OFFICE OF THE NEW YORK STATE COMPTROLLER

DIVISION OF STATE GOVERNMENT ACCOUNTABILITY

Metropolitan Transportation Authority

Minority and Women's Business Enterprise Reporting

2010-S-9

Thomas P. DiNapoli

This page is left intentionally blank.

Table of Contents

Page

Authority Letter 5

Executive Summary 7

Introduction 9
- Background 9
- Audit Scope and Methodology 10
- Authority 11
- Reporting Requirements 11
- Contributors to the Report 11

Audit Findings and Recommendations 13
- Goal Setting 13
- Recommendation 14
- Outreach and Good Faith Efforts 14
- Recommendations 16
- Accuracy of Expenditure Reporting 16
- Recommendations 17

Agency Comments 19

This page is left intentionally blank.

State of New York
Office of the State Comptroller

Division of State Government Accountability

January 25, 2011

Jay H. Walder
Chairman and Chief Executive Officer
New York City Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Dear Chairman Walder:

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 Metropolitan Transportation Authority's *Minority and Women's Business Enterprise Reporting*. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities 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

This page is left intentionally blank.

State of New York
Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objectives

Our objectives were to determine if the Metropolitan Transportation Authority (MTA) is establishing annual goals for procurements from minority- and women-owned business enterprises (M/WBEs), making a good faith effort to reach those goals, and accurately reporting its results to Empire State Development (ESD).

Audit Results - Summary

We found that the MTA is establishing annual goals for M/WBE participation in its procurements, and in some respects, is making a good faith effort to reach those goals. However, it has not shown that the goals are reasonable, and it is consistently falling well short of reaching the goals. We also found that the MTA is not accurately reporting the results of its efforts to ESD, and in fact, is overstating the extent of M/WBE participation in its procurements.

State agencies and public authorities such as the MTA are required by law to promote the participation of M/WBEs in their procurement opportunities, and specifically, to establish annual goals for such participation. These goals are to be expressed as a percentage of the agency's or authority's total discretionary procurement expenditures for the year. We found that the MTA is establishing such goals. However, contrary to requirements, the goals are not supported by documentation or analysis, and as a result, there is no assurance the goals are realistic.

In each of the three years covered by our audit, the MTA's goal for MBE participation was 10 percent, and its goal for WBE participation was 5 percent, of its total discretionary procurement expenditures for the year (MTA reports such expenditures totaled $1.4 billion in the 2008-09 fiscal year). The MTA fell well short of these goals in all three years, as its reported MBE participation ranged from 1.2 to 5.3 percent and its reported WBE participation ranged from 1.4 to 4.1 percent. In the absence of documentation or analysis justifying the goals, it is difficult to determine whether the MTA' s performance in promoting M/WBE participation has been poor or the goals themselves are simply unrealistic. We recommend that the MTA develop supportable participation goals and identify the actions that are needed to reach these goals.

The MTA is required by law to make a good faith effort to reach its M/WBE participation goals. We found that, in some respects, the MTA is making such an effort, as it is working actively to identify M/WBE vendors and assist eligible vendors in becoming certified. However, improvements are needed in the MTA's monitoring of contractors with agreed-upon M/WBE subcontractor participation goals, as the monitoring is not always as proactive as it could be and the MTA does not always verify the accuracy of the contractors' claimed payments to the subcontractors.

The MTA is required by law to report its M/WBE participation results quarterly to ESD. We found that the MTA is filing the required quarterly reports. However, when we attempted to verify the accuracy of the data in the reports for three of MTA's seven constituent agencies, we found that the MTA understated its total discretionary procurement expenditures, and thus, overstated its extent of M/WBE participation. For example, in the 12-month period we tested, the total expenditures were understated by about $252 million for the 3 constituent agencies, and as a result, M/WBE participation was overstated by about 15 percent. We also found that the expenditure data is not always supported by the MTA's detailed expenditure records. We recommend certain actions be taken by the MTA to improve the reliability of its M/WBE participation reporting.

Our report contains six recommendations to help the MTA more fully comply with the requirements for M/WBE participation and reporting. MTA officials generally agreed with our recommendations and indicated the actions they have taken, or will be taking, to implement them.

This report, dated January 25, 2011, is available on our website at: http://www.osc.state.ny.us.
Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA is governed by a Board of Directors, whose 17 members are nominated by the Governor and confirmed by the State Senate. The MTA includes the following seven constituent agencies, each led by a President who is appointed by the Board:

- New York City Transit (Transit), which operates New York City's bus and subway systems.
- The Long Island Rail Road (LIRR), which operates a commuter railroad between New York City and Long Island.
- Metro-North Railroad (Metro-North), which operates a commuter railroad running between New York City and parts of upstate New York and Connecticut.
- The MTA Bus Company, which provides bus service in certain parts of New York City.
- Long Island Bus, which provides bus service on Long Island.
- MTA Bridges and Tunnels, which operates seven bridges and two traffic tunnels in New York City.
- MTA Capital Construction, which manages certain MTA capital projects.

The MTA also includes a Headquarters, which provides administrative support for the seven constituent agencies.

The MTA is subject to Article 15-A of the New York State Executive Law and the regulations promulgated thereunder, which 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, entities must establish annual participation goals (expressed as a percentage of their total "discretionary" contract spending for the year), make a "good faith" effort to achieve their goals, and report quarterly to Empire State Development (ESD), New York State's economic development agency, on their level of participation.

The annual goal plans must be submitted to ESD each October, with quarterly compliance reports due in January, April, July, and October. The quarterly reports should include a determination of the degree of compliance with the goal plan, based on information provided in the compliance report or, upon a determination of noncompliance with the goal plan, a description of actions which will be taken to comply with the goal plan. ESD approves agency plans, monitors compliance, and certifies businesses as eligible MBEs and/or WBEs.

For the 2009 calendar year, the MTA's operating budget was approximately $12.9 billion, of which $6.9 billion represented salaries and related fringe benefit costs. The MTA reported that about $1.4 billion of the remaining $6 billion was discretionary funding available for potential M/WBE participation.

The MTA's Department of Diversity and Civil Rights (DDCR), located in MTA Headquarters, is responsible for establishing the MTA's annual goals for MBE and WBE participation, monitoring achievement of the goals, and reporting the results of these activities. However, between 2006 and February 2009, DDCR was not responsible for monitoring the achievement of the goals; rather, during this time period, this monitoring was performed by a different unit - MTA Corporate Compliance.

Audit Scope and Methodology

We audited the MTA's reporting of expenditure data for the M/WBE program, as well as efforts made by the MTA to promote the program, for the period April 1, 2006 through March 19, 2010. The objectives of our audit were to determine if the MTA is establishing annual goals for M/WBE participation in its procurements, making a good faith effort to reach those goals, and accurately reporting its results to ESD.

To accomplish our objectives, we met with MTA officials to gain an understanding of their practices for purchasing products and services from M/WBEs. We also reviewed the MTA's process for setting M/WBE goals and its efforts to attain these goals. In addition, we reviewed the MTA's internal databases and spreadsheets containing M/WBE information, and we verified the accuracy of selected payments to M/WBE firms by reviewing cancelled checks, payment verifications forms signed by the M/WBE firms, and through telephone calls to M/WBEs.

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 X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

Reporting Requirements

A draft copy of this report was provided to MTA officials for their review and comment. Their comments were considered in preparing this final 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 Chairman of the Metropolitan Transportation Authority 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 why.

Contributors to the Report

Major contributors to this report include Frank Houston, Cindi Frieder, Christine Chu, Myron Goldmeer, Jeremy Mack, Daniel Raczynski, Nick Angel, Lillian Fernandes and Dana Newhouse.

This page is left intentionally blank.

Audit Findings and Recommendations

Goal Setting

The MTA is required by ESD regulations to prepare an annual M/WBE goal plan. The plan should include specific goals for participation by certified M/WBEs, expressed as a percentage of the MTA's total discretionary procurement expenditures for the year, as well as justification for those goals.

We found that the MTA establishes an annual M/WBE goal plan, establishing one overall plan for the entire agency (i.e., all the constituent agencies together). We examined the annual goal plans for the fiscal years ended March 31, 2009 and March 31, 2010. We found that the goals in the plans were appropriately expressed as a percentage of the MTA's reported total discretionary procurement expenditures for the year. However, appropriate justification was not provided for the goals.

In each of the plans, there was a narrative explanation of the factors considered in establishing the goals, including the number, type and dollar value of contracting opportunities expected to be awarded during the year; the number of M/WBE firms likely to compete on such contracts; the past results of M/WBE contracting efforts; and the locations of the M/WBE firms. However, MTA officials were unable to provide documentation or analysis showing how these, or other factors, were used in establishing the specific goals.

We further note that the goals have remained unchanged for nearly ten years, even though the MTA has not come close to reaching the goals. For example, in the three years covered by our audit, the MTA fell well short of the goals, as follows:

Year	MBE		WBE	
	Goal	Actual	Goal	Actual
2006-07	10%	1.2%	5%	1.4%
2007-08	10%	5.3%	5%	3.4%
2008-09	10%	4.0%	5%	4.1%

In the absence of documentation or analysis justifying the goals, it is difficult to determine whether the MTA' s performance in promoting M/WBE participation has been poor or the goals themselves are simply unrealistic. We recommend that the MTA develop supportable participation goals and identify the actions that are needed to reach these goals.

Recommendation

1. Subject the annual M/WBE goal plan to rigorous review to ensure that it (a) is supported by analysis of the specific factors that were considered in establishing the M/WBE participation goals, as well as documentation of this analysis, and (b) identifies the actions that are needed to reach these goals.

Outreach and Good Faith 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 found that the MTA is actively encouraging new M/WBE vendor participation. For example, MTA officials:

- attend conferences and various networking events to promote greater participation by M/WBEs;
- collect contact information about M/WBEs and maintain a database of contacts for future events;
- coordinate MBE and WBE certification sessions;
- conduct procurement sessions in which the participants are given information about the MTA and its constituent agencies' M/WBE procurement process;
- coordinate agency-wide procurement staff participation at annual events held to promote greater opportunities for M/WBEs; and
- conduct and coordinate training sessions on doing business with the MTA and its constituent agencies.

The amounts paid to M/WBE contractors are taken into account when determining an agency's M/WBE participation rate, as are the amounts paid to M/WBE subcontractors. In fact, as part of their contracts, non-M/WBE contractors are sometimes expected to achieve certain M/WBE participation rates among their subcontractors. Article 15-A, Section 313 (5) of the Executive Law allows such contractors to request a partial or total waiver to comply with their M/WBE subcontracting goals, when it appears that the contractors cannot, after a good faith effort, comply with the participation requirements set forth in their contracts.

The contractors may request a waiver at any time during the term of the contract, prior to the submission of a request for final payment on that contract. The waiver request should include, among other things, information pertaining to M/WBE bid solicitations made by the contractor and copies of responses, documentation of any negotiations between the contractor and certified M/WBEs, and a statement setting forth the contractor's basis for requesting a partial or total waiver.

DDCR's Standard Operating Procedures require that, upon receipt of a request for a waiver, the supporting documentation is to be reviewed and a determination made to either approve or deny the request. We selected a judgmental sample of ten such waiver requests, from ten contracts that were active as of February 2010, to determine whether the requests had been reviewed and acted upon by DDCR. The ten requests were submitted to DDCR between January 2006 and February 2010.

We found that DDCR had reviewed and made a determination on five of the waiver requests (approving four and denying one). However, DDCR had yet to make a determination on the other 5 requests, even though the 5 requests had been pending for between 8 and 50 months. We further note that four of these five contracts were nearly complete, and all four of these contractors had not met their M/WBE participation goals.

DDCR officials stated that they received four of the five pending waiver requests at the end of the contracts' terms, when it was too late to do much to increase the M/WBE participation rates, and they therefore decided to review the contractors' M/WBE issues as part of the closeout process for the contracts. We acknowledge the difficulty of responding to waiver requests when the contract work is nearly complete. However, we also note that DDCR needs to be more proactive in its monitoring of contractors' efforts to meet their M/WBE participation goals so that it can detect early signs of potential difficulties and provide timely assistance.

DDCR officials stated that they are taking steps to improve their monitoring, as they have hired a firm to implement an electronic monitoring system that will enable staff to more effectively track contract payment activity and more readily detect deficiencies in goal participation. We encourage DDCR officials in these improvement efforts.

In addition, according to DDCR's Standard Operating Procedures, prior to a contract's completion, the payments to the M/WBE subcontractors listed by the prime contractor in its monthly report to the MTA must be verified. To determine whether these payments were being verified, we judgmentally selected 10 contracts, with a total of 60 M/WBE subcontractors, for review. According to the MTA, the 60 M/WBE subcontractors had received a total of about $40.6 million in payments.

We found that the MTA attempted to verify the payments to 38 of the 60 M/WBE subcontractors (24 of the subcontractors responded to the MTA's verification requests and indicated that they had been paid amounts equal to or greater than the amounts indicated by the prime contractors; 14 subcontractors did not respond to the verification requests). However, the MTA had not attempted to verify the payments

to 22 of the 60 M/WBE subcontractors. The payments to these 22 subcontractors reportedly totaled $2.35 million.

The same MTA compliance manager was responsible for all 22 subcontractors, and he told us that he had not attempted to verify the payments because of his large workload. In their response to our preliminary audit findings, MTA officials stated that they subsequently sent verification requests to all 22 subcontractors.

If the MTA does not verify the reported payments to its M/WBE subcontractors, it has no assurance the payments are accurate. In their response to our audit, MTA officials stated that the new electronic monitoring system, expected to be in place by the end of 2010, will enable compliance managers to more closely monitor the general contractors' M/WBE performance and determine whether payment verification requests have been sent to the M/WBE subcontractors.

Recommendations

2. Monitor proactively contractors' efforts to meet their M/WBE participation goals, and provide timely assistance when it appears that the goals may not be met. As part of this monitoring, ensure that a determination is promptly made on contractors' waiver requests.

3. Monitor MTA compliance managers to determine whether payment verification request forms are being sent to M/WBE subcontractors as required, and take appropriate corrective action when the forms are not being sent.

Accuracy of Expenditure Reporting

Title 5, Chapter 14 of the Official Compilation of Codes, Rules and Regulations of the State of New York requires State agencies and public authorities, including the MTA, to submit quarterly reports to ESD on their level of M/WBE participation. We found that the MTA is submitting such reports. However, when we attempted to verify the accuracy and completeness of the data in the reports, we found that the data is not always accurate and complete.

For example, we requested the detailed expenditure data supporting the quarterly reports for the three years ended March 31, 2009. This expenditure data is maintained by DDCR. We found that, in two of the three years, the detailed expenditure data were consistent with the totals reported to ESD. However, in one year (the year ended March 31, 2008), the detailed expenditure records accounted for only $733 million of the total $1.271 billion reported. DDCR officials were unable to explain the reason for this $538-million discrepancy. In the absence of an explanation for this discrepancy, there is no assurance that the information in that year's quarterly reports was accurate.

We also compared the aggregate information in the quarterly reports, which are compiled by DDCR, with the information submitted to DDCR by the constituent agencies. Specifically, we traced Transit's and LIRR's data to the quarterly reports for October 2008 through September 2009, and traced Metro-North's data to the quarterly reports for October 2008 through March 2009.

We found that the data in the quarterly reports compiled by DDCR were not complete, because they did not include about $252 million in total discretionary procurement expenditures at Transit ($215.6 million) and LIRR ($36.3 million). As a result of these omissions, the MTA's total discretionary procurement expenditures were understated and its M/WBE participation (which is expressed as a percentage of this total) was overstated by about 15 percent for the 12-month period reviewed (October 2008 through September 2009). Specifically, if the MTA's total discretionary expenditures for the period are corrected to include the identified omitted amount ($252 million), the reported MBE participation rate of 3.55 percent is reduced to 3.02 percent (a 14.9-percent reduction), and the reported WBE participation rate of 3.62 percent is reduced to 3.07 percent (a 15.2-percent reduction).

The $252 million was omitted because certain types of expenditures were incorrectly omitted from the quarterly reports by the DDCR staff who compiled the reports, and some of the spreadsheet formulas for tracking expenditure data were incorrect. In addition, we identified other errors that resulted in the underreporting of both total discretionary procurement expenditures and M/WBE expenditures on some quarterly reports.

We note that DDCR has written procedures for preparing the quarterly reports, but the procedures are not always followed. One of the employees involved in the report preparation process told us that she was not officially trained on how to perform this task, and we found no indication formal training was provided to the other report preparation staff. In response to our audit, DDCR officials told us that they contacted ESD to set up training for the staff.

We also performed tests to verify the accuracy of the payments reportedly made to M/WBE contractors and subcontractors. We tested a total of $459,297 in payments to contractors and $3,156,467 in payments to subcontractors, and identified no material errors.

Recommendations

4. Monitor the quarterly reports submitted to ESD to ensure that they are accurate, complete and supported by MTA records, and take appropriate corrective action when errors are identified.

5. Provide training in the quarterly report preparation process to the DDCR staff who are responsible for the process.

6. Monitor the quarterly report preparation process to ensure that it complies with the written procedures, and take appropriate corrective action when it does not comply.

Agency Comments

347 Madison Avenue
New York, NY 10017-3739
212 878-7000 Tel

Metropolitan Transportation Authority
State of New York

September 23, 2010

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:

The MTA Department of Diversity and Civil Rights reviewed the draft audit report of the Office of the State Comptroller dated August 26, 2010 (2010-S-9) regarding the Metropolitan Transportation Authority's Minority and Women's Business Enterprise Reporting.

MTA appreciates the opportunity to review the draft report and submit its responses. Our responses to the audit recommendations contained in the draft audit report are attached for your review and action. Also included are the corrective actions to your recommendations.

Please note that under the leadership of Chairman Jay Walder, we have created and implemented a number of small business development programs that will enable us to develop a larger pool of New York State certified Minority and Women-Owned Business Enterprises. We have worked in conjunction with the New York State Legislature in drafting a bill which was recently signed into law by Governor Paterson, in creating the MTA Small Business Mentor Program. Other small business development programmatic initiatives include small business loan, surety bonding, construction and information technology and union transition programs. We are confident that once these programs are implemented, a higher percentage of contracts will be awarded to New York State certified Minority and Women-Owned Business Enterprises.

Thank you for the opportunity to respond to your audit comments.

Sincerely,

Michael J. Garner
MTA Chief Diversity Officer

C: Jay Walder, MTA Chairman and Chief Executive Officer
Fredericka Cuenca, MTA
Michael Fucilli, MTA
Karen Malloy, MTA
File

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road
MTA Long Island Bus
MTA Metro-North Railroad
MTA Bridges and Tunnels
MTA Capital Construction
MTA Bus Company

Metropolitan Transportation Authority
Department of Diversity and Civil Rights
Response to Office of the New York State Comptroller's Draft Audit Report 2010-S-9

The draft audit report states (6) recommendations, based on findings noted in the report. We address such recommendations in the order in which they appear in the draft audit report. We have previously provided explanations in response to the preliminary draft findings. If those explanations were not included in this draft report, we are providing them again in this response. Additional comments are included in those areas that warrant further clarification and explanation.

Recommendation Number 1

Subject the annual M/WBE goal plan to rigorous review to ensure that it (a) is supported by analysis of the specific factors that were considered in establishing the M/WBE participation goals, as well as documentation of this analysis, and (b) identifies the actions that are needed to reach these goals.

DDCR Response

The MTA Department of Diversity and Civil Rights ("DDCR") is in full agreement that MTA's Annual M/WBE Goal Plan should be rigorously reviewed to ensure that it is supported by an analysis of all factors considered in establishing M/WBE participation goals and that these analyses are documented. We stated in our 2010/2011 Annual Goal Plan that we do not project our budget and contract awards in the manner set forth in Empire State Development's goal request. However, we did provide contract award information over the previous five years which was considered in projecting our annual M/WBE goals. Additionally, in setting our overall annual goal for participation by Disadvantaged Business Enterprises ("DBEs") in federally funded contracts, we review the number of available firms in New York Empire State Development Corporation's M/WBE Directory. This data is also used in formulating our annual M/WBE goals. We must note that the MTA and its operating agencies procure some goods and services in which there are no NYS certified M/WBEs. Therefore, we are currently reviewing those items and we will be submitting an official request to Empire State Development Corporation asking for relief and requesting that those purchases not be included in our reported procurement totals. It is our understanding within the goal setting process, that M/WBE goals can only be assigned when there is an available pool of M/WBEs in order to support the goals.

Additionally, we have began to alert NYS certified M/WBEs of specific procurement opportunities as a way of increasing bidding opportunities for this population and as a way of increasing contract awards.

We are also in agreement with identifying actions needed to reach overall M/WBE goals. From Chairman and Chief Executive Officer Jay Walder down to the level of manager, increased M/WBE participation is the goal of the MTA and its operating agencies. Under the leadership of Michael J. Garner, Chief Diversity Officer, DDCR is taking aggressive steps to increase M/WBE participation. These steps include the following:

a. ***MTA Small Business Mentoring Program*** *– Governor Patterson has signed legislation creating this program and the first contracts are expected to be awarded in November 2010.*
b. ***Small Business Loan Program*** *– Recently awarded a contract to Carver Federal Savings Bank to manage the program. Our pool of M/WDBEs will have the opportunity to apply for small business loans while participating in our Small Business Mentoring Program. As the owner, the MTA will issue two party checks until the loans have been satisfied.*
c. ***Surety Bonding Program*** *– This program has been finalized with our insurance consultant, MARSH to provide surety bonding to our pool of M/W/DBEs.*
d. ***MTA Construction Training Program*** *– The goal of this program is to train M/WBEs how to do business with the MTA and to better integrate these firms into our procurement process after certification. Training started in October 2009 and a more defined program will start in November 2010 with the assistance of our Mentor Program Construction Manager, TDX/Cinalta. TDX/Citnalta was recently awarded a contract to manage the MTA's Small Business Mentor Program.*
e. ***Targeted Outreach Events*** *– This includes reaching out to small, minority and women-owned firms to become state certified and be eligible to bid on MTA contracts as primes or participate as subcontractors as a means of satisfying our annual M/WBE goals. We have also been holding specialized bi-monthly marketing and networking forums to attract additional M/WBEs in order to increase contract awards. We are also assisting small, M/WBEs with their construction union transition efforts.*
f. ***Online Certification/M/W/DBE Contract Compliance/Data Gathering System*** *– DDCR is working to finalize the implementation of this online system which will replace the current manual process used by staff in monitoring compliance with M/WBE goals. The online system will alert DDCR and MTA Agencies when a prime contractor is not meeting M/WBE goals, alerting staff to immediately address the shortfall.*
g. ***Final Evaluation of Contract*** *– This will include an evaluation of achievement of M/WBE goals with possible sanctions for those primes who do not achieve their M/WBE goals.*
h. ***Governor Paterson's Executive Order Number Ten Task Force*** *– We have been working with Task Force Chairman Paul Williams and Michael Jones-Bey, Executive Director, NYS Minority and Women's Business Programs in implementing the "Best Practices" recommendations for M/WBE participation in legal, financial and professional services.*

Recommendation Number 2

Monitor proactively contractors' efforts to meet their M/WBE participation goals, and provide timely assistance when it appears that the goals may not be met. As part of this monitoring, ensure that a determination is promptly made on contractors' waiver requests.

DDCR Response

We reiterate that on the five contracts referred to in this audit report, DDCR had addressed the waiver-requests. We also advised the auditors that "when the waiver was requested at the end of the contract, all issues regarding M/WBE compliance, waivers, good faith efforts, etc. would

be determined at the close of the contract using figures from the agency which would reflect actual projections rather than the prime contractors' projections."

The draft audit report also notes that four of these contracts did not meet their M/WBE participation goals. As previously explained to the auditors, these contracts were routinely monitored by the assigned compliance managers. This routine monitoring by DDCR compliance managers of their contract assignments allows DDCR to immediately address a change in the M/WBE participation goals. Where a potential shortfall to the M/WBE participation is evident, DDCR compliance managers contact the agency project managers and/or the general contractors to request a meeting and/or written explanation of the shortfall and the action plan to address the shortfall.

It is DDCR's practice to encourage general contractors to use all available resources to satisfy their goal commitments. Goal waiver and reduction requests are not automatically granted.

DDCR staff is trained to assist general contractors in identifying M/WBEs when goal waivers are sought. DDCR has taken this approach because as has often occurred, general contractors who are granted waivers do not increase M/WBE participation, even though there are ample opportunities for them to do so. Where a goal is totally or partially waived, the general contractor has absolutely no incentive or obligation to increase M/WBE participation when there is an expansion in the scope of work. Additionally, the Chief Diversity Officer personally reviews all waiver requests and is personally scheduling meetings with those prime contractors who fall behind in meeting their M/WBE goals.

As recommended, DDCR will ensure that all waiver-requests are promptly addressed. In addition, by the Fall of 2010, an M/W/DBE Contract Compliance/Data Gathering System will replace our manual process of monitoring M/W/DBE goals. Through this computer system, compliance managers will be able to more closely monitor prime contractors' compliance with their commitments to utilize M/W/DBE firms and be alerted should deviations or non-compliance occur.

Recommendation Number 3

Monitor MTA compliance managers to determine whether payment verification request forms are being sent to M/WBE subcontractors as required, and take appropriate corrective action when the forms are not being sent.

DDCR Response

As stated in DDCR's Standard Operating Procedures, payment verification letters are sent to the M/WBE subcontractors for two reasons: 1) To confirm that subcontracts committed to MBEs and WBEs at contract award were actually performed by the approved MBE/WBEs and 2) To determine if the amount indicated by the general contractors in their monthly reports as being paid to the MBE/WBEs are actually paid and received.

DDCR maintains an inventory of contracts for monitoring, including contracts where work has been completed but awaiting closeout documentation from the respective MTA agencies. When this closeout documentation is received by DDCR, compliance managers will initiate the case

closing that will remove the contract from DDCR inventory. Payment verification letters are sent to M/WBE subcontractors prior to this case closing to confirm the payments.

Subcontractor payment verification is also performed when general contractors make amendments to utilization plans (e.g., list new subcontractors or subconsultants in their monthly participation reports, cancel/remove original subcontractors or subconsultants from the project.

The draft audit report also notes that "the MTA had not attempted to verify the payments to 22 of the 60 M/WBE subcontractors." We agree that at the time of the audit, payment verification letters were not sent to these 22 subcontractors who worked on (3) contracts. However, DDCR's Standard Operating Procedures on Case Closing will ensure that this procedure would be performed prior to DDCR removing the contracts from our inventory, thus confirming the payments reported by the prime contractors. In response to the preliminary audit findings, we sent payment verification letters to these subcontractors although we are still awaiting contract closeout documentation from the respective agencies.

In addition, the proposed M/W/DBE Contract Compliance/Data Gathering System that will replace our manual process of monitoring M/W/DBE goals will alert the compliance managers that projects have been completed and payment verification letters can be printed through the system for mailing to M/WBE subcontractors. Likewise, the computer system will send a reminder that follow-up letters need to be sent when no responses are received within the time period allowed.

Recommendation Number 4

Monitor the quarterly reports submitted to ESD to ensure that they are accurate, complete and supported by MTA records, and take appropriate corrective action when errors are identified.

DDCR Response

We reviewed the back-up documentation on the report submissions for the year ended March 31, 2008. We compared these against ESD's Utilization and Expenditure Summary for FY 2008 (April 1, 2007 to March 31, 2008) and found that that the discrepancy resulted from the First Quarter, April 1, 2007 to June 30, 2007). According to ESD's Utilization and Expenditure Summary, expenditures total $572,519,744.44. However, based on DDCR's documentation supporting the submissions, these expenditures total $34,193,896. We contacted ESD to request information on how $572,519,744.44 was derived but ESD was not able to provide us with the requested documentation and explanation.

The draft audit report also notes that the DDCR staff who compiled the reports for the period October 2008 through September 2009 incorrectly omitted certain types of expenditures, resulting in the overstatement of the M/WBE participation by about 15 percent for the said period. Our review of the documentation received from the agencies indicated that expenditures on contracts without M/WBE goals were excluded in the quarterly report submissions.

For the quarter April 1, 2010 to June 30, 2010, all the expenditures have been included in the report submissions. We will ensure that these expenditures are included in all future quarterly report submissions.

Recommendation Number 5

Provide training in the quarterly report preparation process to the DDCR staff responsible for the process.

Recommendation Number 6

Monitor the quarterly report preparation process to ensure that it complies with the written procedures, and take appropriate corrective action when it does not comply.

DDCR Response to Recommendations Numbers 5 & 6

All the employees who were previously responsible for preparing the quarterly reports covered by the audit period have been replaced. We have contacted ESD to provide training to the newly assigned staff. In addition, we have revised the department's Standard Operating Procedures for the compilation and reporting of total expenditures to comply with the State's guidelines.

Overall Conclusion

Under the leadership of MTA Chairman and Chief Executive Officer, Jay Walder and Chief Diversity Officer, Michael J. Garner, the MTA has created and implemented a number of small business development programs with a goal of increasing contract awards to NYS certified Minority and Women-Owned Business Enterprises. We have worked in conjunction with the NYS Legislature in drafting a bill which was recently signed into law by Governor Paterson, in creating the MTA Small Business Mentor Program. Other small business development programmatic initiatives include the implementation of a small business loan, surety bonding, construction/information technology training and union transition programs. The recent implementation of our small business development program initiatives are aligned with Governor Paterson's goal of increasing contract awards to NYS certified Minority and Women-Owned Business Development Enterprises and the Executive Order Number Ten Task Force Recommendations.

Due to transition issues, we are in agreement that certain aspects of our M/WBE efforts needed to be re-engineered. We have taken the necessary steps towards addressing those programmatic weaknesses and implemented corrective measures to ensure improvements within our program. Some of those corrective measures include:

- *Created the Chief Diversity Officer position who reports to the Chairman and Chief Executive Officer*
- *Hired a NYS certified Minority Business Enterprise to design and implement a new M/W/DBE software monitoring system, which will track M/WDBE participation in "Real-Time".*
- *Replaced and trained new staff who are now responsible for M/WBE reporting.*

We look forward to working with Empire State Development Corporation in ensuring that we are maximizing procurement opportunities for NYS certified Minority and Women-Owned Business Enterprises.