



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
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MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the New York City
Department of Housing Preservation
and Development's Administration of
the Minority- and Women-Owned
Business Enterprise Program

MD15-111A

March 18, 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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March 18, 2016

To the Residents of the City of New York:

My office has audited the New York City Department of Housing Preservation and Development (HPD) to determine whether it complied with the key provisions of Local Law 1 of 2013 (LL1) that pertained to New York City's Minority- and Women-Owned Business Enterprise (M/WBE) Program. We perform audits such as this to increase accountability and to ensure compliance with City laws.


The audit found that HPD is not in compliance with key provisions of LL1 that pertain to the M/WBE Program. Specifically, HPD does not adequately track all contracts and subcontracts subject to LL1 that were awarded to M/WBEs. HPD also did not record all required contract information in the City's Financial Management System (FMS) for contracts subject to LL1 M/WBE participation goals. In addition, the audit found inadequate evidence that HPD monitored its prime contractors' use of M/WBEs for contracts awarded with participation goals. Further, the audit found inadequate evidence that HPD: 1) considered relevant information required by LL1 when setting its annual Agency M/WBE utilization goals; 2) performed some M/WBE initiatives that the agency stated it would perform in its *M/WBE Utilization Plans*; and 3) monitored its progress towards achieving its M/WBE utilization goals.

To address these issues, the audit recommends that HPD maintain a complete centralized list of all prime contractors and subcontractors to help track and monitor contracts subject to LL1; ensure that it correctly enters all prime contracts and subcontracts into the applicable FMS tables; monitor and document the prime contractors' use of M/WBEs and verify payments made to them; conduct a more thorough evaluation of its M/WBE utilization goals; and establish a formal means of monitoring its procurement activities to ensure compliance with the agency's utilization plan.

The results of the audit have been discussed with HPD 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.

Sincerely,



Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the New York City Department of Housing Preservation and Development's Administration of the Minority- and Women-Owned Business Enterprise Program

MD15-111A

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City Department of Housing Preservation and Development (HPD) complied with the key provisions of Local Law 1 of 2013 (LL1) that pertained to New York City's Minority- and Women-Owned Business Enterprise (M/WBE) Program.

HPD is the largest municipal housing preservation and development agency in the nation. The agency is responsible for promoting the construction and preservation of affordable, high quality housing for low- and moderate-income families throughout the City by enforcing housing quality standards, financing affordable housing development and preservation, and ensuring sound management of the City's affordable housing stock.

In 2005, Local Law 129 (LL129) created the M/WBE Program, which was modified by LL1 in 2013.¹ The M/WBE Program, administered jointly by the Department of Small Business Services (DSBS) and the Mayor's Office of Contract Services (MOCS), aims to eliminate discrimination in City contracting. Such discrimination was quantified through a disparity study commissioned by the New York City Council. Based on this disparity study, the City Council established Citywide contracting participation goals for M/WBEs that it set forth in LL1. Pursuant to LL1, these contracting participation goals may be met through awards of prime contracts or subcontracts for the procurement of professional services, standard services, construction services and goods. The M/WBE Program aims to increase M/WBE contracting opportunities by maximizing access to bid or proposal opportunities for prime contracts. However, under New York State law, agencies are required to award prime contracts through a competitive process and M/WBE status *may not* be a factor in making such an award. The M/WBE Program requires City agencies to set M/WBE participation goals on individual contracts, subject to the law.²

¹ LL1 became effective on July 1, 2013.

² For specific contracts, agencies are required to establish M/WBE participation goals based on the size and nature of anticipated procurements that will be subject to the M/WBE participation requirements. Agencies are required to consider several factors in deciding whether to set a participation goal, including the history of similar projects and the availability of M/WBEs to perform the work.

LL1 requires City agencies to develop and submit an *M/WBE Utilization Plan* each fiscal year to DSBS.³ Each agency must factor in Citywide goals for M/WBE utilization when setting its own goals for procurement, and make all reasonable efforts to meet the goals it has set for M/WBE participation. LL1 also requires that agency M/WBE Officers⁴ monitor their agency's procurement activities to ensure utilization goal compliance and to assess their agency's progress towards the participation goals established in its plan.

Audit Findings and Conclusion

The audit found that HPD is not in compliance with key provisions of LL1 that pertain to the M/WBE program. Specifically, HPD does not track or maintain a complete centralized list of all contracts and subcontracts subject to LL1 that were awarded to M/WBEs. HPD also did not record all required contract information in the City's Financial Management System (FMS) for contracts subject to LL1 M/WBE participation goals.⁵ Because of HPD's failure to record all of the required contract information in FMS, we found that HPD potentially overstated the reported dollar amounts awarded to M/WBEs for four sampled prime contracts totaling \$174,554 by \$13,900.

We also found inadequate evidence that HPD monitored its prime contractors' use of M/WBEs for contracts awarded with participation goals. There was no documentary evidence of HPD's review of the prime contractors' records to verify payments made to subcontractors, and no evidence of job-site inspections or of any contacts with M/WBE subcontractors to verify their use. Further, we found inadequate evidence that HPD: (1) considered relevant information required by LL1 when setting its annual Agency M/WBE utilization goals;⁶ (2) performed some M/WBE initiatives that the agency stated it would perform in its FY 2014 and FY 2015 *M/WBE Utilization Plan*; and (3) monitored its progress towards achieving its M/WBE utilization goals.

The deficiencies identified in this report hinder HPD's efforts to effectively assess its compliance with its agency-wide M/WBE utilization plan and its prime contractors' compliance with established participation goals.

Audit Recommendations

Based on the audit we make 12 recommendations, including:

- HPD should maintain a complete centralized list of all prime contractors and subcontractors to help track and monitor contracts subject to LL1.
- HPD should ensure that it correctly enters all prime contracts and subcontracts into the applicable FMS tables.
- HPD should monitor and document the prime contractors' use of M/WBEs and verify payments made to them by, at a minimum, performing job-site inspections to ensure subcontractor performance and utilization, contacting M/WBEs identified in the plan to confirm their participation and auditing the contractors' books and records.

³ Agencies are required to prepare an annual *M/WBE Utilization Plan* that includes justifications for how they arrived at their goals, prime contractor utilization initiatives, and the names of personnel responsible for implementation of the agency utilization plan.

⁴ An agency M/WBE Officer is either a deputy commissioner or other executive officer designated by the agency head. The M/WBE Officer reports directly to the agency head on all M/WBE matters, and serves as a liaison with DSBS and M/WBE organizations and/or associations.

⁵ FMS is the City's centralized accounting and budgeting system.

⁶ LL1 requires agencies to set overall agency utilization goals for ethnic and gender groups within each industry category.

- HPD should conduct a more thorough evaluation of its M/WBE utilization goals, consider increasing its goals in future years where applicable, and document all factors considered in establishing its goals.
- HPD should advertise procurement opportunities in minority publications in order to increase opportunities for prospective M/WBE bidders.
- HPD should establish a formal means of monitoring its procurement activities to ensure compliance with the agency's utilization plan and to monitor its progress towards meeting the participation goals established in its plan.

Agency Response

In its response, HPD agreed with 11 of the audit's 12 recommendations but disagreed with the need for eight of them, arguing that the agency was already in compliance. HPD also disagreed with many of the audit's findings, stating that it "had already implemented many of the policies and practices recommended in the Audit Report." After carefully reviewing HPD's arguments, we find no basis to alter any of our audit's findings or the report's overall conclusion.

AUDIT REPORT

Background

HPD is the largest municipal housing preservation and development agency in the nation. The agency is responsible for promoting the construction and preservation of affordable, high quality housing for low- and moderate-income families throughout the City by enforcing housing quality standards, financing affordable housing development and preservation, and ensuring sound management of the City's affordable housing stock.

In 2005, LL129 created the M/WBE Program, which was modified by LL1 in 2013. The M/WBE Program aims to eliminate discrimination in City contracting that was quantified through a disparity study commissioned by the New York City Council. LL1 established Citywide contracting participation goals for M/WBEs based on this disparity study. These participation goals may be met through awards of prime contracts or subcontracts for the procurement of professional services, standard services, construction services and goods. The M/WBE Program aims to increase M/WBE contracting opportunities by maximizing access to bid or proposal opportunities for prime contracts. However, under New York State law, agencies are required to award prime contracts through a competitive process and M/WBE status *may not* be a factor in making such an award. The M/WBE Program requires City agencies to set M/WBE participation goals on individual contracts, subject to the law.

The M/WBE Program is administered jointly by DSBS and MOCS. The two agencies jointly issue the *M/WBE Program Annual Report* each fiscal year, as well as interim quarterly reports after each of the first three quarters in a fiscal year. These reports, along with the annual MOCS' *Agency Procurement Indicators (API) Report*, summarize program activity, prime contract and subcontract utilization data for City-certified M/WBEs, as well as additional data specified in §6-129 of the New York City Administrative Code.⁷

In order to assist City agencies in increasing their awards to M/WBEs, MOCS issued the *M/WBE Policies, Procedures, and Best Practices (MOCS Manual)* to each agency's M/WBE Officer and Agency Chief Contracting Officer (ACCO). The MOCS Manual provides guidelines and best practices for LL1 compliance and standardized LL1-related forms. LL1 requires City agencies to develop and submit an *M/WBE Utilization Plan* each fiscal year to DSBS. Each agency must factor in Citywide goals for M/WBE utilization when setting its own goals for procurement, and make all reasonable efforts to meet the goals it has set for M/WBE participation.

LL1 also requires that agency M/WBE Officers monitor their agency's procurement activities to ensure utilization goal compliance and to assess their agency's progress towards the participation goals established in its plan. The agency determines whether a given procurement contract will be subject to M/WBE participation goals, and sets a percentage for M/WBE participation that the prime contractor should meet.⁸ When bidding on a contract with an M/WBE participation goal, a

⁷ The API Report provides statistics and highlights information relating to New York City procurement.

⁸ A prime contractor can choose to subcontract to M/WBE-certified companies to meet its goal, or if the prime contractor is M/WBE-certified itself, can choose to meet its goal by self-performing the work involved in the contract. Alternatively, a prime contractor may also pursue a waiver of its participation goal prior to being awarded a contract (either partially or in full), which is reviewed by the agency and forwarded to MOCS with its recommendation for acceptance or denial of the waiver request. If a prime contractor determines it may not meet its participation goal after the contract has been awarded, it may also pursue a modification of its goal, which undergoes a similar approval process to a waiver request.

prime contractor must submit a completed *Schedule B – M/WBE Utilization Plan* (Schedule B), which lays out its intended methods for meeting the contract M/WBE participation requirements.

According to the MOCS Fiscal Year (FY) 2014 API Report, HPD utilized 3,974 prime contracts (valued at approximately \$14.6 million) that were subject to the M/WBE Program: 3,429 construction service contracts, valued at \$8.4 million; 327 standard services contracts, valued at approximately \$4.8 million; 187 goods contracts, valued at \$1.3 million; and 31 professional services contracts, valued at approximately \$65,000. The FY 2015 API Report states that HPD utilized 3,874 prime contracts (valued at greater than \$16.8 million) that were subject to the M/WBE Program: 3,343 construction services contracts, valued at approximately \$5.1 million; 388 standardized services contracts, valued at approximately \$1.6 million; 129 goods contracts, valued at approximately \$1.1 million; and 14 professional services contracts, valued at approximately \$9 million.

A prior audit was conducted by our office, *Audit Report on the Monitoring of the Department of Housing Preservation and Development of Subcontracts Covered by Local Law 129* (Audit # MD10-131A), issued October 2010, to determine whether HPD complied with LL129 in monitoring vendor M/WBE utilization for contracts in which M/WBE subcontractor participation goals had been established. That audit found that HPD did not maintain a list of the contracts subject to the local law subcontracting requirements. Therefore, the agency could not adequately track these contracts for the purpose of determining whether the established subcontracting goals had been met by the prime contractors. That audit also found that HPD did not monitor its prime contractors' use of M/WBEs for contracts that were awarded with M/WBE participation goals. Specifically, HPD did not review the prime contractors' records to verify that payments were made to M/WBE subcontractors; and also did not perform job-site inspections to confirm that the M/WBEs were on site or contact the M/WBE subcontractors to verify that they were in fact employed by the primes.

HPD generally agreed with the recommendation made in the prior report to monitor the use of M/WBEs by prime contractors and verify payments made to them and responded that it would increase its monitoring of prime contractor's use of M/WBEs, including calling subcontractors to verify work performed and developing a protocol to perform spot check inspections of job sites. The agency contended that it maintained a list of contracts subject to LL129 subcontracting requirements; however, it was unclear from HPD's response whether HPD officials were contending that the implementation occurred before or after the performance of that audit.

Objective

The objective of this audit was to determine whether HPD complied with the key provisions of LL1 that pertained to the M/WBE Program.

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 objectives. 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 FYs 2014 and 2015 (July 1, 2013, through June 30, 2015). Please refer to the Detailed Scope and Methodology at the end of this report for specific procedures and tests that were conducted.

Discussion of Audit Results with HPD

The matters covered in the audit were discussed with HPD officials during and at the conclusion of this audit. A preliminary draft report was sent to HPD and discussed at an exit conference held on February 4, 2016. On February 23, 2016, we submitted a draft report to HPD officials with a request for comments. We received a written response from HPD officials on March 11, 2016. HPD agreed with 11 of the audit's 12 recommendations but disagreed with the need for eight of them, arguing that the agency was already in compliance. HPD also disagreed with many of the audit's findings and stated,

We have thoroughly reviewed the Audit Report and we disagree with many of the findings. I also note that HPD had already implemented many of the policies and practices recommended in the Audit Report. Further, our documented successes in M/WBE contracting, and the robust processes in place to ensure that those successes continue, belie the Audit's conclusion that HPD has failed to comply with key provisions of Local Law 1.

HPD also stated,

HPD's success in delivering excellent results in M/WBE contracting was recognized by the City Comptroller in the "Making the Grade Report," issued on October 12, 2015. Indeed, HPD was the only city agency to receive an "A" in the report. The Mayor's Office of Contract Services also has recognized HPD's contracting practices for achieving exceptional participation of M/WBE firms.

We disagree with HPD's contention that its "documented successes" and "robust processes" belie the audit's conclusion. Preliminarily, to the extent that HPD has already implemented many of the policies and procedures recommended as a result of our audit findings, we are pleased that these changes have been made. We note, however, that many of the procedures HPD contends satisfy the audit recommendations were not implemented until after we had completed our audit testing and shared the audit's findings with HPD officials. Accordingly, these recommendations are appropriately included together with our audit findings. In addition, as is discussed in more detail below, we do not agree that all of the measures HPD has taken fully address our findings and recommendations.

Further, the report's overall conclusion that HPD is not in compliance with key provisions of LL1 that pertain to the M/WBE Program is based on the fact that the agency was unable to provide adequate evidence that it: (1) tracked and recorded contracts subject to LL1; (2) monitored prime contractors' use of M/WBEs; (3) considered relevant and required information when setting its annual M/WBE utilization goals; and (4) performed some of the required prime contractor utilization initiatives. At no point during the audit or in its response has HPD provided sufficient, competent evidence to refute the report findings.

In its response, HPD also makes reference to the "A" rating it was given by the Comptroller's Diversity Office of the Bureau of Policy and Research (Policy Bureau) for the agency's M/WBE spending in the Policy Bureau's *Making the Grade* report. However, as discussed in "Other Matters" beginning on page 22 of this report, the Policy Bureau's analysis and the audit assess two completely different matters. The report issued by the Policy Bureau solely focused on HPD's

spending on goods and services provided by M/WBEs as reported in FMS by the City during the fiscal year. Conversely, this audit assessed HPD's compliance with M/WBE reporting and monitoring requirements outlined in LL1, and not the amounts ultimately spent. Consequently, the fact that the results are different does not indicate that they are inconsistent.

Furthermore, the data used by the Policy Bureau in determining the letter grades originated entirely from FMS. Thus, the impact of any incomplete or otherwise erroneous data in FMS is not considered by the Policy Bureau's letter grade report. Significantly, in this audit we identified a number of deficiencies regarding HPD's controls over the information entered in FMS, which raises concerns about the reliability of M/WBE spending totals reported in FMS on HPD contracts and, by extension, the "documented successes" referred to by HPD.

After carefully reviewing HPD's arguments, we find no basis to alter any of our audit's findings or the report's overall conclusion.

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

FINDINGS AND RECOMMENDATIONS

The audit found that HPD is not in compliance with key provisions of LL1 that pertain to the M/WBE Program. HPD does not track or maintain a centralized list of all contracts and subcontracts subject to LL1 that were awarded to M/WBEs; the list that HPD does maintain is incomplete. HPD also did not record all required contract information in FMS for contracts subject to LL1 M/WBE participation goals. Because of HPD's failure to record all of the required contract information, we found that HPD potentially overstated the reported dollar amounts awarded to M/WBEs for four sampled prime contracts totaling \$174,554 by \$13,900.

We also found inadequate evidence that HPD monitored its prime contractors' use of M/WBEs for contracts awarded with participation goals. There was no documentary evidence of HPD's review of the prime contractors' records to verify payments made to subcontractors, and no evidence of job-site inspections or of any contacts with M/WBE subcontractors to verify their use.

Further, we found inadequate evidence that HPD: (1) considered relevant information required by LL1 when setting its annual Agency M/WBE utilization goals; (2) performed some M/WBE initiatives that the agency stated it would perform in its FY 2014 and FY 2015 *M/WBE Utilization Plan*; and (3) monitored its progress towards achieving its M/WBE utilization goals.

The deficiencies identified in this report hinder HPD's efforts to effectively assess its compliance with its agency-wide M/WBE utilization and its prime contractors' compliance with established participation goals. We believe these deficiencies, at least in part, are due to HPD's failure to establish an authoritative set of procedures that would govern LL1 requirements. Such a procedural guide would assist HPD personnel to comply with the law's provisions.

These issues are discussed in the following sections of this report.

Inadequate Tracking and Recording of Contracts Subject to LL1

Tracking of Contracts Subject to LL1

HPD, through its M/WBE Officer, is responsible for tracking and recording each M/WBE prime contractor, as well as each M/WBE subcontractor hired under the agency's contracts pursuant to §6-129f(7) of LL1. However, HPD does not track or maintain a complete centralized list of all M/WBE prime contractors and subcontractors hired pursuant to the contracts subject to LL1.⁹

HPD officials provided a list of eight prime contracts that the agency stated were all of its contracts subject to LL1 M/WBE participation goals through April 2015. However, this list was incomplete. We identified a ninth contract that should have been included in HPD's list of prime contracts with established M/WBE participation goals. In addition, HPD could not provide a list of M/WBE prime contractors and subcontractors hired pursuant to LL1 (for contracts without established M/WBE participation goals), although LL1 requires the agency to track and record this information. We were unable to determine whether any additional HPD contracts were subject to LL1, but not on the list we were provided. Based on information recorded in FMS, this ninth contract had a procurement initiation date of January 9, 2014, and was classified by HPD in FMS as subject to

⁹ We note that the prior Comptroller's audit also cited HPD for its failure to maintain a list of contracts subject to M/WBE subcontracting requirements.

LL1, with an established M/WBE participation goal of 26 percent. We received the payment package for this contract as a sample contract for demonstration purposes during a walkthrough of HPD's payment review process and verified the existence of a Schedule B, which specified the contract's M/WBE participation requirements, thus confirming that this contract should have been included on the provided list.

HPD's M/WBE Officer does not track and record prime contractor and subcontractor information as required by LL1, which appears to have contributed to the agency's inability to provide a complete list of those contracts awarded to M/WBEs. Without a complete list of its M/WBE prime contractors and subcontractors, HPD cannot adequately track contracts subject to LL1. Its failure to maintain such a list may also contribute to HPD's failure to record all its contracts subject to LL1 in FMS as required, a deficiency discussed in more detail below. Further, the absence of a complete and accurate list limits HPD's ability to oversee prime contractor entries into the Payee Information Portal (PIP).¹⁰ According to the MOCS manual, prime contractors must record contract information into PIP, including subcontractor information, for contracts valued at \$250,000 or more. The agency, however, must ensure that the prime contractors record complete and accurate subcontractor information into PIP. Because HPD does not have a complete list of contracts subject to LL1, it may not track all the contracts that must be recorded in PIP, and as a result would not be able to monitor the accuracy of the associated subcontractor information.

Inadequate Review of Required FMS Contract Information

To ensure accurate reporting of agency performance of M/WBE utilization, agencies are required to use the Contract Goals Header (CTGH) and Contract Goals Ledger (CTGL) tables in FMS to enter information relating to the administration of the M/WBE Program. The CTGH table is intended to record all M/WBE participation goal information and the CTGL table is intended to record all approved subcontractor information, including but not limited to those with M/WBE status, for prime contracts valued under \$250,000.

Prime Contracts Not Recorded in CTGH

We found that HPD did not record six of its nine prime contracts that were subject to LL1 M/WBE participation goals into CTGH, as required. These six contracts are identified in Table I below.

¹⁰ PIP is a service that allows a payee/vendor for the City of New York to, among other things, manage subcontractors. Within PIP, prime contractors must identify whether subcontracting is required in their contracts, list all subcontractors they intend to use for the contracted agency's review and approval, and provide information about each subcontract award they will issue.

Table I
List of HPD Contracts Subject to LL1 M/WBE Participation
Goals Not Recorded in the FMS CTGH Table

| Registered Contract # | Vendor Name | Value of Contract Award (\$) | Contract Award Date (Registration) | Period Covered by Contract | Industry Type | Contract Services Description |
|-----------------------|--------------------------|------------------------------|------------------------------------|----------------------------|---------------|-------------------------------|
| 20141412181 | A Russo Wrecking Inc. | 15,555.00 | 12/6/2013 | 10/21/2013 - 10/20/2014 | Construction | Demolition |
| 20141412964 | A Russo Wrecking Inc. | 19,555.00 | 12/11/2013 | 1/6/2014 - 1/5/2015 | Construction | Demolition |
| 20141411975 | A Russo Wrecking Inc. | 57,222.00 | 12/19/2013 | 12/24/2013-12/23/2014 | Construction | Demolition |
| 20141412966 | A Russo Wrecking Inc. | 82,222.00 | 12/27/2013 | 10/30/2013 - 10/29/2014 | Construction | Demolition |
| 20151405267 | C.A. McCrae CPA LLC | 9,000,000.00 | 12/19/2014 | 09/28/2014 - 09/27/2017 | Standard | Payroll Services |
| 20151413623 | Gateway Demolition Corp. | 22,969.00 | 12/30/2014 | 1/15/2015 - 1/14/2016 | Construction | Demolition |

After bringing the missing FMS contract information to HPD's attention on October 7, 2015, HPD explained that "for the five small/micro purchase contracts, the Division of Maintenance (DOM) did not complete the CTGH and CTGL entries, as is required once a Schedule B is completed. The process has since been clarified with the staff." However, when we requested written procedures related to the requirements that contract information be entered into the CTGH and CTGL tables, none were provided.

Further, when we reviewed the CTGH table on November 13, 2015, these five contracts still had not been recorded. With respect to the sixth contract (Contract #20151405267 – C.A. McCrae CPA LLC), HPD explained that "as the contract [is greater than] \$250,000, all information regarding M/WBE status is added through PIP by the vendor and there are no subcontracts." However, according to the MOCS Manual, *all* contracts subject to the M/WBE Program must be entered into the CTGH table. Therefore, all contracts should be entered into the CTGH table regardless of value or whether the prime contractor is required to enter contract information into PIP.

At the exit conference, HPD officials provided us with the final version of HPD's LL1 Procedure Manual, which they stated was finalized on December 15, 2015. This manual requires that program area representatives record the contract information into FMS as soon as the contract is registered.

Subcontracts Not Recorded in CTGL

HPD did not include required information in the CTGL table for five of the seven prime contracts subject to LL1 for which such information was required. According to the MOCS Manual, "all approved subcontractor information, regardless of M/WBE status, must be entered into FMS" using the CTGL table, unless the subcontractor has been approved through PIP. It further states that "agencies must work with vendors to ensure compliance with recording subcontractor and payment information into PIP," and that "it is essential that agencies monitor contractor PIP compliance," including the monitoring of subcontractor awards. Five of the six prime contracts identified above in Table I had a value of less than \$250,000 and therefore were not required to have any subcontractor information recorded in PIP. Consequently, HPD should have recorded the subcontractor information in the CTGL table. However, that required the prime contracts with

which they were associated be recorded in the CTGH table first. Because they were not doing this, no corresponding entries recording the approved subcontractor information could be made in the CTGL table either. These five contracts, which were awarded to M/WBE primes, had a total of 17 approved subcontracts valued at \$17,165, with only one subcontract valued at \$2,500 identified as an M/WBE. Consequently, the value of the remaining 16 subcontracts should not be credited toward the M/WBE award amounts.

Failures to Properly Record Information in PIP

Two of the nine prime contracts subject to M/WBE participation goals were valued over \$250,000 and so required subcontractor entries in PIP to be made by the prime contractors. However, we found issues with the entry of information into PIP for one of these two prime contracts. Specifically, for that one contract we identified a subcontract valued at \$20,000 that was not recorded in PIP. In addition, we identified two M/WBE subcontracts associated with this same contract in which the estimated subcontractor values on the Subcontractor Approval Forms did not match the estimated subcontractor values entered in PIP.

HPD must oversee and approve PIP subcontractor information entries for accuracy. Though requested, HPD failed to indicate which of the values, if any, were correct. If the amounts on the Subcontractor Approval Forms are accurate, this contract will fall short of its M/WBE participation goal. The contract is for \$694,444 with an M/WBE participation goal of 20 percent, or \$138,889. The amounts on the Subcontractor Approval Forms total \$135,000 or 19.4 percent of the contract amount.

Consequences of Inadequate M/WBE Reporting and Tracking

Without the CTGL entries and subcontractor information recorded in PIP by the prime contractors, the City may be incorrectly reporting the dollar amounts awarded to M/WBEs. Dollar amounts awarded to M/WBEs are included in an agency's M/WBE award amount reported in the City's API Report produced by MOCS. However, if the M/WBE prime contractor awards any subcontracts to non-M/WBEs, the dollar amount of those subcontracts must be deducted from the amount reported as being awarded to M/WBEs. This requirement helps to ensure that companies identified as M/WBEs are not merely shell companies used to obtain contracts but where the actual work is subcontracted to non-M/WBE subcontractors.

In the case of the five prime contracts discussed above, four totaling \$174,554 were awarded to one M/WBE prime contractor. Although this vendor is a certified M/WBE, all 13 of its subcontracts, totaling \$13,900, were awarded to non-M/WBEs. As a result, the reported M/WBE award amount for these four prime contracts should be reduced by \$13,900, or 7.9 percent.¹¹ The prior Comptroller's audit also identified issues with HPD not properly entering subcontractor information into the CTGL table, and therefore inaccurately reporting subcontractor amounts.

We attribute this deficiency to the agency's inadequate monitoring of FMS contract information and to the M/WBE officer not overseeing that the contract and subcontractor information is correctly recorded in FMS and PIP.

¹¹ For the aforementioned contract with missing subcontractor information in PIP, the contractor's failure to enter this information does not affect the M/WBE reporting as both the prime contractor and subcontractor are non-M/WBEs.

Recommendations

1. HPD should maintain a complete centralized list of all M/WBE prime contractors and M/WBE subcontractors to help track and monitor contracts subject to LL1.

HPD Response: “HPD agrees with this finding. HPD currently tracks and records all contracts subject to Local Law 1 in various program-specific data systems. The agency will aggregate information from the various systems to create a centralized list of all contracts and subcontracts subject to Local Law 1.”

2. HPD should ensure that it correctly enters all prime contracts and subcontracts into the applicable FMS tables.

HPD Response: “HPD agrees but is already in compliance. The majority of the Agency’s contracts subject to Local Law 1 were properly recorded into the applicable FMS tables; only a handful of contracts were not properly entered. HPD corrected this limited oversight and issued guidance to procurement liaisons and program staff on the required reporting in FMS. Further, as acknowledged in the audit report, HPD has already reiterated the procedures for entering prime and subcontracts in the applicable tables in FMS in our Local Law 1 Manual. The manual has been distributed to appropriate personnel.”

Auditor’s Comment: The “handful” of contracts HPD refers to represents 67 percent of all of its contracts with participation goals during the period reviewed. We are pleased that HPD has finalized its LL1 Manual, but HPD should also establish policies and procedures for monitoring and reviewing the information recorded in the CTGH and CTGL tables to ensure that all applicable contracts (prime and subcontracts) have been correctly and timely recorded.¹²

3. HPD should ensure that the prime contractors accurately record contract information into PIP for all contracts subject to LL1.

HPD Response: “HPD disagrees with the finding. For contracts that are still in progress the information entered into PIP is not considered final. HPD requires prime contractors over \$100,000 to use PIP to identify subcontractors and record payment information. HPD has procedures in place to ensure that prime contractors accurately record contractor information into PIP for all contracts subject to Local Law 1. Work for the one referenced contract called into question in the audit has not yet been completed, and the information in PIP therefore reflected the current status of payments to subcontractors which will continue to change as the work progresses. When the contract is complete, PIP will reflect the total amounts the prime contractor paid to its subcontractors and that it met the 20 percent participation goal to which it is mandated by having executed its Schedule B.”

Auditor’s Comment: Although HPD claims that it has procedures in place to ensure that prime contractors accurately record contractor information into PIP, it fails to identify those procedures. During the course of the audit, we found that HPD had no such procedures for monitoring the vendor-recorded contract information in PIP. HPD did not review the PIP entries made by prime contractors as the contracts progressed, which hindered its ability to identify instances where the required participation goal (20 percent in the instance cited) would not be met

¹² HPD’s LL1 Manual does not include procedures for reviewing entries in the CTGH and CTGL tables for accuracy and timeliness.

in accordance with the contractors' Schedule Bs and, if so, take corrective action where appropriate. We therefore urge HPD to reconsider its response to this recommendation.

Inadequate Monitoring of Prime Contractors Utilization of Subcontractors

In its FY 2014 and its FY 2015 *Agency M/WBE Utilization Plan* submitted to DSBS, HPD stated its intention to regularly employ monitoring techniques by, at a minimum, contacting M/WBEs, auditing prime contractor's books and records and visiting job sites to ensure prime contractor compliance with submitted utilization plans. However, we found inadequate evidence that these activities were engaged in or that any other adequate monitoring of compliance was conducted by HPD.

According to §6-129f(8) of LL1, agency M/WBE officers must monitor each contractor's compliance with its utilization plan. This includes performing job site inspections, contacting the M/WBEs identified in the plan to confirm their participation, and auditing the contractor's books and records. According to the MOCS Manual, these same three "appropriate means" should also be employed by the agencies' M/WBE officers to ensure that only approved subcontractors are used. The MOCS Manual further states that "agencies should monitor the vendor progress. . . evaluating the quantity of the work performed under the contract, percentage of all work subcontracted, [and] amount of work provided to certified M/WBEs."

We reviewed HPD's complete files and records for five of the nine contracts subject to LL1 M/WBE participation goals for evidence that these steps were completed. We found inadequate evidence that HPD monitored its prime contractors' compliance with their M/WBE utilization plans or that HPD evaluated the percentage of work the prime contractors subcontracted to certified M/WBEs. Therefore, HPD has limited assurance that the prime contractors are complying with the contract terms and are providing business to certified M/WBEs and paying the appropriate amounts.

For two of the five contracts we examined with M/WBE subcontractors (Contract #20141418152 and #20141406035), we found no evidence that HPD contacted these M/WBE subcontractors to confirm the work performed and the payments received from the prime contractors. Of the remaining three contracts, two were awarded to the same prime contractor who was itself an M/WBE and that prime contractor stated that it would meet the participation goals for both contracts by self-performing the work. As for the third contract, it was in its early stages at the time of our review, which could have resulted in there only being limited evidence of HPD monitoring. In addition to insufficient evidence of monitoring of M/WBE utilization, we found no evidence that HPD audited the books and records of the prime contractors.¹³

HPD Response: "This finding ignores key facts regarding the nine contracts audited:

- Two contracts that were audited were cancelled before any work could be completed;
- Two contracts that were audited were cancelled after completing less than 1/3 of the work;

¹³ The prior Comptroller's audit also found issues regarding HPD's verification of payments made to M/WBE subcontractors and the agency's communications with those subcontractors to confirm the work performed.

- One contract is ongoing and, as noted in the report, not enough work had been done for HPD to monitor at the time of the review; and
- One contract was self-performed leaving no subcontractors to review.

For the remaining three contracts, the prime contractor itself was a certified M/WBE and met its participation goal through self-performance. Therefore, performing job-site inspections to ensure subcontractor performance and utilization was not necessary....”

Auditor’s Comment: Our audit test included five of these nine contracts. HPD fails to indicate which contracts and comments referenced in its response are related to our sampled contracts.

Nevertheless, payments were made to M/WBE subcontractors for both of the contracts cited in the report. For one, the contract was complete and HPD approved payment of the full contract amount. Although the second contract was cancelled before the actual demolition was performed, a portion of the contract payment had been made to subcontractors including \$1,250 to an M/WBE subcontractor. When contractors are required to use M/WBEs, regardless of whether the contracts are later cancelled, HPD has an obligation to verify whether M/WBEs were in fact used and to verify any payments made to them.

HPD was also unable to provide evidence of sufficient monitoring of one prime contractor’s utilization of a related-party M/WBE subcontractor. The MOCS manual states that the contracting agency should ensure that M/WBE subcontractors employed by primes “are providing a commercially useful function and not acting as a middle person or broker.” In other words, the M/WBE subcontractors must be performing meaningful work and not simply employed to make it appear as if there is an M/WBE subcontractor on the job. Accordingly, among other things, the contracting agency should ensure that M/WBE subcontractors are using their own staff, equipment and resources to complete the subcontracting work specified. This is especially important in instances where there is a relationship between the prime contractor and subcontractor.

For one of the five contracts mentioned above, we identified a relationship between the non-M/WBE prime contractor and one of HPD’s largest M/WBE prime contractors, which for this contract was hired by the prime as an M/WBE subcontractor. According to information from the City’s Vendor Information Exchange System (VENDEX) and from LexisNexis, it appears that the principals of the two companies are related to one another.¹⁴ Though requested, HPD officials failed to provide evidence that it conducted a further review of the relationship between these two companies notwithstanding the fact that HPD did not contend that a relationship does not exist. In addition, HPD did not provide any evidence to confirm that the subcontractor was not merely acting as a broker (a middle person or intermediary) for the prime contractor.

The law requires agencies to verify M/WBE participation reported by contractors so that utilization data does not depend upon prime contractors’ unsubstantiated self-reported information. Inadequate monitoring and documenting of the prime contractors’ use of subcontractors increases the risk that prime contractors could be making false claims to have used and made payments to

¹⁴ VENDEX is a database of information of vendors who do business with the City and LexisNexis is an on-line database service for legal and business research.

M/WBEs. It is therefore important for HPD to perform independent verification of M/WBE use including, at a minimum, the steps clearly identified in the law.

We note that the prior audit also found inadequate evidence that HPD monitored its prime contractors' compliance with their M/WBE utilization plans. Thus, it appears that those earlier audit findings and recommendations were never adequately addressed.

Recommendation

4. HPD should monitor and document the prime contractors' use of M/WBEs and verify payments made to them by, at a minimum, performing job-site inspections to ensure subcontractor performance and utilization, contacting M/WBEs identified in the plan to confirm their participation and auditing the contractors' books and records.

HPD Response: "HPD disagrees with the finding. We are already in compliance with the recommendation. HPD has procedures in place to monitor and document the prime contractors' use of M/WBEs and verify payments made to them. These monitoring procedures are addressed in the Local Law 1 Manual which has been circulated and reviewed with all relevant staff...."

HPD is, however, strengthening its monitoring processes and is in the process of hiring a dedicated inspector who will conduct field inspections of subcontractor usage and audit contractors' books and records as appropriate."

Auditor's Comment: HPD does not indicate in its response when this recommendation was implemented. During the course of our audit, HPD provided no proof nor did it demonstrate the policies and procedures it has in place to monitor prime contractors' use of M/WBEs and payments made to them. More importantly, HPD provided no evidence that it monitors prime contractors' use of M/WBEs.

Further, we note that although HPD's LL1 Manual does include monitoring procedures, the manual was not finalized until December 15, 2015, over two years from the LL1 effective date of July 1, 2013, and after the end of the scope period for our audit. Nevertheless, we are pleased that HPD is taking steps to strengthen its monitoring process.

5. HPD should take all appropriate means, as detailed in the MOCS Manual, including assessing damages against the prime contractor, if instances of non-compliance with M/WBE participation goals are identified.

HPD Response: "HPD disagrees with the finding. We are already in compliance with this recommendation. HPD did not identify any compliance issues involving the contracts registered with participation goals during the audit period. If it had identified issues, HPD would have used all means permissible under the Administrative Code §6-129(o) to address instances of non-compliance. The procedures related to such action are included in our Local Law 1 Manual."

Auditor's Comment: HPD provided no evidence that it had procedures in place to monitor prime contractors' compliance with M/WBE participation goals. As we previously stated, HPD had no policies or procedures in place during the audit scope to monitor the prime contractors' use of M/WBEs and to verify payments made to them. We therefore urge HPD to take the necessary steps to ensure that

an appropriate process is in place to identify instances of non-compliance issues and to take all appropriate means if such instances are identified.

6. HPD should ensure that M/WBE subcontractors, especially those that are related to the prime contractors, are providing commercially useful functions and not acting as brokers.

HPD Response: “HPD disagrees with the finding. We are already in compliance with the recommendation. HPD has no reason to believe that any M/WBE subcontractor was failing to provide a commercially-useful function or acting as a broker... . HPD conducts due diligence on all vendors, including but not limited to background checks of vendors in VENDEX and LexisNexis, as applicable. To the extent that HPD had reason to believe that an M/WBE subcontractor was not providing a commercially-useful function or was acting as a broker, HPD would take all appropriate steps to verify the integrity of the relationship.”

Auditor’s Comment: As part of its responsibility to ensure that M/WBE subcontractors are using their own staff, equipment and resources to complete the subcontracting work specified, we found no evidence that HPD examined an apparent relationship between the prime contractor and the M/WBE subcontractor in question. HPD provided no evidence that it reviewed the circumstances surrounding this work or that it made a determination as to whether the relationship was an issue. In the absence of evidence, we find no basis to alter our finding.

Inadequate Evidence Supporting Its Annual Agency-wide M/WBE Utilization Goals

We found inadequate evidence that HPD considered relevant and required information when setting its annual M/WBE utilization goals. According to §6-129g(1)(a) of LL1, each agency shall consider the Citywide goals, the size and nature of its own procurement portfolio, and availability of M/WBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements during the year. The MOCS Manual goes on to state that “agencies may not summarily adopt Citywide goals, but rather must consider the Citywide goals along with the size and nature of their own procurement portfolio and the availability of M/WBEs with the capacity to perform the specific work that the agency anticipates it will solicit during the year,” and that “agencies are expected to set ambitious utilization goals and to achieve them.”

HPD adopted M/WBE utilization goals identical to the relevant Citywide goals in FYs 2014 and 2015. We requested supporting documentation illustrating how HPD determined the utilization goals in its FY 2014 and its FY 2015 *Agency M/WBE Utilization Plan*, but the agency provided none. Rather, HPD stated that based on its past performance and upcoming initiatives, it decided to adopt the Citywide goals. It also noted that it achieved 138 percent of the dollar value of its utilization plan goals in FY 2014 and again adopted the Citywide goals for FY 2015. In only the first two quarters of FY 2015, HPD claimed to have achieved 215 percent of the dollar value of its FY 2015 utilization plan goals, although officials did not provide documentation in support of the agency’s claim.

In the absence of evidence that HPD determined its M/WBE utilization goals based on a consideration of relevant information, such as the size and nature of its procurement portfolio, the availability of M/WBEs for anticipated work, and the agency’s past performance, we are unable to verify that HPD’s adoption of the Citywide goals was appropriate. In addition, we are unable

to determine the degree to which the goals set by HPD were consistent with the guidelines established by MOCS. The failure of an agency to set M/WBE utilization goals based on its unique procurement needs hinders the efforts of the City to both accurately assess the state of the M/WBE Program and increase future opportunities for M/WBEs.

Recommendation

7. HPD should conduct a more thorough evaluation of its M/WBE utilization goals, consider increasing its goals in future years where applicable, and document all factors considered in establishing its goals.

HPD Response: “HPD disagrees with the finding. HPD conducts a thorough evaluation of its M/WBE utilization goals, considering the citywide goals, the size and the nature of the Agency’s procurement portfolio subject to Local Law 1, and the availability of M/WBEs with the capacity to perform the anticipated work, as required under Administrative Code §6-129(d)(3).... The Agency’s adoption of the citywide goals for the first two years of Local Law 1 implementation was prudent in light of anticipated contracting needs and the fact that many of the Agency’s contracts subject to participation goals have been related to demolition jobs which by their nature are not planned procurements.... The fact that HPD adopted the citywide goals and unexpectedly exceeded them does not demonstrate that higher goals would have been more appropriate under the law.”

Auditor’s Comment: As we state in the report, HPD provided no documentation to support its contention that it conducted a thorough evaluation of its M/WBE utilization goals, that it considered all applicable factors when establishing its goals, or that any internal review of its plan was performed. In the absence of evidence to the contrary, we find no basis to alter our finding.

Inadequate Evidence of Prime Contractor Utilization Initiatives

We found inadequate evidence that HPD performed some of the required prime contractor utilization initiatives that it stated would be performed in its FY 2014 and its FY 2015 *Agency M/WBE Utilization Plan*. According to §6-129h(2)(a) of LL1, agencies shall engage in outreach activities to encourage M/WBEs to compete for all facets of their procurement activities. Additionally, §6-129h(2)(b) of LL1 states that agencies should encourage eligible businesses to apply for certification as M/WBEs and inclusion in the M/WBE directory; and encourage M/WBEs to have their names included on bidders lists and seek pre-qualification where applicable.

HPD selected specific initiatives listed on its FY 2014 and its FY 2015 *Agency M/WBE Utilization Plan* to perform. We found evidence that HPD performed seven of the ten sampled initiatives in FY 2014 and six of the ten in FY 2015. (A list of the 10 sampled initiatives is found in the appendix.) However, we did not find adequate evidence that HPD performed any of the following initiatives in either fiscal year: advertisement of procurement opportunities in minority publications; participation in networking events, meetings and workshops for certified M/WBE firms; and creating a formal means of tracking M/WBE utilization and sharing information within the agency.

In addition, during FY 2015 there was inadequate evidence that HPD engaged in outreach activities. For example, HPD provided a list of seven procurement fairs to demonstrate 1) its

engagement in outreach; and 2) its participation in networking events, meetings and workshops for certified M/WBEs. HPD explained that it sometimes has a table or booth at these events, but was unable to provide any evidence of attending these fairs or of any information of business names collected, such as sign-in sheets. In addition, HPD did not provide any M/WBE-related materials or presentations it used at these events. Further, HPD was only able to provide a flyer advertising one event sponsored by a number of organizations, with no indication of its participation. HPD officials stated that they could not provide proof of attendance at any of these events because the agency did not host them. HPD did provide evidence that it organized an outreach event in FY 2014, an *M/WBE Contractor Opportunity Forum* attended by multiple M/WBEs. However, we did not receive enough evidence to determine whether HPD engaged in outreach activities during FY 2015.

Also, when we requested evidence to support HPD's assertion that it advertised procurement opportunities in minority publications, the agency provided the same evidence it provided to support its assertion that it encouraged M/WBEs to join pre-qualified bidder's lists (PQLs) – PQL advertisements in the City Record and *Minority Commerce Weekly*, which are distinct from advertising actual procurement opportunities. When we requested evidence of advertisements in minority publications other than the PQL solicitation, HPD stated that it did not place any during the time period in question (FY 2014 and 2015).

In addition, although HPD asserted that it will establish a formal means of tracking M/WBE utilization in both fiscal years, the agency did not provide adequate evidence of any mechanism in place during FY 2014. For FY 2015, HPD stated that it organized an M/WBE Committee in Spring 2015 as a formal means of tracking M/WBE utilization and sharing information among interested parties within the agency. However, as is discussed below, we were unable to verify what these meetings covered, who was in attendance or determine whether discussions took place regarding HPD's progress towards meeting its utilization goals or of its procurement activities to ensure progress towards its goals.

Performing prime contractor utilization initiatives, including conducting adequate outreach to M/WBEs, can help identify potential M/WBEs, provide the necessary guidance to applicable businesses to obtain certification with DSBS and alert these businesses of opportunities to obtain City contracts and subcontracts. According to LL1, "establishing the eligibility of such businesses for participation in the programs and processes established pursuant to local law [ensures] their meaningful participation in city procurement."

Recommendations

8. HPD should create standard M/WBE materials and presentations to assist in consistent and uniform outreach to M/WBEs, such as information on joint ventures and on applying for M/WBE certification.

HPD Response: "HPD disagrees with the finding. HPD uses appropriate M/WBE outreach materials. The materials may vary by forum and type of outreach, including events, trainings, and posting the information on HPD's website. However, our materials consistently identify how a vendor may get in touch with the Agency on possible procurement opportunities and how to reach out to SBS to learn more about M/WBE certification...."

Auditor's Comment: The only M/WBE outreach material HPD provided us with was a DSBS handout outlining resources for LL1 M/WBE program implementation, which includes a link to apply for M/WBE certification, tips for

searching the online directory of certified M/WBES, and a list of minority publications for prime contractors. HPD provided no evidence of any M/WBE outreach material produced by HPD, including information on how vendors can contact HPD to learn about its procurement opportunities. We urge HPD to reconsider its response and implement this recommendation.

9. HPD should maintain evidence of attendance and of M/WBE-relevant materials distributed and received at M/WBE outreach and networking events.

HPD Response: “HPD disagrees with the finding....During the time period covered by the audit, HPD participated in numerous M/WBE outreach and networking events. The audit notes that HPD reported attending seven M/WBE networking events during the audit period and hosted a “Contractor Opportunity Forum” to connect subcontractors with prime vendors. There is no dispute that we engaged in such activities; recording every document exchanged in those events serves no purpose.”

Auditor’s Comment: HPD’s assertion that there is no dispute that HPD attended the above-mentioned events is incorrect; with the exception of the contractor forum, we were provided with no evidence that HPD participated at those events. Rather than “recording every document exchanged,” HPD should nevertheless maintain evidence to sufficiently document its attendance at those events and, if feasible, the results of such outreach events. In the absence of such documentation—such as sign-in sheets, outreach materials presented, etc.—HPD’s ability to evaluate the success of its outreach and networking efforts and make modifications to those efforts is significantly hindered.

10. HPD should advertise procurement opportunities in minority publications in order to increase opportunities for prospective M/WBE bidders.

HPD Response: “HPD agrees with the recommendation but is now in compliance....As of FY 16, HPD advertises our pre-qualified list (PQL) and specific procurement opportunities in the *Minority Commerce Weekly*.”

Inadequate Evidence That HPD Monitored Its Procurement Activities

We found limited evidence that HPD performed ongoing monitoring as required by LL1 or that it has developed a formal means of tracking its M/WBE utilization as it represented in its FY 2014 and its FY 2015 *Agency M/WBE Utilization Plan*. According to §6-129f(9) of LL1, the Agency M/WBE Officer must monitor the agency’s procurement activities to ensure compliance with the agency’s utilization plan and gauge its progress towards meeting the plan’s participation goals. Further, in its FYs 2014 and 2015 *Agency M/WBE Utilization Plan*, HPD stated that it would establish a formal means of tracking M/WBE utilization.

HPD officials informed us that the M/WBE Committee, headed by the M/WBE Officer, has been assigned responsibility for ongoing monitoring of M/WBE utilization. According to officials, the M/WBE Committee was created in the spring of 2015—nearly two years after LL1 became effective—when the current M/WBE Officer took on the role. HPD provided no documentation illustrating measures to monitor its procurement activities prior to the formation of this Committee. Officials also stated that the M/WBE Committee holds regular weekly meetings to review and discuss M/WBE utilization reports received from DSBS and other M/WBE-related topics, such as possible outreach activities and upcoming contracts involving M/WBEs. These meetings,

according to the M/WBE Officer, are part of agency efforts to track M/WBE utilization throughout the year and to gauge HPD's progress towards meeting its utilization goals.

However, a sample copy of the DSBS report that HPD provided to us did not indicate the time period the report represents. In addition, HPD does not prepare any minutes of these meetings so we have insufficient evidence to indicate how many of these meetings were held, who was in attendance, what was discussed and the outcome of such discussions. Additionally, when questioned, HPD officials declined to indicate how often they receive reports from DSBS. HPD's refusal to provide a response raises questions as to the frequency with which it received such reports as well as how diligently it reviewed any reports that it did receive.

Effective monitoring of M/WBE program activity is an essential component of ensuring compliance with utilization goals and adequate reporting, and confirms that only approved subcontractors are being used pursuant to the provisions of LL1.

Recommendation

11. HPD should establish a formal means of monitoring its procurement activities to ensure compliance with the agency's utilization plan and to monitor its progress towards meeting the participation goals established in its plan.

HPD Response: "HPD disagrees with the finding. HPD's M/WBE Officer, ACCO and MWBE working group, meet regularly to assess the Agency's progress on its Utilization Plan....The working group meets with program-area representatives quarterly to review the Agency's goals, progress to date and to discuss process improvements. The M/WBE Officer monitors the Agency's compliance and progress towards its goal against Local Law 63 compliance reports, reports provided by SBS, and internal reports compiled by the program area with the highest level of procurement activity (the Division of Maintenance).

Though the current working group began meeting in spring 2015, an M/WBE working group existed under the former M/WBE Officer and former ACCO during the audit period.

More importantly, the Agency's achievement of such high rates of M/WBE contracting directly contradicts any suggestion that HPD isn't ensuring compliance with and tracking progress towards its utilization plan goals. The 2015 'Making the Grade Report' issued by the Comptroller, October 12, 2015, in which HPD received an 'A' also demonstrates that HPD is in fact complying with its goals."

Auditor's Comment: As stated in the report, HPD provided limited evidence of these meetings, so we have no basis to confirm that such meetings took place and no basis to alter our finding. Furthermore, notwithstanding HPD's claims as to the actions taken during these meetings, the agency's failure to prepare minutes of these meetings not only limits its ability to follow up on issues discussed but also raises significant questions as to the significance with which HPD views these meetings.

In addition, as stated later in the report, this audit and the Policy Bureau's *Making the Grade* analysis assess two completely different things. This audit assesses HPD's compliance with M/WBE reporting and monitoring requirements outlined in LL1, which focuses on the values of contracts entered into rather than the amounts ultimately actually spent. Conversely, the report issued by the Comptroller's Policy Bureau only focused on actual spending with M/WBEs as

reported by the City in FMS. Further, this audit identified a number of deficiencies regarding HPD's controls over the information entered in FMS that raises concerns regarding the reliability of M/WBE spending totals reported therein.

Lack of Agency Procedures to Address LL1 Requirements

HPD did not have any authoritative internal written policies and procedures to provide guidance to ensure LL1 compliance. We received a draft version of HPD's LL1 Procedure Manual on May 15, 2015, but as of November 13, 2015, the manual had yet to be finalized. According to HPD officials at that time, this draft remained the most current version but it was not considered by HPD to be an authoritative source of internal procedures.

The MOCS Manual states that "agencies should document and/or update their existing written procedures or, if such procedures do not already exist, promulgate detailed written procedures to ensure that all agency personnel responsible for overseeing contractor compliance with the M/WBE Program have appropriate guidance on all aspects and requirements for legal compliance."

According to Comptroller's Directive #1, *Principles of Internal Controls*, "Internal Control must be an integral part of agency management in satisfying the agency's overall responsibility for successfully achieving its assigned mission and assuring full accountability for resources." It further states internal control activities help ensure that management's directives, such as LL1 compliance, are carried out. Controls are the policies, procedures, techniques and mechanisms used to enforce management's direction. They must be an integral part of an agency's planning, implementation, review and accountability, and are vital to it achieving the desired results.

The deficiencies detailed throughout this report may be attributed, at least in part, to management's failure to develop and promulgate detailed written procedures covering LL1 requirements during the audit scope, including the tracking of *all* prime contractors and subcontractors that are M/WBEs, the recording of contract information in FMS to ensure that accurate M/WBE information is being reported by the City and the monitoring of prime contractor compliance with M/WBE participation goals.

In addition, we found that the draft LL1 manual stated that the M/WBE Officer has the responsibility for monitoring and enforcing vendor compliance with M/WBE participation goals, but does not state how that process should take place. According to HPD officials, the individual program units that oversee the work performed on these contracts conduct on-site inspections, and the Engineering Audit unit reviews documentation related to the work performed on a contract and payments made to subcontractors. Further, HPD officials stated that the results of these reviews are then reported to the Fiscal Unit, but they are not shared with the M/WBE officer. The draft manual is silent on this delegation of duties and no other written policies or procedures were provided describing whom at HPD, other than the M/WBE officer, has oversight or authority to enforce LL1 compliance. Moreover, there are no procedures detailing how the M/WBE monitoring function must be performed, which documentation is required or how to record it.

We note that the prior Comptroller's audit also cited HPD for not having sufficient written or approved standard operating procedures in place to ensure the agency's compliance with M/WBE subcontracting requirements.

Without detailed written procedures, HPD has limited assurance that its personnel know their responsibilities in carrying out the requirements of LL1, and limited assurance that it is complying with the law.

At the exit conference held on February 4, 2016, HPD officials informed us that the draft LL1 manual was finalized on December 15, 2015, and provided us with a copy.

Recommendation

12. HPD should ensure that the appropriate personnel receive a copy of the LL1 procedure manual to help ensure HPD's compliance with the law and consider whether it needs to be amended to address the concerns identified above.

HPD Response: "HPD disagrees with the finding and is already in compliance. The Agency finalized and distributed its Local Law 1 Manual to Agency personnel on December 15, 2015...."

Even prior to that, the ACCO and M/WBE Officer disseminated the Agency's procedures and requirements to procurement personnel through monthly procurement liaison meetings, during which M/WBE topics are discussed and materials distributed. Additionally during quarterly meetings with program area representatives when the M/WBE officer discusses processes and provides guidance on Local Law 1 implementation."

Auditor's Comment: We note that HPD did not finalize its LL1 Manual until December 2015, nearly two and half years after LL1 was established. HPD does not indicate when the ACCO and M/WBE Officer began the practice of disseminating procedures and requirements to procurement personnel through monthly procurement liaison meetings or at meetings with program area representatives. However, we found that such practices were not in place during the period reviewed in this audit.

Other Matter

In October 2015, the Policy Bureau within the Comptroller's Office issued a report, *Making the Grade: New York City Agency Report Card on Minority/Women-Owned Business Enterprises*, an annual report card that grades mayoral agencies on their M/WBE spending. After receiving a D grade in the FY 2014 report, HPD apparently demonstrated a significant improvement in its M/WBE spending, receiving an A grade in the FY 2015 report.

We note, however, that the Policy Bureau's analysis and the audit assess two completely different things and thus, the fact that the results are different does not mean that they are inconsistent. This audit assesses HPD's compliance with M/WBE reporting and monitoring requirements outlined in LL1, which focuses on the amounts of contracts entered into rather than the amounts ultimately actually spent. Conversely, the report issued by the Comptroller's Policy Bureau only focused on actual spending with M/WBEs as reported by the City during the fiscal year. Further, the Policy Bureau did not assess HPD's efforts regarding the various LL1 reporting and monitoring requirements. In addition, the Policy Bureau analyzed the four industry categories established in LL1 that included the purchase of goods and of professional services. The prime contracts with M/WBE participation goals reviewed in our audit did not include either of these two types of contracts.

Further, the data used by the Policy Bureau in determining the letter grades originated entirely from FMS as reported on Checkbook NYC.¹⁵ As this report notes, HPD did not record all required

¹⁵ Checkbook NYC, a NYC Comptroller's Office initiative, is an online transparency tool that places the City's day-to-day spending in the public domain, and provides up-to-date information about the City's financial condition.

information for contracts subject to LL1 M/WBE participation goals in FMS nor did it demonstrate that it reviewed prime contractors' records to verify that the amounts that contractors recorded in FMS representing their payments to subcontractors were accurate. Thus, the impact of any incomplete or otherwise erroneous data in FMS is not considered by the Policy Bureau letter grade report. Until such time as the deficiencies identified in this audit are corrected, we believe that only limited reliance can be placed on the information recorded in FMS regarding M/WBE spending on HPD contracts.

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 FYs 2014 and 2015 (July 1, 2013, through June 30, 2015).

To obtain an understanding of the policies, procedures and regulations governing the City's agencies' responsibilities with the City's M/WBE Program, we reviewed and used as criteria LL1. We also reviewed a memorandum from MOCS, dated April 16, 2015, with the subject "M/WBE Policies, Procedures and Best Practices" to obtain an understanding of how City agencies are applying LL1. In addition, to obtain an understanding of HPD's policies and procedures regarding contracts subject to LL1, we reviewed HPD's *LL 129 Administration*, a document that provides guidelines on the general administration of LL 129, and a draft of HPD's *Local Law 1 of 2013 Procedure Manual* (provided to us on May 15, 2015).¹⁶

To obtain an initial understanding of HPD's organizational structure as it relates to LL1, we reviewed HPD's organization charts for its Office of the ACCO; the Office of Regulatory Compliance/Office of the M/WBE Officer; the Office of Enforcement and Neighborhood Services' Demolition Unit – Work Unit 4702; the Division of Maintenance/Bureau of Maintenance & Procurement – Work Units 4706 & 4707; and the Division of Maintenance/Contact Compliance – Work Units 4700 & 4708. We also reviewed each unit's description and individual job responsibilities as provided by HPD officials.

We reviewed each HPD *M/WBE Agency Utilization Plan* for FYs 2013 through 2015 to obtain an understanding of the agency's M/WBE utilization goals and the agency's outreach initiatives to promote M/WBE participation. We requested and received documentation to confirm that HPD performed the outreach initiatives committed to in its FY 2014 and its FY 2015 *M/WBE Agency Utilization Plan*. We also reviewed the MOCS Agency Procurement Indicators reports for FYs 2014 and 2015, and the New York City *Minority and Women-Owned Business Enterprise (M/WBE) Program* annual reports (also for FYs 2014 and 2015) released in conjunction by MOCS and DSBS for information specific to HPD.

To obtain an understanding of the various roles and responsibilities of HPD personnel regarding LL1 compliance, we conducted walkthroughs and interviewed members of the HPD ACCO's office, including the ACCO and two deputy ACCOs; program personnel, particularly from the Demolition Unit responsible for HPD's dealings with outside vendors, including the Director of the Demolition Unit, Associate Commissioner of the Office of Enforcement and Assistant Commissioner of the Division of Maintenance; and finally with members of the Office of the M/WBE Officer, including the M/WBE Officer (the Assistant Commissioner of the Regulatory Compliance Unit), the Executive Director of the Regulatory Compliance Unit and the Director of Operations of the Regulatory Compliance Unit.

¹⁶ LL129 established the City's M/WBE Program and was intended to address disparities in contracting opportunities afforded to certain M/WBE groups in the City's procurement.

We reviewed a listing of eight contracts provided by HPD, totaling approximately \$9.9 million, awarded from July 1, 2013 (the LL1 effective date), through April 23, 2015, that HPD stated were subject to LL1 M/WBE participation requirements. To determine the accuracy and completeness of HPD's listing of contracts subject to LL1, we reviewed information contained in FMS, including verifying whether the prime contracts and subcontracts were accurately recorded in the CTGH and CTGL tables, respectively. In addition, we reviewed PIP for the contracts valued at \$250,000 or more to determine whether prime contractors accurately recorded the contract information and applicable subcontractor information. To determine whether HPD ensured the accuracy of subcontractor entries, either by the agency itself into the CTGL table for contracts less than \$250,000 or overseeing prime contractor entries into PIP for contracts greater than \$250,000, we obtained HPD's procedures regarding entries into the FMS tables, including the personnel responsible for entering contract data into FMS, and requested relevant procedures that describe these responsibilities.

To obtain an understanding of the nature of the contracts subject to LL1, and the extent of the M/WBE participation, we requested and reviewed copies of all eight contract files on HPD's list. We determined whether each contract file contained a bid tabulation form, a determination of award form, completed M/WBE Utilization Plan (Schedule B), Initial Lists of Subcontractors and Subcontractor Approval Forms, and whether there was any indication that an M/WBE-certified prime contractor would meet the contract's M/WBE participation goals by self-performing.

To obtain an understanding of the payment approval process for prime contractors at the conclusion of a contract and the extent of HPD's monitoring of the use and payments to M/WBE subcontractors by the prime contractors, we conducted a walkthrough with HPD's Demolition Unit Payment Coordinator. We obtained a demonstration of the payment approval process and received copies of two payment packages that were reviewed and approved by the Demolition Unit, the Engineering Audit Division and the Fiscal Unit. To further our understanding of the Fiscal Unit's roles and responsibilities relating to LL1, we requested a description of the unit's roles and responsibilities as they related to LL1 compliance.

We observed one of the payment packages was of a contract that appeared to be subject to LL1 requirements, but was not included on the HPD-provided listing. We requested a copy of this contract; however, HPD asserted that a formally executed contract did not exist because it was based on the City's Standard Non-Emergency Demolition Contract and so processed to respond to the time-sensitive nature of demolitions. In lieu of the contract, we requested and reviewed HPD's standard contract template, its Emergency Contract equivalent, and copies of work orders related to the contracted work.

To determine the extent of HPD's documentation and the extent to which it monitors prime contractors and the use of and payments to subcontractors, we judgmentally selected five of the nine contracts with M/WBE participation goals and reviewed HPD's complete files and records for these contracts.¹⁷ We selected the first contract because it was complete and the vendor used M/WBE subcontractors. We selected the second and third contracts because the prime contractors were M/WBEs, but awarded subcontracts to non-M/WBEs. We selected the fourth contract for review because it was not included on the list provided by HPD, and we selected the fifth contract because it was the largest contract with M/WBE subcontractors and there was a possible relationship between the prime and one of the awarded subcontractors. As part of our review, we verified whether the contracts files and records contained sufficient documentation for HPD to determine compliance with following key LL1 provisions: whether prime contractors

¹⁷ The nine contracts consists of the eight contracts that were included on HPD's contractor list with M/WBE LL1 goals, plus the one contract with M/WBE participation goals that was identified during our payment approval process walkthrough.

completed Payment Voucher Forms when requesting payment; whether HPD tested the accuracy of these forms by auditing the prime contractors' books and records; whether HPD obtained proof of payments from prime contractors to subcontractors (such as cancelled checks); whether HPD conducted on-site audits to ensure the completion of work by the approved personnel; whether HPD reviewed certified payroll reports from prime contractors and subcontractors; and whether the Initial List of Subcontractors and Subcontractor Approval Forms were filed on a timely basis after the Notice to Proceed was issued to the prime contractor.

To determine whether HPD properly considered subcontractor waiver and modification requests by a prime contractor and forwarded a recommendation to MOCS, we requested documentation such as M/WBE Participation Goal worksheets that detailed the agency's internal consideration of a contract's M/WBE participation goal as well as evidence that it provided MOCS with a recommendation.

To determine whether HPD established formal means of tracking M/WBE utilization and sharing this information within the agency, we requested a description, with associated procedures, of how tracking was performed. When we learned that an inter-unit M/WBE Committee, headed by the M/WBE Officer, regularly meets to achieve this, we interviewed the M/WBE Officer and Executive Director of Regulatory Compliance to obtain a better understanding of the M/WBE Committee and its role in tracking M/WBE utilization. We also reviewed a report provided by DSBS to the agency that tallies the agency's M/WBE utilization.

We also reviewed a prior audit report, *Audit Report on the Monitoring of the Department of Housing Preservation and Development of Subcontracts Covered by Local Law 129* (Audit No. MD10-131A), issued in October 2010 to determine whether similar conditions identified in that audit still exist. The prior audit examined HPD's compliance with key provisions of LL129 with regard to its monitoring of the use of M/WBEs by vendors that were awarded contracts with M/WBE subcontractor utilization goals.

APPENDIX

Auditor Assessment of Sampled Prime Contractor Utilization Initiatives as Asserted in HPD's FY 2014 and its FY 2015 Utilization Plan

| Initiatives | FY 2014 | | FY 2015 | |
|--|-----------|---------------------|-----------|---------------------|
| | Performed | Inadequate Evidence | Performed | Inadequate Evidence |
| 1. Engage in outreach activities | X | | | X |
| 2. Encourage eligible firms to apply for certification | X | | X | |
| 3. Include language in RFPs and invitations to bid requiring potential bidders/proposers to consult directories of certified M/WBE firms | X | | X | |
| 4. Encourage M/WBEs to join pre-qualified bidder's lists | X | | X | |
| 5. Advertise procurement opportunities in minority publications | | X | | X |
| 6. Encourage prime contractors to enter into joint ventures with certified M/WBEs | X | | X | |
| 7. Designated dedicated staff to M/WBE program, including an M/WBE Officer that is directly accountable to the agency head | X | | X | |
| 8. Participate in networking events, meetings, and workshops for certified M/WBE firms | | X | | X |
| 9. Establish formal means of tracking M/WBE utilization and sharing information within agency | | X | | X |
| 10. Post M/WBE Program information on agency's website | X | | X | |
| Total Initiatives | 7 | 3 | 6 | 4 |



City of New York
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VICKI BEEN
Commissioner

March 11, 2016

Marjorie Landa
Deputy Comptroller for Audit
Office of the New York City Comptroller
One Centre Street
New York, New York 10007

Re: Audit Report on the New York City Department of Housing Preservation and Development's Administration of the Minority- and Women-Owned Business Enterprise Program MD15-111A

Dear Deputy Comptroller Landa:

I write in response to your "Audit Report on the New York City Department of Housing Preservation and Development's Administration of the Minority- and Women-Owned Business Enterprise Program" (the "Audit Report"). Minority- and Women-Owned Business Enterprise (M/WBE) contracting is a very high priority for the Department of Housing Preservation & Development ("HPD" or the "Agency"). The Agency wholeheartedly supports the goals of Local Law 1 of 2013 ("Local Law 1") and accordingly has implemented a number of initiatives to increase the dollar value and the number of awards that go toward M/WBE contractors.

We have thoroughly reviewed the Audit Report and we disagree with many of the findings. I also note that HPD had already implemented many of the policies and practices recommended in the Audit Report. Further, our documented successes in M/WBE contracting, and the robust processes in place to ensure that those successes continue, belie the Audit's conclusion that HPD has failed to comply with key provisions of Local Law 1.

Our progress to date demonstrates the depth of HPD's commitment to increasing the participation of M/WBEs in our contracting. During the first two years of Local Law 1 implementation, HPD:

- Awarded over approximately 45 percent of our registered contracts to certified M/WBEs, totaling more than \$30 million;

Audit of HPD's Administration of the Minority and Women Owned Business Enterprise Program
March 11, 2016

- Reconstituted its M/WBE working group to focus on Local Law 1 implementation and monitor and improve the Agency's progress in this area;
- Conducted significant M/WBE outreach, attending seven outreach events, and hosting an event to connect M/WBE subcontractors with prime vendors; and
- Established policies and procedures to facilitate implementation, including through monthly procurement liaison meetings, quarterly meetings with program area representatives and the release of our Local Law 1 of 2013 Manual ("Local Law 1 Manual").

HPD's success in delivering excellent results in M/WBE contracting was recognized by the City Comptroller in the "Making the Grade Report," issued on October 12, 2015. Indeed, HPD was the only city agency to receive an "A" in the report. The Mayor's Office of Contract Services also has recognized HPD's contracting practices for achieving exceptional participation of M/WBE firms.

I would be happy to discuss any of these issues further should you require additional information.

Sincerely,



Vicki Been

Audit of HPD's Administration of the Minority and Women Owned Business Enterprise Program
March 11, 2016

Finding 1

Inadequate tracking and recording of contracts subject to LL1.

Recommendation 1

HPD should maintain a complete centralized list of all M/WBE prime contractors and M/WBE subcontractors to help track and monitor contracts subject to LL1.

Agency Response 1

HPD agrees with this finding. HPD currently tracks and records all contracts subject to Local Law 1 in various program-specific data systems. The Agency will aggregate information from the various systems to create a centralized list of all contracts and subcontracts subject to Local Law 1.

Finding 2

Inadequate review of required FMS contract information. Prime contracts not recorded in CTGH, subcontracts not recorded in CTGL, consequences of inadequate MWBE reporting and tracking the City may be incorrectly reporting the dollar amounts awarded to MWBEs.

Recommendation 2

HPD should ensure that all prime contracts and subcontracts are correctly entered into the applicable FMS tables.

Agency Response 2

HPD agrees but is already in compliance. The majority of the Agency's contracts subject to Local Law 1 were properly recorded into the applicable FMS tables; only a handful of contracts were not properly entered. HPD corrected this limited oversight and issued guidance to procurement liaisons and program staff on the required reporting in FMS. Further, as acknowledged in the audit report, HPD has already reiterated the procedures for entering prime and subcontracts in the applicable tables in FMS in our Local Law 1 Manual. The manual has been distributed to appropriate personnel.

Finding 3

Failures to properly record information in PIP.

Recommendation 3

HPD should ensure that the prime contractors accurately record contractor information into PIP for all contracts subject to LL1.

Agency Response 3

HPD disagrees with the finding. For contracts that are still in progress the information entered into PIP is not considered final. HPD requires prime contractors over \$100,000 to use PIP to identify subcontractors and record payment information. HPD has procedures in place to ensure that prime contractors accurately record contractor information into PIP for all contracts subject to Local Law 1. Work for the one referenced contract called into question in the audit has not yet been completed, and the information in PIP therefore reflected the current status of payments

to subcontractors which will continue to change as the work progresses. When the contract is complete, PIP will reflect the total amounts the prime contractor paid to its subcontractors and that it met the 20 percent participation goal to which it is mandated by having executed its Schedule B.

Finding 4

Inadequate Monitoring of Prime Contractors Utilization of Subcontractors.

Recommendation 4

HPD should monitor and document the prime contractors' use of M/WBEs and verify payments made to them by, at a minimum, performing job-site inspections to ensure subcontractor performance and utilization, contacting M/WBEs identified in the plan to confirm their participation and auditing the contractors' books and records.

Agency Response 4

HPD disagrees with the finding. We are already in compliance with the recommendation. HPD has procedures in place to monitor and document the prime contractors' use of M/WBEs and verify payments made to them. These monitoring procedures are addressed in the Local Law 1 Manual which has been circulated and reviewed with all relevant staff.

This finding ignores key facts regarding the nine contracts audited:

- Two contracts that were audited were cancelled before any work could be completed;
- Two contracts that were audited were cancelled after completing less than 1/3 of the work;
- One contract is ongoing and, as noted in the report, not enough work had been done for HPD to monitor at the time of the review; and
- One contract was self-performed leaving no subcontractors to review.

For the remaining three contracts, the prime contractor was itself a certified M/WBE and met its participation goals through self-performance. Therefore, performing job-site inspections to ensure subcontractor performance and utilization was not necessary. HPD is, however, strengthening its monitoring processes and is in the process of hiring a dedicated inspector who will conduct field inspections of subcontractor usage and audit contractors' books and records as appropriate.

Recommendation 5 (related to Finding 4 above)

HPD should take all appropriate means, as detailed in the MOCS Manual, including assessing damages against the prime contractor, if instances of non-compliance with M/WBE participation goals are identified.

Agency Response 5

HPD disagrees with the finding. We are already in compliance with the recommendation. HPD did not identify any compliance issues involving the contracts registered with participation goals during the audit period. If it had identified any such issues, HPD would have used all means

permissible under Administrative Code §6-129(o) to address instances of non-compliance. The procedures related to such action are included in our Local Law 1 Manual.

Recommendation 6 (related to Finding 4 above)

HPD should ensure that M/WBE subcontractors, especially those that are related to the prime contractors, are providing commercially useful functions and not acting as brokers.

Agency Response 6

HPD disagrees with the finding. We are already in compliance with the recommendation. HPD had no reason to believe that any M/WBE subcontractor was failing to provide a commercially-useful function or acting as a broker. Under §6-129(f)(8) of Local Law 1, the M/WBE officer is required to monitor each contractor's compliance "by appropriate means." The law includes a list of examples of appropriate due diligence, not all of which would be required or appropriate in all situations. HPD conducts due diligence on all vendors, including but not limited to background checks of vendors in VENDEX and LexisNexis, as applicable. To the extent that HPD had reason to believe that an M/WBE subcontractor was not providing a commercially-useful function or was acting as a broker, HPD would take all appropriate steps to verify the integrity of the relationship.

Finding 7

Inadequate evidence supporting its Annual Agency-wide M/WBE Utilization Goals.

Recommendation 7

HPD should conduct a more thorough evaluation of its M/WBE utilization goals, consider increasing its goals in future years where applicable, and document all factors considered in establishing its goals.

Agency Response 7

HPD disagrees with the finding. HPD conducts a thorough evaluation of its M/WBE goals, considering the citywide goals, the size and the nature of the Agency's procurement portfolio subject to Local Law 1, and the availability of M/WBEs with the capacity to perform the anticipated work, as required under Administrative Code §6-129(d)(3). HPD's annual Utilization Plan is subject to review both internally and by the Department of Small Business Services (SBS) prior to finalization. Section 6-129(g)(1)(b) of Local Law 1 states very clearly what information the Agency has to consider when setting its goals and those obligations have consistently been met. The Agency's adoption of the citywide goals for the first two years of Local Law 1 implementation was prudent in light of anticipated contracting needs and the fact that many of the Agency's contracts subject to participation goals have been related to demolition jobs which by their nature are not planned procurements. Further, Section 6-129(g)(4) of Local Law 1 states, "Nothing in this paragraph shall be construed to limit the awards of contracts and subcontracts that may be made to MBEs, WBEs and EBEs without using goals." The fact that HPD adopted the citywide goals and unexpectedly exceeded them does not demonstrate that higher goals would have been more appropriate under the law.

Finding 8

Inadequate evidence of Prime Contractor utilization initiatives.

Recommendation 8

HPD should create standard M/WBE materials and presentations to assist in consistent and uniform outreach to M/WBEs, such as information on joint ventures and on applying for M/WBE certification.

Agency Response 8

HPD disagrees with the finding. HPD uses appropriate M/WBE outreach materials. The materials may vary by the forum and type of outreach, including events, trainings, and posting the information on HPD's website. However, our materials consistently identify how a vendor may get in touch with the Agency on possible procurement opportunities and how to reach out to SBS to learn more about M/WBE certification. HPD-sponsored pre-bid conferences also include an overview of M/WBE opportunities and a review of the specific M/WBE subcontracting goal requirements specified in Schedule B. Potential bidders are encouraged to consider the use of M/WBE subcontractors to meet their participation goals as well as to avail themselves of the many services offered by SBS to prime contractors, M/WBE prime-contractor and sub-contractors, and those vendors who while not yet certified, may qualify for M/WBE status.

Recommendation 9 (related to finding 8 above)

HPD should maintain evidence of attendance and of M/WBE-relevant materials distributed and received at M/WBE outreach and networking events.

Agency Response 9

HPD disagrees with the finding. Under §6-129(h)(2)(a) of Local Law 1, "Agencies shall engage in outreach activities to encourage MBEs, WBEs and EBEs to compete for all facets of their procurement activities..." During the time period covered by the audit, HPD participated in numerous M/WBE outreach and networking events. The audit notes that HPD reported attending seven M/WBE networking events during the audit period and hosted a "Contractor Opportunity Forum" to connect subcontractors with prime vendors. There is no dispute that we engaged in such activities; recording every document exchanged in those events serves no purpose.

Recommendation 10 (related to finding 8 above)

HPD should advertise procurement opportunities in minority publications in order to increase opportunities for prospective M/WBE bidders.

Agency Response 10

Section 6-129(h) (2)(b) of Local Law 1 states that agencies, "Are encouraged to advertise procurement opportunities in...publications of minority and women's business organization, and send written notice of specific procurement opportunities to minority and women's business organizations and to send written notice of specific procurement opportunities to minority and women's business organizations."

HPD agrees with the recommendation but is now in compliance. During the period of the audit, the Agency published advertisements to join its PQL in the *Minority Commerce Weekly*. Providing information about how to access HPD's PQL is particularly significant given that the overwhelming majority of HPD's procurement opportunities are open only to members of the PQL. As of FY 16, HPD advertises our pre-qualified list (PQL) and specific procurement opportunities in the *Minority Commerce Weekly*.

Finding 11

Inadequate evidence that HPD monitored its procurement activities.

Recommendation 11

HPD should establish a formal means of monitoring its procurement activities to ensure compliance with the agency's utilization plan and to monitor its progress towards meeting the participation goals established in its plan.

Agency Response 11

HPD disagrees with the finding. HPD's M/WBE Officer, ACCO and MWBE working group, meet regularly to assess the Agency's progress on its Utilization Plan. Section 6-129(f)(9) of Local Law 1 charges the M/WBE Officer with "monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in the plan." The working group meets with program-area representatives quarterly to review the Agency's goals, progress to date and to discuss process improvements. The MWBE Officer monitors the Agency's compliance and progress toward its goals against Local Law 63 compliance reports, reports provided periodically by SBS, and internal reports compiled by the program area with the highest level of procurement activity (the Division of Maintenance).

Though the current working group began meeting in spring 2015, an M/WBE working group existed under the former M/WBE Officer and former ACCO during the audit period.

More importantly, the Agency's achievement of such high rates of M/WBE contracting directly contradicts any suggestion that HPD isn't ensuring compliance with and tracking progress toward its utilization plan goals. The 2015 "Making the Grade Report" issued by the Comptroller, October 12, 2015, in which HPD received an "A" also demonstrates that HPD is in fact complying with its goals.

Finding 12

Lack of Agency procedures to address LL1 requirements.

Recommendation 12

HPD should ensure that the appropriate personnel receive a copy of the LL1 procedural manual to help ensure HPD's compliance with the law and consider whether it needs to be amended to address the concerns identified above.

Agency Response 12

HPD disagrees with the finding and is already in compliance. The Agency finalized and distributed its Local Law 1 Manual to Agency personnel on December 15, 2015. The Mayor's Office of Contract Services issued its M/WBE Policies, Procedures, and Best Practices guidance on April 16, 2015, recommending agencies "document and/or update their existing written procedures or...promulgate detailed written procedures to ensure that all Agency personnel responsible for overseeing contractor compliance with the MWBE Program have appropriate guidance on all aspects and requirements for legal compliance." By May 2015, HPD had produced a draft Local Law 1 Manual, a copy of which was provided to the auditors, and the final Local Law 1 Manual was distributed to Agency personnel on December 15, 2015.

Even prior to that, the ACCO and M/WBE Officer disseminated the Agency's procedures and requirements to procurement personnel through monthly procurement liaison meetings, during which M/WBE topics are discussed and materials are distributed. Additionally during quarterly meetings with program area representatives when the MWBE officer discusses processes and provides guidance on Local Law 1 implementation.