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STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

March 31, 2000

Mr. Charles A. Gargano
Commissioner
Department of Economic Development
30 South Pearl Street
Albany, NY 12245

Re: Report 99-F-16

Dear Mr. Gargano:

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, we have reviewed the actions taken by officials of the Department of Economic Development (Department), as of December 7, 1999, to implement the recommendations contained in our audit report, *Oversight of Selected Authorities' Programs for Minority and Women's Business Enterprises* (Report 95-S-30). Our report, which was issued October 25, 1995, examined the Department's oversight of four selected public authorities' programs for awarding contracts to minority- and women-owned business enterprises (M/WBE).

Background

Public authorities are required by State law to award a certain percentage of their contracts to businesses that are owned and operated by women or members of minority groups. The Department is required to certify such businesses and monitor the authorities' compliance with this contracting requirement. At the time of our prior audit, the Department's Division of Minority and Women's Business Development (Division) was responsible for the certification and monitoring functions. In 1997, the Division's responsibilities were transferred to and divided between two other units within the Department: the Minority and Women's Business Development unit and the Affirmative Action Compliance/Certification unit. According to Department records, about 3,000 firms were certified as a M/WBE between 1995 and 1999, and about the same number of firms were decertified during the period. As of August 1999, about 5,400 firms were listed on the directory of State-certified M/WBE firms. The 2 units have a staff of 16, with budgeted expenditures of \$640,000 for fiscal year 1999-2000.

Summary Conclusions

Our prior audit found that the Department needed to strengthen its oversight of public authorities' M/WBE programs. We had found that, because of clerical and reporting errors as well as the lack of M/WBE certification of some of the businesses, the four authorities whose programs we selected for review had overstated the extent to which their contracts had been awarded to minority- and women-owned businesses. We recommended that the Department verify the information reported by public authorities and develop a schedule for recertifying M/WBE businesses to document that they are still owned and operated by women and members of minority groups. In our follow-up review, we found that the Department has not made much progress in implementing our recommendations.

Summary of Status of Prior Audit Recommendations

Of the five prior audit recommendations, Department officials have partially implemented two recommendations, and have not implemented two recommendations. One recommendation is no longer applicable.

Follow-up Observations

Recommendation 1

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

Status - Partially Implemented

Agency Action - In August 1999, the Division drafted detailed M/WBE compliance review procedures. We were told they have been used on a test basis only. Prior to August 1999, the Division had no formal compliance procedures, and no periodic compliance reviews of agencies and authorities had been conducted.

Recommendation 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.

Status - Not Implemented

Agency Action - No formal risk assessment has been made to determine whether additional resources can be allocated to the performance of oversight functions. In January 1996, in their 90-day response to our prior audit, Department officials indicated that a Management Task Force Study had been undertaken to review all of the Division's programs. At that

time, Department officials also indicated that the Division may need additional resources. However, at the time of this follow-up review, Department officials indicated that staff reductions have occurred in this area since our prior audit.

Recommendation 3

Establish a formal timetable for the recertification of firms that have previously received M/WBE certification from the Division.

Status - Partially Implemented

Agency Action - Department officials have not established a formal timetable for the recertification of firms that have previously received M/WBE certification. However, in 1996, they did conduct two series of M/WBE verifications of recertification: first for firms certified up to December 31, 1991; then for those certified between January 1, 1992 and December 31, 1995. We were told that a third series of verifications had been planned for firms certified between January 1, 1996 and December 31, 1998. As of December 1999, this had not been accomplished.

Recommendation 4

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

Status - Not Applicable

Agency Action - The Department evaluated this recommendation and concluded that it was not applicable because public authorities do not recertify M/WBE businesses; they perform certifications that are valid for their own particular agency.

Recommendation 5

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

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

Status - Not Implemented

Agency Action -Department officials could not provide us with formal written guidelines developed for or provided to authorities to ensure compliance.

Major contributors to this report were Santo Rendon, Emma Wohlberg, and Ronald Gerstein.

We would appreciate your written response to this report within 30 days, indicating any additional actions planned or taken. We also thank the management and staff of the Department of Economic Development for the courtesies and cooperation extended to our staff during this review.

Very truly yours,

Frank J. Houston
Audit Director

cc: Robert Brondi