

R S M P

Rochester Schools Modernization Program
Response to the submitted Compliance
Audit of the Independent Compliance
Officer

Submitted by:



Landon & Rian Enterprises, Inc.
333 Metro Park Suite M-101
Rochester, New York 14623

January 10, 2014

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Rochester Joint Schools Construction Board
Attn: Tom Renauto
1776 N. Clinton Avenue
Rochester, New York 14621

Dear Mr. Renauto:

On behalf of Landon & Rian Enterprises, Inc. (L & R), we appreciate the opportunity to respond to the submitted report to the Rochester Joint Schools Construction Board entitled, 'Compliance Audit of the Independent Compliance Officer'.

While we value the input and review of our internal processes we must unequivocally disagree with the "opinions" (p. 3) expressed in this report. Furthermore, we must call into question the process used to develop the "opinions" and "recommendations" (p. 3) that form the basis of the conclusions of this report. In the information that follows we will demonstrate that the report is neither accurate, nor thorough.

Regarding the process, we requested and did not receive a written description of how the audit would be conducted, including a document request list and schedule. Furthermore, the evaluation process itself was done in a rushed and haphazard fashion. It is not accurate to draw conclusions based on work that has not been completed in the case of Phase 1a and is just beginning in the case of Phase 1b.

Also, the auditor never defined the methodology used for the audit process. For example, in the report the auditor refers to the work as "statistically significant" (p. 3) but provides no details as to the sample size, or analysis methodology. Further, the auditor makes an ambiguous claim to have used, "auditing standards generally accepted in the State of New York and the United States" (p. 3) but neglected to provide any detail as to what those standards were and how they were applied.

In conclusion, Landon & Rian Enterprises, Inc. has a fourteen year track record of successfully serving public sector clients. We are focused on the quality and integrity of our work and are very proud of our accomplishments to date. In fact, our work as ICO in Rochester has led to the following measurable results as to date:

- 24% -Minority 11.6% - Women (Total EEO- %35.6)
- MBE - 16.44%-
- WBE - 7.75%
- SBE - 4%
- DBE - 1.7%

LANDON & RIAN

QUALITY | INTEGRITY | DIVERSITY

We are tangibly helping people in Rochester have opportunities to work and grow. We thank you for the opportunity to serve and we look forward to many more years of success.

Sincerely,

A handwritten signature in black ink, reading "Windell Gray". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

LANDON & RIAN ENTERPRISES, INC.

Windell Gray

President

Finding - DP-1 Audit Review Results:

4.2.2 - Major Control Weakness

- Many current DP-1 forms accurately representing the Prime Contractor's current EBE utilization plan are missing or have not been provided to the ICO (See Appendix D). This deficiency is further outlined in the DP-3a Monthly Utilization Report audit results.

Response/Corrective Action:

L&R disagree with this assertion.

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

" Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. "

"From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May."

As mentioned by the Auditor, L & R follow's the internal control procedures for DP-1 revisions in Appendix C of the submitted audit report of the Compliance Audit of the Independent Compliance Officer.

- No certification documentation or verification is available for some EBE firms listed on DP-1 forms. This is further investigated in the Eligible Business Enterprise Certification section of the report.

Response/Corrective Action:

L&R has tracked in detail all EBE firm status.

See EBE certification response. (Attachment)

When DP-1's are submitted to Landon & Rian Enterprises, Inc. (L & R) at the bid opening, L & R reviews the DP-1 and verifies that each proposed M/W/DBE firm is New York State certified through NYS Empire State Development or certified as a DBE thru the Unified Certification Program Business Directory. SBE's are verified through a SBE verification form (Small Business Enterprise Status form) that needs to be notarized and approved by L & R and the RSMP Board.

Once verified, a copy of the certification verification is printed and a copy is placed in an M/W/D/SBE certifications binder that is kept on hand at the Landon & Rian Enterprises, Inc. office. In the case of SBE, a copy of the submitted verification form is placed in the binder.

All certified M/W/D/SBE's listed on all current DP-1 forms had a printed certification verification on file in the M/W/D/SBE certifications binder and was readily available for review.

- **At least five professional Service contracts could not be provided to the Audit Team by the ICO in a timely manner. These documents were not readily accessible and therefore were not reviewed for accuracy.**

Response/Corrective Action:

We disagree with this assertion.

If the audit team is referring to actual contracts L&R is not required to review and maintain copies of professional services contracts in accordance with the ICO RSMP contract or the RSMP Diversity Plan.

4.2.3 - Minor Control Weakness

- **Revised DP-1 forms are clearly identified; however, multiple instances occur in which no reasoning or documented justification by the Prime Contractor for the changes is provided. Furthermore, documentation indicating that the revised DP-1 forms were reviewed and approved by the ICO is limited.**

Response/Corrective Action:

L&R Disagree with assertion (See attachments)

When the initial DP-1 form is submitted to L&R, Inc. at the bid opening, the DP-1 form may contain various errors including firms who were not certified, debarred, mislabeled certifications, etc. If the initial DP-1 contains errors, L & R contacts the winning Prime Contractor within 24 hours of the board meeting and request a revised DP-1.

Under NYS Law, Article 15A, the Prime Contractor was making a good faith effort to meet the accepted M/W/D/SBE goals, so any changes to the DP-1 during the bid review follow L & R's internal control procedures for DP-1 revisions as mentioned in Appendix C of the submitted audit report of the Compliance Audit of the Independent Compliance Officer. Once Landon & Rian Enterprises, Inc. and the RSMP Board approve the revised DP-1, any changes thereafter to the DP-1 form must be in writing.

This written documentation is stored both electronically by L & R, to keep the information in one central location and a paper copy is printed and placed in a binder for quick reference.

- **The ICO had indicated (but did not provide any supporting documentation) that many changes to the DP-1 form were discussed and confirmed via telephone. The Independent Compliance Officers Procedures developed by Landon & Rian explicitly state, "Request written explanation to changes on DP-1 from Primes" (See Appendix E). This control is not being maintained. Many DP-1 forms are incorrectly completed or contain errors. Many DP-1 forms are handwritten, leaving certain information is illegible.**

Response/Corrective Action:

L& R disagree with this assertion

As mentioned above, many of the revised DP-1's take place in the bid review for legitimate and necessary business reasons prior to award of contract and written explanations to the changes are not required from the Prime Contractors (Per Appendix C - L & R's DP-1 internal control procedures guidelines). In reference to handwritten forms, this is an acceptable format to Landon & Rian Enterprises, Inc., if for any reason DP-1 forms are sent in that are illegible, L & R will request a new legible form. As of this date, L & R has not received any DP-1 documents that are illegible. Any DP-1 forms incorrectly completed or containing errors are corrected in a timely manner with the Prime Contractor. Many times, the DP-3a form is incorrectly submitted making it look like changes have been made without a revised DP-1. As referenced by the audit team in Appendix D the submitted DP-1 for the Prime Contractor was thought to be incorrect, but the submitted DP-3a for September 2013 - Phase 1B submittal was actually submitted incorrectly and has since been reviewed and corrected.

Not every process is in the span of control of the ICO which includes handwritten forms, incompleteness and illegible DP-1 forms provided by the contractors.

4.2.4 - Exceptions

- **The DP-1 form which correlates to the ICO's recommendation and consequently approved by the RJSCB is not clearly identified. It is difficult to identify which DP-1 form was presented to the board by the ICO for approval.**

Response/Corrective Action:

L&R disagree with this opinion

DP-1 forms (Actual Document) are not presented to the board. The recommendation summary of EBE firms for each school and primes contractors is presented to the board for approval in which that resolution can be found on the website (RSMP website).

In the future, Landon & Rian Enterprises, Inc. will date stamp our documents and mark RJSCB board copy.

- **Many DP-1 forms do not clearly identify whether the value shown on the**

documentation for a supplier or broker is the contract value or participation value making it difficult to track the current participation rate at any given point.

Response/Corrective Action:

L&R disagrees with this assertion.

The Auditor did not fully understanding the DP-1 document. L & R is aware of the percentage breakdown for brokers and suppliers. L & R will calculate the supplier 50% and broker of 25% based on the DP-2 contract amount that is shown on each recommendation summary provided to the board.

- **The Audit Team notes at least two different versions of this form; this has been noted as an inconsistency.**

Response/Corrective Action:

L&R disagrees with this assertion.

No modified versions of the DP-3 forms were approved by the ICO or the RJSCB. Not every process is in the span of control of the ICO.

Occasionally, Prime Contractors will submit additional internal paperwork with the DP-1 form as back-up. This may account for the Audit Team's note of two different versions.

Finding - DP-2 Audit Review Results

5.2.2 - Major Control Weakness

- **Multiple DP-2 forms are missing in relation to the EBE contactors listed on Prime Contractor's DP-1 forms.**

Response/Corrective Action:

L&R disagree with the assertion

All of phase 1a - DP-2's were provided to the audit team with exception of suppliers which have provided purchase orders in most cases to the Prime Contractors, which is an acceptable form of documentation. L & R is aware that some of phase 1B - DP-2's have not been completed and is working with the Prime Contractors on collecting the documents in a timely manner. Phase 1B is still an ongoing project and many documents are still being modified by the primes and reviewed by the ICO. These Prime Contractors have been notified and given a designated deadline or risk hold a on their payments.

Most supply firms were not directed by the Prime Contractors to complete DP-2 forms as the form indicates the intent to perform and because they are providing material supplies, L & R has accepted a copy of the purchase orders from suppliers as sufficient proof.

Because no specific documentation has been mentioned, L & R could not provide proof of documentation in this response. L & R has provided a sample of our monthly internal tracking document contract verification as proof of review. (See Attachment #2)

- **When DP-2 forms are compared to EBE contractors ultimately utilized, as determined by DP-3a forms, it is evident that multiple forms are missing.**

Response/Corrective Action:

L&R disagree with this assertion.

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

“ Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. ”

“From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May.”

The auditors did not correct the error of missing documents found on the auditor’s final report prior to submitting it to the RJSCB.

- **Some DP-2 forms contained inaccurate information in relation to contract value proposed on the DP-1 form (See Appendix G).**

Response/Corrective Action:

The ICO acknowledges this issue but has been working on the solution.

L&R reached out to Prime Contractors requesting that DP-2 forms be resubmitted as contract values change on the DP-1 form for any reason. Approved RSMP change orders is a major reason why changes are made to the DP-2 and DP-1. In most cases the M/W/D/SBE had increases to their contract amounts because the Prime Contractors’ contract increased and they had to subcontract out more dollars to meet the diversity goals.

As is the example provide by the audit team in Appendix G, the Prime Contractor had a change order and revised their original DP-1 but failed to submit the updated DP-2 forms for M/W/D/SBE subcontractors. L & R has been working with the Prime Contractor to get the subcontractor to return the signed copy of the DP-2 with the updates but the owner has been quite ill but has been in contact with the ICO.

There is a limited amount of control that ICO has over the Change order approval process.

- **Some completed DP-2 forms indicate that contractors are certified as EBE’s: however, there was no evidence found validating these assertions (See Appendix H).**

Response/Corrective Action:

We disagree with this assertion please see EBE firm list in appendix.

Any DP-2 forms incorrectly completed or containing errors are corrected in a timely manner with the Prime Contractor.

The mentioned DP-2 in Appendix H was for Jaclyn Building Services, the firm identified as an SBE firm and not a WBE. The Prime Contractor was informed and L&R requested a revised DP-1 & DP-2 changing the status from WBE to SBE which has not been submitted. The firm has a WBE certification which is still pending with NYS Empire State Development.

5.2.3 - Minor Control Weakness

- **Many DP-2 forms are completed by the contractor but not signed and approved by the ICO (Appendix I).**

Response/Corrective Action:

The ICO acknowledges but notes all phase 1A - DP-2 documents were signed and completed there were a few DP-2 forms unsigned for Phase 1B which is still ongoing project and have since been signed.

As in the example provided by the audit team in Appendix I, the phase 1b - DP-2 form had been reviewed against the DP-1 form and contract values verified but unsigned. The auditor show no missing documents for Phase 1A which is in the closeout phase. Phase 1B which is an ongoing project the primes are still finalizing document.

- **Many DP-2 forms have been submitted later than the ten days after notification of the award of contract.**

Response/Corrective Action:

The ICO acknowledges the delay but does not control delay issues such as insurance, finances, EBE missing scopes of work, contractual terms deputed, EBE not honoring bid numbers after submitting bid, and EBE non-responsive after bid. L & R continues to request these documents at the de-scope meetings, weekly project meetings and via telephone/emails.

L & R continuously tracks and monitor's any missing DP-2 documents and has and will continue to hold payments on firms with no reasonable explanation. (See Attachment #2)

5.2.4 - Exceptions

- **There is not an opportunity on the DP-2 form for the contractor to state the participation value for each EBE. These circumstances exist where the Prime Contractors are utilizing EBE suppliers and brokers. In addition, instances occur in which the participation value had been substituted for the contract value.**

Response/Corrective Action:

L&R disagree with this assertion

It is evident that the auditors do not understand the DP-1 and DP-2 forms which are common forms used in the Compliance industry.

The purpose of the DP-2 form is for the Prime Contractor to provide proof of intent to use each individual EBE. The form is not intended to incorporate for example all suppliers and their contract values.

Each DP-2 form submitted and filed incorporates the awarded contract value of the individual EBE contractor to be utilized for the scope provided on the DP-2.

- **Some contractors had selected that they were certified and performing as an EBE in a capacity other than what was indicated on the DP-1 form. In many cases, the contractor has multiple certifications, but it cannot be determined from the DP-2 form under which certification they are performing.**

Response/Corrective Action:

L&R disagree with this assertion.

It is evident that the auditors do not understand the DP-1 and DP-2 forms which are common forms used in the Compliance industry.

The DP-2 form provides options for listing all certifications that apply to the M/W/D/SBE firm. The DP-1 form indicates the M/W/D/SBE firm certification being used towards the goal by the Prime Contractor on the specific school project.

Findings - DP-3a Audit Review Results

6.2.2 - Major Control Weakness

- **Many DP-3a forms participating contractors differ from those listed on the current DP-1 forms (See Appendix L).**

Response/Corrective Action

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

" Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. "

"From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May."

Any DP-3a forms incorrectly completed or containing errors are corrected in a timely manner with the Prime Contractor. Many times, the DP-3a form is incorrectly submitted making it look like changes have been made without a revised DP-1. As referenced by the audit team in Appendix D the submitted DP-1 for the Prime Contractor was thought to be incorrect, but the submitted DP-3a for September 2013 - Phase 1B submittal was actually submitted incorrectly.

Appendix L again presents a DP-3a document that was submitted containing errors but no actual changes were made to the DP-1 form. Once the document was reviewed by Landon & Rian, Enterprises, Inc., the Prime Contractor was contacted and a new correct DP-3a was requested.

The auditors did not correct the error of missing documents found to the auditor's final report prior to submitting it to the RJSCB.

- **There are missing DP-3a forms for months in which the Prime Contractor was performing services.**

Response/Corrective Action:

L&R disagree with this assertion.

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

" Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. "

"From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May."

- **Many DP-3a forms contain errors including: in accurately calculated value of participation by suppliers and brokers, non-certified EBE participation (See EBE Certification Audit), and incorrect Prime Contractor contract values.**

Response/Corrective Action:

L&R acknowledges and has a system in place to correct any issues

Any DP-3a forms incorrectly completed or containing errors are corrected in a timely manner with the Prime Contractor. DP-3a forms submitted by each Prime Contractor will match what is reported on the most up to date DP-1. Many times Prime Contractors put the total participation value down on the DP-3a for suppliers so their calculated goal percentages are not accurate. L&R does not take the contractors calculated percentages into account. Our internal tracking and monitoring document maintains the accurate percentages taking into account the various documents submitted on a monthly basis.

L & R has reminded Prime Contractors about accurately reporting the number on their monthly submittals. If a mistake similar to the calculated percentages is found, which does not affect any reported monthly numbers, L & R asks the Prime Contractor to correct it on the following month's document.

The non-EBE participation relates to the SBE certification as will be mentioned in 7.2.2, prior to the start of RSMP Project the Federal SBE requirement changed to self-certification. The RSMP approved a standard of what a SBE firm shall be determined: (Small Business Enterprise (SBE)" shall mean a locally-owned business concern which, together with its affiliates has no more than 15 employees and average annual receipts that do not exceed \$2 million. Annual receipts shall be calculated in accord with the standard established under 13 CFR' 121.104. Number of employees shall be calculated in accord with the standards established under 13 CFR 121.106. Affiliates shall be determined in accord with the standards set forth under 13 CFR' 121.103).

L&R consulted with RJSCB legal counsel and the executive director in Phase 1a to provide a notarized SBE certification form for all firms requesting SBE status. All SBE firms have been requested to complete the documentation.

Prime Contractors number's change prior to Landon & Rian Enterprises, Inc. receiving a revised DP-1 form from a change order. This causes a discrepancy in the DP-1 & DP-3a forms. Therefore, a new DP-1 form is requested as soon as L & R is aware of the change orders.

- **Discrepancies exist between the contract values provided on the DP-1 forms and DP-3a forms with no written justification of changes provided (See Appendix M).**

Response/Corrective Action:

L&R acknowledges and has a system in place to correct any issues

As mentioned above, Prime Contractors numbers change prior to Landon & Rian Enterprises, Inc. receiving a revised DP-1 form from a change order. This causes a discrepancy in the DP-1 & DP-3a forms. Therefore, a new DP-1 form is requested as soon as L & R is aware of the change orders along with justification, which is mainly a change in scope from the change order.

L&R is aware that there are discrepancies between DP-1 documents and DP-3a documents referenced in Appendix M for Phase 1B schools (Edison and John Williams). The Auditors collected this information from the most current DP-3A (September 2013) document which at the time had not been reviewed and approved by Landon & Rian Enterprises, Inc. Since then, Landon & Rian Enterprises, Inc. has been reviewing the documents and are taking corrective actions in getting revised documents.

Appendix M also list Phase 1A schools (Helen Barret, Enrico Fermi, & Charlotte HS). There are figures shown on the DP-3A and not on the DP-1 that represents an increase in contract value due to change order submittals.

There are two firms (Coldwater Insulation (#17) & City Electric (Charlotte HS)) listed on Appendix M that the ICO is unaware of as to why their contract value decreased within their last submittal. The ICO team is working to see why there was a change/decrease in the contract value for these two firms.

- **The ICO has not required the Prime Contractors to submit EBE invoices and cancelled checks.**

Response/Corrective Action:

Disagree with this assertion

These are submitted with the payment applications which are reviewed by PM's accountant and RJSCB Executive Director and filed at the RJSCB office. Duly noted and may be a good service for the ICO to perform, but at this time ICO is not responsible for the monitoring of invoices & cancelled checks.

- **Inaccurate or unconfirmed information provided in DP-3a forms has been reported in the ICO's monthly reports to the RJSCB (See Appendix N).**

Response/Corrective Action:

We acknowledge that Appendix N appears incorrect. The Utilization plan shown for Bell Mechanical is not current. Bell Mechanical submitted a revised DP-1 at the end of October that does not include Slater Equipment. These revisions were not added to the binder for the audit team to review because they were not approved by the ICO team due to pending information.

6.2.3 - Minor Control Weakness

- **Many of the Prime Contractors calculated percentages of participation are incorrect and not noted as such on the DP-3a forms but the ICO did not send these documents back to the contractors for correction.**

Response/Corrective Action:

Disagree with this assertion

Landon & Rian Enterprises, Inc. (L & R) does not take the contractors calculated percentages into account. Our internal tracking and monitoring document maintains the accurate percentages taking into account the various documents submitted on a monthly basis.

L & R has reminded Prime Contractors about accurately reporting the number on their monthly submittals. If a mistake similar to the calculated percentages is found, which does not affect any reported monthly numbers, L & R asks the Prime Contractor to correct it on the following month's document.

- **There is no evidence that many DP-3a forms were ever reviewed by the ICO.**

Response/Corrective Action:

L&R disagree with this assertion.

Based on the auditors November 19, 2013 9:49 PM Email to L&R.

“ Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. “

“From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May.”

Based on the Auditors comments there were files that will pulled aside because of errors.

- **In some cases, change orders were issued to EBE contractors that reduced their contract value; there was no justification provided as to why the EBE received these deductions or how the change impacted the overall participation.**

Response/Corrective Action:

We acknowledge and understand that change orders are approved by the RJSCB with CCDs preceding them that allow for work to continue uninterrupted. Landon & Rian Enterprise, Inc. is not able have Prime Contractors submit a revised DP-1 form prior to the executed change order. If determined after the change order approval that the Prime Contractor has not incorporated these changes in their DP-1 Business Utilization Plan, L & R will work with the Prime Contractor to address these issues and determine a strategy to get back on track.

No change orders are made to the M/W/D/SBE contractors without Landon & Rian’s Enterprises, Inc. approval. Any justification is discussed with the Prime Contractor and M/W/D/SBE prior to the change.

6.2.4 - Exceptions

- **A noted exception is that at least two different versions of the DP-3a forms are being utilized by Prime Contractors; both require the same information.**

Response/Corrective Action:

No modified versions of the DP-3a forms were approved by the ICO or the RJSCB. The DP-3a forms submitted by the Primes is not the span of control of the ICO.

Findings - Eligible Business Enterprise Certification Audit Review Results

7.2.2 - Major Control Weakness

- **Many firms that had been considered SBE's and were subsequently reported as SBE's by the ICO in the monthly diversity reports, have responded to the request to complete the SBE Certification form stating that they are not SBE's because their firms do not meet the requirements. These adjustments have not been reflected in the current ICO monthly reports.**

Response/Corrective Action:

Prior to the start of RSMP Project the Federal SBE requirement changed to self-certification. SBE firms were verbally approved by the Prime Contractor in accordance to the RSMP requirements (Small Business Enterprise (SBE)" shall mean a locally-owned business concern which, together with its affiliates has no more than 15 employees and average annual receipts that do not exceed \$2 million. Annual receipts shall be calculated in accord with the standard established under 13 CFR' 121.104. Number of employees shall be calculated in accord with the standards established under 13 CFR 121.106. Affiliates shall be determined in accord with the standards set forth under 13 CFR' 121.103).

Landon & Rian Enterprises, Inc. consulted with RJSCB legal counsel and the executive director in Phase 1a to provide a notarized SBE certification form for all firms requesting SBE status. All SBE firms have been requested to complete documentation.

There are 93 firms listed in Appendix Q as an "Ineligible EBE" company. After reviewing the document 3 firms of the 93 are no longer considered SBE's due to their work on the RSMP project (Steel Tech, Weswood, and Herman HVAC) and 2 firms are not SBE's (Victory Lifts and Firestop. Firestop is a certified WBE – does not affect the overall EBE results). Four (4) firms had letters certifying their SBE status in the binder that the audit team reviewed and stated that they were not certified SBE's (KLUG, Jaclyn, MIS America, and ASA) and 1 firm had a letter certifying their MBE status for which they were approved on the DP-1 Utilization Plan (JHP).

Phase 1b SBE firms are required to complete the SBE notarized documents prior to approval by Landon & Rian Enterprises, Inc. and RJSCB Board.

- **There is no indication that all SBE firms receiving participation have been issued RSMP Certification of Small Business Enterprise Status forms. When firms not listed on the ICO's SBE master list were contacted by the Audit Team, many firms stated that they had never received a form and were unaware of the requirements. More specifically, there was no indication that SBE firms utilized by Professional Service contractors were issued these forms.**

Response/Corrective Action:

We disagree with this assertion

As mentioned, Landon & Rian Enterprises, Inc. consulted with RJSCB legal counsel and the executive director to develop a certification form for all firms requesting SBE status. All SBE firms have been requested to complete documentation and all tracking documentation has been shared with the Executive Director of RSMP. Landon and Rian Enterprises, Inc. mailed out letters and copies of the Small Business Enterprise Status form to both Prime Contractors utilizing SBE contractors and the actual SBE contractor to complete the Small Business Enterprise Status. This information was sent out four times and some subcontractors failed to complete and submit this document. Landon & Rain Enterprises, Inc. is still working to collect this documentation.

- **The ICO has not been required to have the EBE contractors produce a letter of certification from the appropriate certifying authority confirming their current status. This presents the opportunity for an EBE to lose their status; there is no documentation stating that the EBE was certified when the project commenced.**

Response/Corrective Action:

We disagree with this assertion

When DP-1's are submitted to Landon & Rian Enterprises, Inc. (L & R) at the bid opening, L & R reviews the DP-1 and verifies that each proposed EBE is certified through the NYS Empire State Development, City of Rochester or a Certified DBE thru the Unified Certification Program Business Directory <http://nysucp.net>. SBE's are verified through a SBE verification form that need to be notarized and approved by L & R and the RSMP Board.

Once verified, a copy of the certification verification is printed and a copy is placed in an M/W/D/SBE certifications binder that is kept on hand at the Landon & Rian Enterprises, Inc. office. In the case of SBE, a copy of the submitted verification form is placed in the binder.

As should be noted, any EBE firm certified at the time of the signed contract between them and the Prime Contractor can still be used as M/W/D/SBE throughout the project even if the certification is lost during the project.

- **No evidence exists indicating that multiple firms are or were certified as EBE's. A table showing these deficiencies was constructed by the Audit Team (See Appendixes Q, R, and S).**

Response/Corrective Action:

We disagree with this assertion

In response to the referenced Appendix's Q, R, S, L & R reviews each DP-1 and verifies that each proposed EBE is certified through the NYS Empire State Development, City of Rochester or a Certified DBE thru the Unified Certification Program Business Directory

<http://nysucp.net>. SBE's are verified through a SBE verification form that needs to be notarized and approved by L & R and the RSMP Board. Landon & Rian Enterprises, Inc. consulted with RJSCB legal counsel and the executive director in Phase 1a to provide a notarized SBE certification form for all firms requesting SBE status. All SBE firms have been requested to complete documentation.

Landon & Rian Enterprises, Inc. would like to address specific issues related to Appendix Q, R, & S found in the auditor's review submittal.

There are 93 firms listed in Appendix Q as an "Ineligible EBE" company.

Please note, the certification listings in the audit report were taken off of DP-3A forms not DP-1's. DP-1 forms are the designated documents in which firms are approved by the ICO. notes for Appendix Q. (See Appendix – EBE Certification Response)

- **C. Downing Enterprises, LLC, Clinton Downing Construction and Clinton Downing** are the same firm. (MBE)

This firm was certified as an MBE at the time of approval. The firm was NYS Empire State Development certified and listed on the City of Rochester Approved 9/26/11 M/WBE list in which the City of Rochester ordinances only allow certified firms that are approved by the NYS Development Agency.

On Franklin Education Campus C. Downing was approved as a MBE firm and not as a WBE firm.

- **Sykes Consulting (MBE)** NYS Empire State Development certification is pending and will forward certification when received. Sykes has an out of state certification but not NYS.
- **MD Office** was not listed DP-1 or approved by Landon & Rian Enterprises, Inc. for moving services by Lafayette storage.
- **Empire Air Balance** was approved as a certified MBE firm at the time of approval. The firm was NYS Empire State Development certified and listed on the City of Rochester approved 9/26/11 M/WBE list in which the City of Rochester ordinances only allow certified firms that are approved by NYS Empire State Development.
- **Jaelyn Building Services** is an SBE firm and not a WBE. The Prime Contractor was informed and Landon & Rian Enterprises, Inc. requested a revised DP-1 changing the status from SBE to WBE. The firm has a WBE certification which is still pending with NYS Empire State Development.

- **Career Compliance Placement** was on the Program Manager DP-1 form prior to the ICO monitoring contract. CCP website states it is certified but no certification provided. The ICO team has requested a WBE certification but has not receive a response.
- **Mid-City Signs** was not approved by Landon & Rian Enterprises, Inc. as an SBE firm on the DP-1 and is not on the Pike Company DP-1 plan as a WBE as suggested.

Henry Hudson School #28 data was recorded from a DP-3a monthly form that was not filled out properly from Manning Squire. The DP-3a form did not match the approved EBE firms that were listed on the DP-1. Landon & Rian Enterprises, Inc. requested that a corrected DP-3a monthly report form be submitted. The EBE listed for Henry Hudson School #28 is not valid on the auditor's report.

7.2.3 - Minor Control Weakness

- **Accurate and organized documentation and summary lists are not maintained by the ICO.**

Response/Corrective Action:

L&R Disagree with this Assertion

Once Landon & Rian Enterprises, Inc. (L & R) confirms the EBE is certified through the NYS Empire State Development, City of Rochester or a Certified DBE thru the Unified Certification Program Business Directory <http://nysucp.net> and a SBE's are verified through Small Business Enterprise Status form a copy of the certification verification is printed and a copy is placed in an M/W/D/SBE certifications binder that is kept on hand at the Landon & Rian Enterprises, Inc. office. In the case of SBE, a copy of the submitted verification form is placed in the binder.

Landon & Rian doesn't keep a summary list of all participating M/W/D/SBE Subcontractors but as noted provides a detailed binder containing all participating M/W/D/SBE subcontractors.

- **The ICO stated that a Monroe County approved MBE/WBE list of contractors was used to validate certifications, rather than the certifying agencies appropriate directories.**

Response/Corrective Action:

Landon & Rian Enterprises, Inc. (L & R) only verifies EBE's is certified through the NYS Empire State Development, City of Rochester or a Certified DBE thru the Unified Certification Program Business Directory <http://nysucp.net>. SBE's are verified through a SBE verification form that needs to be notarized an approved by L & R and the RSMP Board.

7.2.4 - Exceptions

- **There is neither process or controls created to address SBE firms that can no longer be considered an SBE firm due to receiving RSMP opportunities.**

Response/Corrective Action:

L&R disagree with this assertion:

The process that has been recommended by L&R is to incorporate the SBE forms within the bid documents, so the Prime Contractors can verify the SBE prior to submitting their bid. This recommendation is still being reviewed by the RSJCB Legal Counsel.

If firms are no longer qualified or do not submit the documents they will not be approved as an RSMP SBE firm. It is a standard general practice in the Independent compliance industry that a firm which was approved as an EBE at the start of a project be allowed to complete the project and the Prime EBE numbers will still valid. The EBE if decertified can not be counted as an EBE firm on future contracts unless recertified.

Findings - DP-3 Audit Review Results

8.2.2 - Major Control Weakness

- **DP-3 forms are missing for months in which the Prime Contractor or subcontractor was performing services (See Appendix U).**

Response/Corrective Action:

L&R disagree with this assertion.

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

“ Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. “

“From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May.”

This is clear evidence of why the documents were missing.

- **Some of the DP-3 forms are not completed on a monthly basis, but at different times intervals across the projects.**

Response/Corrective Action:

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

"Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed."

"From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May."

This may explain why some firms were missing.

- **Some DP-3 forms contain miscalculations of the percentage for minority and women workforce participation.**

Response/Corrective Action:

L&R acknowledges some DP-3 errors submitted by the primes but has a system in place to correct deficiencies. The incorrect DP-3 forms provided by the Primes is not in the span of control of the ICO.

L&R does not take the contractors calculated percentages into account. Our internal tracking and monitoring documents maintains the accurate percentages.

L & R has reminded Prime Contractors and their subcontractors about accurately reporting the number on their monthly DP-3 submittals. If a mistake similar to the calculated percentages is found, which does not affect any reported monthly numbers, L & R asks the Prime Contractor to correct it. This is the reason why L&R have a

- **Missing certified payroll reports for the corresponding DP-3 forms.**

Response/Corrective Action:

L&R disagree with this assertion

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

"Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed."

"From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May."

Some of the missing certified payroll reports were in the files that the Auditor did not add to the report.

- **Contractor has wrongful counts of a female or home office staff as a member of the workforce on the DP-3 form (See Appendix V).**

Response/Corrective Action:

L&R disagree with this assertion

L&R does not count any hours of the administrative staff unless they are on the project site. In reference to Appendix V a detailed review of the monthly report shows that the home office staff were not counted.

- **Inaccurate or unconfirmed information provided in DP-3 forms has been reported in the ICO's monthly reports to the RJSCB.**

Response/Corrective Action:

L&R disagree with this assertion

This is made on the error of review on the prior note then no error was made.

No other proof was given.

8.2.3 - Minor Control Weakness

- **Many of the contractors calculated percentages of workforce participation are incorrect, but recalculated by the ICO and accurately recorded in the monthly reports.**

Response/Corrective Action:

L&R acknowledges that this is correct and it is made know by the Auditors that the ICO has corrected the errors prior to the monthly report.

No Issue found.

- **Multiple instances in which the contractors are not meeting diversity requirements.**

Response/Corrective Action:

The ICO acknowledges that all Primes are not meeting goals. This is part of the ICO duties is to work with the Primes and unions to meet the goals.

Prime Contractors are not required to meet a monthly workforce diversity goal, only an overall workforce diversity goal of 6.9% female and 20% Minority.

A monthly review of each Prime Contractor is conducted by Landon & Rian Enterprises to review the Prime Contractors overall goal on the project, if a Prime Contractor falls below the required diversity goals they are notified and reminded of the 48 hr. notice form submittal to the union for minority/women workers as recorded in the diversity plan.

If the union cannot provide the minority/women workers Prime Contractor/Subcontractors can use any outside source. The Unions are made aware of the PLA monthly meeting and EEO reports provided by Landon & Rian Enterprises, Inc. A copy of qualified Roar students are provided to any interested Prime Contractors or subcontractors.

- **Evidence does not support that all DP-3 forms were reviewed by the ICO; many were apparently never reviewed.**

Response/Corrective Action:

L&R disagree with these assertion based on the auditors November 19, 2013 9:49 PM Email to L&R.

“ Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. ”

The auditors did not correct the error of missing documents found to the auditor’s final report prior to submitting it to the RJSCB.

The files of DP-3 forms that were missed by the Auditors errors is proof that the ICO review the documents.

L & R tracks this documentation via attachment #4 or our document referred to by the audit team in Appendix U.

- **Many of the DP-3 forms were not signed by the contractor.**

Response/Corrective Action:

Signatures are reviewed at the same time Landon & Rian Enterprises, Inc. reviews DP-3 hrs. against the submitted certified payroll hrs. If a signature discrepancy is found during our review of the DP-3 forms, the Prime Contractor or subcontractor is asked to correct the error and resubmit the changes.

8.2.4 - Exceptions

- **The contractors are using at least two versions of the DP-3 form.**

L&R disagree with this assertion.

Response/Corrective Action:

No modified versions of the DP-3 forms were approved by the ICO or the RJSCB. The DP-3 forms submitted by the Primes is not in the span of control of the ICO.

Findings - Rochester Careers in Construction Audit Review Results

9.2.2 - Major Control Weakness

- **Missing RCC Reports for months in which the Prime Contractor or subcontractor was performing services.**

Response/Corrective Action:

L&R disagree with this assertion.

The Auditor DP-3A Monthly Utilization Report Audit results contain errors based on the auditors November 19, 2013 9:49 PM Email to L&R.

" Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. "

"From my count there are over 100 documents that are in this cabinet. I have not reviewed them in great detail. But from what I have seen some documents date back to May."

- **Some RCC reports contain errors including miscalculation of total hours and errors in the total amount paid to Rochester Careers in Construction.**

Response/Corrective Action:

L&R disagree with this assertion.

The purpose of the spreadsheets illustrate the errors and miscalculation between the certified payroll and RCC reports in order that the contractors may be aware and correct the errors. The audit team did not understand the purpose of the RCC spreadsheets.

9.2.3 - Minor Control Weakness

- **Some of the RCC reports are not provided on a monthly basis, but rather different time intervals.**

Response/Corrective Action:

L&R acknowledges this not every process is in the span of control of the ICO.

L & R does request documents on a monthly basis, however some Prime Contractors submit documents based on their payroll schedule. The different time intervals does not reflect the overall integrity of the report.

Not every process is in the span of control of the ICO.

9.2.4 - Exceptions

- **There was no indication that many of the forms were reviewed by the ICO, and that hours were verified.**

Response/Corrective Action:

L&R disagree with these assertion based on the auditors November 19, 2013 9:49 PM Email to L&R.

“ Today while reviewing paperwork I had requested a few documents that were missing. It was brought to my attention that you separately file any certified payroll, DP-3 forms, or RCC checks that were not properly completed by the contractor. Unfortunately, we may have already noted that these files were missing in the project audit we have completed. ”

The auditors did not correct the error of missing documents found to the auditor’s final report prior to submitting it to the RJSCB.

It is noted by the Auditors that the ICO had separated RCC checks that were not properly completed by the contractors this is clear proof that the ICO reviewed the documents.

Findings - Rochester Resident Reporting Audit Review Results

10.2.2 - Major Control Weakness

- **The Rochester Resident report was not completed for every month since inception.**

Response/Corrective Action:

L&R disagree with this assertion.

The auditors did not provide dates or samples of what specific reports were missing for the ICO team to verify.

- **The ICO does not implement a working paper for review of the employees.**

Response/Corrective Action:

L&R does not agree with the opinion of implementing a working paper.

L&R does not submit separate report on a monthly basis. This monthly review is calculated from reviewing each certified payroll submittal and submitted in the monthly RJSCB report.

Internal working papers were used prior to the Auditors review but not needed for the accuracy of the reports.

- **Some of the certified payroll reports did not include employee addresses, some addresses were post office boxes, which do not indicate residency.**

Response/Corrective Action:

L&R acknowledges employees addresses issues in the report and realizes that not every process is in the span of control of the ICO.

This report may appear inaccurate due to contractors not providing their employ's addresses on the certified payrolls. L&R is aware and only reports based on what contactors actually submits for addresses. Contractors have been contacted and were requested that they provide addresses on their Certified Payroll documents however because they were not required to submit this information in their contract some have failed to comply.

It is very likely that some workers may have PO Box addresses because they may not have stable residence.

- **The Audit team discovered a street that was in the City of Rochester but not listed on the ICO's directory.**

Response/Corrective Action:

L&R disagree with this assertion.

It appears that the audit team made an error or did not review the Rochester City Street Directory that L&R uses to complete the report. The street mentioned (Locust) is in the City of Rochester Directory that was provided.

10.2.3 - Minor Control Weakness

- **Some reports contained errors in calculating total number of trade employee and Rochester residents.**

Response/Corrective Action:

L&R disagree with this assertion.

The auditors did not provide dates or samples of what specific reports had errors for the ICO team to review.