



New York State Department of Taxation and Finance

Minority and Women's Business Enterprise Reporting

Report 2009-S-82



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 Comptroller's Comments	21

State of New York Office of the State Comptroller

Division of State Government Accountability

June 29, 2010

Jamie Woodward
Acting Commissioner
New York State Department of Taxation and Finance
W.A. Harriman Campus, Building #9
Albany, New York 12227

Dear Ms. Woodward:

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 Department of Taxation and Finance'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 State 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
Department of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

Our objective was to determine if the Department of Taxation and Finance (Department) 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 Department's M/WBE procurement goals are relatively low at just 2 percent of eligible purchases, these goals are supported by an analysis of the Department's current procurement patterns. We also found that the Department has not fully achieved these modest goals, even though management has provided staff with the basic tools and training to help them maximize their use of M/WBE firms when making procurements. We therefore concluded that, while the Department may be making a good faith effort to pursue M/WBE involvement in procurement opportunities, it needs to take further steps, such as those recommended in this report, to substantially increase participation in the future.

The Department considers several factors when establishing its M/WBE goals; including past program achievements; the contracting pool of M/WBE vendors compared to the types of services and commodities purchased; available funding outside Statewide contracts; and budget limitations on discretionary buying thresholds. To reach its goal, the Department trains its purchasing staff on Article 15A requirements and utilizes a directory of certified M/WBE vendors when making purchases.

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

The Department utilizes the Department of Correctional Services' (DOCS) financial management system to process its expenditures. We found that this system accurately tracks the Department's M/WBE expenditures. However, we were unable to reconcile the total discretionary purchases reported by the system for the 2008-09 fiscal year to the total purchases reported by the Department

to ESD. The system indicated \$9.3 million more in discretionary purchases than was reported to ESD. Department officials were aware of this problem and have been working with DOCS' officials to reconcile the difference, but have been unable to do so. As a result, if the total discretionary purchases are higher than reported, the Department's participation percentages may be even lower than those reported to ESD.

We found that the Department can improve its outreach efforts to build its inventory of M/WBE certified vendors and the services and/or commodities they provide. Currently, department staff identify potential M/WBE firms when attending vendor seminars and when vendors contact the Department. The Department could improve these efforts by allowing potential certified vendors to contact them through the procurement opportunities section of their website. The site provides information to the vendors, but does not allow them to provide information to the Department on their status or their products and services. The Department could use this information to further improve its inventory of M/WBE vendors and the goods and services they provide.

Our report contains four recommendations to help the Department improve its reporting process, identify and expand M/WBE procurement opportunities, and increase its outreach and vendor assistance. Department officials concurred with the recommendations and indicated they will take action to implement them.

This report, dated June 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
Department of State Government Accountability
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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 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 Department of Taxation and Finance (Department) collects tax revenue and provides associated services in support of government operations in New York State. In fulfilling its responsibilities, the Department collects and accounts for almost \$60 billion in State taxes and \$40 billion in local taxes; administers 35 State and 7 local taxes, including New York City and City of Yonkers income taxes; and processes approximately 27 million tax returns, registrations, and associated documents each year. The Department also manages the State Treasury, which provides investment and cash management services to various State agencies. The Department reported \$75.8 million in "discretionary" expenditures for fiscal year 2008-09. 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 Department 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 objective, we met with Department officials to confirm and enhance our understanding of their practices for purchasing products and services from M/WBEs. We also reviewed the Department's process for setting M/WBE goals and their efforts to attain these goals. We reviewed the Department'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 Department officials for their review and comment. Their comments were considered in preparing this report, and are included at the end of the report. Officials provided us with certain clarifications to our findings and agreed with all of our recommendations. Our rejoinders to their comments are included as State Comptroller's Comments at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the New York State Department of Taxation and Finance 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 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, 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 examined the Department's annual M/WBE plans and found that they complied with these requirements. We also examined whether the Department 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 Department's goals are relatively low, but appear realistic in light of current procurement patterns. We also found that the Department has not reached these modest goals, even though management has provided procurement staff with the basic tools and training to help them maximize their use of M/WBE vendors. As such, we conclude that, while the Department may be making a good faith effort to pursue M/WBE involvement in procurement opportunities, it still needs to take further steps to substantially increase participation in the future.

For the 2008-09 fiscal year, the Department's goal was to award 2 percent of the \$75.8 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 Department did not achieve either goal, reporting only .09 percent of discretionary expenditures (about \$69,000) awarded to minority-owned firms and just .37 percent of purchases (\$277,000) awarded to women-owned firms.

To establish the participation goals, Department 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 Department typically purchases each year, coupled with historical information on the extent of purchases from various sources. The Department determined it spent just under 50 percent of its total 2008-09 non-personal services funding on bank services and information technology services. According to Department officials, the bidder community for these two areas includes very few M/WBE vendors, if any.

We found that Department management has established processes to assist staff in meeting the M/WBE goals and supplemented standard purchasing guidelines with procedures for soliciting eligible vendors. For example, procurement staff are trained on Article 15 and are provided a copy of the

Department's goal plan, while procurement card holders are encouraged to utilize M/WBE vendors.

We also reviewed the types of items that the Department 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. The majority of the Department's purchases are for information technology services and banking services for processing tax returns. Agencies that would have similar types of purchases could include the Office for Technology, the Banking Department, and local and federal tax collection agencies.

In addition, according to the analysis conducted by the Department when establishing its participation goals, the Department purchases many items using centralized commodity and service contracts established by the Office of General Services (OGS) and from vendors identified as 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 Department is not obligated to purchase services 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 Department 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 Department is to fully achieve, and increase, its M/WBE participation goals.

**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 Department has an adequate system for tracking and compiling data reported to ESD. The Department utilizes a financial management system maintained by the Department of Corrections Services (DOCS) to record M/WBE purchasing data. Procurement staff enters the vendor name and type (MBE or WBE), purchase order or contract number, commodity

code, and dollar value into the system, which produces the quarterly utilization reports that are sent to ESD.

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 Department's reports and supporting documentation to gain assurance that the data reported was accurate and complete. We also verified that the vendors the Department used during the fourth quarter of 2008 are currently listed in ESD's database as certified M/WBE vendors.

We found that the Department had adequate supporting documentation for the M/WBE procurement data reported to ESD, but not for its reported total discretionary expenditures. For fiscal year 2008-09, the Department reported to ESD total expenditures of \$75.8 million and M/WBE expenditures of \$346,000. In reviewing quarterly detailed expenditure reports produced by the DOCS system, we were able to verify the reported M/WBE expenditures. However, the system identified total discretionary purchases of \$85.1 million, or \$9.3 million more than reported to ESD. Department officials indicated that they are aware of this discrepancy and have been working with DOCS officials to reconcile the differences between the two totals, but have been unable to do so. If the total value of the discretionary purchases is actually higher than that reported, the Department's M/WBE participation percentages could be overstated by as much as one-third.

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 Department's efforts for encouraging new vendor participation and found several basic actions are in place. For example, the Department uses the ESD M/WBE Directory, OGS contract listings, and their own internal data base, to identify potential M/WBE firms when making a procurement. Procurement staff also identify potential M/WBE firms when attending vendor seminars and inquire about the M/WBE status of vendors when they contact the Department. These baseline efforts help the Department promote the identification and use of M/WBE certified vendors. However, the Department can still make improvements to better identify and help certify additional M/WBEs.

The Department maintains a procurement opportunities section on its public website that contains listings of current procurement opportunities available. In addition, the section provides a link to the New York State Contract Reporter so vendors can identify more procurement opportunities. However, this section does not allow potential vendors to notify the Department if they are certified M/WBEs and to provide information on the

services or commodities they provide. Outreach efforts like this could allow the Department to build a larger inventory of certified vendors itemized by service or commodity and have it available to procurement staff.

In addition to efforts to find qualified M/WBE vendors, agencies should encourage vendors who are not certified with the State to obtain certification. When contacted by a vendor, the procurement staff will inquire whether or not a vendor is an M/WBE. If they are not, the staff will encourage the vendor to contact ESD to become certified if eligible. Through some of its procurement opportunities, the Department includes a questionnaire where bidders notify the Department if they are M/WBE certified, and if not, provides ESD contact information so vendors can become certified if eligible. The Department needs to take a more active role to assist potential vendors. For example, the Department, through the procurement opportunities section of its website, could provide potential vendors with information on how to become certified through ESD along with a link to the ESD website.

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. Monitor the total discretionary purchases reported quarterly to ESD against those listed on the financial management system. Reconcile any differences to ensure accurate totals and participation levels are reported to ESD.
3. Use the Department's procurement opportunities website to allow vendors to communicate their M/WBE status and the types of services and/or commodities they provide to the Department.
4. Provide more active assistance by communicating with potential M/WBE vendors through the Department's procurement opportunities website on how they can become certified by ESD and providing them with the contacts to do so.

(Department officials agreed with our recommendations and stated they are taking action to implement them.)

Agency Comments



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
W A HARRIMAN CAMPUS
ALBANY, NY 12227

JAMIE WOODWARD
ACTING COMMISSIONER

June 1, 2010

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

Dear Mr. Houston:

Thank you for the opportunity to respond to the Office of the State Comptroller (OSC) draft audit report (2009-S-82) addressing the Department of Taxation and Finance's "Participation of Minority and Women's Business Enterprise Reporting in State Contracts".

While we agree with the recommendations contained in the report, we wish to point out the following statements that need to be corrected and clarified:

OSC states that the Department was unable to reconcile the total discretionary purchases reported by us for FY 2008-09. They note that "the Department reported \$62.5 million in 'discretionary' expenditures for fiscal year 2008-09." They also note that the system identified \$85.1 million in expenditures.

DTF Response:

The above statements need to be corrected and clarified. The total expenditure number reported to ESD for FY 2008-09 is \$75.7 million, and was provided to the auditors; not \$62.5 million. Our expenditure number is derived from quarterly reports submitted to the Department from DOCS for the development of our MWBE submission to ESD. In re-checking our reported numbers as part of this review, we noticed that the first three quarters of fiscal year 2008-09 total \$62.5 million.

***Comment**

1

*** See State Comptroller's Comments, Page 21.**

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The quarterly reports that we brought to OSC's attention (showing the FY 2008-09 total of \$85.1 million) contains additional detail, some of which we know is not germane to MWBE reporting. To date, we have been unable to get DOCS to provide us with what "filters" are put on each report to determine the difference.

As part of OSC's audit review, they too reached out to DOCS to attempt to reconcile the reports and were also unable to obtain the requested information from DOCS.

Additionally, we also contacted ESD for their help, and they were unable to provide assistance.

The draft report notes that for FY 2008-09 the Department did not achieve its MWBE goals—one percent for MBE; and one percent for WBE--reporting .04 percent of discretionary purchases were awarded to minority-owned firms and .42 percent of purchases to women-owned firms.

DTF Response:

The percentages cited by OSC were based on an inaccurate total expenditure number \$62.5 million, which is not the expenditure number reported to ESD. Utilizing the \$75.7 million number that the Department reported to ESD, our actual annual percentage numbers are .09 percent for MBE's and .37 percent for WBE's for FY 2008-09.

*** Comment
1**

Additionally, we want to highlight that as a result of our refocused efforts and the addition of certain certified vendors, the Department ended FY 2009-10 with substantially improved numbers--.79 percent awarded to minority-owned firms and 1.24 percent for women-owned firms.

OSC's draft report states that the Department is not obligated to purchase from statewide contracts if it can find a comparable deal elsewhere.

DTF Response:

We do not believe that we are able to utilize non-contract vendors for a "comparable deal" without going outside of the requirements of the State Finance Law. Pursuant to NYS Purchasing Guidelines, State agencies are required to utilize a preferred source vendor in the first instance. If the preferred source does not provide the form, utility or function necessary, we then must turn to

*** Comment
2**

*** See State Comptroller's Comments, Page 21.**

statewide contracts for purchase of commodities. If the contract has an “OGS or less clause”, as provided for in Section 163.3 a.v., Article XI of State Finance Law, we can purchase products other than from a statewide contract vendor if the product (or substantially similar product) is lower in price and/or is available under terms that are economically efficient to the State agency.

The draft report states that “the Department purchases many items using centralized commodity and service contracts established by OGS and from vendors identified as either preferred source or sole sources. We believe such purchases could be eligible for inclusion in the MWBE program, particularly if new vendors that are MWBE certified are identified.”

DTF Response:

The Department is not completely clear what OSC is suggesting here. While we agree that it is possible for a sole source to be MWBE certified; we understand that sole source procurements are not generally considered in MWBE reporting. We agree that if a sole source vendor is MWBE certified, they should be included in our reporting. However, no preferred source vendors—Corcraft, Industries for the Blind or Industries for the Disabled—are MWBE certified and the Department has no control over the determination of what constitutes a preferred source.

<p>* Comment 3</p>

The draft report notes that the Department obtains MWBE information from vendors through its RFP process. It also notes that we use the OGS contract listings when issuing an RFP.

DTF Response:

We believe that there may have been some confusion here as well. The Department provided OSC with a printout of an established internal vendor database that DTF continuously updates. This database contains information that flags a vendor if it is a MWBE. We noted to OSC that it had recently been used for the development of a “bidder’s list” for a recently released RFP. OSC asked us for a print out of the database. We actually seek MWBE information from vendors and the MWBE certification site and enter them into our database for use in all of our procurements. We may obtain some MWBE information from the RFP process if a certified vendor contacts us regarding the procurement. However, our MWBE identification procedure is general procurement policy and not specific to an RFP. We also want to clarify that OGS contract listings—

<p>* Comment 1</p>

*** See State Comptroller’s Comments, Page 21.**

identifying potential MWBE's—are used for our procurements, and not only for the development of RFP.

The following responds to the report's recommendations.

Recommendation 1:

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

DTF Response:

We agree. Prior to the audit, we submitted to ESD our FY 2009-10 Goal Plan that contained essentially the same recommendation. We stated that as part of our planned outreach to the MWBE community for the next fiscal year we plan to “confer with other state agencies that may undergo a similar procurement, particularly those with high MWBE utilization rates...”

Recommendation 2:

Monitor the total discretionary purchases reported quarterly to ESD against those listed on the financial management system. Reconcile any differences to ensure accurate totals and participation levels are reported to ESD.

DTF Response:

We agree. We will continue to monitor discretionary purchases as we have always done, and reconcile any differences. We will also continue to ask DOCS to explain the different filters placed on their different reports to aid us in this reconciliation.

Recommendation 3:

Use the Department's procurement opportunities website to allow vendors to communicate their MWBE status and the types of services and/or commodities they provide to the Department.

DTF Response:

The Department plans to implement. We will provide a place on our procurement website for vendors to communicate their MWBE status and the type of service they could provide to the Department.

Recommendation 4:

Provide more active assistance by communicating with potential MWBE vendors through the Department's procurement opportunities website on how they can become certified by ESD and providing them with the contacts to do so.

DTF Response:

We agree. As a compliment to our response to recommendation three, we will provide potential MWBE vendors with information on how they can become certified by ESD. This contact information will be made available on the Department's website.

In closing, we continue to appreciate and value OSC's input and suggestions on ways to improve our operation.

Sincerely,



Jamie Woodward
Acting Commissioner

State Comptroller's Comments

1. The report has been revised to reflect the comments of Department officials.
2. The State Finance Law requirements apply to commodities purchases only. For purchases of services, agencies must only comply with the preferred source requirement. If the needed service is not available from a preferred source, then the agency can purchase the service through any means available. We believe this could open up more opportunities for the Department to seek out and engage M/WBE firms to provide the services it requires.
3. We agree with the Department that there are no M/WBE firms that qualify as preferred sources. However, there are sole source and/or single source vendors who may already be certified or who could be certified, and thus be counted in the Department's M/WBE participation rates.