



Division of State Police

Minority and Women's Business Enterprise Reporting

Report 2009-S-81



Thomas P. DiNapoli

Table of Contents

	Page
Authority Letter	5
Executive Summary	7
Introduction.....	9
Background	9
Audit Scope and Methodology	9
Authority.....	10
Reporting Requirements	10
Contributors to the Report	10
Audit Findings and Recommendations.....	11
Goal Setting	11
Performance Tracking and Data Verification	12
Outreach Efforts	13
Recommendations.....	14
Agency Comments	15

State of New York Office of the State Comptroller

Division of State Government Accountability

May 24, 2010

John Melville
Acting Superintendent
New York State Division of State Police
Building 22
1220 Washington Avenue
Albany, NY 12226-2252

Dear Superintendent Melville:

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 Division of State Police'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 Division of State Police (Division) 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 determined that although the Division's M/WBE procurement goals are relatively low at just 2 percent of eligible purchases, these goals appear realistic in view of the Division's current procurement patterns. We also found that, while the Division has not fully achieved those goals (the WBE goal was met for the first time in 2008-09), it is still taking steps to challenge staff by doubling its goals to 4 percent for the current year. We therefore concluded that the Division is making a good faith effort to pursue M/WBE involvement in procurement opportunities, but still needs to take further steps, such as those recommended in this report, to substantially increase participation in the future.

We found the Division has established several new processes to assist staff in meeting its goals, including incorporating procedures for soliciting M/WBEs into the Division's purchasing guidelines, as well as holding meetings and providing guidance to staff to encourage use of M/WBEs. The Division has also implemented some measures to identify new M/WBE vendors, encourage further participation by existing M/WBEs, and assist eligible vendors in becoming certified.

Our tests showed the Division adequately tracks, captures, and assures the accuracy of the data it reports to ESD. Staff use an automated system which matches data from the State Comptroller's Office and ESD's M/WBE database to compile quarterly reports on its M/WBE utilization. We found the Division maintained adequate support for the data it submitted to ESD.

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

assist ESD in its management of the M/WBE program by informing ESD when vendors report difficulties in registering, renewing or otherwise participating in the program.

Our report contains two recommendations to help the Division improve its identification of M/WBE procurement opportunities, expand the field of potential qualified vendors and provide information that can assist in the statewide management of the M/WBE program. Division officials concurred with the recommendations and indicated that they will take action to implement them.

This report, dated May 24, 2010 is available on our web site 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

Albany, NY 12236

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 Division was established in 1917. Its mission is to promote highway safety and protect against crime. The Division, headed by a Superintendent who is appointed by the Governor, is organized into 11 Troops, which are overseen and supported by a Division Headquarters located in Albany. The Division purchases a wide variety of goods and services such as uniforms, body armor, DNA testing equipment, and office supplies. For the 2008-09 fiscal year, the Division's operating budget was approximately \$657 million of which \$505 million represented personal service costs. Of the remaining \$152 million, the Division concluded about \$82 million was "discretionary" funds available for potential M/WBE participation. This figure did not include items excludable by law, such as travel reimbursements, utilities, postage, telephones, certain rentals and repairs, and special charges.

Audit Scope and Methodology

Our objective was to determine if the Division 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 October 29, 2009. To accomplish our objectives, we met with Division officials to confirm and enhance our understanding of their practices for purchasing products and services from M/WBEs. We also reviewed the Division's process for setting M/WBE goals and its efforts to attain these goals. We reviewed the Division'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 Division 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 Superintendent of the Division of the State Police 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 recommendation contained herein, and if the recommendations were not implemented, the reasons therefor.

Contributors to the Report

Major contributors to this report include Frank Houston, John Buyce, Greg Petschke, Heather Pratt, Anne Marie Miller, and Kelly Evers-Engel.

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 examined the Division's annual M/WBE plans and found that they complied with these requirements. We also examined whether the Division has established realistic participation goals and is making a good faith effort to reach these goals, focusing on the 2008-09 fiscal year. We found that the Division's goals are relatively low, but appear realistic in light of current procurement patterns. As such, we conclude that the Division is making a good faith effort to pursue M/WBE involvement in procurement opportunities, but needs to take further steps to enable it to substantially increase participation in the future.

For the 2008-09 fiscal year, the Division's goal was to award 2 percent of the \$82 million in discretionary expenditures available for potential M/WBE participation to MBE and WBE vendors. One percent was to be awarded to MBE vendors and one percent was to be awarded to WBE vendors. Although these goals are quite modest, the Division still did not achieve the MBE goal, reporting only .19 percent of discretionary expenditures (about \$156,000) awarded to minority-owned firms. Conversely the Division did achieve its WBE goal for the first time, with nearly 1.5 percent of discretionary expenditures (more than \$1.2 million) awarded to women-owned firms.

To establish the participation goals, Division staff analyzed various spending factors they believed contributed to the potential for M/WBE participation. Such factors included the types of products and services the Division typically purchases each year, coupled with historical information on the extent of purchases from various sources. For example, this analysis showed that the Division purchases a large amount of specialized products, such as DNA testing equipment and body armor, which Division officials indicate are currently not produced by M/WBE vendors. We conclude that the factors considered by the Division are realistic and reasonably account for the Division's unique purchases.

We also found that Division management established several new processes to assist staff in meeting the M/WBE goals and supplemented standard purchasing guidelines with new procedures for soliciting eligible vendors.

For example, Division management held a meeting of the staff responsible for many of the purchases in individual Troops to outline M/WBE goals and the procedures for soliciting vendors, and sent e-mail to staff reminding them to solicit M/WBEs, including attachments containing the current listings of M/WBEs interested in doing business with the Division. The Division also requires that Troop clerks maintain a log of their efforts to solicit M/WBEs when making purchases.

We also reviewed the types of items that the Division routinely purchases and determined that it may be able to increase the participation of M/WBE vendors by improving communication and information-sharing with agencies that have similar procurement needs. These agencies include the Department of Correctional Services and Federal law enforcement agencies (for commodities and services specifically related to law enforcement), as well as the Department of Health and the Office of Mental Health and the Office Mental Retardation and Developmental Disabilities (for health-related purchases).

In addition, according to the analysis conducted by the Division when establishing its participation goals, the Division purchases many items (e.g., uniforms, aircraft fuel, and medical supplies) using centralized commodity and service contracts established by the Office of General Services (OGS) and from vendors identified as either preferred or sole sources. We believe such purchases could be eligible for inclusion in the M/WBE program, particularly if new vendors that are already M/WBE certified are identified. The Division 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.

It is therefore important for the Division to share information with other agencies that have similar needs, and to maintain open lines of communication with both agencies and vendors to identify new opportunities to obtain necessary goods and services from qualified M/WBE firms. Such opportunities must be found if the Division is to fully achieve its M/WBE participation goals, especially since those goals increased to 2 percent participation each (MBE and WBE), and 4 percent overall, in the 2009-10 fiscal year.

**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 the Division has an adequate system for tracking and compiling the data reported to ESD. It is highly automated and integrated with data received from the State Comptroller's Office and from ESD. The Division takes expenditure data received from the Comptroller's Office and places it into an Access database along with information from ESD's listing of certified M/WBE vendors. The system then matches the tax ID numbers from the expenditures and the vendor listing to identify eligible M/WBE purchases.

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 the Division's reports and supporting documentation to gain assurance that the data reported was accurate and complete.

We found the Division has adequate supporting documentation for its reported data and that this data closely matches the data reported to ESD. We obtained copies of the spreadsheets showing the line-by-line data submitted to ESD, as well as copies of the databases from which this information was pulled for the 2008-09 fiscal year. When we compared the data, we found only minor discrepancies that were attributable either to data entry errors by Division staff who manually enter information into ESD's online forms or to Division updates made to the reports after their submission. In addition, we also verified that the vendors the Division used during the fourth quarter of 2008 are currently listed in ESD's database as 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 the Division's efforts for encouraging new vendor participation and found several actions in place. For example, the Division posts weekly ads in the Contract Reporter to solicit M/WBE participation and has a similar posting on its web page. The Division also maintains a number of shared folders on its computer network that contain information on M/WBE vendors. Staff are required to enter information into these folders and onto their personal logs each time they make a purchase, including the type of service/commodity sought; their efforts to solicit an M/WBE vendor; and, if no M/WBE vendor was selected, the reason why they were unable to utilize a M/WBE vendor. In addition, a list of contacts for potential M/WBE vendors is maintained in the shared folders and the listing is updated every four to five months using the certified M/WBE

listing from ESD. We reviewed supporting documentation and found these efforts were taking place as stated.

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. As stated previously, the Division 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 Division. When this occurs, Division staff attempt to help the vendor become certified by supplying them with ESD's M/WBE information and referring them to the certification web site. Staff also supply 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 Division staff and various vendors.

Division officials stressed that, while they encourage current vendors to become certified, they are not always successful and sometimes experience resistance from the vendors due to the length and complexity of the certification process. For example, officials are confident that one of the Division's uniform suppliers is eligible for certification, but despite encouragement, it has not yet applied. In another case, officials told us a supplier recently reported that it decided not to renew its certification due to the complexity of the process. This vendor told the Division that several months went by without response to its application for recertification, only to be asked to then submit additional documentation. According to Division staff, the vendor decided it wasn't worth the trouble to recertify. As a result, the Division can not count purchases from these vendors toward achieving its total M/WBE goals.

Recommendations

1. Encourage procurement staff to communicate with other agencies that have similar purchasing needs to share information and identify new opportunities to acquire necessary goods and services from qualified M/WBE vendors.
2. Assist ESD in its management of the M/WBE program by informing ESD officials when vendors report difficulties in registering, renewing or otherwise participating in the program.

Agency Comments

JOHN P. MELVILLE
ACTING SUPERINTENDENT



NEW YORK STATE POLICE
BUILDING 22
1220 WASHINGTON AVE.
ALBANY, N. Y. 12226-2252

April 27, 2010

Mr. Frank J. Houston
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, New York 10038

Dear Mr. Houston:

We have reviewed the draft audit report (2009-S-81) regarding *Minority and Women's Business Enterprise Reporting*. We concur with the findings and will take the following actions to implement the recommendations:

Recommendation 1. Encourage procurement staff to communicate with other agencies that have similar purchasing needs to share information and identify new opportunities to acquire necessary good and services from qualified M/WBE vendors.

Agency procurement staff will contact the New York State Department of Correctional Services and Federal law enforcement agencies regarding M/WBE vendors supplying law enforcement commodities and the New York State Department of Health regarding vendors supply laboratory supplies. Agency procurement staff will attend the 2010 State Purchasing Forum sponsored by New York State Office of General Services on May 19 and 20, 2010. It is expected that staff will collect information at the forum regarding M/WBE vendors that supply commodities and services purchased by the agency.

Recommendation 2. Assist ESD in its management of the M/WBE program by informing ESD officials when vendors report difficulties in registering, renewing or otherwise participating in the program.

Agency procurement staff will continue to assist all vendors that have difficulties participating in the system and will continue to encourage all eligible vendors to do so. Staff will contact ESD officials when difficulties are reported to them.

If you have any questions or require any additional information feel free to contact me at (518) 457-6621.

Sincerely,



William J. Callahan
Administrative Director