

*State of New York*  
*Office of the State Comptroller*  
*Division of Management Audit*

**DEPARTMENT OF  
ECONOMIC DEVELOPMENT**

**OVERSIGHT OF SELECTED  
AUTHORITIES' PROGRAMS FOR  
MINORITY AND WOMEN'S  
BUSINESS ENTERPRISES**

**REPORT 95-S-30**



*H. Carl McCall*  
*Comptroller*



# State of New York Office of the State Comptroller

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## Division of Management Audit

### Report 95-S-30

Mr. Charles Gargano  
Commissioner  
Department of Economic Development  
One Commerce Plaza  
New York, NY 12245

Dear Commissioner Gargano:

The following is our report on the Department of Economic Development's oversight of the implementation of programs for Minority and Women's Business Development at selected public authorities.

This audit was performed pursuant to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law. The major contributors to this report are listed in Appendix A.

*Office of the State Comptroller  
Division of Management Audit*

October 25, 1995

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# Executive Summary

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## Department of Economic Development Oversight of Selected Authorities' Programs for Minority and Women's Business Enterprises

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### Scope of Audit

In July 1988, Article 15-A of the Executive Law authorized the creation of the Governor's Office of Minority and Women's Business Development (Office). The purpose of the Office was to promote business opportunities for companies owned and operated by members of minority groups and women. Under this law, public authorities and State agencies were required to establish business participation goals for minority and women's business enterprises (M/WBEs). Public authorities must also comply with Executive Order 173, which was issued to ensure that the M/WBE programs of authorities were consistent with the State's M/WBE goals.

In April 1992, the Economic Development Law was amended to reestablish the Office under the Department of Economic Development (Department) as the Division of Minority and Women's Business Development (Division). The Division reviews applications by firms requesting M/WBE designation and grants State certification to those businesses that meet M/WBE criteria. As of July 1994, the Division had certified about 5,000 M/WBEs. The Division is also required to ensure that agencies and public authorities meet their participation goals in compliance with the Law and Executive Order. During the 1993-94 fiscal year, the Division had 48 employees and spent about \$2.1 million.

Our audit addressed the following question about the Division's administration of the M/WBE program for the period April 1, 1992 through September 30, 1994.

- Does the Division maintain effective oversight of public authorities' compliance with M/WBE program goals?

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### Audit Observations and Conclusions

The Division needs to strengthen its oversight of public authorities' M/WBE programs. To obtain adequate assurance that authorities meet program goals to comply with the Law and Executive Order, the Division should make required field visits to verify program information and ensure that the compliance statistics public authorities report are accurate. In addition, the Division should establish a schedule for the regular recertification of M/WBE firms to ensure they continue to meet the criteria for M/WBE designation.

We found that the Division has not complied with Department operating procedures, which require visits to public authorities to verify the accuracy of

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reported M/WBE program data. Due, at least in part, to the Division's limited monitoring, the public authorities we visited overstated their M/WBE activity. Specifically, these authorities reported activity for firms that were not State-certified, made various clerical errors in preparing their activity reports and did not verify payments to M/WBE subcontractors. (See pp. 5-8)

For example, for the quarter ended March 31, 1993, the Dormitory Authority reported activity with 43 firms. (Note: Firms with multiple contracts and/or receiving multiple contract payments were counted once.) We found that 14 of these firms (33 percent) were not State-certified M/WBEs. The \$2.1 million paid to these 14 firms represented about 41 percent of the \$5.1 million in M/WBE activity the Dormitory Authority reported for the period. Further, the Division requires that public authorities report their M/WBE activity in terms of the actual dollars paid to the M/WBEs, not the contract amounts awarded to them. However, at the time of our review, the Dormitory Authority reported its awarded amounts. (See pp. 9-10)

Large amounts of the public authorities' M/WBE activity are with subcontractors. However, the authorities did not have adequate and timely methods for verifying that payments are made to M/WBE subcontractors. We also found other errors in the public authorities' activity reports. For example, for the 18 months ended March 31, 1994, the Thruway Authority's summary reports showed M/WBE activity (worth about \$2.5 million) with 68 more firms than were documented on the corresponding detail reports. (See pp. 11-14)

In addition, we concluded that the Division needs to develop a schedule for recertifying firms to ensure they still meet the M/WBE eligibility criteria. Most of the 4,800 M/WBEs certified after April 1, 1989 have not been recertified. Furthermore, we recommended that the Department coordinate recertification efforts, to the extent possible, with other public agencies which have significant M/WBE programs. (See pp. 6-8)

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## **Comments of Agency Officials**

Department officials generally agreed with the report's recommendations and indicated the actions they have taken and will be taking to implement them. These actions include a comprehensive management review to explore ways to utilize existing resources more efficiently and effectively.

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# Contents

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<b>Introduction</b>	Background . . . . .	1
	Audit Scope, Objective and Methodology . . . . .	2
	Response of Department Officials . . . . .	4

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<b>Ensuring Compliance With Program Goals</b>	Division Oversight . . . . .	5
	<i>Monitoring Authorities' Compliance</i> . . . . .	5
	<i>Recertifying Businesses' Program Eligibility</i> . . . . .	6
	Authorities' Reported Compliance With Program Goals . . . . .	9
	<i>Contracts With Non-Certified Businesses</i> . . . . .	9
	<i>Reporting Payments Made to Contractors</i> . . . . .	10
	<i>Verifying Payments Made to Subcontractors</i> . . . . .	11
	<i>Inaccurate Program Data</i> . . . . .	12

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<b>Exhibit A</b>	Public Authorities Impacted by Article 15-A of the Executive Law
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<b>Appendix A</b>	Major Contributors to This Report
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<b>Appendix B</b>	Comments of Department Officials
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# Introduction

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## Background

In July 1988, Article 15-A of the Executive Law authorized the creation of the Governor's Office of Minority and Women's Business Development. The purpose of the Governor's Office of Minority and Women's Business Development was to promote business opportunities for companies owned and operated by members of minority groups and women. Under this statute, State agencies and public authorities are required to establish employment and business participation goals for minority and women's business enterprises (M/WBEs).

In April 1992, the Economic Development Law was amended to reestablish the Governor's Office of Minority and Women's Business Development under the Department of Economic Development (Department) as the Division of Minority and Women's Business Development (Division). For fiscal year 1993-94, the Division had 48 employees and spent about \$2.1 million.

Public authorities must comply with Public Authorities Law Section 2879, the provisions of which are similar to Article 15-A of the Executive Law. Public authorities must also comply with Executive Order 173 which was issued to ensure that activities of the State's public authorities are consistent with the State's M/WBE goals. A listing of the entities subject to Article 15-A is included in Exhibit A.

To qualify as an M/WBE, a firm must be 51-percent owned, operated and controlled by a member of a minority group or a woman. To obtain certification, a business must submit a detailed application to the Division and pass the eligibility assessment process. As of July 1994, about 5,000 M/WBEs have been certified by the Division. The following table summarizes the M/WBEs certified by the Division through July 1994 according to amount of annual gross sales.

<b>A</b> <b>NNUAL GROSS SALES</b>	<b>NUMBER OF</b> <b>CERTIFIED FIRMS</b>	<b>PERCENT</b> <b>OF TOTAL</b>
Less Than \$100,000	1,749	35
\$100,000 to \$499,999	1,523	30
\$500,000 to \$999,999	620	12
\$1,000,000 to \$4,999,999	777	15
\$5,000,000 and Over	280	6
Unknown	97	2
<b>Total</b>	<b>5,046</b>	<b>100</b>

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As indicated by the table, 3,272 (65 percent) of the certified M/WBEs have gross sales of \$500,000 or less. Thus, many of the State's certified M/WBEs are comparatively small firms.

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## **Audit Scope, Objective and Meth- odology**

We audited the Division's oversight of public authorities' compliance with the Minority and Women's Business Development program for the period April 1, 1992 through September 30, 1994. The objective of our performance audit was to assess the Division's effectiveness in ensuring that public authorities meet the requirements regarding M/WBE participation in authority contracts. We audited the Division's program oversight at four judgmentally selected public authorities: the Dormitory Authority (Dormitory), Battery Park City Authority (Battery Park), the Thruway Authority (Thruway), and the Metropolitan Transportation Authority (MTA). In addition we reviewed the records at MTA-New York City Transit (Transit), which is an affiliate of the MTA. We selected these authorities based on the amount of their reported M/WBE activity and other information provided to us by the Division.

Our audit focused on reviewing compliance at selected public authorities because authorities, unlike State agencies, are not included on a centralized reporting system (like the State accounting system) which the Division can access to monitor compliance information. To accomplish our objective, we visited the above public authorities, interviewed Division and authority officials, examined Division and authority procedures manuals, guidelines and related documentation, surveyed reporting methodologies at various other public authorities and reviewed relevant laws and regulations.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those Division procedures and operations which are included in our audit scope. Further, these standards require that we understand the Division's internal control structure and compliance with those laws, rules and regulations that are relevant to the Division's operations which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that have been identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This report,

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therefore, highlights those areas that need improvement and does not address activities that may be functioning properly.

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## **Response of Department Officials**

Draft copies of this report were provided to Department officials for their review and formal comment. Their comments have been considered in preparing this report and are included in Appendix B.

In their response to the draft report, Department officials questioned whether our findings represent the Division's oversight of public authorities. According to Department officials, the survey of all authorities, that (officials state) we conducted at their request and that formed the basis of our findings, may not have necessarily been representative of conditions at other public authorities.

We note, however, that we did not perform our survey at the request of the Department. Further, we did not use our survey to broadly assess the Department's oversight. Our assessment of the Department's oversight was based on our review of prescribed procedures and our interviews of Division officials. In contrast, our survey focused on one issue - whether the authorities reported the actual payments to M/WBEs or the contract amounts awarded to M/WBEs. Moreover, we do not assert that the findings from our reviews of the authorities we did visit are consistent with conditions at the authorities we did not visit. Rather, we presented the findings from our site visits to illustrate why the Department needs to improve its oversight of the authorities' M/WBE programs.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Economic Development shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

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# Ensuring Compliance With Program Goals

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To ensure that public authorities achieve the levels of contract participation by M/WBE businesses that are mandated by Article 15-A of the Executive Law and Executive Order 173, the Division is supposed to conduct performance reviews at authorities and examine the quarterly reports the authorities submit to the Division. Further, the Division is supposed to maintain an accurate list of certified M/WBE businesses and recertify such businesses on a timely basis to ensure they continue to meet the criteria for M/WBE eligibility.

However, we found that the Division has not made field visits to determine the extent of authorities' compliance with M/WBE requirements, or established comprehensive guidelines to ensure that authorities use acceptable methodologies and report appropriate data. In addition, the Division does not recertify businesses on a timely basis to ensure that lists of M/WBE businesses are accurate. As a result, we believe the Division does not have adequate assurance that authorities are in compliance with the Law's requirements.

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## Division Oversight

Department procedures require the Division to conduct field visits to obtain assurance that authorities report M/WBE statistics accurately and meet program goals. However, we found that Division staff has not visited authorities to verify contracts with and payments to M/WBE businesses. As we describe in detail in the second part of this report, we found that several authorities we visited had made significant errors in reporting M/WBE data to the Division. Further, to ensure that all businesses with M/WBE certification meet the eligibility criteria for this designation, the Division should develop a timetable for the regular recertification of such businesses. The Division should also work with other agencies and authorities within the State to make the process of certification, as well as recertification, more timely and efficient.

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## Monitoring Authorities' Compliance

The Division is responsible for ensuring that State agencies and authorities implement their respective goal plans for M/WBEs consistent with the rules and regulations issued under Article 15-A. According to Department administrative procedures, staff from the Division's Agency Services Bureau are to conduct compliance reviews and field visits with assigned agencies. These reviews and visits should include (but not be limited to) verifications of contracts awarded and payments made to M/WBEs.

However, the Division has not conducted field visits or compliance reviews to review contracts awarded by the authorities to M/WBEs and to verify M/WBE program data reported to the Division. Due, at least in part, to the Division's limited monitoring, the authorities that we visited overstated their M/WBE activity on their reports to Department. As described later in this report, the authorities reported contracts with non-certified firms as M/WBE program

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activity, made various errors in preparing their reports and did not verify payments to M/WBE subcontractors.

Division officials advised us that they have been planning to establish a compliance unit which could conduct site reviews of the authorities' programs, including reviews of supporting documentation for amounts of M/WBE activity reported to the Division. They added, however, that staffing limitations have hindered efforts to implement this type of oversight program. We note that the Department has not conducted a formal comprehensive risk assessment of its operations to determine if additional resources could be allocated to the Division. Given the Department's overall program and funding priorities, we believe that senior Department management may need to perform such an assessment to determine if more resources can be devoted to Division activities.

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**Recertifying  
Businesses' Program  
Eligibility**

Part 544.3 of the Rules and Regulations for the Office of Minority and Women's Business Development granted State M/WBE certification to any business which had previously received such certification from State agencies or the authorities prior to August 31, 1988. Part 544.3 further stated that these M/WBEs were entitled to this status until they were required to reapply for it. However, neither the applicable Laws or Regulations prescribed when or how often recertification should take place. The following table summarizes the growth in certified M/WBE firms since April 1, 1989, according to data provided to us by the Division.

A PRIL 1 OF YEAR	NEW FIRMS CER- TIFIED	FIRMS REVOKED	NET INCREASE FROM PRIOR YEAR	TOTAL CERTIFIED
1989	N/A	N/A	N/A	1,510
1990	488	37	451	1,961
1991	598	0	598	2,559
1992	1,261	129	1,132	3,691
1993	932	79	853	4,544
1994	1,143	761	382	4,926
10/1/94	437	148	289	5,215
<b>Totals</b>	4,859	1,154	3,705	

**(Note: The net increase from the prior year [Column 4] equals the number of new firms certified [Column 2] minus the number of firms whose certifications were revoked [Column 3].)**

As the table indicates, the Division certified 4,859 firms during the period April 1, 1989 through October 1, 1994. Although the Division revoked the certifications of 1,154 firms during the same period, 909 (79 percent) of the revocations occurred during the period April 1, 1993 through October 1, 1994. According to Division officials, most of these revocations (including firms that withdrew from the recertification process and firms which submitted incomplete applications for recertification) pertained to firms that were certified prior to April 1, 1989. However, most of the 4,859 firms certified after April 1, 1989 have not been subjected to recertification. At the time of our review, the Division had not established a formal timetable for reviewing the eligibility of firms certified after April 1, 1989.

We believe that recertification is necessary because it is possible that the status of M/WBE businesses could change over time. For example, according to Division officials, the Division revoked certification of 555 of the firms that were originally certified in 1988 and early 1989. Officials further indicated that another 314 of the original M/WBEs have either (1) withdrawn from the certification process, (2) failed to return a completed application form, or (3) been placed on "inactive certified" status by the Division. Thus, less than half of the firms that were originally certified (in 1988 and early 1989) were viable certified firms at the time of our review. Some of the firms currently listed on the Division's automated Directory of certified M/WBEs have not been subject to recertification for up to five years. Therefore, we believe there is significant risk that many firms listed on the Directory may no longer meet the standards for M/WBE certification.

Division officials told us that they have not been able to recertify most firms on a more timely basis because they have limited staff and a significant number of M/WBE applications to process. We believe the Department needs to prepare a formal risk assessment of its operations to help ensure that sufficient resources are allocated to the Division's oversight function.

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Also, we noted that Division officials are members of a task force of officials from a number of large public agencies that administer M/WBE programs. These other agencies include the Port Authority of New York and New Jersey, the New York City School Construction Authority, the New York City Department of Business Services, the NYC Housing Authority, the NYS Department of Transportation, and several public agencies from New Jersey. Moreover, the task force has developed a standard form that firms can use to apply for M/WBE status. The standard form helps to reduce the potentially higher administrative costs that firms can incur in preparing duplicate M/WBE applications for multiple public agencies. Furthermore, task force members have been working on a proposal that would permit reciprocal M/WBE certification among the agencies represented by the task force.

Because members of the task force are using similar eligibility criteria and information for their M/WBE programs, we believe that the Division should determine if the resources of the member agencies could be coordinated to make recertification, as well as certification, more timely and efficient.

### **Recommendations**

1. Ensure that the Division performs compliance reviews of public authorities as prescribed by the Department's formal administrative procedures.
2. Perform a formal risk assessment of Department operations to determine if additional resources can be allocated to the Division to perform prescribed oversight functions.
3. Establish a formal timetable for the recertification of firms that have previously received M/WBE certification from the Division.
4. To the extent possible, coordinate recertification efforts with other public agencies which have significant M/WBE programs.

(Department officials agreed with the recommendation and indicated that they would make strong efforts to provide coordination and leadership for other agencies with significant M/WBE programs to follow. Officials also indicated, however, that the key to such coordination depends on revising the approach to certification, rather than a focus on recertification.)

## Authorities' Reported Compliance With Program Goals

Every entity impacted by Article 15-A of the Executive Law is supposed to comply with the Law by awarding a designated percentage of contracts to M/WBE contractors or subcontractors, and demonstrate compliance by reporting M/WBE-related data to the Division. However, we found that the Division had not made field visits to verify that reporting is accurate. To test the extent of authorities' compliance, we visited four judgmentally selected authorities (Dormitory, Battery Park, Thruway, and MTA). We found that one or more of these authorities reported contracts with non-certified firms, reported the wrong data, used incorrect methodologies in preparing reports or failed to timely verify that M/WBE subcontractors were paid. As a result, two of these four authorities may not have achieved the levels of M/WBE activity they reported. Moreover, the Division does not have adequate assurance that authorities are in compliance with the Law's requirements.

## Contracts With Non-Certified Businesses

To demonstrate compliance with their M/WBE program goals, State agencies and public authorities are required to submit quarterly reports to the Department indicating the dollar value of the contract payments made to M/WBEs. Each contract payment should be reported by category (e.g., construction, commodities, personal services and consultants). The reports must be filed 15 days after the end of a quarter, and only certified M/WBE firms should be claimed on these reports.

Each of the four authorities we visited reported activity for firms that were not State-certified M/WBEs. The following table summarizes the total number of M/WBEs firms reported for the periods we reviewed and the number of these firms that we found were not State-certified. (Note: Firms with multiple contracts and/or multiple contract payments are counted once.)

A UTHORITY	PE- RIOD(S) REVIEWED	M/WBES CLAIMED	M/WBES NOT STATE CERTIFIED	
Dormitory	1/1/93 to 3/31/93	43	14	(33%)
Battery Park City	10/1/92 to 12/31/92 & 10/1/93 to 12/31/93	25	3	(12%)
MTA	1/1/94 to 3/31/94	37	4	(11%)
Thruway	1/1/94 to 3/31/94	58	2	(3%)
<b>Totals</b>		163	23	(14%)

As the table indicates, 14 percent of the M/WBEs reported by the authorities, for the quarters that we reviewed, were not State-certified by the Department. Furthermore, the amount of contract activity corresponding to the 14 non-

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certified firms reported by the Dormitory totaled about \$2.1 million. This represented about 41 percent of the \$5.1 million in M/WBE activity reported by the Dormitory for the quarter in question. The reporting of activity with non-certified firms had less significance at the other authorities we visited. Nonetheless, as demonstrated by our review at the Dormitory, the inclusion of activity with non-certified firms can result in a significant overstatement of the authority's M/WBE activity.

Before the authorities report M/WBE activity with a particular firm, they should verify that the firm is State-certified by consulting the Division's automated Directory. Although all of the authorities we visited have access to the Directory, authority officials advised us that they do not always use it. For example, the Dormitory does not verify that a firm is a State-certified M/WBE before reporting associated transactions to the Division. Instead, the Dormitory registers M/WBE firms through a not-for-profit consultant who was hired to provide technical support to the Dormitory.

According to Dormitory officials, the overreporting we found resulted from the inadvertent use of a list of firms approved for other programs for small business development. Dormitory officials further stated that most of the 14 non-certified firms were owned and operated by minorities and/or women. Dormitory officials also stated that they urge firms that are not State-certified M/WBEs to apply to the Division for certification.

Division officials stated that they can verify whether the firms claimed by the authorities are State-certified, but they do not always do so. According to Division officials, they have implemented new procedures that identify and disallow reported activity with those firms that have not been State-certified.

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## **Reporting Payments Made to Contractors**

The Division issued guidelines to the authorities and State agencies for the preparation of M/WBE contract activity reports. Under the guidelines, effective the third quarter of fiscal year 1992-93 (October 1 to December 31, 1992), agencies should not report M/WBE activity in terms of amounts awarded (as had been previously allowed), but in terms of the actual dollars paid to these contractors.

However, at the time of our review, the Dormitory reported M/WBE activity in terms of contract dollars awarded instead of actual payments made. This can result in a cumulative overstatement (or understatement) in M/WBE activity because the amount of a contract award to an M/WBE does not always correspond to the amount actually paid to that M/WBE. For example, the Dormitory reported about \$4.7 million in activity for two contracts awarded to a certain M/WBE contractor in 1989 and 1990. However, the contractor subsequently defaulted on both contracts, and the Dormitory had to award two additional contracts, totaling about \$890,000, to two other M/WBEs in 1993. Consequently, the Dormitory's cumulative amount of M/WBE activity, as reported, was overstated. (Note: At the time the Dormitory awarded the

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original two contracts, it was appropriate to report the awarded amounts to the Department. We have presented this information only to illustrate how the use of awarded amounts can result in a cumulative misstatement of M/WBE activity.)

Battery Park was reporting actual payments to M/WBEs at the time of our review. The Thruway was reporting contract amounts awarded when we began our review of program data, but was complying with the requirement to report actual payments by the time our audit work was completed.

The MTA was also attempting to comply with this requirement. The MTA reports total M/WBE activity statistics for all its constituent authorities. In 1992-93, total MTA activity accounted for about 15 percent of the total M/WBE expenditures reported to the Division. All MTA authorities, except for Transit, properly report actual payment data to the MTA. However, since Transit data (reported as contract amounts awarded) makes up a significant portion of the MTA's total reported M/WBE expenditures, Transit's use of improper methodology affects the overall accuracy and reliability of MTA's reporting.

We surveyed most of the other public authorities covered by Article 15-A to ascertain the methodologies they used for reporting data to the Division. Most of the authorities indicated that they were complying with the Division's guidelines for the preparation of agency utilization reports. However, the New York Convention Center Operating Corporation was reporting awarded contract amounts. Also, officials of the State University Construction Fund and the Facilities Development Corporation indicated that they were reporting both awarded and paid amounts. Consequently, these three entities are not in full compliance with the Division's reporting requirements.

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## **Verifying Payments Made to Subcontractors**

For M/WBE program reporting purposes, an expenditure is defined as the actual payment made by an authority (including subcontractor/ supplier payments made by a prime contractor) that can be verified by the authority. As previously noted, most of the State's certified M/WBEs are comparatively smaller firms. Often, the smaller M/WBEs participate in government contract work as subcontractors.

However, none of the authorities we visited has an adequate mechanism to timely verify the payments made by prime contractors to M/WBE subcontractors. Dormitory, MTA, Battery Park and Thruway officials explained that the prime contractor's monthly compliance report is their only means of identifying awards made to M/WBE subcontractors. As a result, none of the authorities we visited was able to verify that the subcontractor had been paid or when the payment was made until the contract closeout. Closeouts may occur years after the contracts are awarded and payments are made. The following table shows

the reported value of the authorities' M/WBE activities with subcontractors for the quarter(s) we reviewed. The table excludes a reference to Battery Park because it had no reported M/WBE activity with subcontractors.

A UTHORITY	PERIOD REVIEWED	REPORTED VALUE OF M/WBE SUBCONTRACTOR A CTIVITY
Dormitory	July 1993 through September 1993	\$ 2,738,984
Transit	April 1993 through March 1994	\$ 4,684,826
MTA <sup>(1)</sup>	October 1993 through March 1994	\$ 1,536,967
Thruway	April 1993 through March 1994	\$29,846,612
<sup>(1)</sup> Excludes Transit data.		

Authorities appear to engage in significant activity with M/WBE subcontractors and report such activity to satisfy their respective program compliance goals without verifying payment information. For example, at the Thruway, we found four large prime contracts that included 23 subcontractor awards worth \$14 million. In one of the prime contracts, there was no supporting documentation for nearly \$1.8 million of the \$5.2 million the Thruway reported as subcontracted to M/WBEs. Thruway officials explained that the \$1.8 million had been mistakenly identified as M/WBE activity as a result of a clerical error. Verification of subcontractor payments would have detected this kind of error.

Consequently, we concluded that the Department should ensure that each authority has an effective mechanism to verify actual payments to subcontractors on a timely basis. The authorities could, for example, periodically confirm with selected M/WBE subcontractors that the prime contractors have actually paid the subcontractors the amounts prescribed by their contracts.

## Inaccurate Program Data

To help ensure that the authorities' M/WBE programs are functioning effectively, both Division and authority management need to have accurate program data. However, at each of the authorities we visited (except for Transit) we found various errors in the reported data, in addition to the errors detailed previously.

At the MTA, for example, for the quarter ended March 1994, we found that M/WBE utilization had been overstated by more than \$400,000. This occurred because a contract compliance officer made mathematical errors when preparing the utilization report. In addition, some MTA contract compliance officers used incorrect methodologies when they reported actual expenditures. Some staff reported year-to-date amounts, rather than quarterly payments, as prescribed by MTA guidelines. We believe that additional supervisory

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oversight of activity reporting may be needed.

In addition, at the Thruway we found differences in the six quarterly reports (covering the period October 1, 1992 to March 31, 1994) between the reported figures and the detail of listed firms. The detailed listing of firms included 68 fewer firms (19 percent of the reported amount) than the total from the summary reports. The amounts of M/WBE contract activity associated with the 68 firms totaled more than \$2.5 million (almost 5 percent of the quarterly reported amounts). Thruway officials could not explain the reasons for the variances.

We concluded that the authorities need to exercise greater care in the preparation of the M/WBE utilization reports they submit to the Division because the cumulative effect of the various errors we found could significantly skew the authorities' reported M/WBE participation levels. Based on information from the Department's report for fiscal year 1992-93, the following table summarizes how each of the authorities we visited performed in relation to its prescribed M/WBE utilization goal.

<b>A UTHORITY</b>	<b>MBE GOAL %</b>	<b>A CTUAL MBE %</b>	<b>WBE GOAL %</b>	<b>A CTUAL WBE %</b>
Battery Park	9.00	8.89	3.00	6.21
Dormitory	12.00	7.38	5.00	.44
MTA	15.00	5.44	5.00	.96
Thruway	10.00	11.40	4.00	3.57

As the table indicates, the authorities attained certain goals and did not reach others. Moreover, our site visits disclosed that each of the authorities overstated, at least to some degree, the level of their actual M/WBE utilization. Consequently, we believe that the actual level of the authorities' goal attainment may be less than indicated by the Division.

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## **Recommendation**

5. Develop formal guidance for the authorities to follow to help ensure that:
- amounts reported as paid to M/WBEs are limited to firms that are State-certified M/WBEs;
  - the amounts of actual payments (not contract awards) to M/WBEs are included in quarterly utilization reports;
  - prime contractor payments to M/WBE subcontractors are verified on a timely basis; and
  - other clerical errors and reporting inconsistencies are minimized.

**DEPARTMENT OF ECONOMIC DEVELOPMENT  
PROGRAM FOR MINORITY AND WOMEN'S BUSINESS ENTERPRISES  
PUBLIC AUTHORITIES IMPACTED BY ARTICLE 15-A OF THE EXECUTIVE LAW**

Albany Port District Commission  
Battery Park City Authority  
(Nelson A. Rockefeller) Empire State Plaza Performing Arts Corporation Center  
Industrial Exhibit Authority  
Long Island Power Authority  
Long Island Rail Road  
Manhattan and Bronx Surface Transit Operating Authority  
Metro-North Commuter Railroad  
Metropolitan Suburban Bus Authority  
Metropolitan Transportation Authority  
Natural Heritage Trust  
New York City Transit Authority  
New York Convention Center Operating Corporation  
New York State Bridge Authority  
New York State Olympic Regional Development Authority  
New York State Thruway Authority  
Power Authority of the State of New York  
Roosevelt Island Operating Corporation  
State Insurance Fund  
Staten Island Rapid Transit Operating Authority  
State University Construction Fund  
Triborough Bridge and Tunnel Authority

(Article 15-A includes the following entities with respect to contracts that involve New York State funds.)

Dormitory Authority of the State of New York  
Facilities Development Corporation  
New York State Energy Research and Development Authority  
New York Science and Technology Foundation

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# Major Contributors to This Report

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**New York State Department of Economic Development**

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April 27, 1995

Mr. Robert Blot  
Audit Director  
Division of Management Audit  
and Fiscal Reporting  
NYS Office of the State Comptroller  
A.E. Smith State Office Building  
Albany, N.Y. 12225

Dear Mr. Blot:

This is in response to your draft audit of the Department of Economic Development's Oversight of Programs for Minority and Women's Business Development at Selected Public Authorities.

As you know, the draft audit emphasizes oversight of public authorities only; while these are important, most of the Department of Economic Development Division of Minority and Women's Business Development's mandated responsibilities are directed at State agencies. Therefore, the findings of this draft do not necessarily apply to the bulk of our responsibilities, and, oversight of State agencies is made relatively easier by the fact that, unlike public authorities, State agencies are included in the State Accounting System maintained by the State Comptroller. This, although not providing all the information needed, can serve as a more reliable check upon the extent of minority and women's business participation in State contracts than you found to exist for some public authorities. Therefore, when you conclude that the Division needs to strengthen its oversight of authorities, it should be recognized that this does not represent its oversight of State agencies.

There are also some questions as to whether the draft audit's findings represent the Division's oversight of public authorities, since a survey of all public authorities you conducted at our request indicated that those selected by you, that formed the basis of your deficiency findings, may not have necessarily been representative of other public authorities.

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Appendix B

Moreover, your draft suggested that insufficient resources had been allocated to the Division to perform its prescribed oversight functions, although it had, and still has proportionately more resources than most administrative units within DED. As you know, this is a time of downsizing in State Government, where all administrative units are being asked to perform their functions more effectively and efficiently with less resources.

Therefore, the Department has undertaken a management review of all its programs, to determine how to operate them within the level of resources that can be made available, in a manner that is in compliance with State law, and that demonstrates the commitment of the Department to provide less bureaucratic, more customer-oriented services to businesses. For these programs, we also wish to assure that businesses certified are authenticated as minority and women-owned and controlled. Additionally, we plan to work with State agencies and authorities in striving to increase participation by such firms, without excessive regulations and requirements.

We do agree with a number of your recommendations, but note that we also think more emphasis could have been included in the draft audit to indicate the many and varied steps underway to improve the Division's programs before audit research began. For example, activity to monitor compliance had begun before the audit and will continue.

There are five recommendations contained in the draft audit; below is the Department's response to each:

*OSC Recommendation Number One*

"Ensure that the Division performs compliance reviews of public authorities as prescribed by the Department's formal administrative procedures."

*DED Response*

We agree that there should be increased emphasis on monitoring and auditing state agency and public authority compliance, and are exploring ways to reallocate resources to do so.

*OSC Recommendation Number Two*

"Perform a formal risk assessment of Department operations to determine if additional resources can be allocated to the Division to perform prescribed oversight functions."

*DED Response*

As previously stated, this is a time of downsizing for all administrative units within DED; therefore our management review nearing completion has explored ways to utilize existing resources more efficiently and effectively.

OSC Recommendation Number Three

"Establish a formal timetable for the recertification of firms that have previously received M/WBE [Minority/Women's Business Enterprise] certification from the Division."

DED Response

The Department agrees that, while recertification is not required either in law or regulation, it is important to assure that businesses certified as minority and women-owned and controlled remain so. Therefore, part of the reallocation of resources is to begin the recertification process. It is also hoped that such a process can become an outreach effort to those in the directory, who have not always benefitted from follow-up that could provide technical assistance to them, as well as reasonable assurance that a listing in the Directory is as represented.

OSC Recommendation Number Four

"To the extent possible, coordinate recertification efforts with other public agencies which have significant M/WBE programs."

DED Response

We agree that, "to the extent possible," we should coordinate our efforts with others, and have done so in the past. However, it should be noted that while the unified approach to certification may have avoided duplication, it did so, in part, by adding to the complexity of the certification process. We also hope to redesign the process so that more technical assistance is available, and this is another objective of our planned reallocation of resources. We will make every effort to coordinate, and to provide leadership for other agencies with significant M/WBE programs to follow. The key to this, however, is revising the approach to certification, rather than the recommended focus on recertification.

OSC Recommendation Number Five

"Develop formal guidance to the authorities to follow to help ensure that:

- amounts reported as paid to M/WBEs are limited to firms that are State-certified M/WBEs.
- the amounts of actual payments (not contract awards) to M/WBEs are included in quarterly utilization reports;
- prime contractor payments to M/WBE subcontractors are verified on a timely basis; and

-- other clerical errors and reporting inconsistencies are minimized."

DED Response

As to assuring that firms are certified, we had earlier reported steps taken to remedy this, and other problems cited in this OSC Recommendation Number Five. Most important of these was the recent introduction of a compliance emphasis to monitor whether reporting by State agencies and public authorities was reliable. This step was taken prior to the beginning of this audit, with the creation of a compliance unit and will be reaffirmed by reallocation of staff to this function, if not to a separate unit.

We call attention again to the fact that such recommendations as assuring that amounts reported as paid to minority and women's businesses are actual payments (and not contract awards), do not apply to state agencies which are the bulk of the State's entities from which we gather such information. For State agencies, the State Accounting System administered by the State Comptroller provides a resource we simply do not have to monitor public authorities.

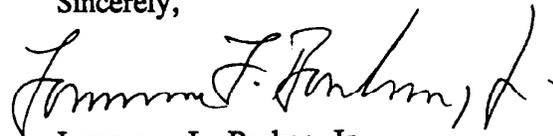
However, we will seek the Comptroller's assistance to make this resource even more helpful to our needs to determine participation of minority and women-owned businesses in State contracts in the future. We also note that the selected public authorities are not representative of all public authorities that report minority and women's business participation based on the OSC survey completed, but not reported in this draft audit.

As to the need for formal guidance, and reducing clerical errors and reporting inconsistencies, we've already reported the many steps taken to eliminate these in a prior response to your "Preliminary Audit Findings."

Nevertheless, we remain committed to obtaining reasonable assurance that program information used to determine the participation of minority and women's businesses are as reliable as possible, and this is one key reason for our planned emphasis on compliance monitoring.

In conclusion, we believe a new approach to these programs that better utilizes our available staff can result in: 1) increased emphasis on recertification, 2) increased monitoring of compliance, and 3) increased technical assistance to strengthen such minority and women's businesses.

Sincerely,



Lawrence L. Barker, Jr.  
Executive Deputy Commissioner