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To: Hon. Chairwoman Perla Tabares Hantman and Members  
Miami-Dade County School Board  
  
Alberto Carvalho, Superintendent, Miami-Dade County Public Schools

From: Mary T. Cagle, Inspector General 

Date: October 10, 2014

Subject: OIG Final Report of Investigation On-going Misclassification by M-DCPS of  
EPIC Construction's Licensure Status for Contractor Prequalification and  
Contract Award Eligibility; SB1314-1001

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Attached please find a Miami-Dade County Public Schools (M-DCPS) Office of the Inspector General (OIG) Final Report of Investigation. This investigation concerned allegations that EPIC Construction Inc. (EPIC) was not a Certified General Contractor, even though it was prequalified in that category and bid on job order contracts, which contained that requirement. The OIG substantiated the allegation. EPIC had previously been awarded two job order contracts, and had been recommended to receive a third contract, in June 2013, when the allegation was made.

This report covers EPIC's contracting history with the School District since 2005. It also describes more recent events—events that took place after the complaint was made in June 2013. While these contracting acts pertain only to maintenance-related construction and the utilization of job order contracts, certain processes (namely, the prequalification process and bid-responsiveness review process) have District-wide applicability. As such, the OIG provides, at the end of the report, one recommendation for consideration.

This report, as a draft, was provided to EPIC, the M-DCPS Office of Facilities and the Office of Economic Opportunity through the Superintendent's Office, and to one former M-DCPS employee. Written responses were received from EPIC and the Superintendent's Office. They are included in this final report as Appendix A and B, respectively.

As mentioned above, this report contains one recommendation. As such, we are requesting to be provided with a status report in 60 days, on or before December 8, 2014, regarding the adoption and implementation of this recommendation.

Attachment

cc: Walter J. Harvey, School Board Attorney, Miami-Dade County Public Schools  
Jose Montes de Oca, Chief Auditor, Miami-Dade County Public Schools  
Individuals previously provided with the draft report

**MIAMI-DADE COUNTY PUBLIC SCHOOLS OFFICE OF THE INSPECTOR GENERAL**  
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**INTRODUCTION & SYNOPSIS**

In August 2013, the Office of the Inspector General (OIG) received a complaint concerning irregularities in the proposed award of Miami-Dade County Public Schools (M-DCPS) Job Order Contracts (JOCs) 13-C1 and 13-C2. In summary, the complaint alleged that EPIC Construction, Inc. (one of the firms that bid on JOC13-C1 and JOC13-C2, and who was one of two firms originally recommended for award) was not a licensed General Contractor, as required by the contract's minimum qualifications. The complaint questioned whether M-DCPS staff were doing their job by verifying EPIC's contractor license prior to recommending the award. The complaint also stated that the contract's requirements were in the process of being modified so that a firm like EPIC, licensed only as a Certified Building Contractor, would not be disqualified.

The OIG investigation substantiated the allegations. The investigation revealed that the M-DCPS Contractor Prequalification Department wrongly prequalified EPIC, a Certified Building Contractor, to bid as a General Contractor. EPIC's initial prequalification status was wrongly bestowed in 2006; thereafter, EPIC was improperly approved for recertification as a prequalified General Contractor every year from 2007 through 2013.

The OIG investigation determined that in 2006, Prequalification staff questioned this discrepancy (Building vs. General Contractor); however, EPIC was prequalified as a General Contractor despite the fact that it was not one. Moreover, during the annual recertification process, M-DCPS verified EPIC's contractor licensure status with the State of Florida. Staff verified that EPIC only held a Building Contractor's license—not a General Contractor's license—nevertheless, EPIC's prequalification status in the category of General Contractor was renewed every year.

EPIC, instead of attempting to correct this error, held itself out as a General Contractor and bid on contracts requiring a Certified General Contractor's license. EPIC also submitted affidavits, as part of its bid packages, certifying that it was a General Contractor—when, in fact, it was not. M-DCPS awarded two contracts to EPIC (JOC06-C5 and JOC10-C3), and recommended EPIC for a third contract (JOC13-C1). EPIC received over \$3.3 million from M-DCPS for work performed under the 2006 and 2010 contracts.

In June 2013, as JOC13-C1 was being processed for award to EPIC, the Office of School Facilities received a complaint that EPIC was not a General Contractor, and consequently should be disqualified for not meeting the contract's minimum qualifications. Upon verification, M-DCPS staff did not disqualify EPIC, but did request that the proposed contract awards (both JOC13-C1 and JOC13-C2) be withdrawn. On or around the same

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time, the Office of Economic Opportunity (OEO), the unit now in charge of Contractor Prequalification, learned that EPIC was not a General Contractor, and, on its own accord, issued EPIC a new certificate officially prequalifying it as a "Building Contractor." While this was consistent with EPIC's true licensure status, the revised prequalification was accorded without going back before the Contractor Prequalification Review Committee or the School Board.

The following month, the Superintendent requested that the School Board reject all bids on JOC13-C1 and JOC13-C2, allow staff to expand the categories of contractors eligible to bid on the contracts, and re-advertise the contract solicitations. The revised solicitations, which now allowed for both General Contractors and Building Contractors to bid, were advertised in September 2013, but were withdrawn prior to the receipt of bids. (See footnote 19 on page 16.)

While EPIC was never awarded JOC13-C1, EPIC still had over five months remaining on its existing 2010 JOC contract (JOC10-C3B<sup>1</sup>). The 2010 JOC (like the 2006 and 2013 JOCs) required that the awarded firm be a licensed General Contractor. Having learned that EPIC was not a General Contractor, the Facilities staff did not terminate EPIC from its existing contract. Instead, work in progress was allowed to continue, EPIC continued to submit payment requisitions and get paid, and two new work orders (totaling over \$130,000) were issued to EPIC even though it did not meet the minimum qualifications required by the contract.

The events uncovered in this investigation, from 2006 to the present, document a case history of disregard for established program and contracting protocols. The awarding of these JOCs to EPIC—contracts that required a valid General Contractor's license—came at the expense of the actual, certified general contractors that had participated in these competitive procurements. While the conduct described in this report pertains to job order contracts utilized by the Facilities Operations Maintenance Division—and not General Obligation Bond work—many of the procurement processes are similar. As the School District implements its 21<sup>st</sup> Century Schools General Obligation Bond, it is more important than ever to assure the contractor community that procurement processes will be respected and contract requirements will be followed.

### **OIG JURISDICTIONAL AUTHORITY**

The OIG provides inspector general services to M-DCPS pursuant to an Interlocal Agreement (ILA) between Miami-Dade County and the M-DCPS Board. The ILA governs the scope and jurisdiction of the OIG's activities. Among the authority, jurisdiction,

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<sup>1</sup> The suffix "B" refers to the contract being on its second one-year extension.

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responsibilities and functions conferred upon the OIG through the ILA is the authority and jurisdiction to investigate M-DCPS affairs, including the power to review past, present, and proposed programs, accounts, records, contracts and transactions. The OIG shall have the power to require reports and the production of records from the M-DCPS Superintendent, School Board members, School District departments and allied organizations, and School District officers and employees, regarding any matter within the jurisdiction of the OIG.

**BACKGROUND: INDIVIDUALS & ENTITIES COVERED IN THIS REPORT**

***EPIC Construction, Inc.***

EPIC is a construction company located at 11705 S.W. 69<sup>th</sup> Avenue, Pinecrest, FL 33156.<sup>2</sup> EPIC was incorporated as a for-profit corporation in the State of Florida in 1987 under FEIN/EIN Number 050035587.

For the periods relevant to this report, the registered Officers/Directors of EPIC are Rita K. Hernandez and Miguel Hernandez, Jr. Rita Hernandez serves as President and Director, and is the sole owner of the company. Miguel Hernandez serves as Vice President and Director.<sup>3</sup>

Miguel Hernandez is a State of Florida Certified Building Contractor.<sup>4</sup> His license qualifies EPIC as a Certified Building Contractor.<sup>5</sup> As the qualifying agent (Qualifier) for the company, the license numbers of Miguel Hernandez and EPIC are the same – CBC1251847.<sup>6</sup> Miguel Hernandez is also EPIC's designated Project Manager.

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<sup>2</sup> This is EPIC's current principal address and mailing address listed with the Florida Department of State, Division of Corporations.

<sup>3</sup> Former officers include William Hernandez and Mireya Hernandez. William Hernandez, a licensed Building Contractor, was also the former qualifying agent (Qualifier) for EPIC. Matthew Peter was recently added as a Vice President and Director.

<sup>4</sup> The OIG has recently learned that Miguel Hernandez applied to take the State of Florida Certified General Contractor License (GC) test. Mr. Hernandez applied on or about May 8, 2014 and was declared exam eligible. Mr. Hernandez passed the General Contractor exam on June 18, 2014. According to State records, Miguel Hernandez received his General Contractor license on August 5, 2014 and is the qualifying agent for EPIC.

<sup>5</sup> In Florida, a construction company must apply for a license through a qualifying agent. A qualifying agent is a person who possesses the requisite skill, knowledge, and experience, and has the responsibility to supervise, direct, manage, and control the contracting activities of the business organization.

<sup>6</sup> The prefix CBC stands for Certified Building Contractor. Similarly, Certified General Contractor licenses begin with the prefix CGC.

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***Office of School Facilities (Facilities) & Facilities Operations, Maintenance (FOM)***

FOM is a division within the larger Office of School Facilities (Facilities), which also includes capital construction and architectural and engineering services. Facilities is headed by Jaime Torrens, Chief Facilities Officer. FOM is headed by Assistant Superintendent Carl Nicoleau, who reports to Mr. Torrens. FOM is a multifaceted service organization responsible for all aspects of preventive, routine, and emergency maintenance of educational and auxiliary facilities owned or leased by the school district. FOM is responsible for managing large capitalized maintenance projects, using a combination of in-house and contracted services. The job order contracts that are discussed in this report (JOC06-C5, JOC10-C3, and JOC13-C1) are under the purview of FOM. Those within FOM who were responsible for the issuance of JOC work orders include Francis Hoar, Administrative Director, and Michael Krtausch, Executive Director. The procurement process to select and award JOC contractors is handled by Isora Castro, Executive Director for Capital Construction Budget and Contract Management (CCBMC).

***Contractor Prequalification Department & Contractor Prequalification Review Committee (CPRC)***

The M-DCPS Contractor Prequalification Department was created by Board Rule 6Gx13-7D-1.05<sup>7</sup> in 1998, pursuant to statutes requiring school boards to prequalify contractors. The functions and responsibilities of the Contractor Prequalification Department were designed to avoid conflicts of interests between it and the other construction divisions within Facilities. The Contractor Prequalification Department processes all of the applications from contractors, design builders, and construction management firms wanting to provide services for M-DCPS. Once the applications are processed, the Contractor Prequalification Department provides a summary sheet listing the contractor's name, type of certification, bonding capacity, recommended award amount, and copies of the pertinent documents to the Contractor Prequalification Review Committee (CPRC).

The CPRC is "responsible for reviewing and evaluating Contractor Prequalification Applications determining the eligibility, thereof, and recommending that contractors be prequalified, or not, to bid on construction projects of a particular scope and type with a value that does not exceed a certain dollar volume."<sup>8</sup> The CPRC's recommendations are forwarded to the School Board for approval.

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<sup>7</sup> Replaced by Policy 6334.

<sup>8</sup> Policy 6334 – *Prequalification of Contractors for Educational Facilities Construction*, Section (B)(6) Definitions.

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In 2006, the Contractor Prequalification Department was organizationally under the Division of Business Development and Assistance, under the supervision of Dr. Rose Barefield-Cox (deceased). Sometime in 2009-2010, Contractor Prequalification functions were transferred from the Office of Compliance & Business Services to A/E Selection and Negotiations, which changed its name to A/E Selection, Negotiations and Contractor Prequalification. Sharon Hire-Miller was a member of the Contractor Prequalification staff since 2006—when EPIC was initially prequalified—until November 2013.<sup>9</sup> Ms. Hire-Miller was the person principally responsible for reviewing contractor applications for prequalification and reviewing the paperwork for the annual re-certifications. Patricia Freeman was the Director of Business Development and was the Chair of the CPRC.<sup>10</sup>

Since March 2013, Contractor Prequalification has been organizationally housed within the Office of Economic Opportunity (OEO). Brian Williams, Economic Development Officer, heads the OEO.

### **RELEVANT GOVERNING AUTHORITIES**

Policy 6334- Prequalification of Contractors for Educational Facilities Construction

A. Introduction

F.S. 1013.46, Section 423 of the Florida Building Code, and State Requirements for Educational Facilities (2007 [SREF]), requires school boards to prequalify contractors as eligible to bid on construction or capital improvement projects. This policy establishes procedures and criteria for prequalifying responsible contractors on school construction projects for the School Board. It does not restrict competition, or prevent the submission of a bid, or prohibit the consideration of a bid submitted by a prequalified contractor, nor does the rule supersede the Board's Minority/Women Business Development Program.

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<sup>9</sup> Ms. Hire-Miller was temporarily reporting to Personnel Non-instructional in November 2013; however, she remained on OEO's payroll. She was officially terminated from M-DCPS employment in July 2014; the separation reason reads Reduction in Force.

<sup>10</sup> Ms. Freeman and Ms. Hire-Miller are no longer employed by M-DCPS.

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State Requirements for Educational Facilities (SREF) Section 4.1

(1) Prequalification of Contractors for Educational Facilities Construction.

A board shall prequalify contractors for a one (1) year period or for a specific project. This section prescribes uniform and consistent requirements for prequalification of all construction services contractors. This section is applicable for bids, construction management, design-build, and any other construction services application.

Policy 7101 – Building Permits and the Code Enforcement Office

D. Contractors:

All construction on Board-owned property including volunteer or service organization projects, shall be performed by State-certified or licensed **general contractors** and subcontractors, or locally registered subcontractors where their registration is valid, as required by State Requirements of Education Facilities 4.1(5)<sup>[11]</sup> and shall follow approved processes as described under Florida statute. Prequalification of contractors shall be required as per statute for construction services. (Emphasis added by OIG)

Florida Statutes Section 489.105(3) defines the various categories of state contractor certifications. Contractor categories are grouped into two divisions. Division 1 consists of general contractors, building contractors and residential contractors. Division 2 consists of various specialty contractors, such as mechanical contractors, air conditioning contractors, swimming pool and spa contractors (commercial and residential certifications), plumbing contractors, solar contractors, etc.

Specific to Division 1, the three definitions are:

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<sup>11</sup> State Requirements for Educational Facilities (SREF) Section 4.1(5) was amended in December 2007 to only require proof that the contractor holds a valid contractor's license that authorizes the contractor to supervise the work within the scope of the construction project and within its license classification. [See SREF Section 4.1(1) (December 2007 & November 2012)] While the SREF section may have been amended, M-DCPS policy and contracting minimum qualifications for JOCs still required that the firm be a licensed General Contractor.

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(a) "General contractor" means a contractor whose services are unlimited as to the type of work which he or she may do, who may contract for any activity requiring licensure under this part, and who may perform any work requiring licensure under this part, except as otherwise expressly provided in s. 489.113.

(b) "Building contractor" means a contractor whose services are limited to construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair, or improvement of any size building if the services do not affect the structural members of the building.

(c) "Residential contractor" means a contractor whose services are limited to construction, remodeling, repair, or improvement of one-family, two-family, or three-family residences not exceeding two habitable stories above no more than one uninhabitable story and accessory use structures in connection therewith.

### **CASE INITIATION & INVESTIGATIVE METHODOLOGY**

This investigation is predicated on a complaint received by the OIG in August 2013 about EPIC. A few weeks earlier, M-DCPS Facilities had also received a complaint from an M-DCPS prequalified contractor that EPIC was not a General Contractor. Upon verification that the information was correct, M-DCPS Facilities withdrew the proposed contract award to EPIC that was scheduled for the School Board Agenda of June 19, 2013. No explanation at that time was given.

While the complaint received by the OIG also related to EPIC's contractor license, the complaint directed to the OIG also questioned subsequent actions by M-DCPS Facilities to propose lowering the contract's minimum qualifications to include other categories of contractors eligible to bid on the contract (i.e., to include Building Contractors so that EPIC could bid on the contract). The complainant questioned the lack of disclosures made by M-DCPS staff about EPIC—notably, that EPIC had previously submitted false licensure affidavits. Upon confirmation of the principal allegations made in the complaint, the OIG initiated an investigation into EPIC's contractor status and work history with M-DCPS.

In the course of the investigation, the OIG reviewed M-DCPS documents dating back to 2006. We also reviewed records belonging to the State of Florida Department of Business

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& Professional Regulation (DBPR) and EPIC Construction, Inc. The OIG also conducted interviews of the complainant, EPIC Officers and Directors, DBPR's Regional Program Administrator, and present and past employees of M-DCPS.

This investigation was conducted in accordance with the *Principals and Standards of Offices of Inspector General, Quality Standards for Investigation*, as promulgated by the Association of Inspectors General.

### **INVESTIGATIVE FINDINGS**

The OIG substantiated the allegation that EPIC Construction is not a Certified General Contractor and that M-DCPS employees should not have prequalified it as such. Further, EPIC submitted with its bid packets, on more than one occasion, notarized Licensure Certifications falsely certifying that it is a General Contractor. The investigation revealed that in 2006, when EPIC was trying to get prequalified for the first time, M-DCPS personnel were aware that EPIC was not a General Contractor, but advanced its application as a General Contractor to the CPRC for approval. Moreover, its prequalification—as a General Contractor—was incorrectly renewed every year after 2006 until 2013, when the misclassification was exposed by the initial complainant. In June 2013, EPIC was issued a *Certificate of Contractor Prequalification* in the category of Building Contractor. Even though its true licensure status was now revealed, EPIC was allowed to continue working, and received new work under its 2010 JOC contract, which required a licensed General Contractor.

#### ***The Initial Application for Prequalification***

The OIG's examination of dates and notations referenced on documents in the application file show that EPIC's initial application was submitted in October 2005. Correspondence and notations in the file indicate that EPIC was in the process of substituting its construction qualifier from William Hernandez to Miguel Hernandez. On-line printouts from the DBPR website show that M-DCPS staff had verified Miguel Hernandez's Certified Building Contractor (CBC) license number, and that by February 2006 Miguel Hernandez's license number officially qualified EPIC Construction, Inc., as a Certified Building Contractor. In April 2006, EPIC submitted supplemental records in the form of updated corporate officer(s) information, new Qualifier information, etc. to M-DCPS to complete its prequalification application. (Exhibit 1)

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Nowhere in the application record does EPIC expressly state that it is a General Contractor.<sup>12</sup> On the contrary, where the application requires the applicant to list its "License type," EPIC provided "CBC1251847." This clearly indicates that the license type is that of Certified Building Contractor as opposed to a CGC (Certified General Contractor). See Figure 1, below.

**FIGURE 1**

2. Is the applicant company licensed by the State of Florida for the type(s) (including trade) of construction project(s) which the company intends to bid?  Yes  No  
 Provide the numbers and expiration dates for all construction licenses that are held by the company, below.

License type	License number	License expiration date
QB 45872	QB 45872	8/31/09
CBC 1251847	1251847	8/31/06

Further, the application file contains anecdotal evidence that supports that M-DCPS personnel were aware that EPIC's licensure status was that of Building Contractor. Most notably, the OIG found post-it notes indicating that there was a question as to EPIC's credentials as a General Contractor. (Exhibit 2) On one note, dated "5/16/2006," initialed by Ms. Hire-Miller, the word "General?" was written. On a second note identified by Ms. Hire-Miller as the handwriting of her supervisor, Dr. Barefield-Cox, are the words: "Building Contractor not General."

Ms. Hire-Miller explained to the OIG that, at that time, she reported directly to Dr. Barefield-Cox.<sup>13</sup> Ms. Hire-Miller confirmed to the OIG that the handwriting on the post-it notes was hers and that of Dr. Barefield-Cox. She stated to the OIG that she did not know how this conflict was resolved.

In a subsequent interview with the OIG, Ms. Hire-Miller stated that she could not remember when in the process she had questioned EPIC's proposed designation as a General Contractor. She acknowledged that she would not designate a Building Contractor

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<sup>12</sup> In the application file, the OIG found one reference describing EPIC as a General Contractor. This comes from the Certificate of Liability issued by EPIC's insurer to M-DCPS as the Certificate Holder.

<sup>13</sup> In a second interview with the OIG, Ms. Hire-Miller stated that her immediate supervisor, Ms. Freeman, was responsible for ensuring that all documentation was correct before forwarding it to her supervisor, Dr. Barefield-Cox. The OIG also interviewed Ms. Freeman, who stated that she only supervised Ms. Hire-Miller for a short time, and that Ms. Hire-Miller reported directly to Dr. Barefield-Cox. Ms. Freeman also confirmed that she chaired the CPRC, but explained that her primary responsibility within the Division was Business Development—not Prequalification. Ms. Freeman had no recollection of EPIC.

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as a General Contractor—that she knew that there was a difference between the two. When asked how this misclassification could have occurred, Ms. Hire-Miller stated it was a mistake and deemed it “an error in the process.” According to Ms. Hire-Miller, this was a mistake that was not caught by her, any of her supervisors, or anyone on the CPRC. Ms. Hire-Miller explained that once the initial mistake was made, it was never subsequently addressed. She indicated that in the following years (for prequalification renewals) staff relied on existing information maintained in the database for firms that had already been prequalified.

Although these post-it notes questioned EPIC’s eligibility, the Contractor Prequalification Department cleared the application and forwarded it to the CPRC. The summary cover sheet provided to the CPRC (presumably prepared by staff), under the heading CONTRACTOR TYPE(S), lists the word “General.” (Exhibit 3)

***The Initial Prequalification Approval Process***

On June 7, 2006, the CPRC met to evaluate the applications of several companies seeking prequalification. One of those companies was EPIC. The minutes of the meeting lists EPIC under “New Applications” and describes the company as a “General Contractor.” The minutes do not reflect any discussion concerning EPIC’s licensure status. The minutes, however, do include references to EPIC having made several prior attempts to become prequalified and that Facilities had been working with them.

While EPIC’s initial prequalification took place eight years ago, the OIG is still unsettled as to how the members of the CPRC failed to catch this licensure discrepancy. The records comprising EPIC’s application contain its state-issued contractor’s license, which reads “Certified Building Contractor.” EPIC’s license number begins with the prefix CBC—not CGC. The CPRC is a committee that is constantly reviewing the paperwork of state certified general contractors. We would like to believe that members have some familiarity with these records and that they carefully review the applications (especially for first time prequalifications). In this case, other than the verbal comments noted above, the minutes do not show anyone commenting on EPIC’s licensure status and/or observing that EPIC was only a Building Contractor. The Committee passed a motion to recommend EPIC’s application to be prequalified as a General Contractor to the School Board for approval.

Item F-70 of the School Board’s agenda of July 12, 2006 included EPIC’s application. The item indicated that EPIC was a new applicant and next to “Type of Work” it read “General.” The item was approved and EPIC was sent a letter by Ms. Hire-Miller stating that the certification authorizes the company to bid as a General Contractor. (Exhibit 4)

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***Subsequent Annual Renewals of EPIC's Prequalification Status***

The OIG has examined EPIC's entire prequalification file. While the paperwork in the file for each year is not exactly the same, each year generally contains the same or similar documentation: the annual renewal paperwork submitted by EPIC, including information on its insurance and bonding status; copies of insurance certificates;<sup>14</sup> copies of its licenses (contractor license and occupational license); a certification of no change in status; worksheets prepared by M-DCPS staff; printouts from the DBPR website ([www.myfloridalicense.com](http://www.myfloridalicense.com)) verifying qualifier/contractor licensure status; and correspondence from M-DCPS, either in the form of a letter or a certificate issued to EPIC, confirming its prequalified status to bid as a General Contractor.<sup>15</sup> From these annual renewal files, the OIG found that there was no indication that EPIC ever notified the Contractor Prequalification Department that it had been mistakenly classified as a Certified General Contractor.<sup>16</sup>

Moreover, it is clear from our review of the renewal files that the Contract Prequalification staff was well aware that EPIC was a Certified Building Contractor—and not a Certified General Contractor. First, copies of EPIC's State of Florida license show that it is a Certified Building Contractor. Second, printouts of DBPR licensee information (contained in almost every renewal file) also affirmatively show that EPIC is a Building Contractor. The licensee information sheet in each renewal file includes a checkmark written after the license type. Ms. Hire-Miller acknowledged that she placed the checkmarks after confirming the information. (See Exhibit 5 for a composite of key documents contained in the renewal files.)

However, even knowing that EPIC was a Building—and not a General—Contractor, staff still prepared a Contractor's worksheet (or coversheet) showing EPIC as General Contractor. Each year from 2007 – 2013, staff forwarded EPIC's renewal request to the CPRC, and subsequently to the School Board, for approval as a prequalified General Contractor.

***Mandatory Pre-bid Conferences***

Once prequalified, EPIC was allowed to bid on M-DCPS construction contracts. As a precondition to submitting a bid, all bidders must attend a mandatory pre-bid conference.

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<sup>14</sup> The insurance certificates in the 2009, 2010 and 2011 renewal files list EPIC as a General Contractor.

<sup>15</sup> A certification renewal letter was sent in September 2007 and December 2008, authorizing EPIC to bid as a General Contractor.

<sup>16</sup> The Contractor Prequalification file on EPIC contains a phone log and a status list, which is void of any notes regarding the license type.

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As it relates to the 2013 JOCs, the pre-bid conference was held on May 14, 2013, and the sign-in sheet shows that Mike [Miguel] Hernandez attended on behalf of EPIC. During the pre-bid conference a PowerPoint presentation was shown. Slides 3 and 5 of the presentation (Exhibit 6) clearly identifies that the firm must be prequalified as a General Contractor with M-DCPS prior to the bid date and must have a valid Florida General Contractor's license. The qualifications are reiterated in the actual bid documents for JOC13-C1 and JOC13-C2. (Exhibit 7) Mike Hernandez was not a licensed General Contractor; he only held a state-issued Building Contractor's license.

***Contracts Awarded to EPIC***

**1. JOC06-C5**

Shortly after receiving its initial prequalification, EPIC bid on, and was awarded, JOC06-C5. The bid solicitation stated that all bidders must be prequalified as General Contractors by the School Board. As part of its bid, Rita Hernandez, President of EPIC, supplied a notarized *Licensure Certification*, dated December 18, 2006, certifying that EPIC is a General Contractor. The certification also includes assurance that all construction will be performed by state certified or licensed general contractors and subcontractors, as shown below.

**FIGURE 2**

  
I, Rita Hernandez/EPIC Construction, Inc. hereby certify, in accordance with the laws of the State of Florida, for this project no. JOC06-C5 Miami-Dade Public Schools (name of facility) I as General Contractor shall insure that all construction on Board owned property under my contract including volunteer or service organization projects, shall be performed by state certified or licensed general contractors and subcontractors, or locally registered subcontractors where applicable. Locally registered subcontractors shall only provide services to the Board where their registration is valid. Where mandated by local ordinance, I shall ensure that all occupational licenses are secured for services on project # JOC06-C5 the Miami-Dade County School Board.

In the same bid package that contained the aforementioned affidavit was a copy of EPIC's state-issued license that clearly reads that EPIC is a Building Contractor and that its license number is CBC1251847. (Exhibit 8) The OIG is at a loss to understand how anyone responsible for opening the bid package, reviewing its contents, and evaluating the bid submittal could fail to notice that EPIC did not meet the minimum qualifications required by the bid—irrespective of its prequalification status with the school district.

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Despite not being the lowest bidder, EPIC was recommended for award of JOC06-C5.<sup>17</sup> The item was approved by the School Board on February 14, 2007 (Agenda Item F-50). The contract term was for one year with two possible one-year renewal options that were both exercised, bringing the contract's final expiration date to February 14, 2010. EPIC received over \$2.3 million for work performed under this contract—a contract that it did not qualify for.

## **2. JOC10-C3**

In September 2010, M-DCPS advertised JOC10-C3. Once again, the bid solicitation required that all bidders must be prequalified as General Contractors by the School Board. EPIC submitted a bid proposal for JOC10-C3 that again included the requisite *Licensure Certification* affidavit that reads, in part, "I as General Contractor..." This time Miguel Hernandez, Jr. (EPIC's qualifier and Vice-President) makes the certification, as shown below.

### **FIGURE 3**

I, Miguel Hernandez, Jr., hereby certify in accordance with the laws of the State of Florida, for this project no. JOC 10-C3 MDCPS (name of facility) I as General Contractor shall insure that all construction on Board owned property under my contract including volunteer or service organization projects, shall be performed by state certified or licensed general contractors and subcontractors, or locally registered subcontractors where applicable. Locally registered subcontractors shall only provide services to the Board where their registration is valid. Where mandated by local ordinance, I shall ensure that all occupational licenses are secured for services on project #JOC10-C3 of the Miami-Dade County School Board.

Although Miguel Hernandez's name appears on the certification, Rita Hernandez signs the bottom of the affidavit as President of EPIC; Mr. Hernandez signs as a witness. (See Figure 4 on the next page.)

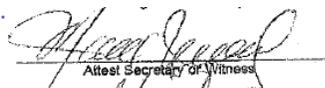
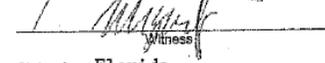
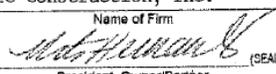
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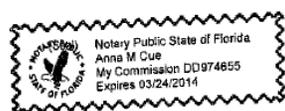
<sup>17</sup> EPIC was not the lowest bidder in JOC06-C5—it had the fifth lowest bid price. The four firms that were ranked above EPIC already held job order contracts with the school district. According to the explanation in the agenda item, staff was exercising its discretion to limit the number of concurrent contracts that a firm could have, and thus was recommending EPIC for the award of JOC06-C5.

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**FIGURE 4**

<p> Attest Secretary or Witness</p> <p> Witness</p> <p>State of <u>Florida</u></p> <p>County of <u>Miami-Dade</u></p> <p>On this <u>4th</u> day of <u>October</u>, 20<u>10</u>, <u>Rita Hernandez</u> Print name(s) of signer(s)</p> <p>personally appeared before me, as the signer(s) of the attached instrument, and he/she/they acknowledged that he/she/they signed the instrument voluntarily for the purpose expressed in it, who is personally known to me or has produced</p> <p>_____ Type of Identification ID#/Expiration Date</p>	<p><u>EPIC Construction, Inc.</u> Name of Firm</p> <p> (SEAL) President, Owner/Partner (Sign as on contract)</p> <p> Signature of Notary</p> <p><u>Anna M. Cue</u> Printed Name of Notary</p>
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EPIC's bid submission for the 2010 JOC did not include a copy of its state-issued license. Instead, EPIC supplied a copy of its current M-DCPS *Certificate of Contractor Prequalification* showing that it was prequalified for "Type of Work – General." EPIC was deemed the lowest bid and was recommended for award of JOC10-C3. The item was approved by the School Board on November 24, 2010 (Agenda Item F-50). The contract term was for one year with two possible one-year renewal options that were both exercised, bringing the contract's final expiration date to November 24, 2013. EPIC received over \$900,000 for work performed under this contract—a contract that it did not qualify for.

**3. JOC13-C1**

In regards to JOC13-C1, which was the impetus for this complaint, the same pattern was followed. The advertisement contains the same language concerning the necessary prequalification as a General Contractor, and the bid packet submitted by EPIC has the notarized Licensure Certification affidavit with the same language stating "... I as General Contractor..." Rita Hernandez signed this certification as President of EPIC. (See Figure 5 on the next page.)

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**FIGURE 5**

I, Rita Hernandez, hereby certify in accordance with the laws of the State of Florida, for this project no. JOC13-C1 (name of facility) I as General Contractor shall insure that all construction on Board owned property under my contract including volunteer or service organization projects, shall be performed by state certified or licensed general contractors and subcontractors, or locally registered subcontractors where applicable. Locally registered subcontractors shall only provide services to the Board where their registration is valid. Where mandated by local ordinance, I shall ensure that all occupational licenses are secured for services on project # \_\_\_\_\_ of the Miami-Dade County School Board.

Construction Manager/Contractor shall execute and provide one (1) of the following:

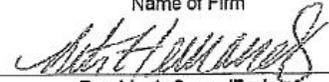
- signature, corporate seal, attesting secretary; or
- signature, two (2) witnesses; or
- § signature, Notary.

\_\_\_\_\_  
Attest Secretary or Witness

\_\_\_\_\_  
Witness

Epic Construction, Inc.

\_\_\_\_\_  
Name of Firm

 (SEAL)  
President, Owner/Partner  
(Sign as on contract)

(See Exhibit 9 for copies of the three Licensure Certifications that were submitted by EPIC with the 2006, 2010 and 2013 JOC bids.)

Eleven bids were received for JOC13-C1 and JOC13-C2, which were opened on May 28, 2013.<sup>18</sup> EPIC was deemed to have the lowest bid price, and was being recommended for award of JOC13-C1. (FHP Tectonics Corp. had the second lowest weighted bid and was being recommended for award of JOC13-C2.) The two proposed contract awards (Items F-50 and F-51) were passed by the Facilities and Construction Reform Committee at its meeting of June 12, 2013. Prior to the School Board Meeting of June 19, 2013, Agenda Items F-50 and F-51 were withdrawn at the request of the Superintendent's Office. (Exhibit 10) No explanation was given at that time.

The following month, revised Items F-50 and F-51 were placed on the School Board Agenda. (Exhibit 11) The items asked that all the bids for JOC13-C1 and JOC13-C2 be rejected, and that the Superintendent be authorized to expand the categories of contractors eligible to bid on the contracts and to re-bid them after

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<sup>18</sup> EPIC's contractor prequalification (albeit incorrectly categorized as a General Contractor) had actually expired on April 13, 2013. The circumstances pertaining to the lag in renewing EPIC's prequalification is unclear, however, EPIC's bid was not declared to be non-responsive.

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making said changes.<sup>19</sup> The items were approved by the Board on August 7, 2013. No background information concerning EPIC was provided in Items F-50 and F-51. Instead, the agenda item(s) explained that expanding the categories of eligible contractors would promote inclusion and healthy competition, and thus maximize cost efficiencies.

***EPIC's Contractor Licensure Status Exposed***

Sometime after the bids were opened on May 28, 2013, but before June 19, 2013, one of the JOC bidders informed Isora Castro, Executive Director for Capital Construction Budget and Contract Management, that EPIC was not a Certified General Contractor. According to Ms. Castro, this information was shared with Jaime Torrens, Chief Facilities Officer, and Brian Williams, Economic Development Officer. The OIG interviewed Mr. Torrens who explained that after this information was verified, he recommended to the Superintendent that the proposed contract award(s) be withdrawn from the June 19<sup>th</sup> agenda. Mr. Torrens confirmed that it was the fact that EPIC was not a General Contractor that was the basis for withdrawing the two proposed contract awards (Agenda Items F-50 and F-51).

However, on that same agenda of June 19<sup>th</sup>, Item F-80 contained information pertaining to EPIC's prequalification renewal.<sup>20</sup> As in all earlier years, EPIC was seeking renewal of its prequalification in the category of General Contractor. While EPIC was included as one of 21 firms seeking renewal, the Board action requested in Item F-80 only pertained to approving new certificates and increases in contract limits. After the passage of Item F-80, OEO issued EPIC a new certificate bearing an effective date of June 19, 2013, prequalifying it as a "Building Contractor." (Exhibit 12)

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<sup>19</sup> Six JOCs were advertised for bid in September 2013. Two were open market (i.e., unrestricted contracts); two were set asides for certified small business enterprises; and two were set asides for certified micro-business enterprises. All six JOCs were open to both Certified General Contractors and Certified Building Contractors. Based on concerns voiced by the OIG and advisement of this pending investigation, the two open market solicitations (JOC130-C1 and JOC130-C2, which were the revised versions of what had previously been withdrawn) were halted. The revised JOC solicitations for the small and micro business enterprises proceeded.

<sup>20</sup> In a subsequent interview with the OIG, Mr. Williams advised that while information pertaining to the renewals of several contractors' prequalification was included in the F-80 Agenda Item, the only actionable items were the approval of new prequalification certificates and increases to contract participation limits. Mr. Williams explained that he had the delegated authority to approve renewals. The companies listed in Item F-80 for annual renewal were provided for informational purposes only.

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The OIG interviewed Mr. Williams about the issuance of the "Building Contractor" certificate. He explained that his immediate concern was to correct the prequalification certification. Clearly he could not sign a renewal certificate for General Contractor—because EPIC was not. Mr. Williams advised that by issuing EPIC a certificate as a Building Contractor, OEO was not trying to hide the earlier mistake, but just trying to correct EPIC's prequalification status. He told the OIG that he wanted to make sure that EPIC did not try to obtain work under a General Contractor designation.

While the OIG concurs that OEO could not have issued EPIC a prequalification certificate for "General Contractor," we question OEO's authority to unilaterally issue a "corrected" certificate. EPIC sought a standard, routine one-year renewal. What it received was a new certificate in a category that it did not previously hold. At a minimum, we believe that disclosures to the CPRC and the School Board were warranted. In reality, EPIC's prequalification status as a General Contractor should have been revoked. If EPIC wanted to be prequalified as a Building Contractor, it should have been required to re-submit a new application.

***Subsequent Contracting Decisions Benefiting EPIC***

As it relates to the 2013 JOCs that were withdrawn from the June 19<sup>th</sup> agenda, Facilities (instead of allowing FHP Tectonic Corp.'s proposed contract award to stand, declaring EPIC ineligible or non-responsive, and awarding the second contract to the next lowest bidder ) opted to reject all bids and revise the bid solicitation. According to Chief Facilities Officer Torrens, the issue of whether EPIC was non-responsive just didn't come up.

When asked directly about these decisions, Mr. Torrens told the OIG that he had a meeting with Assistant Superintendent for Maintenance Operations Nicoleau and an Assistant School Board Attorney. During their meeting, they discussed the type (scope) of work that was being issued pursuant to the JOCs. Staff had evaluated the type of work being performed by EPIC and concluded that the type of work did not really need to be performed by a General Contractor—that a Building Contractor's license would be sufficient. At that meeting, they discussed revising the JOC's minimum qualification to allow both General Contractors and Building Contractors to bid on the contract.<sup>21</sup> (See Exhibit 11, previously referenced.) When asked how many firms, besides EPIC, were prequalified as a Building Contractor, Mr. Torrens acknowledged that there were only two or three firms.

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<sup>21</sup> During our interview with Mr. Torrens, we pointed out the requirement of School Board Policy 7101 that requires that all construction performed on Board-owned property be performed by State-certified or licensed general contractors.

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Expanding the categories of eligible contractors (i.e., adding in Building Contractors) may promote inclusion and healthy competition, but in this case it would have added—at most—two or three firms. One of those firms directly benefiting from this mid-stream modification would have been EPIC, who, but for this modification, should have been disqualified.

As for increasing competition, the bid process had already demonstrated healthy competition. First, 10 firms (excluding EPIC) bid on JOCs 13-C1 and 13-C2. We believe that 10 bids demonstrate healthy competition. By allowing Building Contractors to bid, Facilities could have only hoped to get a couple more bidders; but, more importantly, EPIC would not have been excluded. Next, all the firms' bid prices had just been disclosed. By re-bidding the contracts, all the firms that had not been in the competitive range would now have the advantage of hindsight knowing what the lowest bids were. Last, we believe it was fundamentally unfair to withdraw FHP Tectonics' proposed contract award. There were no issues with FHP Tectonics' bid, and there were no irregularities in the procurement process, yet FHP Tectonics lost its proposed contract award. We question why Facilities didn't declare EPIC non-responsive/ineligible. All of these decisions directly benefited EPIC, an incumbent JOC firm that has been doing work with M-DCPS since 2007, yet has never met the minimum qualifications required by the JOCs.

M-DCPS Facilities staff confirmed to the OIG that all JOCs require the contracted firm to have a valid General Contractor's license. (See Exhibit 7, previously referenced.) After it was revealed that EPIC was not a General Contractor, there was no attempt by Facilities staff to terminate EPIC from JOC10-C3B. (EPIC had over five months left on its second contract extension.) Instead, staff allowed EPIC to keep working on projects that it had already started, and even issued two new work orders to EPIC. These two new work orders, valued over \$130,000, were issued well after staff was aware of EPIC's licensure status

In an interview with Assistant Superintendent Nicoleau, he advised the OIG that in a meeting with Mr. Torrens and the Assistant School Board Attorney, they discussed not giving EPIC any new work but allowing them to continue with projects that were in the pipeline. According to Mr. Nicoleau, the first of the two work orders was already in the pipeline, and the second of the two was justified as there was a time-pressing safety issue and because EPIC was already on the job site.

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***Two New Work Orders Issued to EPIC***

**1. Work Order 13-36021.01 Miami Southridge Sr.**  
**Replace Auditorium Seats and Carpet**

This work order, in the amount of \$110,664, was issued to EPIC on July 30, 2013. We questioned FOM staff about its issuance. FOM staff (Nicoleau, Hoar and Krtausch) told the OIG that they agreed that no new work would be issued to EPIC, but EPIC would be allowed to finish work already started. As it related to this work order, staff justified this work order by explaining that this project began with a Joint Scope Meeting that took place in April 2013—prior to the revelation of EPIC's licensure status. Moreover, Mr. Krtausch told the OIG that assigning a new JOC contractor could have added 60 days to complete the project.

The OIG questions FOM's explanation about why this work was still assigned to EPIC. First, the fact that a Joint Scope Meeting took place does not mean that work had already begun. There had been no agreement on either scope or price. Moreover, it wasn't until over two months later that FOM requested a proposal from EPIC. According to the JOC Project Input Form, a Request for Proposal was issued on June 24, 2013—five days after the 2013 JOC proposed contract award was withdrawn. Second, and more importantly, no work order had been issued. The scope of work for this project was finalized on or about July 17, 2013. According to the Notice to Commence letter issued to EPIC on August 2, 2013, EPIC submitted its proposal on July 25, 2013. (Exhibit 13) EPIC received \$109,821 for work on this project—work issued by staff after staff was aware that EPIC did not hold the requisite contract qualifications.

As for the statement that a new contractor could have added 60 days onto this project, we observe that time was not of the essence in this case. The Notice to Commence was issued to EPIC approximately two weeks before the start of the school year. The project's time for completion, which involved the school's auditorium, was set at 120 days but due to delays, the project was finally accepted on March 14, 2014. Moreover, Facilities staff made the point of advising that its portfolio of job order contracts do not all expire at the same time in order to ensure contract capacity to issue work. Thus, we find it reasonable that Facilities could have authorized this work to another JOC contractor.

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**2. Work Order 13-36042.01 Miami Southridge Sr.**  
**Repairs to Fence & Pavement Markings**

This work order, in the amount of \$21,694, was *purportedly* issued on August 26, 2013. (Exhibit 14) The OIG was advised that this work order was issued to EPIC because EPIC was already on the job site and that there existed a public safety emergency that had to be remedied before the start of the school year. The scope of this work order involved signage and markings surrounding the school bus drop-off and boarding areas, removal of parking bumpers, installation of over 450 linear feet of fencing, and installation of pedestrian and rolling gates.

The OIG does not question that the work had to be completed expeditiously—before school started. It was surely convenient that EPIC was on site. But if the auditorium work had been issued to another JOC contractor, then it too would have been on site to perform the fence and pavement work.

Moreover, the OIG is troubled with several key pieces of documentation contained in this work order file. While this work may have been an emergency, it should have been documented as such. Instead, the Scope of Work is dated and signed on August 20, 2013—two days after the project was completed. The actual work order is dated August 26, 2013. The Notice to Commence letter is dated and signed on August 28, 2013, and refers to EPIC's proposal dated August 26, 2013. Nowhere, on any of these documents, does it state that this job was an emergency or that these authorizations are retroactive. This job was completed on August 18, 2013, and by August 27, 2013 EPIC submitted a certified pay requisition for the project being 100% complete.

Records show that a joint scope meeting (site visit) took place on August 6, 2013. The work was completed/accepted on August 18, 2013—one day before the start of the new school year. While we do not question the need for this work, we do question that it was issued to EPIC; and we question the completeness and accuracy of dates documented in the project file.

***Latest 2014 JOCs***

On or about February 11, 2014, three open market JOCs were advertised. The minimum qualification still required that all intending bidders had to be prequalified by the School Board as General Contractors.

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The mandatory pre-bid meeting was held on March 4, 2014. Bids were received and opened on March 18, 2014. EPIC submitted a bid on each of the three JOCs.

In each of its three bid packages, EPIC supplied the requisite notarized *Licensure Certification*. (Exhibit 15) All three were attested to by Miguel Hernandez (VP and Qualifier) that, he, "as a General Contractor shall insure . . ." Also included in each bid package was a copy of EPIC's *Certificate of Contractor Prequalification*, effective June 19, 2013, that showed that it was prequalified as a Building Contractor. (Exhibit 12, previously referenced.)

When the bids were tabulated, EPIC was ranked the fourth lowest bid. Apparently, there were still questions surrounding EPIC's eligibility. In an email to Facilities staff, Economic Development Officer Williams reiterated that EPIC was only a Building Contractor and did not meet the minimum requirements of the JOCs. Mr. Williams advised that EPIC was ineligible or non-responsive to the bid solicitation. But instead of removing them from the bid tabulation, as Facilities did with all the other firms that did not qualify, EPIC was still officially listed as the fourth place bidder. (Exhibit 16) Consequently, a notation was made stating: "Epic Construction, Inc. does not have a current 'General State Contracting License.'" Again, we question why Facilities didn't declare EPIC non-responsive/ineligible, thereby removing them from the official rankings.

***OIG Interviews of EPIC and its Principals***

William Hernandez and Mike Hernandez were interviewed in September 2013. During the interview, William Hernandez (former principal and qualifier for EPIC) stated to OIG Special Agents that they have been working with M-DCPS since approximately 2003, under what he referred to as "miscellaneous continuing contract," until they were prequalified. When asked how they were able to bid when the solicitation was limited to General Contractors, William Hernandez stated that Under Chapter 489, Florida Statutes, contractors are divided into two divisions. Division 1 consists of General Contractors, Building Contractors, and Residential Contractors. Since all three of these are in Division 1, it is his opinion that they are all considered General Contractors.

William Hernandez, Mike Hernandez, and Rita Hernandez were interviewed with their attorney in November 2013. Their attorney stated that they never submitted any paperwork to the School District that indicated being anything other than a Building Contractor. Their attorney further stated that both Rita Hernandez and Mike Hernandez signed the Licensure Certification affidavit as "General Contractor" because they both believed that they are General Contractors and are prequalified by the school district as such. Rita Hernandez

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stated to the OIG that M-DCPS never told her that EPIC did not meet the General Contractor requirement for prequalification.

***OIG Interview of Bill Tejada, Regional Program Administrator  
Florida Department of Business and Professional Regulation (DBPR)***

DBPR is the state agency responsible for testing, licensing, and certifying individual contractors and the companies that they qualify for. Mr. Bill Tejada explained to the OIG that there are distinct differences between a General Contractor and a Building Contractor, and that anyone involved in the industry certainly knows the difference between the two. The terms are not interchangeable. Each has different requirements, different applications, and a different certification exam. The General Contractor exam is much more comprehensive, testing the applicant on all phases of construction. The Building Contractor exam is tailored to the limitations imposed on this lesser certification. Mr. Tejada stated that a Building Contractor should not in any way portray himself as a General Contractor.

**RESPONSES TO THE DRAFT REPORT & OIG COMMENTS**

This report, as a draft, was provided to EPIC Construction, Inc. (Rita Hernandez, President, and Miguel Hernandez, Vice-President and Qualifier) for its review and provision of a discretionary written response. The draft report was also provided to the M-DCPS Office of Facilities and Office of Economic Opportunity through the Superintendent's Office, and to Ms. Sharon Hire-Miller, formerly with M-DCPS. The OIG received a response from EPIC, which is attached in its entirety as Appendix A. We also received a response from the Superintendent's Office, which is attached as Appendix B. The OIG did not receive a written response from Ms. Sharon Hire-Miller. A summary of each response and our comments follow below.

***Summary of EPIC's Response***

EPIC's response consists of a seven-page letter authored by its attorney, and 65 pages of attachments. The attachments are comprised of records contained in EPIC's prequalification file, including various EPIC submissions and M-DCPS prequalification certificates; PowerPoint presentation slides from the mandatory pre-bid conferences; an expert opinion letter, including various definitions of the term "General Contractor and a 17-page resume of the expert; three pages of permit print-outs from the M-DCPS Office of Educational Facilities and Code Compliance; a copy of the Daily Business Review advertisement for the 2014 JOCs (March 2014); and a Certificate of Liability Insurance

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depicting the operations of EPIC as "General Contractor." EPIC's entire response is attached as Appendix A.

In summary, EPIC makes four arguments. First, that in 2005-2006, when it sought its initial prequalification status with M-DCPS, EPIC never contended that it was a Certified General Contractor or that it (or its qualifier) had a General Contractor's license. EPIC contends that the review conducted by M-DCPS staff (unbeknownst to EPIC) questioned this same issue and somehow concluded that it was indeed a General Contractor and prequalified it as such. EPIC states that it relied on the prequalification certificate conferred by M-DCPS that EPIC was authorized to bid as a General Contractor on M-DCPS contracts.

Second, that when bidding on the JOCs, EPIC certified "that it was a general contractor in its licensure certificate, as per instructions and certifications it had received from MDCPS." EPIC maintains that the term "general contractor" as it is used by M-DCPS does not mean "certified general contractor," and that the OIG is attempting to "extra-legislate" this issue.

Third, EPIC argues that the types of work performed under the job order contracts do not require a General Contractor license. EPIC states that JOC-issued work orders are small jobs that do not involve the construction of buildings; it is work that "falls squarely with the type of work a building contractor is permitted by law to perform." EPIC asserts that M-DCPS "has never required that contractors applying for work under JOC[s] to be 'certified general contractors.'" EPIC states that this is another case of the OIG trying to extra-legislate this requirement.

Fourth, EPIC maintains that it is a general contractor<sup>22</sup> and that it was "actually performing work as a general contractor for which it was allowed and licensed to perform under Florida law." In support of this contention, EPIC refers to the opinion of its expert. EPIC also chastises the OIG for not having mentioned receiving this opinion letter during

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<sup>22</sup> EPIC, later in its response, acknowledges that after these events unfolded it obtained its certified general contractor license from the State of Florida. (See OIG footnote 4. EPIC became a Certified General Contractor on or about August 5, 2014, after Qualifier Miguel Hernandez took and passed the General Contractor's exam.) This part of its response is separate from the argument made above that it is a "general contractor." In fact, EPIC stresses that its obtaining a general contractor's license should not be construed as an admission or evidence of wrongdoing. Instead, this decision came about after countless meetings between EPIC and M-DCPS staff on how to reach a resolution to this issue that was preventing EPIC from receiving more work. In fact, EPIC asserts, "Truth be told, Epic merely obtained its certified general contractor license on suggestion from MDCPS that it might be a [sic] easy way to resolve the situation and allow Epic to continue receiving work."

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the investigation. In essence, the expert opines that EPIC is a general contractor pursuant to standard industry definitions and pursuant to the definition provided in Florida Statutes. Based on review of documentation provided by EPIC, namely the prequalification certificates issued to EPIC year-after-year, the expert opines that:

Epic Construction Inc. qualifies as a General Contractor because they are [sic] General Contractor by definition from the State of Florida [sic], the Standards in the Construction Industry and by the work they perform. Epic Construction Inc. has been prequalified as General Contractors by the School Board of Miami-Dade every year since 2006.

Last, on this issue of being a general contractor, EPIC suggests that the OIG failed to mention in the draft report our interview with EPIC's insurance agents because the insurance agents corroborated EPIC's position that it was a general contractor. EPIC's response asserts that "the insurance company, being otherwise aware of the scope of work performed by EPIC over the past decade, informed the OIG agents that Epic had not misrepresented anything to the insurance company and Epic was indeed a general contractor under Florida law."

EPIC ends its response by stating that it has followed the rules set forth by M-DCPS and that the OIG report "improperly employs a review with a much finer comb than the one originally chosen by MDCPS."

***OIG Comments on EPIC's Response***

As an overview, the OIG would like to distinguish that there are three distinct processes at play here and that approval, authorization, certification, or the like, from one process does not subsume the same for another process. First, at a foundational level, individuals or entities engaging in the business of construction contracting must be licensed or certified in the category that they are working in. Individuals must take exams demonstrating their competency in order to receive a license. Once licensed, that individual may qualify a company. Yes, many individuals may meet the industry standard or Wikipedia definition of "general contractor," but if one wishes to engage in contracting activity as a general contractor in the State of Florida, then one must be so licensed. In fact, it is a crime to engage in contracting without a license. (See Fla. Stat. §429.137(f); no person shall engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified.)

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The second process is that of prequalification. All school boards are required to prequalify contractors as eligible to bid on construction or capital improvement contracts. This requirement comes from the Florida Building Code and the State Requirements for Educational Facilities (SREF). This process is similar to a vendor registration requirement. Neither this process nor the resulting Prequalification Certificate that is issued can make a company a General Contractor when it is not. The certificate and prequalification status accorded by the process only clears the firm as being eligible to bid on contracts. To be prequalified to bid on contracts as a general contractor does not make you a General Contractor. Just the opposite, it presupposes that you actually are one.

The third process is the bid itself. Each procurement has its own requirements. The JOCs require that 1) the contractor must be prequalified by the School Board as a General Contractor prior to the bid date and be authorized at a bidding capacity of \$2 million per single bid limit; and 2) that the contractor possess a valid General Contractor License.

The logic of EPIC's response is basically that it is a General Contractor because it meets the definition of one, because M-DCPS prequalified it as such, and because it says so on the certificates that it received from M-DCPS. EPIC also contends that it never falsely certified that it was a General Contractor on any of its bid submissions because it was only calling itself a General Contractor because M-DCPS had already deemed it to be one. But EPIC ignores the entirety of the *Licensure Certification* affidavit that states: "I as General Contractor shall insure that all construction work on Board owned property under my contract including volunteer or service organization projects, shall be performed by state certified or licensed general contractors and subcontractors..."

The prequalification certificate issued by M-DCPS is not a substitute for the State of Florida issued license. Miguel Hernandez (EPIC's qualifier) was only a licensed Building Contractor; EPIC was only a Certified Building Contractor.

The OIG recognizes the review performed by Facilities staff concluding that the actual work issued to EPIC under its JOCs was work that could be performed by a Certified Building Contractor, but that does not alleviate the bid requirement that the contractor have a valid General Contractor's license. EPIC contending that JOCs did not have this requirement is just wrong (see OIG Exhibits 6 and 7).

Finally, with regard to the expert opinion and the statement of the insurance agent, their arguments are of the same circular reasoning. In the case of the expert opinion, it relies on the M-DCPS issued certificates as support for the conclusion that EPIC is a General

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Contractor. In the case of the insurance agent, it relies on EPIC telling its insurance agent that it performs general contractor work, so therefore it is one. The OIG rightfully dismissed these arguments.

***Summary of Management's Response***

The OIG received a five-page response from the Superintendent's Office; it is attached as Appendix B. The response begins by focusing blame on two parties: EPIC and former M-DCPS employee Sharon Hire-Miller. The remainder of the response discusses the subsequent actions taken by M-DCPS staff after the initial complaint was received.

As for EPIC's responsibility in this matter, Management's response states that "EPIC did not comply with the bid requirements to possess a General Contractor license." The response also acknowledges that at no time "did EPIC seek to alert M-DCPS staff that it had received an improper certificate. As such, Epic also bears fault in the improper designation." The Superintendent's Office states in its response that the District is pursuing debarment of EPIC from future work.

As for Ms. Hire-Miller, the response states: "The actions eight years ago of a single District employee is the root cause leading to the current unfortunate situation relating to EPIC." The response goes on to blame Ms. Hire-Miller for not alerting senior management and/or subsequent supervisors of this error. Moreover, the response takes issue with the OIG for not blaming Ms. Hire-Miller enough.

It is management's opinion that the [OIG Draft] Report does not adequately emphasize the significance of the original actions in 2006, by a sole employee and presumably her immediate supervisor, and the subsequent obfuscation of an important prequalification predicate i.e. type of license, by that employee, when in fact it was due to her actions that Epic was granted subsequent competitive solicitations under the General Contractor status.

According to Management's response, Facilities and OEO staff took immediate action in June 2013 when they learned of the matter. Items F-50 and F-51 were withdrawn from the June 19, 2013 Agenda. Counsel was sought from the School Board Attorney's Office and an opinion was sought from the Florida Department of Education/SREF on whether a licensed building contractor could perform the type of work that EPIC had performed under the JOCs. According to the response, once it was determined that a licensed Building

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Contractor could perform the type of work issued under the JOCs, the decision was to re-advertise the bid with a more inclusive minimum qualification.

Upon becoming aware that an entire category of duly licensed contractors was being excluded from participation in JOC solicitations, staff considered that expanding future advertisements to allow licensed Building Contractors to compete for work was supported by guidance in SREF and in the best interest of the District. This action is also consistent with the District's emphasis on expanding opportunities in its Capital Program under the new Small/Micro Business Enterprises Program led by the Office of Economic Opportunity.

The response also explains that the Miami Southridge project proceeded with EPIC, as the project was already "in the pipeline," but that in hindsight, the assignment to EPIC should have been cancelled and reassigned to another JOC contractor.

Last, the response explains the actions of Mr. Williams, Economic Opportunity Officer, to correct EPIC's prequalification renewal certificate to properly reflect EPIC's designation as a Building Contractor. According to the response, prequalification renewals do not actually require Board Approval and may be renewed by the Superintendent or his designee. Mr. Williams is the authorized designee to approve such annual renewals. "The [OIG Draft] Report implies that Mr. Williams performed this action 'unilaterally', however, as stated above his action was done so in accordance with Board policy and SREF with the intent of preventing the continued misrepresentation of EPIC as a General Contractor."

***OIG Comments on Management's Response***

As to EPIC's responsibility in this matter, the OIG concurs with the Superintendent's assessment, and concurs that debarment is an appropriate course of action.

As for Management's position that (other than EPIC) Ms. Sharon Hire-Miller was solely responsible for what happened, the OIG does not concur. We agree that her initial notations in 2006, coupled with her annual review of the renewal documentation submitted by EPIC, calls into question her thoroughness and competence to accurately process the prequalification paperwork. She definitely bears responsibility in the matter; however, she was not the only individual—since 2006—to have been involved with EPIC's contracting history with M-DCPS.

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Prequalification status was not solely determined by Ms. Hire-Miller—there was a Contractor Prequalification Review Committee (CPRC) that makes those determinations through a recommendation, which was then ratified by the School Board. Application details noting “Certified Building Contractor,” as discussed throughout this report, were not inconspicuous—they were blatantly visible. Annual renewals, and the paperwork that accompanied them, were reviewed by the CPRC. Bid submittals still required review and processing to determine responsiveness. And even if a contractor’s Prequalification Certificate was included in the bid submittal, we would have expected that someone would have independently verified the contractor’s licensure standing with the State of Florida. After all, a license could be revoked or could be expired subsequent to the date of the last M-DCPS Prequalification Certificate. We would assume that someone would have been doing this due diligence as part of the bid award process. Moreover, as mentioned throughout this report, EPIC’s license number bears the prefix “CBC,” and its license number was visible on numerous documents, including project-specific records. It appears from Management’s response that none of these other individuals had a duty to perform their jobs with a degree of due care. We respectfully disagree; this case cannot be pinpointed to the negligence of a single individual.

With regard to the subsequent actions taken by M-DCPS staff, which we are still troubled by, the OIG questions the rationale and justification provided in Management’s response. By analogy, when someone breaks the rules of the game, is it fair to change the rules mid-game and allow them to keep playing? In essence, that is what almost happened here.<sup>23</sup>

By its own response, M-DCPS realized that EPIC did not hold the JOC’s minimum qualification to possess a valid General Contractor license. That is why the proposed JOC award to EPIC was withdrawn (Item F-50 of the June 19, 2013 Agenda) and that is why staff agreed that no new—as opposed to pipeline—work would be issued to them under its then current JOC. Yet after going through a complete competitive bid process, where no other irregularity was detected, Facilities decided it would change the rules of the game in the middle of the game. Management’s response states that the option of rejecting all bids and re-advertising is an option that is reserved in all bid solicitations. The OIG does not disagree. But the initial withdrawal of Items F-50 and F-51 (on June 19, 2013) were done because staff realized that there was a problem with EPIC’s qualifications—i.e., it did not qualify. Why then change the rules of the game to make them eligible? The OIG maintains that EPIC should have been found non-responsive and disqualified from the bid process. It wasn’t. Instead,

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<sup>23</sup> We use the term “almost” because as we disclosed in footnote 19, the OIG challenged Facilities about this change in September 2013, and the re-advertised bid solicitation was withdrawn.

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the bid requirements were modified to include Certified Building Contractors so that EPIC did not have to exit the game.

By adding Certified Building Contractors to the JOC minimum qualifications presumably more firms could have bid on the contract, but, as previously explained, there were less than a handful of firms that held a prequalification in the category of Building Contractor. Moreover, EPIC never asked to be prequalified as a Building Contractor, yet it received a “corrected” prequalification certificate, which then made it eligible to bid on contracts as a Building Contractor.

The OIG acknowledges that the Superintendent or his designee may renew contractor certifications, and such annual renewals do not require School Board approval.<sup>24</sup> This was not, however, a routine renewal. It certainly was not requested by EPIC. The resulting new certificate corrected seven years of misclassification. This was a change in category—not a routine annual renewal. We note that the same School Board policy, which delegates renewal authorizations to the Superintendent, retains changes to prequalification status within the purview of the Board approval.<sup>25</sup>

Last, we are encouraged by Management's response that acknowledges, in hindsight, that the Miami Southridge project should have been assigned to another JOC contractor. Further, Management states that changes are being made to strengthen the role and responsibility of the CPRC, and more consistent procedures are being implemented by the OEO, which is now charged with the responsibility of prequalifying contractors. During the course of the OIG's investigation, we have verbally provided some suggestions regarding how to make the process more accountable. These suggestions, framed as a recommendation, are provided in the next section below.

## **CONCLUSION & RECOMMENDATION**

EPIC was awarded two contracts that it was not qualified to receive. From this, it received over \$3.3 million from M-DCPS. The awarding of these contracts to EPIC—contracts that required a valid General Contractor's license—comes at the expense of the actual general contractors that had participated in these competitive procurements.

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<sup>24</sup> This final report reflects the changes made to School Board Policy in 2011.

<sup>25</sup> This section of School Board Policy 6334 *Contractor Prequalification Certification Renewal*, section (D) refers to requests to increase the contractor's dollar volume of work allowable under contract. We believe that a change in status, as profound as a complete change in contractor category, is one of those changes that is not included in a standard renewal.

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Year after year, EPIC was wrongly prequalified as a General Contractor, even though Contractor Prequalification staff verified that it was only a Building Contractor. While EPIC chose not to speak up and rectify this mistake, so too did staff in continuing to prequalify EPIC as a General Contractor.

By virtue of this misclassification, EPIC bid on JOCs that required a General Contractor's license. EPIC falsely certified that it was a General Contractor in 2006, in 2010, in 2013, and most recently in March 2014. In 2007 and 2010, EPIC was inappropriately awarded contracts. In 2013, after EPIC's actual licensure status was publicly disclosed by another M-DCPS prequalified contractor, EPIC was not disqualified. Instead, the proposed contract award was withdrawn and the bid requirements were revised. At the same time, after realizing that EPIC was not a General Contractor, Facilities did not terminate EPIC from its existing contract. EPIC had five months left on its contract, and FOM issued it two more work orders totaling over \$130,000.

As late as March 2014, EPIC submitted bids on three JOCs that required bidders to be prequalified as a General Contractor (Building Contractors were not allowed). While EPIC's bid was not in the top three lowest bids, EPIC—still only a Certified Building Contractor—was not declared non-responsive and, thereby, disqualified.

The events uncovered in this investigation, from 2006 to the present, document a case history of disregard for established program and contracting protocols. The awarding of these JOCs to EPIC—contracts that required a valid General Contractor's license—came at the expense of the actual, certified general contractors that had participated in these competitive procurements. While the conduct described in this report pertains to job order contracts utilized by the Facilities Operations Maintenance Division—and not General Obligation Bond work—many of the procurement processes are similar. As the School District implements its 21<sup>st</sup> Century Schools General Obligation Bond, it is more important than ever to assure the contractor community that procurement processes will be respected and contract requirements will be followed.

To this end, the OIG makes the following recommendation:

- That OEO and Facilities each implement a checklist that would provide an audit trail demonstrating that certain checks were performed and that no exceptions were noted. For example, the form would list the types of verifications conducted by staff and would require the staff member to affirmatively acknowledge the result of that check. Such a form would identify by name the staff member conducting the review, and the form should require supervisory sign-off. One checklist should be developed

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for the prequalification and prequalification renewal process. A separate checklist should be developed for reviewing bids. This completed form should accompany the recommendation to award the contract.

The OIG requests a status-report from the Superintendent's Office regarding the acceptance of the OIG's recommendation and, if so, the implementation of it. We also ask that it include the status of any administrative action taken against EPIC. We respectfully request to be provided this status report in 60 days, on or before December 8, 2014.

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