



**Offices of the  
Inspector General**

**Lucy Lang**  
Inspector General

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February 14, 2022

Hope Knight, Esq.  
President and CEO-designate and Acting Commissioner  
Empire State Development  
633 Third Avenue  
New York, NY 10017

Re: NYS IG 4732-319-2017

Dear President and CEO-designate and Acting Commissioner Knight:

On December 22, 2017, the Offices of the New York State Inspector General received a complaint about Minority and Women-Owned Business Enterprise (M/WBE) compliance on the Tioga Downs Racetrack, LLC gaming facility capital project. Specifically, the complaint questioned the role of BSV Metal Finishers Inc. (BSV), an MBE purportedly utilized on the project.

The Inspector General investigated this allegation and found that BSV performed no “commercially useful function” on the project and instead acted as a “pass-through” entity for billing purposes.<sup>1</sup>

By way of background, Tioga Downs was awarded a gaming facility license on August 30, 2016, and undertook a construction project to expand its “racino” gambling facilities into a casino. Tioga Downs contracted with LPCiminelli Inc. as the project manager to coordinate and oversee the casino construction. In turn, LPCiminelli subcontracted with a number of entities to provide services and supplies for the project. All work on the project was subject to M/WBE requirements. The casino project was completed in or around September 2018.

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<sup>1</sup> A contractor on a State contract may only claim utilization of an M/WBE toward a participation goal if the M/WBE's work performed constituted a commercially useful function—a useful role proportionate to the payment received. Contractors may not act merely as a pass through or unnecessary participant. See, 5 NYCRR § 140.1.

According to records filed on the project with Empire State Development (ESD), LPCiminelli contracted with Matco, a non-M/WBE, to provide electrical work on the casino project. Matco then subcontracted with BSV to supply electrical goods on the project and to satisfy a portion of project M/WBE participation requirements. BSV submitted invoices to Matco on the project totaling approximately \$911,000 for these supplies.

However, the Inspector General's investigation found that BSV did not supply all of the electrical goods claimed by Matco on the project. Instead, the Inspector General found that Matco purchased most of these goods directly from non-M/WBE suppliers, such as Kaman Automation. BSV then created invoices to mirror those of Kaman Automation, so as to make it appear that the electrical goods had been supplied by BSV. BSV reported supplying over \$700,000 in electrical goods that were actually supplied by Kaman Automation, and BSV was paid \$34,074 for this pass-through activity.

The investigation also found that Matco falsely reported to LPCiminelli M/WBE utilization credit for this purported purchase from BSV as if BSV was an M/WBE supplier when, in fact, BSV is certified only as an agent/broker. Utilization credits may only be claimed for the value of an agent/broker's markup or fees on capital projects.

Through these false representations, Tioga Downs was able to claim M/WBE utilization on the project while BSV performed no commercially useful function.

Given these findings, the Inspector General recommends ESD review BSV's continuing certification as a New York State MBE. The Inspector General's case file detailing the investigation of BSV is available for ESD's review.

Please advise me of any action taken by ESD in response to this recommendation within 45 days of this letter. If you require further information, please contact Deputy Inspector General Jeffrey J. Hagen at 716.847.7118.

Sincerely,

  
Robyn Adair  
Chief Deputy Inspector General

cc: Goldie Weixel, Esq.  
Acting General Counsel