



New York State Office for Technology

Minority and Women's Business Enterprise Reporting

Report 2009-S-104



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

July 22, 2010

Melodie Mayberry-Stewart, Ph.D.
Chief Information Officer
New York State Office for Technology
State Capital
PO Box 2062
Albany, NY 12220

Dear Dr. Mayberry-Stewart:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Office for Technology's *Minority and Women's Business Enterprise Reporting*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

Our objective was to determine if the Office for Technology (OFT) is appropriately establishing annual goals for procurements from minority- and women-owned business enterprises (M/WBE), making a good faith effort to reach those goals, and accurately reporting their results to Empire State Development (ESD).

Audit Results - Summary

We found that OFT had not always established annual goals for M/WBE participation. In fact, we found that OFT did not submit an annual plan for three of the four years covered by our audit scope period and, therefore, had no official M/WBE goal for those three years. While OFT established a 20 percent M/WBE participation goal in its 2008-09 annual plan based on \$176.4 million of eligible expenses, the assumptions underlying this level of participation were not supported with analysis showing that the participation goal was realistic. In fact, the actual M/WBE participation for 2008-09 was only 1.02 percent, which indicated that the goal was unrealistic to begin with. Moreover, in the last quarter of 2010, OFT reduced the extent of expenditures used to determine its M/WBE goal by over 95 percent and, by so doing, achieved a 14.07 percent participation rate for that quarter; thus supporting that the original goal setting was unrealistic.

We also noted that OFT's actual M/WBE participation did not reflect required prime contractor reporting of the use of M/WBE subcontractors, because the prime contractors failed to provide the reporting and OFT failed to enforce it. As a result, OFT's actual M/WBE accomplishment would be understated to the extent that such M/WBE subcontracting was taking place.

Our tests showed OFT adequately tracks, captures and assures the accuracy of the data it reports to ESD. Staff uses a financial management system to record M/WBE purchasing data, coupled with metrics-based spreadsheets that compile the information and create quarterly utilization reports for submission to ESD. However, we also found that OFT only submitted about half of the required quarterly reports to ESD during our four-year audit period.

We also found OFT has made significant efforts to increase awareness and promote participation in the State's M/WBE program, including hosting various M/WBE-focused events in cities across the State with the goal of forming long-term partnerships between M/WBEs and large high-tech companies. OFT also provides an extensive amount of information for M/WBEs on

its web site, publishes a monthly newsletter targeted toward M/WBEs and an M/WBE Guide to Doing Business with New York State, and maintains an extensive list of M/WBE vendors that it makes available to IT companies looking to form partnerships with M/WBEs.

Our report contains two recommendations to help OFT improve its M/WBE planning and reporting.

This report, dated July 22, 2010, is available on our website at: <http://www.osc.state.ny.us>.

Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller

Division of State Government Accountability

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Introduction

Background

Article 15-A of the Executive Law requires State agencies and public authorities to promote the participation of minority-owned business enterprises (MBEs) and women-owned business enterprises (WBEs) in State contracts and procurement opportunities. Specifically, State agencies must establish annual goals for participation (expressed as a percentage of the agency's total contract spending for the year), make a "good faith" effort to achieve their goals, and report quarterly to Empire State Development (ESD) on their level of participation. Annual goal plans must be submitted to ESD each October, with quarterly compliance reports due in January, April, July, and October. ESD approves agency plans, monitors compliance and certifies businesses as eligible MBEs and/or WBEs.

The mission of the Office for Technology (OFT), which is headed by the State's Chief Information Officer (CIO), is to provide strategic technology leadership and deliver innovative information and technology solutions enabling government to improve the quality of life for its citizens, businesses, and visitors. OFT has established a goal to raise the level of M/WBE involvement in State technology procurement to 15 percent by the end of 2009 and 20 percent by the end of 2010.

Audit Scope and Methodology

Our objective was to determine if OFT is appropriately establishing annual goals for procurements from M/WBE vendors, making a good faith effort to reach those goals, and accurately reporting their results to ESD. Our audit scope covered the period April 1, 2006 through March 31, 2010. To accomplish our objectives, we met with OFT officials to confirm and enhance our understanding of their practices for purchasing products and services from M/WBEs. We also reviewed OFT's process for setting M/WBE goals and its efforts to attain these goals. We reviewed OFT's data and spreadsheets containing M/WBE information to ensure it reported this information accurately to ESD.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller’s authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to OFT officials for their review and comment. Their comments were considered in preparing this report, and are included at the end of the report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, OFT’s Chief Information Officer shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Contributors to the Report

Major contributors to this report include Frank Houston, Walter Irving, Greg Petschke, Lynn Freeman, Donald Cosgrove, and Michele Krill.

Audit Findings and Recommendations

Goal Setting

ESD regulations require that each State agency prepare an annual M/WBE plan. The plan should include the agency's goals for participation by certified minority- and women-owned business enterprises, expressed as a percentage of the agency's aggregate annual contract spending. The plan should also include the agency's justification for those goals. We found OFT only submitted the required plan for one of the four fiscal years covered by our audit (2008-09). No plan was developed for 2006-07, 2007-08 or 2009-10.

We reviewed the 2008-09 annual plan to determine if OFT had established realistic participation goals and made a good faith effort to reach these goals. In that year, OFT's M/WBE participation goal was 20 percent of \$176.4 million in reported contractual services appropriations - 15 percent participation by MBE vendors and 5 percent by WBE vendors. OFT staff indicated they considered several factors when setting this goal including; the promotion of the use of M/WBE subcontractors by their current vendors, the increased focus and leadership of the CIO in spearheading the M/WBE program, and the success that other agencies have had with their programs. However, these assumptions were not supported with analysis that justified that the 20 percent 2008-09 participation goal was realistic.

In fact, the actual 2008-09 M/WBE participation was only 1.02 percent, followed by 2.28 percent for 2009-10. These results indicate that the goal that had been set for 2008-09 was not realistic. Moreover, beginning with the fourth quarter of 2009-10, OFT significantly reduced the pool of expenditures against which M/WBE participation is measured, explaining that they had determined that over 90 percent of the purchases that had been included in the original goal setting should have been excluded because the nature of the expenditures precluded M/WBE participation. ESD approved OFT's new discretionary pool of expenditures which, as a result, went from \$57.5 million in the third quarter of 2009-10 to \$3.3 million in the fourth quarter of 2009-10; a reduction of about 95 percent. This reduction caused the M/WBE participation to rise from 1.10 percent in the third quarter to 14.07 percent in the fourth quarter of 2009-10. Accordingly, this change, as shown by the fourth quarter 2010 results, aligns OFT's M/WBE performance much closer to the 20 percent goal that had been established in 2008-09.

Another reason that OFT's M/WBE performance results had been so low was that its reported achievements did not include any payments that its

prime contractors may have made to M/WBE eligible subcontractors. While the prime contractors were supposed to provide OFT with quarterly M/WBE Contractor Compliance Reports detailing their use of M/WBE subcontractors, OFT had not enforced this reporting requirement and the contractors failed to comply with it. As previously discussed, OFT had no analysis supporting the assumptions underlying its M/WBE participation. Accordingly, we were unable to estimate to what extent such underreporting contributed to the low goal accomplishments.

**Performance
Tracking and
Data Verification**

ESD regulations require each agency's quarterly compliance report to include information on the number and value of contracts awarded during the period, the amounts expended under these procurements and the extent of participation of eligible minority- or women-owned businesses. In addition, while Article 15-A does not require agencies to report data for commodity and service contracts valued at less than \$25,000, or for construction contracts valued at less than \$100,000, ESD requests that agencies report this data so it can maintain complete M/WBE statistics.

We found OFT has an adequate system for tracking and compiling the data reported to ESD. OFT utilizes a financial management system maintained by the Department of Corrections Services (DOCS) to record M/WBE purchasing data. Procurement staff enters the vendor, purchase order or contract number, type (MBE or WBE), commodity code and dollar value into the financial management system. Metrics-based spreadsheets are used to compile the information from DOCS and to produce the quarterly utilization reports for ESD.

We reviewed OFT's submission of the required quarterly compliance reports and found that of the 15 required quarterly reports, it had submitted only 8. We also found that during our audit scope period OFT had not received any M/WBE Contractor Compliance Reports from their prime vendors.

Adequate monitoring and oversight of the M/WBE program is dependent upon the accuracy of the data provided by agencies in their quarterly reports. For this data to be useful it must match the agency's own internal reports, agree with supporting documentation, be complete, and be reported timely. We reviewed OFT's reports and supporting documentation to gain assurance that the data reported was accurate and complete.

We found OFT has adequate supporting documentation for its reported data and that this data closely matches the data reported to ESD. We obtained a copy of an expenditure database from the third quarter of 2009-

10 fiscal year. We were able to validate this information in comparison to the State accounting system. In addition, we verified that the vendors listed on OFT's most recent utilization report were all listed on the ESD's database of certified M/WBE vendors.

Outreach Efforts

Each agency should seek out and encourage certified vendors to compete for opportunities as part of its good faith efforts to achieve M/WBE participation goals. We reviewed OFT's efforts to encourage new vendor participation and found several actions in place. For example, OFT has created a link on its website to an M/WBE-dedicated page, which features many helpful resources including: information about OFT's program and goals; details regarding Article 15-A; success stories from M/WBE vendors; and a link to ESD's website where vendors may seek program certification.

OFT has created an M/WBE Guide to Doing Business in New York State that provides the details of the program and certification information. It publishes a monthly newsletter which details information on the certification process, resources for technical assistance, access to capital, contract opportunities, and M/WBE events. OFT also maintains an e-mail list of M/WBE vendors that it uses when distributing requests for proposals to prospective vendors.

We also found OFT has hosted several events focusing on M/WBE awareness, including several events in Albany, New York City and Buffalo, which focused on forming long-term partnerships between State-certified M/WBEs and large high-tech companies doing businesses in New York. OFT also co-hosted a roundtable discussion with high-tech companies who shared success stories of their partnerships with M/WBEs. The OFT CIO gave the keynote address at the 30th Annual Exposition and Diversity Business Opportunity Fair in Rochester, which focused on increased M/WBE participation in the technology business sector.

In addition to efforts to find certified M/WBE vendors, agencies should encourage qualified vendors who are not yet certified with the State to obtain certification. OFT maintains an internal listing of certified vendors who express interest in providing goods and services. In some cases, vendors who are not certified (but who state they are an M/WBE) may express interest in becoming a supplier for the OFT. When this occurs, OFT staff attempt to help the vendor become certified by supplying them with ESD's M/WBE information and referring them to the certification website. Staff also supplies vendors with information on the process for becoming part of the statewide negotiated contracts network. We

verified these efforts through a review of correspondence between OFT staff and various vendors.

- Recommendations**
1. Submit M/WBE annual plans containing realistic M/WBE goals to ESD on a timely basis.
 2. Develop a system to collect M/WBE contractor compliance reports from prime vendors and include the information in quarterly reports submitted in a timely manner to ESD.

Agency Comments



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DIRECTOR OF OFFICE FOR TECHNOLOGY

July 2, 2010

Frank J. Houston Audit Director
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Dear Mr. Houston:

This is in response to OSC Draft Report 2009-S-104, Minority and Women's Business Enterprise Reporting. Thank you for taking the time to examine CIO/OFT's progress in meeting the spirit of Article 15A of the Executive Law.

We were very pleased with OSC's acknowledgement of the improvements CIO/OFT has made in this area over the last several years. The agency did not collect MWBE participation information and did not file required reports to ESDC at the time I was appointed CIO in early 2007. Improvement in this area has been a high priority of this agency as presented in CIO/OFT's Plan 2010 Strategic Roadmap issued in April 2008. We have invested significant resources in improving our data collection and reporting functions. We are also conducting significant outreach to increase MWBE participation. Your report reaffirms the steps we have taken have borne fruit.

CIO/OFT is committed to continual improvement in our MWBE Program and appreciate the insights offered by your audit team.

Sincerely,


for Melodie Mayberry-Stewart, Ph.D.
NYS Chief Information Officer