

Office of the Inspector General

Miami-Dade County

FINAL

Audit Report

Tropical Park Construction

Project No. 97023

**An audit conducted by the Office of the Inspector General
of the Miami-Dade Department of Parks and Recreation's contract with
Miami Skyline Construction Co., for the general construction of Tropical Park's Field
House, Press Box Elevator and Ticket Booth.**

September 12, 2002

**Office of the Inspector General
Tropical Park Construction Project No. 97023**

FINAL AUDIT REPORT

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I. INTRODUCTION

In accordance with §2-1076(c)(6) of the Code of Miami-Dade County, the Office of the Inspector General (OIG) may perform random audits of County contracts and has the authority to review past, present, and proposed County programs, accounts, records, contracts and transactions.

The OIG randomly selected for audit the County construction contract for the Tropical Park Project No. 97023, with Miami Skyline Construction Corporation (Miami Skyline) as the prime contractor. The County's Parks and Recreation Department (Parks Department) is responsible for the management and administration of the contract with Miami Skyline, entered into on November 16, 2001, as it is for the general construction of Tropical Park's Field House, Press Box Elevator and Ticket Booth.

This construction contract was approved during the 30-day emergency expedite period established by Resolution R-1079-01, passed and adopted on October 2, 2001. The contract amount is \$1,025,979 and is to be completed within 240 consecutive calendar days from the effective date of the Notice-to-Proceed, dated January 17, 2002. Thus, the contract period spans from January 17, 2002 through September 28, 2002.

Additionally, this construction contract has a Community Small Business Enterprise (CSBE) goal of 23%. The CSBE Program, established in 1997, is designed to provide business opportunities for small construction businesses operating in Miami-Dade County. The CSBE program is codified in Miami-Dade County Code Section 10-33.02 and is implemented through the application of Administrative Order (A.O.) No. 3-22. The County's Department of Business Development (DBD) is responsible for administering and monitoring compliance with all CSBE program requirements.

To expedite receipt of payment to the CSBE subcontractors, Administrative Order No. 3-22, Section XIV. (B)(1) requires that all payment requisitions of prime contractors meeting a CSBE goal are to be promptly reviewed and paid **within fourteen (14) calendar days of receipt by the County if those amounts are not in dispute.**

In turn, Miami-Dade County's A.O. No. 3-22 requires that "billings received by the prime contractor from CSBE subcontractors for which a CSBE Trade Set-aside or subcontractor goal has been applied" are to be promptly reviewed and **paid by the prime contractor to the CSBE within two (2) business days of receipt of payment from the County on those amounts not in dispute.**

The OIG's audit was conducted while the Phase I scope of work was in progress. The OIG's goal was to provide timely audit recommendations, based on our observations and findings, concurrent with the activities under review. During the course of the OIG's audit of the Tropical Park construction contract, the OIG was informed that the Project Management Division of the Parks Department extended the original completion date for the Phase I scope of work to end concurrently with Phase II of the project. Consequently, Phase I and Phase II of the Tropical Park project should be substantially completed by early October 2002.

In response to the OIG's Draft Report, the County's Parks and Recreation Department provided its response to the OIG (See Appendix). However, no responses were provided to the OIG by the Department of Business Development or Miami Skyline Construction Corporation. Therefore, only Parks' responses to the Summary Audit Results and Recommendations are reproduced herein. Please see Appendix 1. for Parks' full response.

II. SUMMARY OF AUDIT RESULTS

The results of the OIG's audit of contractor payment requisitions, supporting documentation and assessment of the Parks Department and DBD's administration of the Tropical Park construction contract are summarized as follows:

1. The Parks Department was unable to document its compliance with A.O. 3-22, which requires that the County remit payment within fourteen (14) days of receipt of a proper invoice to prime contractors who are meeting a CSBE goal. The OIG was unable to measure the exact number of days it took the County to issue payment to the prime contractor, Miami Skyline, as the Project Management Division of the Parks Department did not date stamp the face of contractor's payment requisitions upon receipt. {See Section III. - Recommendation No. 1 and Section V. A. 1 herein.}

Park's Response:

"We agree that your point is legitimate. Please see our response to Item No. 1 of the Recommendations."

2. There were extensive time delays between the prime contractor's requisition date (i.e., date the Architect/Engineer signs the prime's requisition) and the approval date (i.e., between 12 days to 23 days) by the Parks Project Management Division.

Park's Response:

“Our past payment history indicates that the process time, counting from the time a proper/complete invoice is submitted, never exceeded 14 days. To date, the contractor has not brought forth any complaints regarding the timeliness of his payments.

We are also encouraging all our contractors to take advantage of the new direct deposit procedure which recently became available and that hopefully will eliminate some days from the completed process.

Please see our response to Item No. 3 of the Recommendations for additional information regarding this issue in general.”

3. Three (3) Monthly CSBE Utilization Reports (MURs) completed by the prime contractor, who is new to doing business with Miami-Dade County, were incorrectly prepared. Some of the inaccuracies included: (1) omitting the reporting period; (2) omitting “the amount paid to date;” (3) omitting the percentage of CSBE goal “achieved-to-date;” and, (4) in the Reporting Period section, rather than writing the dates for the reporting period the MUR covered, the prime contractor wrote the name of the DBD Compliance Specialist receiving the MUR on the “To” line and on the “From” line, the name of the preparer of the MUR was written.
4. A review of the “Subcontractors’ Release of Claim” forms showed that Miami Skyline paid two (2) CSBE subcontractors, Able Electric and Unitech Mechanical Systems, amounts **greater than** what had been invoiced by the prime contractor to the County for each CSBE’s scope of work performed. The two (2) CSBE subcontractors submitted additional invoices to the prime contractor **after** the current month’s Contractor Payment Request had been submitted to the County. Specifically, Able Electric received \$6,153 more and Unitech Mechanical Systems received \$7,290 more than what Miami Skyline invoiced the County. The OIG notes that Miami Skyline was under no obligation to pay these two (2) subcontractors **prior** to receiving payment from the County for the subcontractors’ invoiced work. **These actions by Miami Skyline demonstrate its good faith commitment to complete the Tropical Park project in a timely manner while assuring that the CSBE subcontractors were paid immediately as opposed to waiting until the next payment requisition submission.**

5. Although Miami Skyline on two (2) occasions paid its CSBE subcontractors prior to receiving payment from the County, Miami Skyline did not expedite payments to the CSBE subcontractors within the requisite two-day timeframe as required by the CSBE Prompt Payment Ordinance when payment was actually received from the County. The OIG auditor reviewed seven (7) check payments to Miami Skyline's CSBE subcontractors. The OIG auditor's analysis revealed **that it took between three (3) to five (5) business days after Miami Skyline received its payment from the County for Miami Skyline to issue payment to the CSBE subcontractors.** The OIG auditor inquired of the prime contractor, Miami Skyline, as to what caused the delay in issuing payment to the CSBE subcontractors. **According to Miami Skyline, it was unaware of the two-day payment timeframe that was required of prime contractors who are meeting a CSBE goal.**

6. DBD issued two (2) Notices of Violation (NOV) to Miami Skyline and C&F Decorating Services, Inc. (C&F), a CSBE subcontractor, for violating A.O. 3-22 requirements. Because Miami Skyline is the prime contractor, Miami Skyline is held responsible for the actions of C&F. The NOV's are for the following violations:
 - a. DBD issued the first NOV to both Miami Skyline and C&F on May 30, 2002 for violating the "Responsible Wage and Benefits Ordinance," Ord. 90-143. A C&F supervisor prevented the DBD Compliance Specialist from completing the required interviews of C&F employees on the job site. The DBD Compliance Specialist attempted to interview the workers present at the job site to document their answers to questions such as their job duties, levels of responsibilities, hourly pay, hours worked, etc.
 - b. DBD issued a second NOV to both Miami Skyline and C&F on July 8, 2002 because C&F subcontracted its drywall scope of work to a non-CSBE subcontractor, "Alcard Group, Inc." This practice violates A.O. 3-22. In the NOV letter addressed to Miami Skyline and C&F, DBD indicated that the violation was due to the fact that the contractor deviated from the list of CSBE subcontractors listed on the Schedule of Participation (SOP) at the time of the prime contractor's bid submission.

7. Per the revised "Notice to Proceed" dated January 16, 2002, Phase I of the Tropical Park Field House project should have been completed as of May 17, 2002. **The OIG auditor noted that as of June 13, 2002, Phase I still had not been completed.** The Project Management Division of the Parks Department recognized the contractor's assignment of the delay in completing Phase I of this construction project to **one particular subcontractor's non-performance, which caused the prime contractor to experience significant delays. The Parks Department approved change authorizations to the prime contractor under Change Proposal Requests Nos. 12,**

13, 14, 15, and 19. The Change Proposal Requests included time extensions for construction work performed on both Phase I and II, as work was being performed concurrently for both project phases. In total, these change authorizations internally approved an extension for time of 21 days (i.e., time extensions of 14 days for Phase I and 7 days for Phase II) from May 17, 2002 to June 7, 2002.

The OIG auditor reviewed the Change Proposal Requests Nos. 12, 13, 14, 15, and 19 noting that **there was no explanation documented for the contract time extension as required by the Document 01028-CP, Change Proposal Request. Specifically, the document states: "Attach complete breakdown for price quote and justification for any Contract Time extensions requested."**

Park's management provided the OIG auditor with the official Change Authorizations Nos. 6 -10 forms, signed and approved by the Project Management Division's Chief. Each Change Authorization provided corresponded to each of the Change Proposal Requests Nos. 12, 13, 14, 15, and 19. The OIG auditor notes that the contract time extensions requested on the Change Proposals were officially authorized via the Change Authorizations Nos. 6 -10.

Park's Response:

"We suggest the following modification based on our conversations with your staff:

"...The Project Management Division of the Parks Department recognized the contractor's assignment of the delay in completing Phase I of this construction project to one particular subcontractor's non-performance, which caused the prime contractor to experience significant delays..."

Also in Item No. 7 above, which states: "...there was no explanation documented for the contract time extension as required by the Document O1028-CP, Change Proposal Request. Specifically, the document states: "Attach complete breakdown for price quote and justification for any Contract Time extensions requested."

Park's states: "Please see our response to Item No. 6 of the Recommendations. We apologize for any confusion this may have caused."

8. The Park's Project Management Division informed the OIG auditor that the County Building Department inspectors were unable to grant a "Certificate of Use and Occupancy" on the structure enclosing the freestanding elevator or a "Certificate of Inspection" (C.I.) for the newly constructed elevator at Tropical Park (i.e., Phase I) as the elevator's surrounding structures of the press box and bleachers required accessibility modifications to be compliant with the requirements of the American with Disabilities Act (ADA). In order to complete the originally planned construction project, the Parks Department is currently in the process of drafting a Contract Change Order for the additional costs of permitting and modifying the previously constructed press box and bleachers. **Therefore, as of June 11, 2002, the prime contractor, Miami Skyline, was unable to obtain substantial completion on Phase I (i.e., the elevator) of the project through no fault of its own.**

9. The prime contractor, Miami Skyline, has agreed to obtain all the necessary permits for the bleachers and press box on behalf of the County and will also perform the work for the structural modifications. The Parks Department informed the OIG that it is currently finalizing a Contract Change Order for the additional costs associated with acquiring the permits and performing the additional modifications to the bleachers and press box to make these structures compliant with ADA requirements. Furthermore, **the Park's Project Management Division decided to "extend the completion date for the original Phase I scope to end concurrently with Phase II scope of work, thus obtaining final certifications for all facilities being built under this contract at the same time."** Parks management informed the OIG that the collapsing of Phase I and Phase II of the project would be included in forthcoming Contract Change Order. Thus, Phase I and Phase II of the Tropical Park Project No. 97023, should be substantially completed by early October 2002.

10. DBD attends all pre-construction meetings for construction projects with CSBE goals and/or set-asides and has developed a form known as a "Conference Summary Report" for the purpose of outlining the items to be discussed by DBD at the Pre-Construction Conference. Items discussed by DBD pertain to the CSBE program requirements, prime contractors and CSBE subcontractors' responsibilities, penalties and sanctions, etc. However, DBD does not require the prime contractor and its subcontractors in attendance to acknowledge via a signed document that they have been made aware of and understand the CSBE program requirements that they are obligated to comply with as part of the County's CSBE program.

11. DBD has been monitoring the prime contractor's CSBE utilization rate, which the OIG auditor calculated at 17% for the one-month reporting period April 25, 2002 through May 25, 2002. Although the CSBE goal for this contract is 23%, the OIG recognizes that there is much work yet to be completed and one CSBE subcontractor has not yet been mobilized, as its portion of the scope of work begins towards the end of the construction project. Therefore, it is reasonable that CSBE utilization rate is presently at 17%. DBD should continue to monitor the prime contractor's CSBE utilization rate to ensure the CSBE goal is achieved. This is especially important in light of the second NOV issued on July 8, 2002 regarding the unauthorized subcontracting of intended CSBE work to a non-CSBE certified contractor, which may have an adverse affect on the prime contractor meeting the CSBE utilization goal.

NOTE: See Section V., "Audit Results," on p. 14 of this report for the detailed analysis of the audit fieldwork.

III. RECOMMENDATIONS

Based on the OIG auditor's review of contractor payment requisitions and supporting documentation as well as an assessment of the County's administration of contracts with CSBE goals, County management should consider the following recommendations to expedite the payment process to construction contractors and to more effectively administer the CSBE program:

1. To verify whether the Park's Department is issuing payments to prime contractors within fourteen (14) days for those contracts with CSBE goals, **upon receipt of the prime contractor's "Contractor Payment Request," the Parks & Recreation Department should date stamp all requisition packages initially upon receipt.** This procedure should be documented as a **requirement** in the Parks Department's Standard Operating Procedures. A date stamp will allow the Parks Department and DBD management to monitor compliance with the prompt payment requirements of Administrative Order No. 3-22, Section XIV (B)(1).

Park's Response:

"In an effort to better document the actual date a proper/complete requisition is submitted to us or our consultant other than at our offices, we are instituting the following procedures:

- a. *As part of the Project Management Division's policies and procedures, we require all prime contractors to acknowledge special instructions issued at Pre- Construction Meetings regarding submission of payment requisitions as well as other procedures. This acknowledgement form is revised and updated as necessary to keep up with changes in County and Park's policies; a copy of the version used for this particular project is attached for your examination.*
- b. *When a payment requisition is submitted to the Project Manager/consultant at a construction meeting, the Project Manager will ensure that the minutes of the meeting properly reflect such action.*
- c. *When a payment requisition is submitted to the Project Manager or consultant other than at the office or at a construction meeting, the Project Manager/consultant will acknowledge receipt via an email, facsimile or memo to the file.*

Otherwise, existing procedures already require that all requisitions delivered to our offices be date-stamped upon receipt.

The contract with Miami Skyline does not specify a billing cycle, either in the form of a payment schedule or as a recurring event (taking place for example, on the 30th of each month), the actual time and/or method for delivery of a payment requisition is at the contractor's discretion. The responsibility to define what constitutes the submission of a proper/complete invoice rests on the Project Manager and the consultant. Often a joint review by the Project Manager and the consultant takes place at the time of submission if the payment requisition is submitted during or immediately after a construction meeting.

It is the PRD's view that deliberately requiring the contractor to submit payment requisitions only to our offices in order to place a date-received stamp on the invoice could further restrict our ability to meet an already tight payment deadline by then requiring the Project Manager to forward the requisition to the consultant for his review and allowing a minimum of two to three days for their review and signature and waiting until its return to continue with the process, thus hindering the intent of the Ordinance. Our procedures, as stated above are meant to expedite the processing of a complete/proper payment requisition.”

2. To expedite payment to prime contractors with CSBE goals, the Parks Department should consistently use the "CSBE PROMPT PAYMENT" stamp for all construction contracts containing a CSBE goal or trade set-aside.

Park's Response:

"Currently all of our projects require that construction payments be expedited since all our projects have CSBE participation assigned. As a result, there is no real need to distinguish between expedite VS non-expedite. However, we have instructed our staff to consistently use the "CSBE PROMPT PAYMENT" stamp for emphasis."

3. The Parks Department should promptly notify the prime contractor in writing of those "Contractor Payment Requests" which are rejected due to the omission of required information and document the specific reasons for rejecting the invoice package from the prime contractor. The Parks Department should maintain sufficient supporting documentation, such as copies of rejected Contract Payment Request, correspondence, etc., in the Project Manager's project files to substantiate the reason(s) the Park's Project Manager rejected the requisition package in the event of a dispute between the County and the prime contractor regarding contract payments.

Park's Response:

"In some instances the Project Manager has accepted requisitions that have not been complete and ready for processing with the intention of expediting the payment. However, in those instances the contractor has immediately been made aware of the items missing. As a result of your suggestions, where feasible we will conduct joint reviews between the Project Manager and the consultant during or immediately after a construction meeting to allow either a formal rejection on the spot or a process-able payment to return to the office for date stamping.

If documentation is pending from a submitted payment requisition, the Project Manager will immediately document the status via an e-mail and facsimile to the contractor advising of issues affecting the ability for us to process said Requisition and state the status of the payment requisition at that or the next construction meeting. Included in the communication will be a detailed breakdown of missing documentation and the specific reasons why the requisition was unacceptable. The following statement closes the notification in bold and oversized letters to highlight the status of the requisition: "The payment requisition is now on hold until all of the above documents are submitted."

4. Should the Parks Department and the prime contractor have a **dispute regarding the billing amounts on a payment requisition**, then, as required by County Code Section 10-33.02 (B)(1)(a) for the CSBE Program, the Parks Department must **promptly notify in writing the prime contractor and DBD, within fourteen (14) calendar days, of those “Contractor Payment Requests” which are in dispute and the reasons for the disputed billings.**

Park’s Response:

“Malka Rodriguez (Project Manager) and Richard Johns (Project Manager) have confirmed that no disputes regarding the billing amounts on any payment requisitions have occurred in the management of this contract. As your staff’s observations reflect and we concur, Miami Skyline is a very professional organization and their estimates for percentage of completion accurately reflect our field observations. As a result, no formal or informal dispute notifications have been required.”

5. For resubmitted Contractor Payment Requisitions, revised requisitions that are accepted without dispute by the County should be date stamped immediately upon receipt by the Parks Department to readily determine the date the County received a proper invoice. This would allow County management to monitor compliance with the prompt payment requirements of Administrative Order No. 3-22, Section XIV. (B)(1).

Park’s Response:

“Pursuant to your staff’s suggestions, we have implemented procedures to protect the Department from possible claims of non-compliance with the Prompt Payment Ordinance requirements. Consequently, in order for our Project Managers to agree to review an incomplete requisition, thus expediting the payment to the prime, a memo acknowledging the incomplete status of the requisition has to be signed by the prime. Otherwise the requisition will be formally rejected (Attached is a copy of said memo for your review.)”

6. For contract “Change Proposal Requests,” Document No. 01028-CP, justification for time extension requests should be attached to the Change Proposal Request, as required per the standardized form. If the prime contractor does not include such justification, then the Project Manager should not process the change request until the requisite written justification is provided to the Project Management Division.

Park's Response:

“The form mentioned is not part of the original contract for Tropical Park's Field House, Press Box Elevator and Ticket Booth. The OIO28-CP form belongs to another project built in Tropical Park, specifically the construction of the Tropical Park Equestrian Arena -a design-build project- and used by the Project Manager with the intention of standardizing the process.

We require breakdowns for price quote(s) for any change authorizations. However, since this form is not part of the executed contract no additional and/or particular explanation was needed or contractually due in this particular instance for time extensions. Although detailed breakdowns are not required for time extensions, time extension requests are discussed in construction meetings and not recommended for approval unless the Project Manager and the consultant are satisfied that it is justifiable. The Project Managers have been instructed to ensure that said discussions are documented in meetings of construction meetings.”

7. The Project Management Division of the Parks and Recreation Department should document its policies and procedures for processing and approving change proposal requests and change authorizations. The Parks Department should also document which personnel are authorized to grant contract time extensions during the project's completion period to establish accountability in the event that project deadlines are not met.

Park's Response:

“The Project Management Division is relatively new - approximately two years old - and as such is still very much in the process of fine-tuning our policies and procedures. However, all personnel are aware of the procedures for processing contract time extensions and subsequent meetings with our staff did not reveal misinterpretations or confusion with such procedures.

The Department is in the process of adopting a standard boilerplate contract for eventual use in all of our construction contracts. Nonetheless, we still have active projects which are regulated by different contract conditions and therefore, what may be applicable to one project could and will be entirely unsuitable for another. At this time a uniform and unvarying procedure is not practical for the Division's use and each Project Manager is instructed to follow the requirements and documentation procedures of their specific contracts to avoid loosing our contractual and legal rights.”

8. To ensure that CSBE subcontractors maintain sufficient cash flow in order to complete the construction services being provided to the County, all billings received by the prime contractor from CSBE Subcontractors, for which a CSBE trade set-aside or subcontractor goal has been applied, **should be promptly paid to the CSBE by the prime contractor within two (2) business days of receipt of payment from the County on those amounts not in dispute.**
9. During the pre-construction meeting, DBD should strongly emphasize to the prime contractors who are meeting CSBE goals, the contractual requirement for the prime contractor to pay the CSBE subcontractors within two business days of receipt of payment from the County for all invoiced work from the CSBE. Although prime contractors are ultimately responsible for complying with the terms and conditions of the County contracts, **it is recommended that DBD take a more proactive approach in educating County contractors as to the requirements of the CSBE program, particularly for those prime contractors who are new to County contracts containing CSBE goals.**
10. DBD should require all prime contractors and subcontractors to sign the “Conference Summary Report” which DBD currently uses as a script for items to be discussed by DBD at the Pre-Construction Conference. The OIG encourages DBD to obtain written acknowledgement from all County prime contractors and its subcontractors to confirm that the contractors are aware and understand all requirements and responsibilities that they are obligated to comply with as part of the County’s CSBE program. A copy of the “Conference Summary Report” should also be given to all prime contractors and subcontractors.
11. At the pre-construction meeting, DBD should make available written instructions, with examples of a correctly completed MUR, to all prime contractors to aid them in properly completing a Monthly CSBE Utilization Report - MUR. Additionally, if inaccuracies in the preparation of the MUR are continuous, DBD should meet directly with a representative from the prime contractor to give one-on-one guidance and to answer any questions the prime contractor may have regarding the preparation of the MUR, as this document is crucial in assessing whether the goals of the CSBE program are being met.
12. The Department of Business Development should update Administrative Order No. 3-22, Section XIV (A)(3) to reflect recent amendments to the Miami-Dade County Code Section 10-33.02 (B), Ordinance 01-116 adopted July 10, 2001 and Ordinance 01-158 adopted September 25, 2001.

IV. AUDIT SCOPE & OBJECTIVES

The scope of the audit encompassed the period January 17, 2002 to June 21, 2002, which coincides with the effective date of the "Notice to Proceed" through the date audit fieldwork ended. The objectives of the OIG's review were as follows:

1. To verify that the County remitted payments to the prime contractor (Miami Skyline), in accordance with A.O. No. 3-22, Section XIV. (B)(1), which requires payments to a prime contractor meeting a CSBE goal be promptly paid within fourteen (14) calendar days of receipt by the County if those amounts are not in dispute;
2. To verify that the prime contractor, Miami Skyline, paid its CSBE subcontractors within two (2) business days of receipt of payment from the County, in accordance with Miami-Dade County Ordinance Section 10-33.02, Subsection (3)(B)(1)(d);
3. To examine whether documentation supporting the prime contractor's payment requisitions accurately and completely substantiated the requisition amounts and were properly authorized for payment by authorized County personnel. Such documentation reviewed included certified payrolls, applicable releases and CSBE Monthly Utilization Reports;
4. To check that all contract change authorizations for additional funds issued to date for the Tropical Park Field House Project were properly approved *prior* to their inclusion in payment requisitions;
5. To substantiate that MURs were properly completed and timely submitted to the Department of Business Development (DBD) by the prime contractor;
6. To evaluate the County Parks & Recreation Department's Project Management Division contract administration with respect to the timeliness of completion of Phase I of this construction project, which required that the press box elevator be 100% complete within the first 105 days after the Revised Notice to Proceed (NTP) was issued on January 17, 2002; and,
7. To assess and evaluate DBD's policies and procedures for monitoring contracts with CSBE goals and determine whether the prime contractor, Miami Skyline, complies with the CSBE utilization rates as well as County Ordinance 10-33.02 for the CSBE Program.

V. AUDIT RESULTS

A. PRIME CONTRACTOR PAYMENT REQUISITIONS

1. Inability to Measure Compliance with 14-day Payment Requirement

For the period reviewed, the OIG auditor sampled all three (3) Contractor Payment Requests submitted to the Parks Department as of June 21, 2002 by the prime contractor, Miami Skyline, in order to verify whether payments disbursed from the County were issued within the timeframes mandated by Administrative Order (A.O.) No. 3-22 for contracts containing a CSBE subcontractor goal.

For the three (3) Miami Skyline “Contractor Payment Requests” reviewed, the OIG auditor noted the following:

						Points of Measure		
REQUISITION			DATES			DAYS BETWEEN		
No.	Amount	Date Signed by A/E	Received by Parks Department	Approved by Parks Project Management Division	Check Disbursed	Date A/E Signed vs. Check Date	* Parks receipt date vs. Check Date	Date Signed by A/E vs. Parks Approval Date
1	\$ 190,763.45	2/13/02	?	2/25/02	3/6/02	21	N/M	12
2	\$ 122,984.41	4/3/02	?	4/26/02	5/2/02	29	N/M	23
3	\$ 124,962.87	5/16/02	?	5/30/02	6/6/02	21	N/M	14
\$ 438,710.73								

* N/M - not measurable

Due to the fact that the Project Management Division of the Parks Department did not date stamp the face of contractor’s payment requisitions upon receipt, the OIG auditor could not determine whether the County remitted payments to the prime within the timeframes mandated by County A.O. No. 3-22, Section XIV (B)(1), which requires the County to remit payment to the prime contractor within 14 days of receipt of a proper invoice. Without any other reference point, the OIG auditor used the date the Architect / Engineer (A/E) signed the payment requisition as the initial point of measure. The OIG auditor noted extensive time delays between the date the A/E

signed the payment requisition and Parks' approval date (i.e. between 12 days to 23 days) by the Parks Project Management Division.

The OIG auditor contacted the Parks Department regarding the extensive delays noted in approving the invoices for payment. The Project Manager stated that this delay is a result of the prime contractor's requisition package being rejected due to omission of required information by Miami Skyline. The OIG auditor **did not** find any supporting documentation (i.e. notes in Project Manger's files, correspondence between Parks and the prime contractor, etc.) to substantiate the reason(s) the Project Management Division rejected the requisition package from Miami Skyline.

Additionally, for resubmitted Contractor Payment Requisitions, the revised requisition did not bear any notation to show the date the prime contractor's corrected payment requisition was received by the Parks Department. Had a date stamp been imprinted on the face of the corrected contractor requisition, then the date the County received a proper invoice would have been readily determinable.

It should be noted that County Section 10-33.02 (B)(1)(a) requires the County to "notify the prime contractor, and Department of Business Development (DBD), **in writing**, of those billings submitted by the prime which are in dispute, and the reasons why they are in dispute, **within fourteen (14) calendar days** of receipt of such billings by the County." The OIG auditor notes that these types of disputes refer specifically to billing amounts on the payment requisitions and not omission of information.

The OIG auditor also noted that the "CSBE PROMPT PAYMENT" stamp was only used in one (1) of the three (3) payment requisitions submitted by the Prime contractor to the County.

Furthermore, during the field visit, the OIG auditor was informed that due to the length of time involved in receipt of a check payment from the County (i.e. between 21 and 29 days), the management of Miami Skyline resorted to opening a line of credit with a banking institution in order to maintain sufficient cash flow to pay its subcontractors on the Tropical Park Field House Project. However, as of July 1, 2002, Miami Skyline informed the OIG auditor that it has not borrowed against its line of credit.

2. Prime Contractor (Miami Skyline) Supporting Documentation for Pay Requisitions

The OIG reviewed the three (3) Contractor Payment Requisition forms submitted to the Parks Department in order to determine whether documentation supporting the payment requisitions was sufficient and properly approved for payment by authorized personnel (i.e. project manager, architect / engineer, etc.). Documentation reviewed included certified payrolls, applicable releases and CSBE Monthly Utilization Reports. Based upon reviewing the supporting documentation, it appears that documentation supporting the payment requisitions was sufficient and properly approved for payment by authorized personnel. **No exceptions were noted.**

The auditor also verified whether the Inspector General Fee (IG Fee) was properly deducted from contractor payments and remitted to the County in accordance with County Code Section 2-1076 as well as whether retainage amounts were correctly withheld in accordance with the contract terms. Both the IG Fee and the retainage amounts were properly withheld, and the IG Fee was appropriately remitted to the County for each of the three (3) payment requisitions reviewed. **No exceptions were noted.**

3. Change Authorization Forms (Contract Change Orders)

The following is the OIG auditor's understanding of the process flow used by the Project Management Division of the Parks Department for approving contract change requests:

- a. **Change Proposal Request (Document # 01028-CP)** – initiated and prepared by prime contractor, signed by the project's Architect / Engineer (A/E), and submitted to the Project Manager with applicable price quotation(s) and written justification for any time extension requests attached; Project Manager signs the request and forwards it to Construction Section Head of the Project Management Division for approval;
- b. **Change Authorization** (approved by Park's Chief of the Project Management Division) – issued if the Change Proposal Request is granted; prepared by the Project Manager, signed by the prime contractor, A/E and Project Manager based on the information stated on the Change Proposal Request; and
- c. **Change Order** (approved by Board of County Commissioners - BCC) – requested for any contract change requests that would amend the contract value or extend the completion date; prepared by the Project Manager; if approved by the Chief of the Project Management Division, it is submitted as an agenda item to the BCC for final approval.

The OIG reviewed all contract change authorizations issued to date for the Tropical Park Field House Project in order to determine whether these documents were reasonable and properly approved *prior* to the payment of the requisition.

All approved contract change authorizations are charged to the Construction Contingency Allowance account in accordance with Section 1.08, "Allowance Account," of the Contract Conditions, which states:

"An Allowance Account has been established for the purpose of funding portions of the work which are unforeseeable at the time of execution of the Contract, or for special work deemed desirable by the County to be incorporated into the Contract."

The amount of the allowance account established for this project is \$91,119.36 (\$45,559.68 per each Phase). As of completion of audit fieldwork on June 21, 2002, the OIG auditor noted that there have been five (5) change authorizations for cost, which involved withdrawing from the contingency allowance for the Tropical Field House project. For Phase I of the project, there have been three (3) Change Authorizations totaling \$20,413.90 and for Phase II there have two (2) Change Authorizations, which amounted to \$6,534.98. Thus, as of the date of audit fieldwork, the total amount of change authorizations drawn from the contingency allowance is \$26,948.88.

The table below details the five (5) Change Authorizations issued through May 30, 2002 and the scope of each one:

CHANGE AUTHORIZATION			REQUISITION		Phase	DESCRIPTION OF WORK	CONTINGENCY ALLOWANCE (RUNNING TOTALS)	
NO.	Amount	Approval Date	NO.	Payment Date			Phase I	Phase II
							\$ 45,559.68	\$ 45,559.68
1	4,600.00	2/26/02	001	3/6/02	I	Modify Press Elevator Foundation per A/E drawings & specs	40,959.68	
2	2,458.70	4/26/02	002	5/2/02	II	Cut through existing concrete ftg - sewer lines		43,100.98
3	12,912.30	5/30/02	003	6/6/02	I	Time extension of nine (9) days, install one (1) holeless dual jack hydraulic elevator, center doors, keyswitch / stainless door with overhead and profit	28,047.38	
4	2,901.60	5/30/02	003	6/6/02	I	Closing openings in elevator shaft with metal framing, wire mesh and stucco inside and outside	25,145.78	
5	4,076.28	5/30/02	003	6/6/02	II	Cut through 7 feet of existing below grade concrete foundation		39,024.70
\$ 26,948.88								

Based upon the OIG auditor's review of the five (5) change proposals and corresponding change authorizations which involved additional funds drawn against the contingency allowance, and in one case a time extension of nine (9) days (i.e., change authorization No. 3), it appears that the change authorizations executed through May 30, 2002 were adequately documented and properly approved prior to the payment of the requisition. **No exceptions were noted.**

4. Monthly CSBE Utilization Reports

In accordance with the requirements of the CSBE ordinance, the prime contractor is required to submit a "Monthly CSBE Utilization Report - MUR" by the 10th day of every month to the Department Of Business Development (DBD), certifying the amounts paid to the CSBE subcontractors. Failure to comply with the reporting requirements may result in the imposition of contractual sanctions or administrative penalties by the County.

To date, the prime contractor, Miami Skyline, has prepared five (5) MURs, which were forwarded to DBD. DBD personnel informed the OIG auditor that **three (3) of the five (5) MURs were incorrectly prepared**. Some of the inaccuracies included: (1) omitting the reporting period; (2) omitting "the amount paid to date;" (3) omitting the percentage of CSBE goal met to date incorrectly; and (4) in the Reporting Period section, rather than writing the dates covered by the MUR, the prime contractor wrote the name of the DBD Compliance Specialist receiving the MUR on the "To" line and on the "From" line, the name of the preparer of the MUR was written.

The OIG auditor reviewed the most recent MUR, which was for reporting period 04/25/02 – 05/25/02, in order to determine whether the amounts certified as payments to the CSBE subcontractors were accurately stated. On Wednesday June 19, 2002, the OIG auditor conducted a field visit to the office of Miami Skyline to review documentation supporting the amounts certified on the sampled MUR.

Based on the review of the cancelled checks and invoices obtained from the prime contractor, Miami Skyline, the amount certified on the MUR for reporting period 04/25/02 – 05/25/02 should be reflected as \$102,876.62. However, the OIG auditor notes that the amount certified on the MUR, which was \$123,991.30, is overstated by \$21,114.68. The overstatement was confined to one of the CSBEs reported on the MUR, Able Electric.

To determine what caused the \$21,114.68 overstatement on the MUR prepared by Miami Skyline, the OIG auditor reviewed a vendor payment report obtained from Miami Skyline's accounting ledgers. Specifically, the auditor reviewed all payments made to the CSBE subcontractors and noted that for the subcontractor "Able Electric," Miami Skyline incorrectly included on the MUR two (2) payments totaling \$21,114.68 paid to "Able Electric" for a different construction project, "Palm Aire Park." Thus, this is the explanation for the \$21,114.68 overstatement on the MUR reviewed by the OIG. This misstatement was promptly rectified by Miami Skyline with the submission of a revised MUR and forwarded to DBD.

5. Subcontractor / Supplier Releases of Claim

The OIG auditor obtained from the County’s Finance Department the “Subcontractor / Supplier Release of Claim” forms to determine whether the CSBE Subcontractors received all amounts due from the prime contractor (Miami Skyline) under the three (3) previous Contractor Payment Requests. For the release forms reviewed, the OIG auditor noted the following:

CSBE Subcontractor	Amount paid on Contractor Payment Request No's. 1 - 3	Less Retainage (10%)	[A] Total paid by County for scope of work performed by CSBE Subcontractor	[B] Amount certified on Subcontractor's / Supplier's Release of Claim (submitted with Requisition No. 3)	[B] - [A] Difference
Able Electric	27,560.00	2,756.00	24,804.00	30,956.68	6,152.68
C & F Decorating Services	10,208.60	1,020.86	9,187.74	6,642.00	(2,545.74)
Cooper Contracting	-	-	-	-	-
TASCO Plumbing	65,234.00	6,523.40	58,710.60	57,988.62	(721.98)
Unitech Mechanical Systems	-	-	-	7,290.00	7,290.00
	\$ 103,002.60	\$ 10,300.26	\$ 92,702.34	\$ 102,877.30	\$ 10,174.96

During the OIG auditor’s onsite visit on June 19, 2002 to Miami Skyline’s office, the OIG auditor reviewed payment vouchers, copies of cancelled checks, and the “Subcontractors / Supplier’s Release of Claim” form. As the Table above illustrates, four (4) of the five (5) CSBE subcontractors received payments from Miami Skyline. The fifth CSBE subcontractor has not begun its portion of the work.

The OIG auditor notes that two (2) of the CSBE subcontractors, C&F and TASCO Plumbing, received payments in amounts that were *less than* what had been invoiced to the County for the scope of work performed. This is because the prime contractor applies a profit margin percentage to the CSBE invoices submitted to the County. **No exceptions were noted.**

Additionally, the CSBE subcontractors “Able Electric” and “Unitech Mechanical Systems” received payments in amounts *greater than* what had been invoiced to the County for the scope of work performed (i.e., “Able Electric” received \$6,153 more and “Unitech Mechanical Systems” received \$7,290 more than invoiced to County by prime contractor). The OIG notes that the reason for Miami Skyline paying these two (2) CSBE subcontractors more than what had been invoiced to the County by the prime contractor for the CSBE Subcontractors scope of work is that both CSBE subcontractors submitted additional invoices to the prime contractor *after* the current month’s Contractor Payment Request had been submitted to the County.

Moreover, as a result of previous extensive time delays caused by the County, *Miami Skyline issued payment to these two CSBE subcontractors before receiving payment from the County* in an effort to ensure that these CSBE subcontractors maintained sufficient cash flow in order to complete the project in the **most efficient** manner possible. The OIG recognizes that Miami Skyline was under no obligation to pay these two (2) subcontractors *prior* to receiving payment from the County for the subcontractors' invoiced work. **These actions by Miami Skyline demonstrate its good faith commitment to complete the Tropical Park project in a timely manner while assuring that the CSBE subcontractors were paid immediately as opposed to waiting until the next payment requisition submission.**

Based upon reviewing the payment vouchers, the "Subcontractors / Supplier's Release of Claim" form and copies of cancelled checks from Miami Skyline, it appears that the CSBE / Subcontractor received all amounts due from the prime contractor (Miami Skyline) under prior requisitions for payments. **No exceptions were noted.**

B. REVIEW OF PAYMENTS TO CSBE SUBCONTRACTORS

1. Noncompliance with 2-day Payment Turnaround Time

The OIG auditor reviewed the prime contractor's, Miami Skyline, disbursements to the CSBE subcontractors to determine whether the CSBE subcontractors were paid by Miami Skyline within the timeframe mandated by County Administrative Order No. 3-22, which is within two (2) business days of receipt of payment from the County. For this audit step, the OIG auditor visited the prime contractor's (Miami Skyline) main office to review subcontractor invoices sent to Miami Skyline and the accompanying cancelled checks, which would verify that Miami Skyline paid the CSBE subcontractors.

Additionally, the OIG auditor directly contacted two (2) of the five (5) CSBE subcontractors to independently confirm the exact payment amounts received from the prime contractor, Miami Skyline. Based on the OIG auditor's inquiry, the two (2) CSBE subcontractors contacted verified that the payments received from the prime contractor as the payment amounts indicated on the cancelled checks the OIG auditor obtained from the prime contractor, Miami Skyline.

In total, the prime contractor, Miami Skyline, issued seven (7) check payments to its CSBE subcontractors. For each of the seven (7) payments, the OIG auditor calculated the number of days that lapsed between the prime contractor's receipt of payment from the County to the date that payment was issued to the CSBE subcontractors by the prime contractor. The OIG auditor's analysis revealed **that it took between three (3) to five (5) business days for the prime contractor, Miami Skyline, to issue payment to the CSBE subcontractors.** Thus, the prime contractor did not expedite payments to the CSBE subcontractors within the requisite two-day timeframe, as required by the CSBE Prompt Payment Ordinance.

The OIG auditor inquired of the prime contractor, Miami Skyline, as to what caused the delay in issuing payment to the CSBE subcontractors. **According to Miami Skyline, it was unaware of the two-day payment timeframe that was required of prime contractors who are meeting a CSBE goal.**

Based on audit inquiry with representatives from the Parks Department and the Department of Business Development (DBD) personnel as well as review of the supporting documentation provided, the two-day payment timeframe mandated by Miami-Dade County Ordinance Section 10-33.02, Section (3)(B)(1)(d) was emphasized during the pre-construction meeting which the prime contractor is required to attend. However, the OIG auditor **did not** find any supporting documentation evidencing the prime contractor's acknowledgement of receipt of this information.

The Table below illustrates the results of the OIG auditor's test work regarding payments made to four (4) of the five (5) CSBE subcontractors who received payments as one CSBE, Cooper Contracting, had not yet been mobilized at this stage of the Tropical Park project:

CSBE Subcontractor	Type of Service	PAYMENT DATES		
		Received by Prime Contractor from County	Disbursed to CSBE by Prime Contractor	**Prime Contractor Receipt Date vs. Date disbursed to CSBE
Able Electric	Electrical	3/6/02	3/13/02	5
TASCO Plumbing	Plumbing	3/6/02	3/13/02	5
Able Electric	Electrical	5/2/02	-	-
TASCO Plumbing *	Plumbing	5/2/02	4/25/02	-5
Able Electric	Electrical	6/6/02	6/11/02	3
C & F Decorating Services	Paint / Drywall / Stucco	6/6/02	6/11/02	3
TASCO Plumbing	Plumbing	6/6/02	6/11/02	3
Unitech Mechanical Sys. *	HVAC	-	6/17/02	-

* ¹ This footnote refers to the 1st column in the table above.

** ² This footnote refers to the last column in the table above.

¹ Miami Skyline paid these two (2) CSBE subcontractors for the scope of work performed even though Miami Skyline had not yet received payment from the County for this period as these CSBE invoices were not yet submitted to the County.

² The OIG auditor excluded the two weekend days, Saturday and Sunday, in this analysis.

C. PROJECT MANAGEMENT / ADMINISTRATION BY PARKS

According to the Agreement between Miami Skyline and Miami-Dade County, dated November 20, 2001, the Tropical Park Press Box Elevator, Field House, and Ticket Booth construction project was divided into two (2) distinct phases. The Project Management Division of the Parks Department informed the auditor that the construction work was divided into two (2) phases to expedite the construction of the elevator building to meet the code requirements specified by the “Americans with Disabilities Act (ADA),” which would allow Miami-Dade County the use of the existing Press-Box in the stadium at Tropical Park.

Section 1.06 of the contract’s General Conditions, “Commencement, Prosecution, and Completion of Work,” states the following:

“Time is of the essence. The work to be performed under this Contract shall commence on the effective date of the Notice to Proceed [NTP] and shall be completed and released to MDC [Miami-Dade County] upon completion of all punch list items within **Two hundred and forty (240)** calendar days after the effective date of said Notice-to-Proceed...

MILESTONES...

The contractor shall complete all Phase I work within (105) calendar days after NTP. Phase I is defined in “Exhibit A” [of the contract] and includes the following:

3. Within the first (105) calendar days after NTP the press box elevator must be 100% completed, to include the following:
 - a. “Certificate of Use and Occupancy” on the structure.
 - b. “Certificate of Inspection” on the elevator.
4. Complying with all permitting agencies having jurisdiction.
5. Completing all punch list items related with this phase.
6. Providing as-builts, and warranties.
7. Completing all other contract obligations as required.

The Contractor shall notify the Parks and Recreation Department in accordance with the contract and sufficiently in advance to allow all necessary inspections to complete this phase within the specified time required.

- D. The contractor shall complete all Phase II work within two hundred and forty (240) calendar days. Phase II is defined in “Exhibit A” and includes the following:
3. “Certificate of Use and Occupancy” on the field house and ticket booth building.
 4. Completion of all other site improvements as per contract documents including a Certificate of Use and Occupancy.
 5. Complying with all permitting agencies having jurisdiction.
 6. Completing all punch list items related with this phase.
 7. Providing as-builts, and warranties.
 8. Completing all other contract obligations as required.” [END QUOTE]

Pursuant to Article 1.07 of the Agreement, “Liquidated Damages,” the County can assess Miami Skyline with liquidated damages for failure to complete Phase I of this project within the specified timeframe (i.e., January 17, 2002 through May 17, 2002). It is stipulated in the contract that the County may assess \$600 per day for each day of delay until completion of Phase I.

Additionally, per Article 1.07 of the Agreement, “Liquidated Damages,” if Phase II of the construction project is not completed on time, the County can assess Miami Skyline with liquidated damages of \$300 per day for each day of delay. The timeframe for Phase II encompasses the period January 17, 2002 through September 28, 2002.

1. Non-Compliance with Contract Milestones for Completion of Phase I of Construction Project

Phase I of the project requires that the press box elevator be 100% complete within the first 105 days after the Revised Notice to Proceed (NTP) was issued on January 17, 2002. The timeframe for Phase I encompassed the period January 17, 2002 through May 17, 2002. As part of Phase I completion, the prime contractor is to obtain a “Certificate of Use and Occupancy” on the structure and a “Certificate of Inspection” on the elevator. The OIG auditor noted that as of June 13, 2002, Phase I still had not been completed.

Mr. Joel Arango, Construction Section Head – Project Management Division, was asked to advise the Office of the Inspector General (OIG) in writing as to what actions, if any, the County is pursuing with the prime contractor, Miami Skyline, as a result of this delay in completing Phase I.

On July 9, 2002, Mr. Arango provided the OIG with a written explanation of the delay in the completion of Phase I and the Parks Department's solution as to how the County would proceed with the completion of the Tropical Park construction project.

In Mr. Arango's documented response, he acknowledges that Phase I should have been substantially completed by May 17, 2002. However, Mr. Arango explained "once under construction some extensions were granted to the contractor for several delays, these extensions covered under change proposals 12, 13, 14, 15, and 19 extended the contract time by a total of 21 days to June 7, 2002." The OIG notes that in Park's response to the Draft Audit Report, Parks cites that these time extensions were granted as a result of additional changes in the scope of work. **[See Park's response in Appendix A, p. 5.]**

The Change Proposal Requests Mr. Arango is referring to include time extensions for construction work performed on both Phase I and II, as work was being performed concurrently for both project phases. In total, these change proposals granted an extension for time of 21 days (i.e., time extensions of 14 days for Phase I and 7 days for Phase II) from May 17, 2002 to June 7, 2002.

It should be noted that the prime contractor initiates the "Change Proposal Request – Document 01028-CP" and is required to attach justification for any Contract Time Extensions requested. The OIG auditor reviewed the Change Proposal Requests Nos. 12, 13, 14, 15, and 19 noting that **there was no explanation documented for the contract time extension as required by the Document 01028-CP, Change Proposal Request. Specifically, the document states "Attach complete breakdown for price quote and justification for any Contract Time extensions requested."** **[See Park's response in Appendix A, pp. 2 and 4, which reference use of Document 01028-CP.]**

The following Table documents the OIG auditor's observations:

Change Proposal Request No.	Time Extension in Days	Date of Change Proposal	Scope of Work relates to:	Signed by:
No.12	1 working day	Revised 6/25/02	Phase II (Field House)	Parks Project Manager
No.13	7 working days	Revised 6/25/02	Phase I (Elevator)	No signature
No.14	1 working day	Revised 6/25/02	Phase II (Ticket Booth)	Parks Project Manager
No.15	5 working days	Revised 6/25/02	Phase II (Ticket Booth)	Parks Project Manager
No. 19	7 working days	Revised 6/25/02	Phase I (Elevator)	Parks Project Manager
TOTAL DAYS	21 days			

On July 12, 2002, the OIG auditor was provided with the official Change Authorization Forms No. 6 – 10, which were signed and approved by the Chief of the Park's Project Management Division. Each Change Authorization provided corresponded to each of the Change Proposal Requests Nos. 12, 13, 14, 15, and 19. The OIG auditor notes that the contract time extensions requested on the Change Proposals were officially recommended for authorization via the Change Authorizations Nos. 6 –10.

The following Table documents the content of each of the Change Authorization forms:

Change Authorization No.	Corresponding Change Proposal Request No.	Scope of Work relates to:	Date of approval:	Authorized Signature of:
No.6	No. 12	Phase II (Field House)	7/10/02	Project Management Chief
No.7	No. 13	Phase I (Elevator)	7/10/02	Project Management Chief
No. 8	No. 14	Phase II (Ticket Booth)	7/10/02	Project Management Chief
No .9	No. 15	Phase II (Ticket Booth)	7/10/02	Project Management Chief
No. 10	No. 19	Phase I (Elevator)	7/10/02	Project Management Chief

Furthermore, in the July 9, 2002 documented response from Mr. Arango, he indicated that there were also permitting issues with regards to the existing structures of the press box and bleachers at Tropical Park, which the newly constructed elevator would provide access to. The OIG auditor notes that **neither the press box nor the bleachers were part of the original Tropical Park project.** Because both the press box and bleachers required modifications in order to be ADA compliant, Mr. Arango stated that County Building Department inspectors were unable to grant a Certificate of Use and Occupancy on the structure enclosing the freestanding elevator or Certificate of Inspection (C.I.) for the elevator, (i.e., Phase I of the Tropical Park project). **Therefore, as of June 11, 2002, the prime contractor, Miami Skyline, was unable to obtain substantial completion on Phase I (i.e., the elevator) of the project through no fault of his own.**

It should be noted that Miami Skyline has agreed to obtain all the necessary permits for the bleachers and press box on behalf of the County and will also perform the work for the required structural modifications. The Parks Department informed the OIG that it is currently finalizing a Contract Change Order for the additional costs associated with acquiring the permits and performing the additional modifications to the bleachers and press box to make these structures compliant with ADA requirements. Furthermore, the Project Management Division decided to “extend the completion date for the original Phase I scope to end concurrently with Phase II scope of work, thus obtaining final certifications for all facilities being built under this contract at the same time.” Parks management informed the OIG that the collapsing of Phase I and Phase II of the project would be included in a forthcoming Contract Change Order.

In conclusion, Phase I and Phase II of the Tropical Park Project No. 97023, should be substantially completed by early October 2002.

Note: Prior to the issuance of the Final Audit Report, the OIG requested documentation from the Parks Department regarding design specifications, permits, and the contract change order necessitated by the additional work to be performed by Miami Skyline. On August 28, 2002, Parks management informed the OIG that this documentation is forthcoming and will be provided to the OIG.

D. DBD MONITORING OF CSBE UTILIZATION & GOALS

The mission of Miami-Dade County's Department of Business Development (DBD) is to provide equal business opportunities to both minority-owned and small businesses operating in Miami-Dade County. To accomplish this objective, DBD is responsible for administering various programs aimed at increasing the level of participation of minority-owned and small businesses. One such program is the "Community Small Business Enterprise (CSBE) Program," which was established in 1997.

The CSBE Program is exclusively for County construction projects and allows small businesses, which qualify as a CSBE, to be awarded contract work on County construction projects where the contract contains either a CSBE trade-set asides and/or subcontractor goals. Administrative Order No. 3-22, "Community Small Business Enterprise (CSBE) Program for the Purchase of Construction Services," Section XIV. "Prompt Payment," requires that the undisputed portion of the construction invoices submitted by prime contractors, who are meeting a CSBE goal, be promptly paid by the County within fourteen (14) days of receipt of a proper invoice requisition. In turn, the CSBE Ordinance No. 97-52 requires the prime contractor to remit payment to its CSBE subcontractors within two (2) business days of receipt of payment from the County on invoiced amounts not in dispute.

DBD is responsible for monitoring and enforcing the provisions established for the CSBE program. To fulfill its oversight responsibility, DBD has established policies and procedures for monitoring compliance with the requirements of the CSBE program. The following are functions DBD performs for all contracts with CSBE goals to accomplish its objectives:

- ❖ A DBD Compliance Specialist is required to attend all pre-bid and pre-construction meetings for construction projects with CSBE goals and/or set-asides. DBD has developed a form known as a "Conference Summary Report" for the purpose of outlining the items to be discussed by DBD at the Pre-Construction Conference. At this pre-construction meeting, the DBD Compliance Specialist reviews the CSBE requirements with the prime contractor and the CSBE subcontractors and emphasizes the following:
 1. Prime contractor Responsibilities;
 2. CSBE Subcontractor Responsibilities;
 3. Monthly Utilization Reporting Requirements;
 4. Subcontractor Agreement Requirements; and,
 5. Penalties and Sanctions.

However, **DBD does not require for the prime contractor or its CSBE subcontractors to sign this summary report so as to provide evidence that the contractors are aware and understand all requirements and responsibilities that the contractors are obligated to comply with as part of the County's CSBE program.**

- ❖ DBD Compliance Specialist conducts on-site inspections by visiting the construction site on a routine basis, usually three days each workweek, to observe the work of the CSBE subcontractors. The DBD Compliance Specialist confirms that the CSBE subcontractors actually performing the work are the subcontractors listed on the prime contractor's "Schedule of Participation," which lists the specific subcontractors meeting a CSBE goal.
- ❖ DBD enforces the provisions of Ordinance 90-143, "Responsible Wages and Benefits Ordinance," by reviewing the wage rates and level of benefit amounts paid to workers on construction projects which have a contract value greater than \$100,000. DBD accomplishes this by reviewing certified payrolls and by visiting the project site to interview the workers present at a given location and documenting their answers to questions such as job duties, levels of responsibilities, hourly pay, hours worked, etc. In case of discrepancies or non-compliance, the prime contractor is asked to provide a revised certified payroll report.
- ❖ On a monthly basis, the prime contractor is required to provide DBD with a Monthly CSBE Utilization Report (MUR) to certify to DBD what has been paid by the prime to the CSBE subcontractors. A DBD Compliance Specialist reviews the MUR and compares it to the Schedule of Participation (SOP) to verify that all CSBE subcontractors listed on both forms cross-check and there has been no unauthorized substitution of CSBE subcontractors. DBD also uses the MUR to monitor the whether the CSBE goal established for a given contract has been achieved by the prime contractor.
- ❖ A DBD Contract Compliance Specialist randomly conducts audits of the prime contractor's MUR to verify the validity of the certified payroll submitted as being paid to the CSBE employees. During the audit, all cancelled checks and certified payrolls are requested by DBD via a formal letter for the CSBE subcontractor(s) under audit.

Additionally, the prime contractor is responsible for notifying DBD, in writing, of those amounts billed by the CSBE subcontractor that are in dispute and the specific reasons why they are in dispute within five (5) calendar days of receipt of the CSBE subcontractor's invoice.

1. CSBE's Non-Compliance with the Responsible Wages and Benefits Ordinance (Ord. 90-143)

Based on OIG audit inquiry of DBD personnel, one CSBE subcontractor, "C & F Decorating Services, Inc.," had been found to be in non-compliance with the "Responsible Wages and Benefits Ordinance" (Ord. 90-143). Specifically, a DBD Compliance Specialist was prevented by "C & F Decorating Services, Inc.," from interviewing its employees during an on-site visit by DBD. As a result, on May 30, 2002, DBD issued a Notice of Violation (NOV) to both the prime contractor, Miami Skyline, and C&F, which involved this CSBE subcontractor. This was the first NOV issued to "C & F Decorating Services, Inc." and DBD stated to the prime contractor that "further violations may result in a recommendation to the County Manager that C&F, its principal owners and/or qualifying agents be prohibited from bidding on or otherwise participating on County contracts for a period of up to three years.

2. CSBE Subcontractor's Violation of the CSBE Ordinance (Ord. 97-52)

On July 8, 2002, a Notice of Violation (NOV) was issued as a result of "C & F Decorating Services, Inc.," subcontracting its drywall scope of work to a non-CSBE subcontractor, "Alcard Group, Inc." In the NOV letter addressed to Miami Skyline and C&F, DBD indicated that the violation was due to the fact that the contractor deviated from the list of CSBE subcontractors listed on the Schedule of Participation (SOP) at the time of the prime contractor's bid submission. DBD explained that only if the subcontracting CSBEs listed on the SOP "performed actual work with their own forces" should the expenditures paid to such CSBEs be counted toward meeting the CSBE goals established in the contract.

Further, DBD stated that "in the event that during the performance of a contract, a first tier CSBE is not able to provide the services specified on the SOP, the successful bidder [i.e. the prime contractor] must locate a CSBE to substitute for the unavailable CSBE and receive approval for the substitution from DBD by submitting a request in writing to the Director of DBD through the Contracting Officer. Deviations from the SOP without prior approval from the DBD constitute a violation of Ord. 97-52."

The OIG notes that DBD did not issue a response to the Draft Audit Report. Without the benefit of DBD's response, the OIG does not know whether DBD recalculated the correct CSBE utilization rate, which should exclude C&F's improperly subcontracted scope of work. Moreover, the OIG can not determine the impact that C&F's actions has on Miami Skyline's progress in achieving its CSBE utilization rate for this contract.

3. Monitoring of the CSBE Utilization Rate

The OIG auditor notes that DBD monitors the prime contractor's CSBE utilization rate using dollar amounts paid to the CSBE subcontractors documented on the MURs. For the one-month reporting period April 25, 2002 through May 25, 2002, the OIG auditor calculated the CSBE utilization rate at 17%. Although the CSBE goal for this contract is 23%, the OIG recognizes that there is much work yet to be completed on this project. Additionally, one of the CSBE subcontractors, "Cooper Contracting," has not started its portion of the scope of work, which is for underground utilities. Therefore, it is reasonable that CSBE utilization rate is presently at 17%.

As previously noted in this audit report, the OIG found a \$21,114.68 overstatement in the April – May 2002 MUR reviewed. Subsequently, a revised MUR was submitted by Miami Skyline to DBD, which properly excluded the \$21,114.68 erroneously included in the amount originally reported as being paid to a CSBE subcontractor. Thus, this revised MUR will affect the CSBE utilization rate. Therefore, DBD should continue to monitor the prime contractor's CSBE utilization rate to ensure the CSBE goal is achieved by the prime contractor.

4. CSBE Nonperformance Issues Resulted in Delay of Completion of Phase I

The OIG auditor notes that DBD has proactively been involved in attempting to remedy nonperformance issues with one problematic CSBE subcontractor, C&F. On June 3, 2002, DBD held a mediation meeting with the prime contractor, Miami Skyline, and the CSBE subcontractor, C&F, to discuss the subcontractor's nonperformance and scope of work clarification.

Due to the fact that the subcontractor was not performing according to the terms of its contract, Phase I of the project had not been completed by the original completion date of May 17, 2002. Mr. Joel Arango, Construction Section Head for Parks Project Management Division, also stated to the OIG auditor that Phase I had to be completed by mid-July 2002 for an international soccer event.

On June 4, 2002, the OIG auditors were provided with additional information by DBD regarding the noncompliance issues for this CSBE subcontractor, C&F. The DBD Compliance Specialist provided the OIG auditor with a written synopsis of the sequence of events that have taken place between Miami Skyline and the CSBE subcontractor in question, C&F. In brief, the OIG obtained the following chronology of events as of June 4, 2002 from DBD:

- a. On April 26, 2002, the prime contractor, Miami Skyline, notified DBD that the CSBE subcontractor, C&F, had caused a three (3) week delay to the "critical path" of the construction project.
- b. On May 1, 2002, DBD informed the Parks Department's Project Manager that the prime contractor could request for substitution of C&F via DBD.

- c. The following day, on May 2, 2002, DBD performed a site visit to Tropical Park and was informed by Miami Skyline that the subcontractor's, C&F, non-performance on the elevator shaft (Phase I of project) is causing a negative impact on the project's critical path.
- d. On May 8, 2002, Miami Skyline informs DBD that it does not want to substitute the CSBE subcontractor, C&F, as it would cause further delays in the progress of the project.
- e. On May 16, 2002 (one day before Phase I was to be completed), Miami Skyline informs DBD that C&F has completed only 10% of the elevator work C&F was under contract to perform. As a result, Miami Skyline performed a portion of the elevator work with Miami Skyline's own work force.
- f. On May 21, 2002, DBD conducted a site visit to the Tropical Park project and observed that C&F was NOT onsite. On this same date, DBD received a fax from C&F that explained that C&F did not show up at the project site due to nonpayment by Miami Skyline. C&F stated that payment requests submitted to Miami Skyline were over 60-days past due. Subsequently, DBD requested from the Park's Project Manager his opinion of the performance of C&F and recommendation(s) as to what step(s) should be taken by the County regarding this CSBE subcontractor.
- g. The following day, May 22, 2002, DBD received an email from the Parks Department Project Manager explaining that C&F is a "major contributor to the predicament" of Miami Skyline, the prime contractor.
- h. On May 29, 2002, DBD set-up a meeting for June 3, 2002 with Miami-Skyline, the prime contractor; C&F, the CSBE; the Parks Department Project Manager and Construction Section Head; and DBD representatives from the Contract Review & Compliance Division. The purpose of the meeting was to discuss C&F's nonperformance issues and scope of work clarification.
- i. On June 3, 2002, a mediation meeting was held with the contractors, DBD, and personnel from the Project Management Division of the Parks Department. An agreement was reached during this meeting whereby C&F Decorating Services agreed to complete its scope of work for Phase I of the project no later than Thursday, June 6, 2002.

The OIG auditor notes that since the June 3, 2002 mediation meeting, DBD issued a Notice of Violation (NOV) on July 8, 2002, to C&F as a result of subcontracting its drywall scope of work to a non-CSBE subcontractor, "Alcard Group, Inc." In the NOV letter addressed to Miami Skyline and C&F, DBD indicated that the violation was due to the fact that the contractor deviated from the list of CSBE subcontractors

on the Schedule of Participation (SOP) submitted at the time of the prime contractor's bid submission.

DBD further explained to C&F that in the event a first tier CSBE is not able to provide the services specified on the Schedule of Participation (SOP), it is the responsibility of the prime contractor to find another CSBE to substitute for the unavailable CSBE. However, the prime contractor must receive the approval from the Director of DBD *prior* to the substitution by submitting a written request to the Director of DBD through the Contracting Officer. Thus, noncompliance with these requirements resulted in a violation of the CSBE Ordinance.

In conclusion, DBD has implemented comprehensive policies and procedures for the purpose of monitoring contractor compliance with the CSBE program requirements. For this particular construction project at Tropical Park, the DBD Contract Review and Compliance Division has been actively involved in attempting to resolve the nonperformance issues with this particular CSBE subcontractor on behalf of both the County Parks Department and the prime contractor, Miami Skyline. The OIG intends to follow-up on the resolution of these particular issues with DBD and the Parks Department, which will be addressed in future OIG audit reports.

The OIG appreciates the cooperation and courtesies extended by all County personnel and Miami Skyline representatives who were involved in our audit of the Tropical Park Construction Project No. 97023.

APPENDIX

1. Notification letter to Park and Recreation Department.
Park and Recreation Department's response.
2. Notification letter to Department of Business Development (DBD).
No response received.
3. Notification letter to Miami Skyline Construction Co.
No response received.