to the RFQ documents prior to final award of the contract. As a result of the concerns raised by the BCC, the Board's input, and the input of County staff and intended proposers, multiple changes were made to the RFQ.

The Duty Free RFQ required a minimum of ten percent (10%) DBE participation, but of equal importance, it afforded extra evaluation points, on a sliding scale, for increased DBE participation above the minimum ten percent (10%). A maximum of nineteen (19) additional points (out of a total of 20 points) were made available for increased DBE commitments. The proposers were evaluated on five (5) different criteria, with DBE participation and revenue return for the County considered most important. The results of the Evaluation Committee's rankings were as follows:

Name of Proposer	% DBE Participation	% of Revenue to County	% Bid with Local Preference	Total Evaluation Points
Miami Airport Duty Free Joint Venture	34.0%	35.1%	35.6265%	333.00
Brasif Miami Joint Venture	33.2%	28.7%	29.1305%	302.00
DFI Miami Partners	25.0%	33.1%	33.5965%	268.75

The Evaluation Committee's recommendation was forwarded to the County Manager, who then recommended MADFJV for the award of the Duty Free Agreement. The County Manager's recommendation for award to MADFJV was presented to the BCC at two different meetings in October 1995. Public hearings were held wherein the various proposers made presentations to the BCC and answered questions regarding their proposals.

In October 1995, the BCC awarded the Duty Free Agreement to MADFJV based upon the above-mentioned criteria and its commitment of achieving 34% DBE participation through the participation of its four (4) DBE certified joint venture partners. MADFJV's four (4) DBE partners are:

1. Century Duty Free, Inc. (owned by Mr. Sergio Pino) with a 14% capital interest;
2. Bayside Company Store (now Miami To Go, owned by Ms. Carole Ann Taylor) with a 12% capital interest;
3. Media Consultants, Inc. (originally owned by Mr. Jorge De Cardenas; now owned by Mr. Luis De Cardenas) with a 4% capital interest;
4. Ms. Maria J. Argudin (individually) with a 4% capital interest.

The remaining majority (non-DBE) interest in the joint venture is currently controlled by Starboard Cruise Lines (Starboard). The majority partner is also the managing partner of the Joint Venture. Starboard is the successor of Greyhound Leisure Services, Inc. (GLSI), which was the original majority joint venture partner in MADFJV when the Agreement was first entered into in 1995 and subsequently modified in 1998 and 1999. Starboard is a United States subsidiary of LVMH Moet Hennessy Louis Vuitton Inc., an international conglomerate.

According to MADFJV's joint venture agreement, each minority DBE partner was also required to make capital contributions commensurate with their ownership shares. These capital contributions are spelled out in the joint venture Agreement and are as follows:

<i>Century Duty Free</i>	-	<i>\$1,722,000 (14%)</i>
<i>Bayside Company Store</i>	-	<i>\$1,476,000 (12%)</i>
<i>Media Consultants</i>	-	<i>\$ 492,000 (4%)</i>
<i>Maria J. Argudin</i>	-	<i>\$ 492,000 (4%)</i>

"Each DBE is to borrow 10% of their capital contributions from outside sources and 90% of their capital contributions from Greyhound Leisure Services, Inc. (GLSI). Interest charged to DBE members would be fixed at prime rate. DBE members would reimburse interest charges to GLSI from the proceeds of their profit shares. Depreciation and financing expenses would be charged to income statement prior to profit distribution."

In other words, GLSI, as the majority partner, financed ninety percent (90%) of the capital contribution for each of its DBE partners.

In December 1998, County staff brought the Duty Free Agreement back before the BCC with a recommendation to change the term of the Agreement from a five (5) year Agreement with five (5) one (1) year options-to-renew to ten (10) years straight, thereby not requiring any options to renew the Agreement. The BCC approved the change in the contract term. The modified contract now automatically runs for ten years with the contract to expire in 2005. In October 1999, County staff brought the Duty Free Agreement back before the BCC again to clarify the language pertaining to the amendment to the term of the Agreement made back in December 1998. **During the discussion over the proposed contract term modification, MADFJV justified the need for the modification based upon its DBE joint venture partners' need to amortize their debt to the majority partner over a longer period of time.** Apparently, the DBE partners were being hurt financially and needed the assurance of a guaranteed longer contract period to satisfy their debt obligation to the majority partner. In retrospect, this justification was invalid given the lack of participation of the DBE joint venture partners on the Duty Free Agreement.

III. INQUIRY

As part of the OIG inquiry into the Duty Free Agreement, many documents were reviewed. The OIG reviewed the videotapes of the various BCC meetings where the Duty Free Agreement was presented, reviewed and discussed by the BCC, County staff, proposers and others. In this report, the OIG focused its review on the extent of DBE participation by MADFJV's DBE partners in the actual management and operation of the Duty Free Agreement. The results of the OIG's review are detailed below in four sections as follows:

- A. What did the BCC want and expect regarding the participation of DBEs in the Duty Free Agreement?
- B. What did the County contract documents require regarding the participation of DBEs in the Duty Free Agreement?
- C. What did MADFJV state in its RFQ proposal, and in its presentations to the BCC, regarding the participation of the DBE joint venture partners in the Duty Free Agreement?
- D. What has occurred since 1995 to the present regarding the actual participation of the DBE joint venture partners in the Duty Free Agreement?

IV. FINDINGS

A. What did the BCC want and expect regarding the participation of DBEs in the Duty Free Agreement?

The OIG reviewed videotapes of the BCC meetings at which the Duty Free RFQ, proposals, and contract award recommendations were exhaustively discussed and considered. A composite videotape titled "MIA Duty Free Concession Agreement 1995" was made by the OIG of pertinent excerpts from these BCC meetings. (A copy of the videotape is available as Exhibit 11). The following is a list of some of the comments made by Commissioners and County staff during those BCC meetings:

1. At the 3/14/95 BCC Aviation Committee meeting, Commissioner Moss stated that he wanted to **"assure that minority input is not words only."**
2. At the 3/21/95 BCC meeting, Commissioner Moss discussed the difficulty [of minorities] in getting in at MIA, the need for opportunities for DBEs at the airport, and the County's **"responsibility to create opportunities."** Commissioner Moss later stated, **"we need meaningful participation out there."**
3. At the same 3/21/95 hearing, former Commissioner Reboredo also noted that there needed to be an **"understanding that DBE goals are a firm contract and a firm commitment, not a want or a maybe."** Assistant County Attorney Robert Cuevas reaffirmed the BCC's requirement calling for **"a firm commitment on the involvement of the DBE firms."**
4. At the 4/4/95 BCC meeting, former Commissioner Kaplan stated **"there needs to be significant and meaningful participation of DBEs."** He later stated that **"participation needs to be substantive and legitimate,** and not just a means to garner points in a subjective rating scale." He reiterated that minority participation **"needs to be true participation and not just window dressing."** Former Chairman Teele also advocated the DBE participation to be meaningful.
5. Mr. Walter Pierce, former Deputy Director of DBED, reassured the BCC that **DBE regulations require the participation to be real and meaningful.**

6. At the 10/5/95 BCC meeting, Mr. Steve Chaykin (accompanied by Mr. Christopher Korge), representing MADFJV, outlined to the BCC each DBE partner's expertise and each partner's role in the Duty Free Agreement. Mr. Chaykin also explained that all the joint venture partners would contribute skill, experience, talent and money to the venture. Mr. Korge also reaffirmed to the BCC that the "**DBEs will perform.**"
7. **At the 10/17/95 BCC meeting, former Commissioner Penelas (now Mayor Penelas) stated to his fellow commissioners that "the DBEs will actually perform work, and they have done some work already."**
8. At various BCC meetings, Commissioner Seijas also voiced concerns about the issue of minority participation on the Duty Free Agreement.

B. What did the County contract documents require regarding the participation of DBEs in the Duty Free Agreement?

The BCC publicly discussed the Duty Free RFQ and the County Manager's recommendation on several occasions. The Commissioners requested multiple changes to the RFQ, and asked questions of the proposers, including addressing concerns about the extent of the DBE participation and whether the DBE participation would be meaningful. This section reviews only the documents in the files (not the verbal statements). For example:

1. At the 3/21/95 BCC meeting, the Duty Free RFQ was amended to include a clause explicitly requiring that "**that there be a firm commitment in connection with the involvement of the DBE firms.**" (Emphasis added).
2. At the 10/5/95 BCC meeting, Agenda Item 5(a)(7) included a copy of Addendum Number 1 to the RFQ Documents for Concession Agreement. (See Exhibit 2) This Addendum emphasized the Federal Aviation Administration (FAA) regulations effecting Disadvantaged Business Enterprise participation and that DBEs must perform a commercially useful function.

The Addendum also states: “Proposers are also advised that the County will make careful scrutiny of any DBE participation in this contract to make certain that it meets the County’s desire, and the FAA Regulation’s directive, that DBE participation be meaningful and perform a commercially useful function.” (Exhibit 3) (Emphasis added).

3. At the 10/17/95 BCC meeting, Supplement No. 3 contained a question (#4) from former Chairman Arthur E. Teele which asked: “Please describe how each proposer’s Disadvantaged Business Enterprise component meets the requirement for ‘real and substantial’ participation.” The County’s response from DBED states in part: “In order to address properly the Chairman’s question, it is necessary to review several portions of the federal regulations. The first is Section 23.53 Eligibility Standards...**The minority...shall share in the risks and profits commensurate with their ownership interests...The minority shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy and operations...**” “Secondly, it is necessary to review selected portions of the (draft) Joint Ventures and Partnership Agreements dated June, 1993, by [the FAA]...II. Eligibility...A joint venture is eligible under 49 CFR, Part 23, if the DBE partner(s) meet the standards for certification set forth in the regulations and is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture...”
4. Article 14.04 of the Agreement states in part : “The Tenant acknowledges that the provisions of...49 CFR Part 23, Disadvantaged Business Enterprise Programs, are applicable to the activities of the Tenant under the terms of this Agreement... and hereby agrees to comply with all requirements of...[the FAA]” (Exhibit 4)
5. Article 14.05 of the Duty Free Concession Agreement states in part: “The Tenant shall contract with those firm(s) as are listed on the Tenant’s DBE Participation Plan as presented in its Proposal documents...and shall thereafter neither terminate such DBE firm(s) nor: (1) reduce the scope of work to be performed by...without the prior written authorization of the Department. The County shall monitor the compliance of the Tenant with the requirement of this provision (Article 14.05) during the terms of this Agreement.” (Exhibit 4) (Emphasis added).

C. **What did MADFJV state in its submissions to the County, in response to the RFQ, and in its presentations to the BCC, regarding the participation of the DBE joint venture partners in the Duty Free Agreement?**

The proposal submitted by MADFJV clearly spelled out the duties of each of the DBE joint venture partners (See Exhibits 7A-7D). The contractual documents attached as part of the BCC Agenda items (for both the RFQ and the Contract Award) also clearly spell out either what is expected, or what was going to be provided, as far as DBE participation on the Duty Free contract (See Exhibits 5 and 6). MADFJV's proposal also expressly warranted the submitted information as true and correct. (See Exhibit 8).

Further examples are:

1. Agenda Item 5(A)12 for the 10/17/95 BCC includes Exhibit A which reads in part: "The Function of Minority Joint Venture Members is outlined as follows:" This exhibit goes on to spell out in specific detail the functions that each Minority Joint Venture partner will provide under the Duty Free Agreement (See Exhibit 5). Also included was Exhibit B, which outlined specific training opportunities for the DBE joint venture partners. This exhibit also stated that at the end of the training period a participant would have the option of running one of the duty free stores at MIA (See Exhibit 6).
2. The Miami Airport Duty Free proposal submitted to the BCC states: "**The Proposer certifies as part of its Statement of Qualifications that it understands that the information contained in its Statements of Qualifications is to be relied upon by the County in its consideration for awarding the Concession Agreement and such information is expressly warranted by the Proposer to be true and correct.**" (Exhibit 8, previously referenced). (Emphasis added).

On page 1 of the Statement of Qualifications submitted by GLSI, it states in part: "...**The contributions of our DBE participants are real and tangible...each [minority partner] brings a special set of talents, skills and experiences** with them which will enhance GLSI's operation.... Our program is implemented to afford them [DBEs] opportunities **to immerse them in the daily management of the concession and prepare them to operate an extensive retail enterprise or concession at the end of said period.**" (Exhibit 7A, previously referenced). (Emphasis added).

The Statement of Qualifications listed the specific functions that each of the DBE joint venture partners would provide under the Duty Free Agreement as well as the training opportunities that would be provided to each of the DBE joint venture partners. The Statement of Qualifications also states that at the end of the training period a participant will have the option of running one of the duty free stores at MIA. (See Exhibits 7A-7D)

Therefore, the proposal submitted to the BCC spells out in detail the specific role and responsibilities of the DBE joint venture partners in the Duty Free Agreement and states that the contributions of the DBE participants are real and tangible. The proposal also stated that the DBE joint venture partners would be provided training and have a chance to run one of the duty free stores at MIA (See Exhibits 7A-7D). The proposal also states that the proposer understands that this information is to be relied upon by the County in its consideration for awarding the Concession Agreement and that such information is expressly warranted by the Proposer to be true and correct (See Exhibit 8).

3. The BCC amended the resolution awarding the Duty Free Agreement to MADFJV to make "...the contract subject to the requirements of Resolution R-1462-95." (Exhibit 9) Resolution R-1462-95 states that "**any representation made to the County Commission on a bidder's behalf at the time it considers award of a contract shall be deemed incorporated into such bidder's bid and that award of the contract to such bidder shall be deemed to include acceptance of the bid inclusive of such representation.**" (Exhibit 10) (Emphasis added). Commissioner Moss wanted to ensure that any and all representations made to the BCC on the Duty Free Agreement were subject to Resolution R-1462-95. These representations included the functions that the DBE would perform, the training that they would receive, and that the DBE participation would be real and meaningful.

D. What has occurred from 1995 to the present regarding the actual participation of the DBE joint venture partners in the Duty Free Agreement?

1. Lack of meaningful participation by DBEs:

While it is clear that the County expected that the DBE participation on the Duty Free Agreement would be real and meaningful, it is also clear from the OIG inquiry concerns were raised that the actual participation of DBEs in the Duty Free Agreement was not truly real or meaningful. An “audit” was performed at MDAD’s request but the central question of determining the extent of services performed by DBEs was never properly answered. For example:

- a. An internal email of 1/27/99 between MDAD personnel notes: “protestors have made verbal allegations that the DBE joint venture partners are not substantially involved in the management and operation of the business, as the federal regs require.” (Exhibit 12) (Emphasis added).
- b. MDAD commissioned a compliance audit titled “Agreed Upon Procedures applied to Greyhound Leisure Services, Inc. dated 2/10/99.” Part of this audit was to assess the extent of services performed by DBE partners pursuant to the Tenants DBE participation plan as presented in its proposal documents but the Sharpton Brunson audit merely verified that the ownership and profits to the DBEs totaled 34% and did not assess the extent of services performed as presented in the proposal documents.
- c. The OIG discovered a draft memo of 2/15/01 from Gary Dellapa to the Inspector General regarding the Miami Airport Duty Free Joint Venture. (See Exhibit 13) This draft memo (which was never received by the OIG) refers to certain allegations of contractual default on the Duty Free contract. Among the defaults listed in the complaint from Walker & Chambers, Attorneys, was that the Joint Venture is in default under Section 14.05 of the Concession Agreement with the County because “Starboard has not complied with the DBE Participation Plan as presented in its Proposal to the County. Starboard has reduced the scope of the work to be performed by the DBE firms without the prior written authorization of the County.”

The complaint also stated that “Starboard has misrepresented the nature and extent of DBE Participation in the Concession.” (Emphasis added).

In a meeting held on April 30, 2002, MDAD personnel advised the OIG that they had not sent the above-mentioned draft memo to the OIG because they believed that the defaults and other issues had been resolved in a meeting held with MADFJV back in early 2001. However, MDAD personnel never followed up with the DBE joint venture partners or MADFJV to see whether corrective action had actually taken place, and they were surprised to hear that the DBE joint venture partners were still having problems.

2. Lack of Training Opportunities for DBE Joint Venture Partners

Exhibit B of the Joint Venture Agreement and a section of the Statement of Qualifications listed specific training opportunities for the DBE joint venture partners. Both documents stated that at the end of the training period a participant would have the option of running one of the duty free stores at MIA (See Exhibits 6, 7A-7D). These training opportunities have not been provided to the DBE joint venture partners from the inception of the contract through the first quarter of 2001.

E. Response to OIG Memorandum of 1/4/02 by MDAD:

The OIG raised questions related to the Duty Free contract, and the role of a DBE joint venture partner, Century Duty Free, in that Agreement, in a memorandum to MIA Director Angela Gittens on January 4, 2002. In a memorandum dated January 31, 2002, MDAD responded to the OIG’s questions. The response included several representations:

1. MDAD stated that, in preparing its response to the OIG inquiry, Aviation Department representatives spoke with Mr. Chris Korge, General Counsel for Century [Duty Free], and Mr. David Suzuki, Vice President and General Counsel for DSS Group Limited (Greyhound’s successor parent a.k.a. Starboard).

In response to the OIG question regarding what specific work is being, or has been, performed, managed and/or supervised by Century Duty Free, Inc. on the Duty Free contract, MDAD's response was: "According to Duty Free representatives, **Century is a passive partner** in the Duty Free venture, and **its primary functions are to advise the other partners in the various aspects of store construction and remodeling**, as well as participate in partners' meetings." (Emphasis added).

However, MDAD did not include other pertinent details provided to it by the Duty Free and DSS representatives when MDAD wrote its response to the OIG. A copy of notes of the conference call between MDAD personnel and Duty Free representatives shows the actual full response from Duty Free representatives: "Mr. Korge stated that although Century Duty Free, Inc., was one of the joint venture partners, Century was not a DBE company and as such, in his opinion, **did not have to follow the FAA regulations for DBEs**. Mr. Korge characterized **Century Duty Free, Inc. as a 'passive-partner' in the Joint Venture**, which he indicated was a permissible activity as a non-DBE company. Mr. Korge further indicated that their primary function was related to advising partners in the different aspects of duty free store construction or remodeling (no duty free store construction or remodeling is taking place now) as well as participating in the Joint Venture Partners' meetings." (Emphasis added).

It is interesting to note that according to the MDAD notes of its contact with Mr. Korge about the participation of Century Duty Free, Mr. Korge, General Counsel for Century Duty Free, does not consider Century Duty Free to be a DBE nor to have to follow the FAA regulations for DBEs, and that Century Duty Free is a passive partner in the Joint Venture which he considers to be a permissible activity for a non-DBE company. Please note that in the County Manager's memo to the BCC on October 5, 1999, regarding the extension of the Duty Free Agreement, the Manager states that although Century Duty Free cannot be certified [in 1999] as a DBE, "Century Duty Free's participation on all current contracts, including options and amendments thereto, may continue to be counted towards the DBE participation on those contracts' overall goals." (Emphasis added).

Therefore, obviously, the Airport considers Century Duty Free to be a DBE and has routinely counted its participation in reporting DBE goals to the FAA. It is clear from County correspondence that Century Duty

Free's participation as a DBE on the Duty Free contract is a requirement of the contract and that MADFJV was considered in default of the contract when Century Duty Free was not certified as a DBE. Also, the OIG believes that the Board of County Commissioners is not aware that Century Duty Free's legal counsel considers Century Duty Free's participation on the Duty Free contract to be that of a "passive partner" and that their legal counsel believes that they [Century Duty Free] do not have to follow FAA regulations since they are not a DBE company.

2. In their response to some of the other OIG questions, MDAD noted that:
 - a. Century Duty Free does not have any employees working on the Duty Free Contract. No security identification badges have been issued in Century's name.
 - b. Century Duty Free has no offices on the Airport property; their business address is 901 SW 69th Avenue, Miami, Florida, 33144. According to Duty Free representatives, it has no payroll and does not file payroll tax returns. Please note that the business address listed above for Century Duty Free is actually that of Century Plumbing, another firm owned by Mr. Sergio Pino.
 - c. Century's primary function is to provide advice on the construction and remodeling of Duty Free stores. No materials or supplies were purchased to support this function. [Note: Mr. Korge's actual words were "that Century's primary function was to provide advice in the construction/remodeling of duty free stores; therefore, there was no materials or supplies needed for their participation."] (Emphasis added).

The OIG's review of the records related to the finished construction and remodeling of the Duty Free stores did not find any indication that either Century Duty Free or Mr. Sergio Pino participated in that construction and remodeling. In fact, that construction and remodeling was supervised and managed by other consultants and/or general contractors.

- d. Century does not subcontract any services.

F. Results of Interviews with the DBE joint venture partners

OIG Special Agents interviewed all four of the DBE joint venture partners and asked them to describe the work that they had performed or the services that they had provided as outlined in Exhibit A of the Joint Venture Agreement (See Exhibit 5). The following is a list of some of their comments from those interviews:

1. **Mr. Sergio Pino (owner of Century Duty Free)** stated that his role in the Duty Free Joint Venture was primarily that of an investor. He has not in the past, and does not currently, manage or supervise any day-to-day construction on the Duty Free stores. He stated that he is a home builder, not a store builder. Mr. Pino said that the other DBE joint venture partners are also mainly investors. He stated that they don't necessarily provide the expertise that is listed in Exhibit A – the joint venture hires consultants to do that.
2. **Ms. Maria Argudin** stated that she participated in the quarterly meetings of the joint venture and that, as part of her role as a participant, she provided copies of documents she had received while attending seminars and conferences when she was employed full time with the City of Miami. Ms. Argudin said that from 1995 through 2000, she was employed full time with the City of Miami. Her normal work hours there were from 9:00 am to 6:00 pm, and she also staffed all City of Miami Commission meetings while she was Assistant City Clerk. Ms. Argudin has no employees other than herself and her office is in her personal residence. Ms. Argudin also noted that Greyhound Leisure Services, Inc., has a full time Human Resources Manager and that she (Ms. Argudin) told that Manager that she would not be performing her job.
3. **Mr. Luis De Cardenas (current owner of Media Consultants, Inc.)** stated that his firm had done some advertising in two magazines and billboards back in 1996-1997. He said that the joint venture has not had an advertising budget since 1996-1997 so his firm has not provided any services since then. Mr. Luis De Cardenas works a full time job for another advertising agency in South Miami as an Account Supervisor and his hours there are 8:30 am to 6:00 pm, five days per week. As a result of his full time job, he only attends one joint venture meeting per year on average. His father, Mr. Jorge De Cardenas, an unpaid volunteer, attends most of the meetings in his place. When Mr. Luis De Cardenas was asked for the address of Media Consultants,

Inc. (one of the joint venture partners and the DBE firm for which he is listed as the corporate owner), he could not remember the address and had to consult an electronic device resembling a Palm Pilot. He then gave two different addresses, both personal residences of Mr. Jorge De Cardenas; neither address is the currently registered corporate address of Media Consultants, Inc. Mr. Luis De Cardenas also explained that his firm, in 1995, lobbied the County in order to obtain the Duty Free contract. He explained this lobbying effort as contributing to the firms' DBE participation, even though it was prior to the award of the contract and in furtherance of trying to obtain the contract.

4. **Mr. Jorge De Cardenas** was the original owner of Media Consultants, Inc. but transferred ownership to his son, Luis De Cardenas, several years ago. Mr. Jorge De Cardenas also stated that his firm had provided advertising in two magazines and billboards in the first 6-7 months of the Duty Free Agreement. He could not provide any copies of those ads or documentation related to the ads. He also said that the firm's participation consists primarily of attending the joint venture meetings. Since his son, Luis De Cardenas, works another full time job, Mr. Jorge De Cardenas attends most of the Board meetings. He also stated that, in regards to the public relations functions, as listed in Exhibit A, his firm lobbied the County to win the Duty Free contract in 1995.
5. **Ms. Carole Ann Taylor (owner of Bayside To Go which is now Miami To Go)** stated that she has not been able to perform the functions listed for her in Exhibit A. She said that her partner, Greyhound Leisure Services, Inc., which is now Starboard Cruise Lines and DFS, has prohibited the DBE joint venture partners from performing the functions listed in Exhibit A. Ms. Taylor said that she has spent the last seven years trying to perform these functions.

Ms. Taylor said that her level of expectation on the joint venture participation was very different from what has actually happened. Her goal and expectation was to own and manage Duty Free stores at the airport – this is part of the lease agreement. She did not expect to have to fight on participation in the joint venture. Ms. Taylor also noted that other airports allow minorities to fully participate in daily operations. She provided names of people and firms at Los Angeles International Airport, Dallas Airport, New York City, Atlanta and Chicago who are participating.

Ms. Taylor also said that she has repeatedly requested training and experience in the Duty Free arena and she has been repeatedly turned down. She said that Greyhound Leisure Services, Inc. told her “she could not participate because they [MADFJV] cannot split it [the duty free stores] up.”

Ms. Taylor stated that it is her belief that Greyhound Leisure Services, Inc., never intended for the DBEs to play a meaningful role and that DFS knows better, but doesn't want to change things.

G. Other Issues

In the course of this inquiry, the OIG has developed other issues and findings, which may be addressed in future reports. A brief summary of these issues follows:

1. FAA requirements for DBE participation:

The OIG has held discussions with FAA officials regarding the DBE regulations and the situation that we found concerning the MIA Duty Free Concession Agreement. The FAA has advised that Federal DBE regulations require that DBEs in a joint venture such as the Duty Free Agreement be responsible for a distinct, clearly defined portion of the work of the contract, and that they share in the management and control of the joint venture. A copy of this report will be forwarded to the FAA, Office of Civil Rights, for its review and information.

2. FAA requirements for monitoring of DBE participation

The OIG also discussed the issue of who should be monitoring DBE participation and what type of monitoring should be performed. FAA personnel advised us that the sponsor (i.e. Miami International Airport) was responsible for monitoring DBE participation. The FAA stated that monitoring of DBE participation is not limited to solely checking that the amount of revenues allocated to DBEs matches the percentage of the DBE's goal on the contract. Monitoring also includes ensuring that the participation of the DBEs is real and meaningful and that they are responsible for, and performing a distinct, clearly defined portion of the work of the contract.

MDAD documents state that the County is responsible for monitoring DBE participation (such as Article 14.05 of the Duty Free Concession Agreement). In addition, MDAD has sent documents to the FAA Civil Rights Staff stating that the MDAD DBE program also includes a monitoring and enforcement mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBEs. However, there is no indication that MDAD has monitored the actual performance of DBEs on the Duty Free Agreement other than mathematically checking that the revenues allocated to the DBEs matches the goal percentage for that DBE.

3. Joint Venture partner, Century Duty Free’s “participation” has been reported to the FAA as DBE participation.

MDAD has consistently reported Century Duty Free’s “participation” as a DBE on the Duty Free Agreement, both internally to County officials as well as externally to the FAA.

When MDAD responded to the OIG’s questions about Century Duty Free and the Duty Free Agreement, MDAD reported that MADFJV representatives said that Century Duty Free was a passive partner in the joint venture and that, therefore, Century Duty Free did not have to abide by the FAA regulations concerning DBEs. MDAD did not disagree with the concessionaire’s position, even though MDAD has routinely reported Century Duty Free as a “participant” on the Duty Free Agreement. However, in the County Manager’s memo to the BCC on October 5, 1999, regarding the extension of the Duty Free Agreement, the Manager’s memo states that although Century Duty Free cannot be certified [in 1999] as a DBE, “Century Duty Free’s participation on all current contracts, including options and amendments thereto, may continue to be counted towards the DBE participation on those contracts’ overall goals.”

V. CONCLUSION

Based on the above findings, the OIG concludes that MADFJV has violated provisions of the Duty Free Concession Agreement at MIA pertaining to its contractual commitment of satisfying its 34% DBE participation obligation through the real, meaningful, and commercially useful participation of its DBE joint venture partners.

The OIG has carefully reviewed the Duty Free Concession Agreement and related documents to determine the extent of the actual participation of the DBE joint venture partners in the continuing operation of the duty free shops at MIA. Since 1995, over \$14.6 million in revenues have been allocated to the DBE joint venture partners, even though their participation has been essentially limited to attending MADFJV Board meetings and providing verbal input at those meetings. This does not constitute the real and meaningful participation of the DBEs that the BCC directed and expected and what the Agreement contractually requires.

Section 14.05 of the Duty Free Agreement states that “the Tenant shall contract with those firm(s) as are listed on the Tenant’s DBE Participation Plan as presented in its proposal documents...and shall thereafter neither terminate such DBE firm(s) nor (1) reduce the scope of the work to be performed by...the DBE firms...” (Exhibit 4, previously referenced). The Statement of Qualifications submitted in MADFJV’s proposal clearly specifies the functions of the DBE joint venture partners and presents a DBE participation plan. The Joint Venture Agreement, submitted as part of the County Manager’s recommendation for award of the Duty Free Agreement, clearly specifies the functions of the DBE joint venture partners and the training opportunities the DBEs were supposed to receive. (See Exhibits 5 and 6, respectively). Section 14.05 of the Duty Free Agreement also states “**The County shall monitor the compliance of the Tenant with the requirement of this provision (Article 14.05) during the term of this Agreement.**” (Exhibit 4) (Emphasis added).

The BCC amended the resolution, which ultimately awarded the Duty Free Agreement to MADFJV, to make “the contract subject to the requirements of Resolution R-1462-95.” Resolution R-1462-95 states that “any representation made to the County Commission on a bidder’s behalf at the time it considers award of a contract shall be deemed incorporated into such bidder’s bid and that award of the contract to such bidder shall be deemed to include acceptance of the bid inclusive of such representation.” (Exhibit 10). The Commission wanted to ensure that any and all representations made to the BCC were expressly made part of the Agreement. These representations included the functions that the DBE would perform, the training that they would receive, and that the DBE participation would be real and meaningful.

In essence, the DBE joint venture partners have been allocated substantial amounts of revenue from a lucrative County contract in return for their firms being presented as "Disadvantaged Business Enterprises" by MADFJV on the Duty Free Agreement rather than actually performing work, or providing services, on the Agreement as was expected by the BCC and was called for in the Agreement.

Finally, it is clear that both parties to the Agreement, MADFJV and MDAD, have not properly disclosed to the BCC the actual roles of the DBE joint venture partners as DBE participants on the Duty Free Agreement.

VI. RECOMMENDATIONS

As for recommendations, please refer to the Inspector General's cover memo date June 11, 2002.

APPENDIX

1. Copy of advance notification letter to MDAD.
MDAD's response.
2. Copy of advance notification letter to Miami Airport Duty Free Joint Venture (MADFJV), c/o Mr. Andres Rivero, Esq.
MADFJV's response.
3. Copy of advance notification letter to Mr. Sergio Pino, President, Century Duty Free, a MADFJV partner.
No response was received.
4. Copy of advance notification letter to Mr. Luis De Cardenas, President, Media Consultants, a MADFJV partner.
No response was received.
5. Copy of advance notification letter to Ms. Carole Ann Taylor, President, Miami To Go, a MADFJV partner.
Miami To Go's response. (Copy of Ms. Taylor's Sworn Statement can be obtained with the Clerk of the Board).
6. Copy of advance notification letter to Ms Maria J. Argudin, a MADFJV partner.
No response was received.

EXHIBIT LIST

1. Concession Monthly Utilization Report for Miami Airport Duty Free
2. Addendum Number 1 to RFQ Documents for Concession Agreement for Operation of Non Exclusive Duty and Tax Free Concession, Terminal Building Miami International Airport – Page 1
3. Addendum Number 1 to RFQ Documents for Concession Agreement for Operation of Nonexclusive Duty and Tax Free Concession, Terminal Building Miami International Airport – Pages OP-2 and OP-3
4. Concession Agreement for Operation of Nonexclusive Duty and Tax Free Concession, Terminal Building, Miami International Airport – Section 14.04 “Affirmative Action and Disadvantaged Business Enterprise Program” and Section 14.05 “Disadvantaged Business Enterprise Participation Plan” – Pages CA-31 and CA 32
5. Joint Venture Agreement for Operation of Miami Airport Duty Free Joint Venture – Exhibit A
6. Joint Venture Agreement for Operation of Miami Airport Duty Free Joint Venture – Exhibit B
- 7A-7D. Statement of Qualifications – Greyhound Leisure Services, Inc., Miami International Airport Duty & Tax Free Concession – Disadvantaged Enterprise Participation Plan - Pages 1 to 4
8. Request for Qualifications for Operation of Nonexclusive Duty and Tax Free Concession, Terminal Building, Miami International Airport – Proposer’s Qualifications Form – Page QF-11
9. Clerk of the Board’s Meeting Minutes – October 17, 1995 BCC Meeting - Page 8 - Report Agenda Item 5(a)12
10. Resolution No. R-1462-95
11. Videotape titled “MIA Duty Free Concession Agreement 1995”
12. Email dated January 27, 1999, from Ms. Esterlene Lewis to various MDAD personnel.
13. Draft memo dated February 15, 2001, from Mr. Gary Dellapa to Mr. Christopher Mazzella, Inspector General (20 pages).