



# Memorandum

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To: Hon. Solomon C. Stinson, Chair  
and Members, Miami-Dade County School Board  
Alberto Carvalho, Superintendent, Miami-Dade County Public Schools

From:  Christopher Mazzella, Inspector General  
for Miami-Dade County Public Schools

Date: June 22, 2009

Subject: M-DCPS Office of Schools Facilities, Construction Contract Monitoring  
Practices at Southside Elementary School, Ref. IG09-10SB

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By way of this memorandum, I want to advise you of certain areas of the Miami-Dade County Public Schools (M-DCPS) school construction program that, we believe, would be better served with the implementation of proactive construction contract monitoring procedures.

As you are aware, the Office of the Inspector General (OIG) is engaged in an ongoing joint investigation with the Miami-Dade State Attorney's Office; the United States Attorney's Office for the Southern District of Florida; and various other federal, state, and local law enforcement agencies, relating to the Southside Elementary School Modular Classroom Addition Project. The investigation has uncovered evidence of criminal conduct in connection with the construction project, including multiple violations of federal and state law. As such, the criminal investigation is continuing, and I will be able to more fully brief you on that matter in the future, when it is appropriate to do so. However, at this juncture, I do believe that sharing my office's observations and recommendations in the area of construction contract monitoring are in order.<sup>1</sup>

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<sup>1</sup> Consistent with Section 6(a) of the Interlocal Agreement between Miami-Dade County and M-DCPS, pursuant to which the OIG provides inspector general services to M-DCPS, we are providing our findings in this matter in the form of an advisory memorandum, rather than as a draft report, so as not to jeopardize the ongoing criminal investigation. In addition, we have redacted the names of all parties involved, have limited the recitation of the factual background, and have limited our description of the methodology of the investigation, particularly as it pertains to evidence gathering techniques. As such, the issuance of this memorandum does not adhere to the 10-day advance copy requirement. However, the OIG has shared the contents of this memorandum with interested law enforcement authorities and will be providing them with a copy.

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In short, there is no adequate program in place to monitor and enforce contractor compliance with applicable federal, state, and local regulations, and there are no requirements imposed on the contractors for them to ensure compliance by their subcontractors. Especially now, with much attention focused on government-funded construction projects, it is paramount that public entities ensure that the recipients of public funds (government contractors and their subcontractors) are in compliance with federal, state, and local regulations concerning the worksite and its employees, and that the workers on these public projects are not exploited.

To that end, as a part of the OIG review, we evaluated existing federal and local enforcement techniques, as described below, that M-DCPS may want to consider adopting. Such prevailing best practices available for incorporation, as well as plain common sense, dictate that M-DCPS can and should act immediately to establish a meaningful contractor monitoring program to identify and prevent violations, and to enforce workplace regulations at M-DCPS construction sites.

#### *The Southside Elementary School Modular Classroom Addition Project*

Southside Elementary School (Southside) is located at 45 SW 13<sup>th</sup> Street, Miami, Florida, and has an enrollment of 308 students from pre-kindergarten through fifth grade. In 2005, M-DCPS authorized a \$3.5 billion capital improvement program for new construction and renovations of existing facilities. Included in this capital work plan was funding allocated for additional construction at Southside.

On July 15, 2008, M-DCPS awarded a construction management (CM) agreement, with a guaranteed maximum price of \$16,170,000, for the Southside Elementary School Modular Classroom Addition Project (Southside Project). Pursuant to the award, the CM firm covenanted to furnish its services in full accordance with applicable federal, state, and local laws and regulations.

The CM firm also acts as the general contractor and, as such, procures the construction services of all the subcontractors. It is the subcontractors, and their subs, that provide the labor forces for the actual construction. Pursuant to the contract award, the CM firm acknowledged that M-DCPS has no responsibility for the performance of the subcontractors.

#### *Investigative Background*

The investigation has determined that since at least February 2009, many of the construction workers at the Southside Project site were being required to work under aliases, were being paid substandard wages, and were required to cash paychecks issued under fictitious names at a mobile check cashing company at the construction site. These

workers included undocumented workers and both registered aliens and U.S. citizens. Additionally, many of the construction workers did not receive overtime wages and were not covered by workers compensation insurance. The workers who questioned the arrangement were told that if they did not work under an alias with the aforementioned conditions, they would not be allowed to work on the Southside Project.

### *OIG Review of M-DCPS Construction Oversight Procedures*

School construction projects are administered through the M-DCPS Office of School Facilities (OSF). OIG Special Agents learned that no specific governing authorities exist, such as M-DCPS rules or procedures, to monitor and address contractor compliance with applicable federal, state, and local laws and regulations. OSF, which is responsible for the oversight of construction projects, relies upon contractors to police themselves in accordance with M-DCPS construction contracts. The contracts generally require the CM firms to comply with federal, state, and local laws and regulation, and contain noncompliance provisions including sanctions such as civil action and debarment. These “boilerplate” requirements are imposed on the subcontractors in their agreements with the CM firm.

OIG Special Agents met with OSF staff, who related the following:

- Contractually, M-DCPS staff has the authority to look into any issue on a school construction site, at all levels from the construction manager to the lowest level subcontractor. However, due to the lack of resources, no staff members or resources have been devoted to actively monitor workplace compliance.
- With regard to the criminal activities that took place on the Southside Project, OSF had no procedures in place that would have detected these activities. Likewise, OSF has no way of knowing if similar illegal activities are taking place on other construction sites.
- OSF is currently exploring the possibility of site enforcement as an additional responsibility of M-DCPS construction site project managers, including considering training a small unit to conduct spot checks. OSF is also considering requesting additional documentation from the CM first and its subcontractors, within the constraints of existing contracts.
- OSF recently issued a letter to all contractors doing business with M-DCPS reasserting that they must adhere to all federal, state and local laws.
- M-DCPS has reached its peak of capital construction activities, and as activities decline, resources will be freed up to allow increased resources to be placed on contractor compliance monitoring.

## *Existing Federal and Local Compliance Models*

We evaluated some existing federal and local enforcement practices, which could be adopted by M-DCPS in whole or in part, to monitor contractor compliance.

### *1. E-Verify Program and the IMAGE Program*

E-Verify is an Internet based system operated by the U.S. Department of Homeland Security (DHS), in partnership with the Social Security Administration (SSA), that allows participating employers to electronically verify the employment eligibility of their newly hired employees. E-Verify works by allowing participating employers to electronically compare employee information taken from the Form I-9 (the paper-based employment eligibility verification form used for all new hires) against more than 449 million records in SSA's database and more than 80 million records in DHS' immigration databases. Results are returned within seconds.<sup>2</sup>

In June 2008, Presidential Executive Order 12989, as amended, directed all federal departments and agencies, as a condition of each future federal contract, to agree to use an electronic employment eligibility verification system to verify the employment eligibility. The DHS Secretary, thereafter, designated E-Verify as the system of choice to ensure that the federal government only does business with companies that agree to verify the legality of their new hires and further, that the specific employees tapped to perform contract services in the United States for the federal government are authorized to work in this country.<sup>3</sup>

To combat unlawful employment and reduce vulnerabilities that help illegal aliens gain such employment, the U.S. Immigration and Customs Enforcement (ICE) Mutual Agreement between Government and Employers (IMAGE) program was initiated in 2007. The goal is to assist employers in targeted sectors to develop a more secure and stable workforce and to enhance fraudulent document awareness through education and training. Participating employers in the IMAGE program enroll in E-Verify and receive training on proper hiring procedures, fraudulent document detection, and anti-discrimination practices.<sup>4</sup>

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<sup>2</sup> Source: <http://www.uscis.gov/portal/site/uscis>

<sup>3</sup> Source: [http://www.dhs.gov/xnews/releases/pr\\_1213039922523.shtm](http://www.dhs.gov/xnews/releases/pr_1213039922523.shtm)

<sup>4</sup> Source: <http://www.ice.gov/partners/opaimage/>

## ***2. The Miami-Dade County Program***

The Miami-Dade County Small Business Department houses a Contract Monitoring and Compliance Division (CMCD)<sup>5</sup>, which proactively seeks to ensure compliance with wage and workforce requirements by taking such actions as:

- Requiring the submission of certified payrolls, monthly utilization reports, and other project-related documents by contractors and their subs to report their compliance with applicable laws and regulations.
- Conducting desk audits of the required documentation to further ensure compliance and identify possible violations.
- Conducting random site interviews and observations of employees to determine contractor compliance, including whether employees are properly authorized, and whether they are receiving the required wages.
- Working with contractors to resolve issues of non-compliance and issuing *Notices of Violation*, where warranted.

## ***3. The Construction Industry Perspective***

In addition to assessing existing enforcement techniques, M-DCPS can readily tap the collective knowledge and expertise of the construction industry, perhaps by convening workshops with selected M-DCPS prequalified contractors. Such efforts would convey to the industry that M-DCPS is increasing its vigilance on worksite compliance.

### ***OIG Recommendations***

The OIG strongly recommends that M-DCPS create and enforce policies and procedures designed to bring about effective, real-time workplace monitoring at its school construction sites. The OIG believes that M-DCPS should explore the implementation of various techniques, including those used by E-Verify, IMAGE, and CMCD, to ensure that it does not do business with contractors that hire unauthorized workers, pay substandard wages, or otherwise commit workplace violations.

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<sup>5</sup> The CMCD monitors all contracts and contractors for wage violations, not only those projects meeting a small business utilization goal or projects that were bid as set-aside contracts for small business.

***OIG Requested Follow-Up***

Pursuant to Section 3(c) of the Interlocal Agreement, the OIG requests that we be provided with a report within 90 days, on or before September 22, 2009, regarding our recommendations that contractor monitoring be implemented and measures be taken to increase workplace compliance by M-DCPS construction contractors.

cc: Mr. Luis Garcia, Interim School Board Attorney  
Mr. Jose Montes de Oca, Interim Chief Auditor  
Mr. Jaime G. Torrens, Chief Facilities Officer, Office of School Facilities