



Office of Children and Family Services

Minority and Women's Business Enterprise

Report 2009-S-105



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

July 29, 2010

Gladys Carrión, Esq.
Commissioner
Office of Children and Family Services
Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

Dear Commissioner Carrión:

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 of Children and Family Services' 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 of Children and Family Services (OCFS) 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 historically OCFS has not appropriately set M/WBE goals. While OCFS has set MWBE goals for 2008-09 and 2009-10 and has made a good faith effort to achieve those goals, the goal setting process is not as effective as it ought to be. Also, OCFS has not filed periodic M/WBE reports with ESD as required because of long-standing information system problems that need to be corrected.

We found that for the 2005-06 and 2006-07 fiscal years, OCFS' annual M/WBE plans specified a zero percent participation goal. In 2007-08, OCFS did not even specify a goal. For 2008-09 and 2009-10, OCFS set combined M/WBE goals of 6 percent and 12 percent, respectively. However, we found these goals were based on a very small pool of eligible discretionary costs totaling only about \$11.9 million annually. This represents less than one percent of OCFS' \$3.5 billion in annual non-personal services expenditures.

OCFS can improve its performance in the M/WBE program by clarifying its eligible expenditures, especially as they relate to funds paid to not-for-profit service providers. One reason that OCFS' pool of eligible costs is so small is that it excludes these payments, even though these providers' M/WBE expenditures could be counted, if known. OCFS needs to educate its not-for-profit service providers regarding subcontracting with M/WBE vendors and reporting these expenditures to the OCFS.

We also determined that OCFS can improve its performance by increasing communication with agencies that have similar needs and that also contract with M/WBE vendors. In addition, management could benefit from further outreach to potential M/WBE vendors, particularly those that provide goods and services that OCFS has historically purchased only from statewide contracts.

We found that OCFS has systems in place to track, capture and assure the accuracy of its M/WBE data, but it has not filed required reports with ESD for over three years. ESD officials indicated some data files had been transferred to them by OCFS, but the files were corrupted and could not be loaded onto ESD's data base. As a result, the most recent OCFS data in ESD's system is from April 2007. OCFS officials blamed programming errors as the cause of the corrupted data and indicated they will work with ESD to resolve the issues.

We found that OCFS does encourage certified M/WBE vendors to compete for procurement opportunities. For example, purchasing staff utilize ESD's online directory of certified vendors when soliciting bids and new vendors can register to receive bidding opportunities through OCFS' website. OCFS also attempts to attract new vendors at various M/WBE outreach events. We did, however, identify certain other steps OCFS could take to seek out and target potential M/WBE vendors, including providing more online information about the types of goods and services OCFS purchases, and providing electronic links to guide prospective vendors toward M/WBE certification.

Our report contains five recommendations to help OCFS improve its M/WBE program. OCFS officials indicated they will incorporate, as practicable, those recommendations which improve the efficiency and effectiveness of this program for OCFS and program participants.

This report, dated July 29, 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
110 State Street, 11th Floor
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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 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 Office of Children and Family Services (OCFS) was established in 1998, and is responsible for programs and services involving foster care, adoption and adoption assistance, child protective services, preventative services for children and families, services for pregnant adolescents, childcare and referral programs and protective programs for vulnerable adults. In addition, OCFS is responsible for all aspects of the State's juvenile justice programs including administering and managing residential facilities, community-based group homes, day-placement centers and reception centers for juvenile delinquents and juvenile offenders placed in OCFS custody by family and criminal courts.

Audit Scope and Methodology

Our objective was to determine if the OCFS 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, 2005 through November 24, 2009. To accomplish our objectives, we met with OCFS officials to confirm and enhance our understanding of their practices for purchasing products and services from M/WBEs. We also reviewed OCFS's process for setting M/WBE goals and its efforts to attain these goals. We reviewed OCFS's internal databases and spreadsheets containing M/WBE information to ensure it reported this data 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 OCFS 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, the Commissioner of the Office of Children and Family Services 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, John Buyce, Greg Petschke, Scott Heid, Donald Cosgrove and Thierry Demoly.

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 non-personal service expenditures. The plan should also include the agency's justification for those goals.

We found that historically OCFS has not appropriately set M/WBE goals. For the 2005-06 and 2006-07 fiscal years, the M/WBE plans of OCFS identified a zero percent participation goal. In 2007-08, the M/WBE plan of OCFS did not even specify a participation goal. While OCFS has recently established a process to set M/WBE goals, the process is not as effective as it ought to be. For example, for the 2008-09 and 2009-10 years, OCFS set combined M/WBE goals of 6 and 12 percent respectively. However, these goals were based on only about \$11.9 million of OCFS discretionary costs. This represents less than one percent of OCFS' \$3.5 billion annual expenditure for other than personal service costs.

OCFS officials explained that the vast majority of their expenditures are payments that go to Local Social Service Districts and not-for-profits, neither of which qualifies for M/WBE expenditure goals. They added that the processes that they have established include incorporating procedures for soliciting M/WBEs into procurement guidelines and training staff on Article 15-A requirements. OCFS officials point out that these efforts have resulted in achievement of 50 percent of the 2008-09 participation goal and about 70 percent of the participation goal for the first nine months of 2009-2010.

We recognize that OCFS cannot count expenditures to not-for-profits towards its M/WBE goals because these entities are not actually owned by anyone and, therefore, are ineligible for M/WBE status. However, similar to large construction companies that utilize subcontractors, OCFS would be able to count program purchases that these not-for-profit organizations make from qualified M/WBE vendors or subcontractors. We noted that OCFS has made some initial efforts in this area, including providing program staff with policy information reinforcing OCFS' M/WBE goals and mission, and stressing that staff should educate not-for-profit organizations about seeking out MBE and WBE firms. Additional steps are still needed to encourage these organizations to report such transactions and to capture the resulting data. We further recommend that OCFS work toward establishing M/WBE goals that include reasonable estimates for not-for-profit contracting with eligible M/WBEs.

We determined that OCFS may be able to further increase the participation of M/WBE vendors by improving communication and information-sharing with State agencies that have similar procurement needs. These agencies include the Office of Temporary and Disability Assistance, the Office of Mental Health, and the Office of Alcoholism and Substance Abuse Services, all of which have extensive dealings with not-for-profit service providers. OCFS could work together with these agencies and ESD to find methods to encourage the not-for-profit vendors to subcontract with M/WBE firms, thus increasing overall participation.

In addition, OCFS should analyze its purchasing patterns to identify whether it purchases many items using centralized commodity and service contracts established by the Office of General Services (OGS) and from vendors identified as either preferred or sole sources. Some of these purchases may be eligible for inclusion in the M/WBE program, particularly if new vendors that are already M/WBE certified are identified. OCFS is not obligated to purchase from statewide contracts if it can find a comparable deal elsewhere. Even sole- or single-source procurements could become M/WBE opportunities as more eligible vendors enter the marketplace in various businesses.

**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.

Adequate monitoring and oversight of the M/WBE program is dependent upon the accuracy of the data provided by agencies in their quarterly reports to ESD. We found that OCFS has systems in place to track, capture and assure the accuracy of its M/WBE data, but has not reported useable performance data to ESD for three years. OCFS utilizes two financial management systems, the Purchase Order Payables and the Contract Management systems, to capture payment information. Performance data is compiled and reported to ESD by running a program that matches payment information from these systems to ESD's M/WBEs. The program produces two text files (one with summary information and another with detail), which are then submitted to ESD for upload into its database.

OCFS officials told us they have been unable to successfully run these reports since the employee who developed the program left OCFS in April 2007. ESD officials confirmed that some data files had been transferred by OCFS, but they were corrupted and could not be loaded onto the data base. As a result, the most recent OCFS data in the ESD system is more than three years old. OCFS officials blamed programming errors as the cause of the corrupted data and indicated that they will continue to work with ESD and hope to resolve the issues in the near future.

Outreach Efforts

Each agency should seek out and encourage certified vendors to compete for opportunities. We found that OCFS makes an effort to attract certified vendors as part of its good faith efforts to achieve M/WBE participation goals. OCFS is represented on the State Affirmative Action Advisory Council's M/WBE Subcommittee, which acts to expand contracting opportunities for M/WBEs. In addition, OCFS officials attend various outreach events throughout the year, including the Black and Puerto Rican Legislative Caucus, Hispanic Legislative Caucus and the Small Business Expo. OCFS provides brochures to vendors at these events describing what it purchases and on how vendors can become certified through ESD. In addition, OCFS has established an online bidding list that allows potential vendors to register so they can be notified when procurement opportunities occur.

Agencies should help eligible vendors become certified if they seek assistance. OCFS does provide ESD contact information to vendors when asked either over the phone or at outreach events. However, there are certain other proactive steps that OCFS can take to seek out and target potential M/WBE vendors. These include expanding its website to include information on the types of goods and services that it generally purchases, as well as information or links to help guide prospective vendors toward M/WBE certification. OCFS may also consider placing advertisements targeted toward new vendors in the State Contract Reporter or other relevant media.

Recommendations

1. Establish realistic goals for not-for-profit participation with eligible M/WBEs.
2. Communicate with not-for-profit service providers to educate them about subcontracting with M/WBE vendors and reporting these expenditures to OCFS.
3. Encourage procurement staff to communicate with other State agencies that have similar purchasing needs to share information and identify new opportunities to acquire necessary goods and services from qualified M/WBE vendors.

4. Resolve technical issues with ESD and transmit the required M/WBE participation reports to ESD.
5. Dedicate resources to more aggressively seek out new qualified M/WBE vendors, by utilizing communication channels like OCFS's website, other common media sources, and any other effective means OCFS can identify.

Agency Comments



June 29, 2010

New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

Mr. Frank Houston, Director
Division of State Government Accountability
Office of the State Comptroller
110 State Street – 11th Floor
Albany, NY 12236

Dear Mr. Houston:

David A. Paterson
Governor
Gladys Carrión, Esq.
Commissioner

This is the Office of Children and Family Services' (OCFS) response to the Office of the State Comptroller (OSC) audit report 2009-S-105, Minority and Women's Business Enterprise (MWBE) Reporting. OCFS has reviewed the document provided by OSC and appreciates the opportunity to address the recommendations that have been presented.

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OCFS is committed to participation in the MWBE program and to creating and achieving goals which support the procurement of goods and services of minority and women-owned business enterprises. This is, and continues to be, an activity OCFS takes very seriously. OCFS acknowledges that there have been issues in the reporting of data to Empire State Development (ESD) in recent years. OCFS had undertaken actions to address those issues prior to the start of this audit and those issues have been largely addressed. OCFS is working to improve the reporting of data to ESD and, where possible, the rate of MWBE participation in OCFS expenditures.

Below please find the specific OCFS response to each of the five recommendations contained in this report.

OSC Recommendation 1 - Establish realistic goals for not-for-profit participation with eligible MWBEs.

OCFS Response to Recommendation 1 -

As a Human Services agency, New York State Office of Children and Family Services' procurement needs reflect the unique nature of most of the services acquired through contracts with Not-For-Profit (NFP) entities. This 'uniqueness' is reflected in the non-construction and limited durable goods procurements that make up the bulk of our procurement expenditures. A substantial portion of agency expenditures are directed to Local Social Services Districts (LSSDs) pursuant to State and/or Federal legislation.

OCFS already actively encourages our Not-for-Profit partners and public agencies to participate and engage services and/or goods from MWBEs. OCFS contract language reflects both the requirements of Article 15-A and standard boiler-plate language to maximize potential MWBE participation.



An Equal Opportunity Employer

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OCFS will explore all viable mechanisms to increase MWBE participation where possible with NFP vendors.

OSC Recommendation 2 - Communicate with not-for-profit service providers to educate them about subcontracting with MWBE vendors and reporting these expenditures to OCFS.

OCFS Response to Recommendation 2

As stated previously, OCFS is committed where feasible to increasing viable MWBE participation in contracting opportunities for services and goods OCFS acquires. OCFS actively provides information to all vendors regarding MWBE participation with information on the OCFS website and establishes goals on contracts for NFP partners where applicable and feasible. OCFS will evaluate the current RFP language on MWBE and, if needed, strengthen it in a manner that encourages best practices by OCFS contractors.

OSC Recommendation 3 - Encourage procurement staff to communicate with other State agencies that have similar purchasing needs to share information and identify new opportunities to acquire necessary goods and services from qualified MWBE vendors.

OCFS Response to Recommendation 3

OCFS will continue its communication with Human Services agencies on best practice purchasing practices and has partnered with other agencies on several procurements and purchases. OCFS has frequent communication with procurement staff in the NYS Office of General Services regarding purchasing requirements and options. The Office of Equal Opportunity and Diversity Development (EODD) staff actively participates in the NYS Affirmative Action Advisory Council's MWBE Subcommittee and participates in various MWBE outreach activities and events statewide.

OSC Recommendation 4 - Resolve technical issues with ESD and transmit the required MWBE participation reports to ESD.

OCFS Response to Recommendation 4 -

As of April 27, 2010, OCFS has submitted all required utilization reports and has resolved prior technical issues regarding the electronic transmissions of these reports to ESD.

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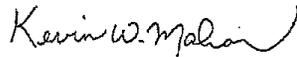
OSC Recommendation 5 - Dedicate resources to more aggressively seek out new qualified MWBE vendors; by utilizing communication channels like OCFS's website, other common media sources, and any other effective means OCFS can identify.

OCFS Response to Recommendation 5 -

Prior to formal issuance of this audit, OCFS had implemented a recommendation of posting a link to the DMWBD website on our intranet page and the agency's Contracts, RFP, and Grants external website. OCFS continues to participate in all viable networking events like the annual Small Business Administration Matchmaking Expo and other MWBE oriented events sponsored by the Office of General Services to increase/maximize MWBE opportunities. EODD has a full-time employee (Affirmative Action Administrator 1, G-18) assigned to coordinate, monitor and administer MWBE program activities. Additionally, program staff involved in contract management and Information Technology actively participates in MWBE activities.

OCFS is committed to appropriate participation and continuous improvement in the Minority and Women-Owned Business Enterprise program. OCFS has reviewed the recommendations made by OSC and will incorporate, as practicable, those recommendations which improve the efficiency and effectiveness of this program for OCFS and program participants.

Sincerely,



Kevin W. Mahar
Director
Office of Audit and Quality Control

cc: William T. Gettman, Jr.
Thomas S. Tipple
Edna Mae Reilly
Karen Lopiccio
Bennett Marion