



# City of New York

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## OFFICE OF THE COMPTROLLER

Scott M. Stringer  
COMPTROLLER



## MANAGEMENT AUDIT

**Marjorie Landa**

Deputy Comptroller for Audit

Follow-up Audit Report on the  
Administration of the Emerging  
Business Enterprise Program by the  
Department of Small Business Services

MD16-071F

April 7, 2016

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
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NEW YORK, NY 10007

SCOTT M. STRINGER  
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April 7, 2016

To the Residents of the City of New York:

My office has audited the New York City Department of Small Business Services (DSBS) to determine whether it implemented the recommendations made in a prior New York City Comptroller's audit report on the Emerging Business Enterprise (EBE) program. We perform audits of City agencies such as this to increase accountability and ensure that applicable policies are followed in a consistent manner.

This follow-up audit determined that while DSBS made several improvements in its administration of the EBE program, only two of the audit's five recommendations were fully implemented while three were only partially implemented. Among other things, our analysis shows that of the 22 applications for EBE certification submitted between Fiscal Years 2008 and 2013, half of the applications were withdrawn by the applicant, five applications were rejected, two were canceled, and one was under analyst review. Only three businesses were certified. Of the 20 applications submitted in Fiscal Years 2014 and 2015, the majority of the applications (11 of 20) were rejected, four applications were withdrawn and three were canceled. Only two EBE certifications were issued. Further, we found that there was inadequate evidence that DSBS formally obtained feedback and identified strategies to increase the number of certified EBEs.

The follow-up audit made three recommendations, including that DSBS should formally solicit and document feedback from EBE applicants and conduct a study to identify the root causes for seemingly low interest in EBE certification in order to identify strategies to increase certification.

The results of the audit have been discussed with DSBS officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

Scott M. Stringer

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# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

## Follow-up Audit Report on the Administration of the Emerging Business Enterprise Program by the Department of Small Business Services

MD16-071F

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### EXECUTIVE SUMMARY

The objective of this audit was to determine whether the Department of Small Business Services (DSBS) implemented the recommendations made in a prior audit report, *Audit Report on the Administration of the Emerging Business Enterprise Program by the Department of Small Business Services* (Audit # MD13-077A), issued in June 2013.

DSBS's mission is to assist businesses in New York City to form, conduct business, and grow. As part of its mission, DSBS runs the Emerging Business Enterprise (EBE) program, which was enacted by the City Council through Local Law (LL) 12 of 2006 and amended in 2013 by LL1.<sup>1</sup> The EBE program is designed to promote opportunities for businesses owned by persons who are both socially and economically disadvantaged.<sup>2</sup> The EBE program is one of three business certification programs promoted by the External Affairs unit in DSBS's Division of Economic and Financial Opportunity (DEFO). The other two programs are the Minority and Women-owned Business Enterprise (M/WBE) program and the Locally Based Enterprise (LBE) program.<sup>3</sup> The External Affairs unit conducts outreach and recruitment activities for all three programs. Currently, there are only three certified EBE businesses and no EBE contracts were awarded in Fiscal Year 2015.

The prior audit found that of six key provisions contained in LL12, DSBS substantially complied with only one: the preparation and updating of an EBE directory. For three other provisions—the establishment and operation of a program for the identification, recruitment, certification, and participation of EBEs; annual reporting of the City's EBE efforts to the Mayor and City Council; and collection of necessary information to determine the availability and utilization of EBEs to revise the citywide participation goals accordingly—DSBS substantially did not comply. For the

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<sup>1</sup> LL1 primarily increased the types of contracts that LL12 applied to and changed certain goal percentages to reflect more current work force demographic analysis. Otherwise, most of the requirements of LL12 remained the same under LL1.

<sup>2</sup> According to §1304 of Chapter 56 of the New York City Charter, a person who is "socially and economically disadvantaged" is defined as a person who has experienced social disadvantage in American society as a result of causes not common to persons who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.

<sup>3</sup> The LBE program is designed to promote the growth of small construction firms through greater access to contracting opportunities with the City.

remaining two provisions—the periodic review of City agencies’ compliance with EBE participation requirements and performance of EBE-related audits—DSBS was unable to comply due to minimal vendor participation in the program.

## **Audit Findings and Conclusion**

This audit found that DSBS has made improvements in its administration of the EBE program since the previous audit. Of the five recommendations made in the previous audit, we found that DSBS has fully implemented two and partially implemented three. However, based on our follow-up review, we found that some improvements are still needed. DSBS needs to maintain better documentation with regard to its outreach efforts. In addition, there was inadequate evidence that DSBS formally obtained feedback and identified strategies to increase the number of certified EBEs. In light of the very small number of certified EBEs, these two deficiencies are of particular concern.

## **Audit Recommendations**

To address the weaknesses that still exist, we make the following three recommendations:

- DSBS should ensure that agendas for all hosted events are prepared and maintained in the events folder.
- DSBS should formally solicit feedback from EBE applicants and document the results of that feedback.
- DSBS should compile the results of the feedback from EBE applicants to identify the root causes for the seemingly low interest in EBE certification in order to identify strategies to increase EBE certification and discuss possible recommendations for modifications to the law with the Mayor’s Office. This information should be included in the required reports submitted to the Mayor’s Office and City Council.

## **Agency Response**

In its response, DSBS generally agreed with the audit’s findings and recommendations.

# INTRODUCTION

## Background

The mission of DSBS is to assist businesses in New York City to form, conduct business, and grow. As part of its mission, DSBS runs the EBE program, which was enacted by the City Council through LL12 and amended in 2013 with LL1. The EBE program is designed to promote opportunities for businesses owned by persons who are both socially and economically disadvantaged “for the purpose of establishing the eligibility of such businesses for participation in the programs and processes established pursuant to local law to ensure their meaningful participation in city procurement.”

The EBE program is one of three business certification programs promoted by the External Affairs unit in DSBS’s DEFO. The other two are the M/WBE and LBE programs. The External Affairs unit conducts outreach and recruitment activities for all three programs.

A prior Comptroller’s Office audit, *Audit Report on the Administration of the Emerging Business Enterprise Program by the Department of Small Business Services* (Audit # MD13-077A), issued June 2013, was conducted to determine whether DSBS complied with the key provisions of LL12 with regard to the EBE program. The prior audit found that of six key provisions contained in the law, DSBS substantially complied with only one: the preparation and updating of an EBE directory. For three other provisions—the establishment and operation of a program for the identification, recruitment, certification, and participation of EBEs; annual reporting of the City’s EBE efforts to the Mayor and City Council; and collection of necessary information to determine the availability and utilization of EBEs to revise the citywide participation goals accordingly—DSBS substantially did not comply. For the remaining two provisions—the periodic review of City agencies’ compliance with EBE participation requirements and performance of EBE-related audits—DSBS was unable to comply due to minimal participation in the program by vendors.<sup>4</sup>

As of Fiscal Year 2015, over the life of the program DSBS has received 42 applications for certification but has only certified four firms. As of January 2016, three firms are EBE-certified.<sup>5</sup> Six contracts (three prime contracts and three subcontracts), totaling approximately \$2.2 million, were awarded to certified EBEs during Fiscal Year 2014 and none were awarded to certified EBEs in Fiscal Year 2015. In the *DSBS Annual Report for Fiscal Year 2014*, the agency states that limited participation in the EBE program has made it difficult for City agencies to set EBE goals for contracts.

## Objective

To determine whether DSBS implemented the recommendations made in the prior audit report.

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<sup>4</sup> The prior audit determined compliance with LL12; however, all of the aspects of LL12 referenced in the findings have continued in effect in LL1.

<sup>5</sup> A fourth business which received its EBE certification in 2008 did not recertify.

## **Scope and Methodology Statement**

We conducted this 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 objective.

This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was July 1, 2014, to December 30, 2015.

## **Discussion of Audit Results with DSBS**

The matters covered in this report were discussed with DSBS officials during and at the conclusion of this audit. A preliminary draft report was sent to DSBS and discussed at an exit conference held on February 29, 2016. On March 9, 2016, we submitted a draft report to DSBS with a request for comments. We received a written response from DSBS officials on March 30, 2016. DSBS generally agreed with the audit's findings and three recommendations.

The full text of DSBS' response is included as an addendum to this report.

## RESULTS OF FOLLOW-UP AUDIT

This follow-up audit found that DSBS has improved its administration of the EBE program but that, notwithstanding, the program has a low rate of participation. Of the five recommendations made by the previous audit, we found that DSBS fully implemented two and partially implemented three. However, based on our follow-up review, we found that some improvements are still needed. DSBS needs to maintain better documentation of its outreach efforts. As a result, we were unable to determine the degree to which DSBS discussed the EBE program at events. In addition, there was inadequate evidence that DSBS formally obtained feedback and identified strategies to increase the number of certified EBEs. As noted, as of Fiscal Year 2015, DSBS has received only 42 applications for certification and has certified four firms.

**Previous Finding:** “Lack of Evidence that DSBS has Effectively Promoted the EBE Program”

The prior audit found that DSBS’s outreach efforts and promotional materials for the EBE program were deficient. There was very limited information on DSBS’s website discussing and promoting the EBE program. In addition, a review of the materials disseminated by the outreach unit to interested parties, including e-mails and brochures, determined that this information did not make *any* mention of the EBE program. Further, the follow-up email sent to interested parties made no mention of the EBE program and only mentioned the M/WBE program. The prior audit also found a lack of evidence of DSBS’s outreach efforts and was unable to determine the extent of DSBS’s outreach to specifically promote the EBE program.

***Previous Recommendation #1:*** “DSBS should update its website and brochures to better promote the EBE program, ensuring that the information is readily available and prominently displayed.”

***Previous DSBS Response:*** “Currently, SBS is working on further enhancements to the Online Directory and to put all certification applications online to make it more convenient for business owners to apply, and once certified, manage their business profiles online through a self-service portal.”

**Current Status:** IMPLEMENTED

Our review of the information and brochures provided by DSBS and of the agency’s website shows improvement in the promotion of the EBE program. Several DSBS brochures now include information on the local laws that established the EBE program, EBE eligibility criteria, benefits of EBE certification, and how to compete on City contracts. In addition, EBE information and corresponding documents are easier to locate and download from DSBS’s website. Further, our analysis shows that there has been a slight increase in the number of EBE applications. Between Fiscal Years 2008 and 2013, a total of 22 applications (an average of four applications a year) were submitted for EBE certification. During Fiscal Years 2014 and 2015, 20 applications were submitted.

***Previous Recommendation #2:*** “Modify the follow-up e-mail sent to interested parties to sufficiently address the EBE program.”

***Previous DSBS Response:*** “SBS will implement the Report’s recommendation to modify the follow-up email that is sent to business owners interested in the City’s M/WBE program to provide greater information on the EBE program.”

**Current Status: IMPLEMENTED**

Following our previous audit, the follow-up e-mail to interested parties now includes a brief history of LL1 pertaining to the M/WBE and EBE programs and, specific to the EBE program, it contains information on the semi-annual EBE training workshops held on the fourth Thursday of January and July. Interested parties are asked to call or send an e-mail to register for the workshops. Finally, the e-mail provides various web-links to EBE, M/WBE, and LBE applications, Financial Management System vendor registration, the Payee Information Portal (centralized contractor registration site), Procurement Technical Assistance Center (offers assistance with the bidding process and marketing strategies), and NYC Teaming (joint-bidding partnerships).<sup>6</sup>

***Previous Recommendation #3:*** “Maintain adequate documentation regarding its outreach efforts in promoting the EBE program.”

***Previous DSBS Response:*** DSBS did not specifically address this recommendation in its response.

**Current Status: PARTIALLY IMPLEMENTED**

Currently, the DSBS External Affairs unit maintains event folders for all the hosted or co-hosted events it attends, which also include EBE-related events. Each event folder is marked with the name, date, address, and a brief description of the event. Generally, an event folder contains, at a minimum, the list of attendees or an email from the hosting entity describing the event and number of attendees, invitation email, flyers, brochures, and business card contacts. In addition, event information is maintained in DSBS’s Customer Relationship Management System (CRM).

In Fiscal Year 2015, External Affairs participated in 137 events; 73 co-hosted (external) events and 64 hosted (internal) events. From the 137 events, we randomly selected 20 event files to determine whether they contained evidence of DSBS’s promotion of the EBE program.

We could not locate agendas in 12 (60 percent) of the 20 sampled event files. Of those 12, 10 were hosted by DSBS. For events attended and hosted by DSBS, the External Affairs Director stated that the unit performs outreach for all three programs (EBE, M/WBE and LBE). However, in the absence of agendas, we are unable to determine whether the EBE program was identified as a topic of discussion at these events.

We did find that DSBS held two workshops during the year solely devoted to EBE-certification. Workshop folders maintained by DSBS included attendance sheets to document attendees.

**Previous Finding: “No Reporting on the EBE Program”**

The previous audit found that DSBS did not report its efforts to the Mayor’s Office or City Council regarding the activities of the EBE program. According to Local Law 12 of 2006, DSBS is required to annually report to the Mayor and the City Council on the activities of the division and efforts by agencies to comply with the provisions of the Local Law. A review of the Fiscal Years 2011 and 2012 Annual Reports and the Fiscal Year 2013 Preliminary Report submitted to the Mayor and City Council did not find any information regarding the EBE program. In fact, these reports, which were intended to report on the M/WBE and EBE programs, were entitled the *Minority and Women-Owned Business Enterprise (M/WBE) Program*.

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<sup>6</sup> The Financial Management System is New York City’s centralized accounting and budgeting system.

**Previous Recommendation #4:** “DSBS should submit the required reports to the Mayor and City Council detailing its efforts to promote the EBE program, the program’s accomplishments, if any, and provide strategies to improve the program resulting from the studies conducted on businesses and/or the feedback obtained from businesses.”

**Previous DSBS Response:** “Since passage of LL129 and LL12, SBS in conjunction with Mayor’s Office of Contract Services has submitted semi-annual reports to the Council containing extensive information on certifications, the utilization of certified companies and removal of barriers to procurement. Again, given the limited number of certified EBE companies, there has been minimal substantive information to report specifically on EBEs. Additionally, SBS has reported on EBE in various Council hearings concerning certification programs. However, SBS notes the Report’s finding and will include additional information in subsequent semi-annual reports.”

**Current Status:** PARTIALLY IMPLEMENTED

In our follow-up audit, we found that the reports DSBS has submitted to the Mayor and the City Council since October 2013 include information on the EBE program. We note that the quarterly reports are still entitled *Minority and Women-Owned Business Enterprise (M/WBE) Program*, however. In its annual report for Fiscal Year 2015, DSBS states that there were no awards to EBEs during Fiscal Year 2015 and that “limited participation in the EBE program has made it difficult for City agencies to set goals on contracts.” The Fiscal Year 2014 Annual Report also included a similar statement regarding the EBE program. In addition, DSBS sends a weekly report to the Mayor’s Office that includes information detailing the events attended by the External Affairs unit as part of the outreach and promotion of the three programs (EBE, M/WBE and LBE).

Despite these additional efforts and as discussed below, DSBS has not conducted any studies or formalized feedback on the EBE program to develop strategies to improve on the program, as we recommended in the prior audit. In its 2015 Annual Report, DSBS states that the agency “continues to strive towards increasing participation in the EBE program through a wide range of outreach efforts” and that “once increased participation in the EBE program is achieved, City agencies will have sufficient availability of certified EBE firms needed to set feasible contract goals.” We note, however, there has been no increase in the number of EBE certifications since the prior audit and DSBS has not identified any strategies by which increased participation may be achieved.

**Previous Finding:** “Analysis or Study of the EBE Program Not Performed”

In our original audit, we found that DSBS did not conduct an analysis or study to identify strategies to improve the administration of the EBE program. The Local Law required that every two years DSBS collect information to determine the availability and utilization of EBEs and, on the basis of such review and other relevant information, revise the citywide participation goals.<sup>7</sup> Because DSBS had only certified three businesses as EBEs, the EBE citywide participation goals could not be met and is a strong indication that the goals needed revision. The results of such a study would have aided DSBS in making informed decisions on ways to improve the program by increasing EBE participation in City procurement and on recommendations to the City Council in

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<sup>7</sup> According to §6-129 of the NYC Administrative Code, the citywide contracting participation goals for EBEs are 6 percent of the total annual agency expenditures on contracts related to each of the following four industry classifications: construction, professional services, standard services, and goods.

the event modifications to the law were deemed necessary. In the absence of any formal studies or investigations into this matter, DSBS was hindered in its ability to improve its performance in the overall goal of increasing EBE participation in City procurement.

***Previous Recommendation #5:*** “DSBS should conduct studies on businesses and/or solicit feedback from businesses in order to identify strategies to improve the administration of the program and to increase the participation of certified EBEs in City procurement.”

***Previous DSBS Response:*** “SBS notes this finding and will survey businesses who attend its biweekly certification workshops to solicit feedback on the application and potential benefits of certification.”

**Current Status:** PARTIALLY IMPLEMENTED

The DSBS External Affairs unit uses the CRM database to document outreach events and follow-up steps taken with interested parties. DSBS also collaborates with an outside vendor, NYC Business Solutions, with which it has a contract, to offer emerging businesses assistance with training, financing and business courses. In addition, DSBS holds “Train the Trainer” workshops for DSBS and NYC Business Solution personnel to review all the programs and services offered by DSBS.

According to the Director of the DSBS External Affairs unit, the office keeps “eyes and ears” open so when personnel are in the field, they can identify potential applicants. The Director stated that the whole division reaches out for feedback from varied sources including the Mayor’s Office and advocacy groups. He reported that the anecdotal feedback DSBS has received this way indicates that the terms “social and economic disadvantaged” and “historically underutilized” create a stigma and as a result, many people do not want to get involved with the program because they feel that their business may be looked at differently if they are associated with these terms.

However, this feedback was only collected on an informal basis; DSBS provided no evidence that it aggregated any feedback or conducted any studies to identify strategies and determine the root cause of low interest in the EBE program.

Our analysis shows that of the 22 applications for EBE certification submitted between Fiscal Years 2008 and 2013, half of the applications were withdrawn by the applicant, five applications were rejected, two were canceled, and one was under analyst review.<sup>8</sup> Only three businesses were certified. Of the 20 applications submitted in Fiscal Years 2014 and 2015, the majority of the applications (11 of 20) were rejected, four applications were withdrawn and three were canceled. Only two EBE certifications were issued.

### *Conclusion*

DSBS has made some improvements in its administration of the EBE program since the previous audit. However, there remains room for improvement. DSBS still has not provided any evidence that it is formally collecting and compiling the feedback it receives regarding the program nor has it conducted any studies to determine the reasons for the low levels of interest in the EBE program.

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<sup>8</sup> Applications are rejected due to a lack of required information by the applicant or if the applicant does not meet the program requirements, and are canceled when a business submits an incorrect application or an application with no supporting documentation.

As stated previously, there has been no increase in the number of EBE certifications since the prior audit; only three firms are currently certified. We noted that most applications submitted in the period covered by the prior audit were withdrawn, whereas most applications for the current audit scope were rejected. DSBS contends that these figures are evidence that there is low interest in the program. In addition, DSBS claims that based on the feedback it received, applicants feel that the terms “social and economic disadvantaged” and “historically underutilized” create a stigma and that their businesses may be looked at differently if associated with these terms.

However, in the absence of any formal studies to confirm this, we are unable to determine the degree to which the low participation is due to disinterest in the program rather than a need for DSBS to modify its outreach to the program’s target audience. As we stated in the prior audit, the results of a formal study would aid DSBS to make informed decisions on measures to improve the program by increasing EBE participation in City procurement and on recommendations to the City Council on modifications to the law, if needed. The absence of any formal studies into the low participation in the EBE program has hindered DSBS’ ability to improve its performance in the law’s overall goal of increasing EBE participation in City procurement.

## Recommendations

To address the issues that still exist, we recommend the following:

1. DSBS should ensure that agendas for all hosted events are prepared and maintained in the events folder.

**DSBS Response:** DSBS agreed stating, “In cases where the hosted event is a specific workshop, i.e., M/WBE, the agenda will note that an overview of the other certifications will be provided. For hosted events where certification is included in the PowerPoint presentation, a copy of the presentation will be maintained in the Division’s folder as evidence that the EBE program was identified as a topic of discussion.”

2. DSBS should formally solicit feedback from EBE applicants and document the results of that feedback.

**DSBS Response:** DSBS agreed stating, “In order to collect quantitative data that substantiates comments that have been received from businesses, SBS is drafting a survey to collect and document such information from businesses. SBS will survey businesses, analyze the information collected and report the findings in a future compliance report.”

3. DSBS should compile the results of the feedback from EBE applicants and conduct a study to identify the root causes for the seemingly low interest in EBE certification in order to identify strategies to increase EBE certification and discuss possible recommendations for modifications to the law with the Mayor’s Office. This information should be included in the required reports submitted to the Mayor’s Office and City Council.

**DSBS Response:** DSBS generally agreed with this recommendation stating that “SBS will conduct a survey to identify possible reasons. The responses received will be analyzed and reported in a future quarterly compliance report.”

The agency will also consider the need for a further survey or study. As EBE eligible companies are not readily identifiable, it may make a study difficult.”

**Auditor Comment:** We are pleased that DSBS will conduct a survey to identify the root causes for the low interest in the EBE program. However, in its response, DSBS does not address the sections of the recommendation that refer to identifying strategies to increase EBE certification and discussing possible recommendations for modifications to the law with the Mayor’s Office. As stated in the law, at least once every two years DSBS should collect information to determine the availability and utilization of EBEs and, on the basis of such review and other relevant information, revise the citywide participation goals. Throughout the audit and in its response, DSBS has argued that there are a number of factors that have led to limited interest in the program and the fact that there has been no increase in EBE certification since the prior audit. The results of the study may help identify new strategies to increase EBE certification and indicate that changes to the law should be made, whereby DSBS should discuss possible recommendations to the law with the Mayor’s Office. Accordingly, we urge DSBS to fully implement this recommendation.

## DETAILED SCOPE AND METHODOLOGY

We conducted this 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 objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The audit scope was July 1, 2014, to December 30, 2015.

To obtain an understanding of the controls relevant to our audit, the applicable policies and procedures pertaining to the EBE program, and to help achieve the audit's objective, we interviewed DEFO's Deputy Commissioner, Assistant Commissioner, Budget and Audit Director and Director of Certifications. To obtain an understanding of the responsibilities of the DSBS External Affairs unit, we interviewed the Executive Director and an External Affairs Associate.

To further our understanding of DSBS's computer database CRM, we conducted a walkthrough of the CRM database with the Executive Director and External Affairs Associate. We reviewed the information in the "Leads" and "Task" tabs to obtain an understanding of the feedback used by the External Affairs unit to follow-up with any interested parties. We also requested evidence showing that DSBS solicited feedback from EBE applicants and/or conducted any studies to identify the target audience for the EBE program and any areas of the EBE program that may require improvement.

To obtain an understanding of the policies and procedures governing the EBE program, we reviewed the following:

- Local Law 1 of 2013
- New York City Administrative Code, Title 6, Chapter 11 Contracts and Purchases §6-129 Participation by Minority-owned and Women-owned Business Enterprises and Emerging Business Enterprises in City Procurement.
- New York City Charter, Chapter 56 Department of Small Business Services §1304 Division of Economic and Financial Opportunity
- Rules of the City of New York, Title 66, Department of Business Services
- New York City Comptroller's Audit Report "Audit Report on the Administration of the Emerging Business Enterprise Program by the Department of Small Business Services" (#MD13-077A)
- EBE Program Certification Application
- SBS Certification Portal: Instructions for EBE Certification Application
- NYC Business Solutions: EBE Program
- NYC SBS: Selling to the Government (How to Certify with the City)

- DSBS organization charts
- Various information on DSBS's website

We reviewed DSBS's status report, submitted to the Comptroller's Office on October 31, 2013, on its progress toward implementing the recommendations made by the prior audit conducted in Fiscal Year 2013.

We reviewed the DSBS website and brochures to determine whether the EBE program was promoted and we reviewed the follow-up e-mail that DSBS sends to interested businesses to determine whether it sufficiently addresses the EBE program. To determine whether DSBS appropriately promoted the EBE program, we randomly selected 20 events from a listing of 137 events attended by the External Affairs unit, and judgmentally selected two other events specific to EBE promotion and certification and reviewed the event files for supporting documentation. In addition, we compared the event information in the files with the information captured in CRM.

To determine whether DSBS submits reports to the City Council as required, we reviewed reports for Fiscal Years 2014 and 2015 including: Final Report for Fiscal Year 2014, 1st and 2nd Quarter Report (covering July 1, 2014, through December 31, 2014), 1<sup>st</sup>, 2<sup>nd</sup> and 3rd Quarter Report (covering July 1, 2014, through March 31, 2015) and the Final Report for Fiscal Year 2015. We also reviewed the weekly email reports included in the sampled events folder sent to the City Council which include information regarding the events attended by the External Affairs unit as part of the outreach and promotion of the three programs.

We reviewed the "Leads" and "Task" tabs information in CRM to obtain an understanding of the feedback used by the External Affairs unit to follow up with any interested parties. To determine whether the number of EBE applications have increased, we performed an analysis of the EBE applications received during the scope of the previous audit and during the scope of the current audit.



**Gregg Bishop**  
Commissioner

March 30, 2016

Hon. Marjorie Landa  
Deputy Comptroller for Audit  
NYC Comptroller's Office  
1 Centre Street, 1100  
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**RE: Follow-up Audit Report on the Administration of the Emerging Business Enterprise Program by the Department of Small Business Services MD16-071F**

Dear Ms. Landa,

This letter represents the New York City Department of Small Business Services (SBS) response to recommendations contained in the Preliminary Draft Follow-up Audit Report (Draft Report) issued by the Office of the Comptroller (Comptroller) on March 9, 2016 regarding the Emerging Business Enterprise (EBE) Program.

SBS' responses to the three recommendations contained in the Draft Report are included in the body of this letter. As SBS stated in its detailed response, attached here, to the earlier EBE Audit Report (Audit #MD13-077A), it is essential to fully understand the specific eligibility standards for EBE certification when considering the number of firms certified as EBE generally, and as compared to the larger number of M/WBE certifications. The earlier response notes that at the time the City Council first considered the program, SBS raised concerns about the potential number of applicants. And given the stringent and complicated requirements of the eligibility criteria under the EBE Program, applications have been limited.

The EBE Certification Program was first established by Local Law 12 of 2006 and amended by Local 1 of 2013 (Local Law 1). Provisions of the law are implemented and administered by the Mayor's Office of Contract Services (MOCS) and the New York City Department of Small Business Services' (SBS) Division of Economic and Financial Opportunity (DEFO). New York City Charter section 1304 sets forth DEFO's authority with respect to the City's M/WBE and EBE programs. Additionally, Local Law 1 sets forth responsibilities for DEFO, including the promulgation of rules and establishing the criteria and procedures for M/WBE and EBE certification.

Local Law 1 does not establish specific targets or goals for enrollment into the EBE program. It is a voluntary program that businesses apply to participate in. Local Law 1 contains an aspirational contracting participation goal of 6% for awards on all eligible contracts, which include professional services, construction, standard services, and goods under \$100K. Given the limited number of

currently certified EBE companies, contracting agencies are generally unable to meet these goals at this time.

As discussed in our earlier response, EBE certification requires an individual demonstration of economic and social disadvantage in order to be eligible. This is in contrast to the requirements of M/WBE certification. SBS has made clear that the agency performs significant outreach and promotion of the EBE program without seeing a large number of applicants.

In its follow-up report, the Comptroller notes that SBS has improved in administration of the program. Specifically, the agency has implemented two of the five findings from the earlier report and partially implemented the remaining three. We appreciate this recognition by the Comptroller that SBS is addressing these areas as we continue to work hard at marketing the program and administering its provisions. The recommendations of the follow-up report are based upon the three findings of partial implementation, and are addressed below.

### **SBS Responses to Specific Findings & Recommendations of the Report**

#### **1. DSBS should ensure that agendas for all hosted events are prepared and maintained in the events folder.**

From the close of the last audit to this follow-up, SBS has demonstrated that it is making efforts to promote and market the EBE program. The Comptroller now requests that more documentation of outreach events are prepared and maintained. SBS accepts this recommendation and will implement.

To that end, SBS has informed internal staff that all agendas for hosted events that include an overview of the certification programs must include language identifying all three certification programs (M/WBE, EBE and LBE). This ensures that each attendee is informed in advance that an overview of all certifications will be provided allowing for attendees to ask questions on programs of interest. In cases where the hosted event is a specific workshop, i.e., M/WBE, the agenda will note that an overview of the other certifications will be provided. For hosted events where certification is included in the PowerPoint presentation, a copy of the presentation will be maintained in the Division's folder as evidence that the EBE program was identified as a topic of discussion.

#### **2. DSBS should formally solicit feedback from EBE applicants and document the results of that feedback.**

SBS has identified over 150 businesses that have attended an EBE workshop, started but never completed the EBE application process, and/or have shown interest in the EBE program while attending a conference or seminar. SBS receives anecdotal feedback from businesses regularly on the difficulty of the EBE certification process and specifically, the challenge in providing documentation to prove social and economic disadvantage. In order to collect quantitative data that substantiates comments that have been received from businesses, SBS is drafting a survey to collect and document such information from businesses. SBS will survey businesses, analyze the information collected and report the findings in a future compliance report.

#### **3. DSBS should compile the results of the feedback from EBE applicants and conduct a study to identify the root causes for the seemingly low interest in EBE certification in order to identify strategies to increase EBE certification and discuss possible recommendations for**

**modifications to the law with the Mayor's Office. This information should be included in the required reports submitted to the Mayor's Office and City Council.**

As noted above, the SBS response to the prior audit report noted root causes for low EBE certification rate, particularly given the somewhat simpler path to M/WBE certification. Notwithstanding the earlier submission, SBS will conduct a survey to identify possible reasons. The responses received will be analyzed and reported in a future quarterly compliance report.

The agency will also consider the need for a further survey or a study. As EBE eligible companies are not readily identifiable, it may make a study difficult. Pursuant to Local Law 1, in order for an individual to be eligible for EBE certification, the net worth of the individual claiming economic disadvantage must be less than \$1 million. In addition, once the economic disadvantage component is met, the applicant business owner must still demonstrate social disadvantage. Specifically, the applicant must provide evidence of at least one objective distinguishing feature that has adversely impacted entry into or advancement in the business world in the areas of education, employment, and/or business history, such as access to credit. SBS believes these complex application requirements have led to limited interest in the EBE program despite consistent marketing efforts.

EBE status is a designation that does not exist anywhere outside of the New York City program. Accordingly, identifying the pool of businesses needed to conduct a thorough study would be challenging. The most comparable program to the City's EBE Program is the federal Disadvantaged Business Enterprise (DBE) Program. However, unlike the federal DBE Program where social disadvantage is presumed for M/WBEs and further evaluation of social or economic disadvantage criteria is not required, the City's EBE Program criteria relies on an individual and specific determination of an applicant's disadvantage.

In New York State, DBE certification is administered by the New York State Department of Transportation (NYS DOT). We are currently working with NYS DOT to identify firms on their certified DBE list that may be eligible for certification with the City of New York.

SBS is committed to promoting its certification programs, expanding certification and assisting businesses to start and grow. Through our outreach and certification efforts, there are over 4,000 certified M/WBE firms. We have taken many steps to make certification simpler and more accessible. We will continue to do so and look forward to working with your office.

Thank you.

Sincerely,



Gregg Bishop  
Commissioner

c: Tara Leary  
Gabriella Adina Benedek  
Jenny Mercado