

City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the New York City
Department of Design and
Construction's Administration of the
Minority- and Women-owned Business
Enterprise Program

MH15-124A

June 29, 2016

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

June 29, 2016

To the Residents of the City of New York:

My office has audited the New York City Department of Design and Construction (DDC) to determine whether it complied with the key provisions of Local Law 1 of 2013 (LL1) that pertains 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 weaknesses in DDC's monitoring to ensure that prime contractors meet their M/WBE goals. Among other things, DDC does not maintain a centralized monitoring and tracking system that lists all contractors with contracts subject to LL1. Further, DDC did not record in the City's Financial Management System (FMS) all required information for contracts subject to M/WBE participation goals and much of the information that was recorded was not entered in a timely manner. In addition, there was insufficient evidence that DDC monitored the prime contractors' use of M/WBEs for those contracts having M/WBE participation goals. These deficiencies inhibit DDC from effectively assessing its compliance with its agency-wide M/WBE utilization goals and its prime contractors' compliance with established participation goals.

To address these issues, the audit recommends that DDC develop and maintain a centralized tracking and monitoring system for contracts subject to LL1; ensure that all prime contracts and subcontracts are accurately entered into the applicable FMS tables in a timely manner; and monitor and document prime contractor's efforts to achieve their M/WBE utilization goals by verifying payments made to M/WBE subcontractors.

The results of the audit have been discussed with DDC 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 email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott M. Stringer".

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 Design and Construction's Administration of the Minority- and Women-owned Business Enterprise Program

MH15-124A

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City (City) Department of Design and Construction (DDC) complied with key Minority- and Women-owned Business Enterprise (M/WBE) Program provisions of Local Law 1 of 2013 (LL1).

DDC manages a design and construction portfolio for the City's capital program valued at approximately \$10 billion. As the City's primary capital construction manager, it is responsible for overseeing the construction of many of its civic facilities. In 2005, Local Law 129 (LL129) created the City's M/WBE Program, which was superseded and modified by LL1.¹ In accordance with LL1, the City establishes percentage goals for M/WBE utilization that City agencies are expected to meet in their procurements of contracts in the following categories: professional services, standard services, construction and goods. The M/WBE Program aims to increase M/WBE contracting opportunities by maximizing access to bids or proposal opportunities for prime contracts.

The M/WBE Program is administered jointly by the Department of Small Business Services (DSBS) and the Mayor's Office of Contract Services (MOCS). The two agencies jointly issue the *M/WBE Program Annual Report* each fiscal year, as well as interim quarterly M/WBE Program Compliance Reports (quarterly compliance 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 City-certified M/WBE program activity, prime contract and subcontract utilization data, as well as additional data specified in §6-129 of the New York City Administrative Code.² In order to compile these reports, MOCS pulls data from the City's Financial Management System (FMS).³

To help City agencies increase their awards to M/WBEs, MOCS has issued the *M/WBE Policies, Procedures and Best Practices* manual (MOCS Manual) to each agency's M/WBE Officer and

¹ LL1 became effective on July 1, 2013.

² The API report provides statistics and highlights information relating to New York City procurement.

³ FMS is the City's centralized accounting and budgeting system.

Agency Chief Contracting Officer (ACCO).⁴ 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.⁵ LL1 also requires that agency M/WBE Officers monitor their agencies' procurement activities to ensure utilization goal compliance and to assess progress towards an agency plan's participation goals.

Audit Findings and Conclusion

This audit found that DDC has: (1) an M/WBE Compliance Unit responsible for monitoring prime contractor M/WBE compliance with LL1; (2) agency-wide M/WBE utilization goals; (3) justification for not adopting the city-wide M/WBE utilization goals; and (4) adequate documentation for denying or approving proposed bidders' waiver requests.

However, we nonetheless found weaknesses in DDC's monitoring to ensure that prime contractors meet their M/WBE goals. Among other things, we found that DDC does not maintain a centralized monitoring and tracking system that lists all contractors with contracts subject to LL1. Further, we found that DDC did not record in FMS all required information for contracts subject to M/WBE participation goals. In addition, we found that many of the FMS Contract Goals Header entries were not made in a timely manner. We also found insufficient evidence that DDC monitored the prime contractors' use of M/WBEs for those contracts having M/WBE participation goals.

For our sampled contracts, there was insufficient evidence documenting DDC's review of the prime contractors' records to verify payments made to M/WBE subcontractors; insufficient evidence that job-site inspections were performed to verify the use of M/WBE subcontractors in projects; and no evidence that audits were conducted on the prime contractors' books and records. We also found that of the 10 prime contractor utilization initiatives that we sampled, two were not performed; specifically, DDC did not advertise procurement opportunities in minority publications and it did not create a formal means of tracking M/WBE utilization and sharing information within the agency.

We believe that the deficiencies identified in the report are largely due to DDC failure to develop and implement an authoritative set of standard procedures governing LL1 requirements. These deficiencies inhibit DDC from effectively assessing its compliance with its agency-wide M/WBE utilization goals and its prime contractors' compliance with established participation goals.

Audit Recommendations

Based on our findings, we make nine recommendations, including the following:

- DDC should develop and maintain a centralized tracking and monitoring system for contracts subject to LL1 that permits monitoring efforts to gauge the prime contractors' progress towards achieving their M/WBE goals.

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 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.

- DDC should ensure that all prime contracts and subcontracts are accurately entered into the applicable FMS tables in a timely manner.
- DDC should monitor and document prime contractors' efforts to achieve their M/WBE utilization goals by verifying payments made to M/WBE subcontractors.
- DDC should perform and properly document job-site inspections to ensure M/WBE subcontractor performance and utilization, contact M/WBEs identified in the plan to confirm their participation and audit the contractors' books and records.
- DDC 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.
- DDC should immediately develop and disseminate detailed written procedures to key personnel that address all LL1 requirements. These should include, but are not limited to, personnel responsibilities and FMS entries of LL1-applicable contract information and detailed documentation requirements to help ensure DDC's compliance with the law.

Agency Response

DDC agreed with the audit's nine recommendations. In its response, DDC states that "[it] is fully committed to the success of the City's M/WBE program and to any recommendations that will result in improving our process of this important program."

AUDIT REPORT

Background

DDC manages a design and construction portfolio of the City's capital program valued at approximately \$10 billion. As the City's primary capital construction manager, it is responsible for overseeing the construction of many of its civic facilities. DDC provides engineering design and construction management for infrastructure projects that range from roadways, sewers and water mains to public safety, health and human services facilities. It also manages the design and construction of civic buildings, such as cultural institutions and libraries. It partners with other City agencies as well as with architects and consultants to create and implement design and construction strategies for City construction projects.

In 2005, LL129 created the City's M/WBE Program, which was superseded and modified by LL1. In accordance with LL1, the City establishes percentage goals for M/WBE utilization that City agencies are expected to meet in their procurements of contracts in the following categories: professional services, standard services, construction and goods. The M/WBE Program aims to increase M/WBE contracting opportunities by maximizing access to bids 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 in those categories which are subject to the law.⁶

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 compliance reports after each of the first three quarters in a fiscal year. These reports, along with the annual MOCS' API report, summarize City-certified M/WBE Program activity, prime contract and subcontract utilization data, as well as additional data specified in §6-129 of the New York City Administrative Code. In order to compile these reports, MOCS pulls data from FMS.

To help City agencies increase their awards to M/WBEs, MOCS has issued the MOCS Manual to each agency's M/WBE Officer and 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 fiscal 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 agencies' procurement activities to ensure utilization goal compliance and to assess progress towards an agency plan's participation goals. The agency determines whether a given procurement contract will be subject to M/WBE participation goals, and sets a percentage the prime contractor should meet for M/WBE participation.⁷ When bidding on a contract that has such a goal, a prime contractor must submit

⁶ 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 should 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.

⁷ 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 contract. Alternatively, a prime contractor may have pursued a waiver of its participation goal prior to submitting its bid, which is reviewed by the agency and forwarded to MOCS with its recommendation for acceptance or denial. 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.

a completed *Schedule B – M/WBE Utilization Plan* (Schedule B), which lays out how it intends to meet M/WBE participation requirements. DDC has an M/WBE Compliance Unit to monitor prime contractors' compliance with M/WBE participation goals. Comprised of four M/WBE Compliance Analysts, it is headed by the Deputy Director for the Office of Contract Opportunity (OCO). After our scope period, DDC's Chief Diversity and Industry Relations Officer began serving as the agency's M/WBE Officer. (Previously, DDC's ACCO served as the M/WBE Officer.)

According to MOCS' Fiscal Year 2014 API report, DDC utilized 80 prime contracts (valued at approximately \$127.9 million) that were subject to the M/WBE Program: 29 construction services contracts, valued at approximately \$95.1 million, 12 professional services contracts, valued at approximately \$32.2 million; 25 goods contracts, valued at approximately \$431,000; and 14 standard services contracts, valued at approximately \$245,000. The Fiscal Year 2015 API report states that DDC utilized 106 prime contracts (valued at approximately \$164.7 million) that were subject to the M/WBE Program: 22 construction services contracts, valued at approximately \$45.4 million; 28 professional services contracts, valued at approximately \$118.7 million; 39 goods contracts, valued at approximately \$371,000; and 17 standard services contracts, valued at approximately \$255,000.

A prior audit conducted by our office (*Audit Report on the Compliance of the Department of Design and Construction with the Minority- and Women-Owned Business Enterprise Program*), issued on December 22, 2010 (FR10-141A), found that DDC had partially complied with key provisions of LL129 of 2005 and §6-129 of the Administrative Code.⁸ Specifically, DDC had designated an executive officer to act as the agency M/WBE officer, created agency utilization plans, and ensured that prime contractors selected M/WBE subcontractors from a pre-qualified list established by DSBS. However, the audit also found that DDC had not complied with those local law provisions that require monitoring the agency's contracting activities to ensure that the agency utilization plans were actually carried out. Specifically, DDC did not monitor the actual participation of M/WBE prime contractors and subcontractors on contracts with utilization goals. In addition, DDC did not review prime contractors' records to verify that payments were made to M/WBE subcontractors, did not perform job-site inspections, and did not contact M/WBE subcontractors to verify their participation. By failing to adequately monitor compliance with agency utilization goals, DDC could not accurately gauge whether prime contractors had fulfilled the utilization goals specified in the contracts. Without this information, DDC could not determine whether the program had contributed to the City's use of certified M/WBEs as intended by LL129. The audit noted that these problems could be attributed to DDC's failure to establish and implement written procedures to ensure compliance with the law.

DDC generally agreed with the recommendations made in the prior report and contended that it was already complying with five recommendations. DDC agreed to implement additional compliance measures for two of these recommendations—to adequately monitor the actual participation of M/WBE prime contractors and subcontractors, and to ensure that contract files contain the names, addresses, or contact numbers of M/WBE subcontractors. DDC also agreed with a recommendation that the agency develop written procedures to comply with the requirements in effect under LL 129.

⁸ http://comptroller.nyc.gov/wp-content/uploads/documents/FR10_141A.pdf

Objective

The objective of this audit was to determine whether DDC complied with key M/WBE Program provisions of LL1 of 2013.

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 Fiscal Years 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 DDC

The matters covered in the audit were discussed with DDC officials during and at the conclusion of this audit. A preliminary draft report was sent to DDC and discussed at an exit conference held on May 17, 2016. On May 27, 2016, we submitted a draft report to DDC with a request for comments. We received a written response from DDC on June 13, 2016.

DDC agreed with all of the audit's nine recommendations. In its response, DDC states that "[it] is fully committed to the success of the City's M/WBE program and to any recommendations that will result in improving our process of this important program."

The full text of the DDC response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

This audit found that DDC has: (1) an M/WBE Compliance Unit responsible for monitoring prime contractor M/WBE compliance with LL1; (2) agency-wide M/WBE utilization goals; (3) justification for not adopting the city-wide M/WBE utilization goals; and (4) adequate documentation for denying or approving proposed bidders' waiver requests.

However, we nonetheless found weaknesses in DDC's monitoring to ensure that prime contractors meet their M/WBE goals. Among other things, we found that DDC does not maintain a centralized monitoring and tracking system that lists all contractors with contracts subject to LL1. Further, we found that DDC did not record in FMS all required information for contracts subject to M/WBE participation goals. In addition, we found that many of the FMS Contract Goals Header entries were not made in a timely manner. We also found insufficient evidence that DDC monitored the prime contractors' use of M/WBEs for those contracts having M/WBE participation goals.

We believe that the deficiencies identified above are largely due to DDC's failure to develop and implement an authoritative set of standard procedures governing LL1 requirements. Such a standard would assist DDC personnel to comply with the provisions of LL1. These deficiencies inhibit DDC from effectively assessing its compliance with its agency-wide M/WBE utilization goals and its prime contractors' compliance with established participation goals.

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

DDC does not maintain a centralized contract monitoring and tracking system that identifies all of DDC's contracts subject to LL1. As a result, the agency cannot monitor and track in the aggregate all contracts subject to LL1 and, of those, which met M/WBE goals.

According to NYC Administrative Code §6-129(f)(9), the agency M/WBE Officer must monitor "the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the [plan's] participation goals." In addition, pursuant to §6-129(f)(7), the agency's M/WBE Officer must record and track each M/WBE prime contractor, as well as each M/WBE subcontractor hired under the agency's contracts. LL1 also makes each agency responsible for providing a breakdown to the City's Chief Procurement Officer and the DSBS Commissioner the number and value of contracts awarded that are subject to the law. This information must include new contracts approved during the period covered by the quarterly compliance reports; requests for contract modification for participation requirements; full and partial waivers granted; complaints received; the number and percentage of contracts audited; and a detailed list of all non-compliance findings.

Due to its lack of a central contract tracking system, DDC could not provide us with a list of agency contracts subject to LL1 when we asked for one. DDC requested assistance from MOCS to fulfill our request. MOCS generated a list of 127 M/WBE contracts. However, this list was incomplete. Based on information recorded in FMS, we identified eight additional contracts that should have been included on the list.

According to MOCS, these omissions were due to manual data entry errors that have since been corrected. MOCS' Associate General Counsel and Assistant Director of the Vendor Programs Unit further stated that they did not generate the list directly from FMS, but rather it was based on an internal MOCS database used for tracking purposes. Based on our review, we calculated that DDC had a total of 135 M/WBE contracts subject to LL1 (the 127 contracts on MOCS' list plus the eight additional contracts that should have been included). Ultimately, the responsibility rests with DDC to track and record each prime contractor's M/WBE performance on those contracts subject to LL1. The absence of such a system hinders DDC's ability to effectively monitor and assess LL1 compliance.

DDC's M/WBE Officer stated that DDC currently does not internally track the agency's progress towards meeting agency-wide M/WBE goals. Instead, the agency relies on the quarterly compliance reports that it receives from MOCS. However, as noted above, the list that MOCS generated was not complete. DDC's M/WBE Officer also stated that the agency is in the process of soliciting a vendor to bring the "aggregate/global" M/WBE information together, which presents challenges because DDC has different computer systems through which it tracks its procurements. Nevertheless, she stated that LL1 does not specifically require the monitoring of contracts subject to LL1 through the use of an internal, centralized contract monitoring and tracking system. She added that the DDC's efforts to monitor its contracts that are subject to LL1 are not hindered by DDC's failure to maintain a comprehensive list because they are tracking the contracts individually and relying on MOCS' reports for their internal monitoring.

However, the lack of an internal, comprehensive monitoring system that tracks all contracts subject to LL1 could hinder the M/WBE Compliance Unit's ability to effectively monitor the status of the prime contractors' progress towards achieving their M/WBE goals in a number of ways. For example, as further discussed below, there were seven contracts that the M/WBE Compliance Unit did not know had commenced until the unit began receiving M/WBE documents (e.g., the initial List of Subcontractors, the Request for Approval of Subcontractor form) from the prime contractors. This resulted in the M/WBE participation goals being entered into the applicable tables in FMS late. MOCS relies on that information to prepare its quarterly compliance reports. If the M/WBE Compliance Unit had maintained a comprehensive list, it would have been able to review the status and progress of the contracts earlier and it would have become aware that a Notice to Proceed had been issued.⁹ According to the MOCS manual, agencies should monitor the prime contractor's progress towards meeting its M/WBE goals at least quarterly. The absence of a comprehensive monitoring and tracking system could hinder DDC's efforts to effectively monitor such contracts.

Further, the failure of DDC to maintain a complete master list of contracts with M/WBE goals could limit DDC's ability to oversee prime contractor entries in the Payee Information Portal (PIP).¹⁰ According to the MOCS Manual, each agency should ensure that the prime contractors of contracts worth \$250,000 or more enter complete and accurate subcontractor information into PIP. Because DDC 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 therefore may not be monitoring the accuracy of the associated subcontractor information as it is required to do. This matter is also discussed further below.

⁹ The Notice to Proceed is a letter sent to the prime contractor by DDC notifying them that they can start working on the project associated with the contract. It shows the award date and the date the contract was registered with the Comptroller's Office.

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

Until such time as DDC can consolidate its contract information into one system, the M/WBE Officer should create and maintain a list of all DDC contracts subject to LL1 that includes, at a minimum, the primes and subcontractors affiliated with those contracts.

Recording of Contract Information into FMS

To ensure accurate reporting of agency M/WBE utilization, agencies must use the FMS Contract Goals Header (CTGH) and Contract Goals Ledger (CTGL) tables. The CTGH table should record all M/WBE participation goal information and the CTGL table should record all approved subcontractor information, including those with M/WBE status, for prime contracts valued under \$250,000. For those contracts valued at \$250,000 or more, the prime contractors must enter subcontractor information in PIP.

Prime Contracts Not Recorded in CTGH

We found that DDC did not, as required, record in the CTGH table seven of its 135 prime contracts subject to LL1 M/WBE participation goals. These seven contracts are identified in Table I below. According to the MOCS Manual, “[a]gencies must enter all [contract] data for ... [the CTGH] table as soon as the contract is registered.”

Table I

List of DDC 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
1	20151416127	ADC Construction, LLC	5,385,427.30	3/11/2015	4/6/2015 – 4/5/2016	Construction	Reconstruction of Existing Sewers, Brooklyn; SEK201BN5
2	20151425097	CTA Architects, PC	3,000,000.00	6/26/2015	6/11/2015 – 6/9/2018	Architecture/Engineering	Requirements Contract for Historic Preservation; RQ_A&E
3	20141412571	En-Tech Corp.	6,696,290.00	1/7/2014	1/27/2014 – 1/26/2015	Construction	Emergency Rehabilitation of Sanitary/Combined Sewers, Citywide; SE-GUN-15
4	20141412575	En-Tech Corp.	3,771,036.50	1/9/2014	1/27/2014 – 1/26/2015	Construction	Rehabilitation of San/Combined Sewers, Citywide; SE-LC-17
5	20151406544	Grimshaw Architects, PC	820,500.00	11/14/2014	11/14/2014 – 12/2/2019	Architecture/Engineering	Arch, Eng. & Const Rel Serv for the New MTS Gansevoort Stat; S216-404A
6	20151424709	Maspeth Supply Co, LLC	7,142,529.76	6/30/2015	6/30/2015 – 6/29/2016	Construction	Recon of Collapsed Vitrified Clay Pipe Sewers, Queens; SEQ201BS7
7	20141428667	NAMOW, Inc.	5,677,451.01	7/10/2014	6/30/2014 – 6/29/2015	Construction	Reconstruction of Collapsed or Otherwise Defective Storm; SEQ201BN6

We requested an explanation of why the data for the seven contracts had not been recorded in the CTGH table. The OCO Deputy Director told us two were architecture/engineering projects that had not been issued a Notice to Proceed yet and five were construction projects managed by the Department of Environmental Protection (DEP). However, none of this information relieves DDC from ensuring that the appropriate data for each of these seven contracts be entered in

DDC's CTGH table. The two contracts lacking Notices to Proceed nevertheless had been registered with the Comptroller's Office and according to the MOCS Manual, agencies must enter all contract data for the CTGH table as soon as the contract is registered. The remaining five contracts, while DEP-managed projects, were registered under DDC.

We also found that 20 contracts had been entered into the CTGH table by DDC subsequent to the date the FMS list of M/WBE contracts was generated at our request, October 9, 2015: nine were entered prior to our January 27, 2016, request for explanations and 11 were entered subsequent to our request. For these contracts, there was a significant gap between the contract registration date and the date of the CTGH entry. The gap ranged from 113 days (approximately 3½ months) to 474 days (more than 1 year and 3 months.) These 20 contracts are identified in Table II below.

Table II

List of DDC Contracts Subject to LL1 M/WBE Participation
Goals Not Recorded in the FMS CTGH Table When the
Contract Was Registered

	Registered Contract #	Vendor Name	Value of Contract Award (\$)	Contract Award Date (Registration)	CTGH Record Date	Number of Days Between Registration and CTGH Record Date
<i>Entered into CTGH Table <u>Prior</u> to Our Inquiry</i>						
1	20151422412	Cruz Contractors, LLC	19,770,252	6/23/2015	10/14/2015	113
2	20151426881	Safeco Construction Corp.	1,908,896	6/24/2015	10/28/2015	126
3	20151423779	En-Tech Corp.	6,386,092	6/26/2015	11/10/2015	137
4	20151424842	Maspeth Supply Co, LLC	4,987,733	6/30/2015	11/25/2015	148
5	20151420463	Rocco Agostino L. & G.C.	3,829,640	4/21/2015	10/22/2015	184
6	20151412091	Thornton Tomasetti, Inc.	5,000,000	12/10/2014	12/3/2015	358
7	20151410923	Deboe Construction Corp.	7,928,731	12/12/2014	1/13/2016	397
8	20151405569	LIRO Engineers, Inc.	3,000,000	10/2/2014	12/10/2015	434
9	20151402686	Camp Dresser McKee & Smith	3,000,000	8/20/2014	12/7/2015	474
<i>Entered into CTGH Table <u>After</u> Our Inquiry</i>						
1	20151423821	En-Tech Corp.	999,475	6/19/2015	2/2/2016	228
2	20151424707	LIRO Program & Constr. Mgmt., PC	275,530,566	6/17/2015	2/1/2016	229
3	20151424706	Tishman Construction Corp of NY	281,497,282	6/17/2015	2/1/2016	229
4	20151424708	Sullivan Land Services, Ltd.	292,672,875	6/17/2015	2/1/2016	229
5	20151420282	C&L Contracting Corp.	46,035,715	5/1/2015	2/1/2016	276
6	20151423596	Power Concrete Co, Inc.	4,669,243	5/15/2015	2/29/2016	290
7	20151423121	Power Concrete Co, Inc.	4,669,243	5/13/2015	2/29/2016	292
8	20151406362	CAC Industries, Inc.	22,131,638	3/17/2015	1/27/2016	316
9	20151415092	En-Tech Corp.	2,775,329	3/4/2015	2/29/2016	362
10	20151413731	Maspeth Supply Co, LLC	3,086,378	1/15/2015	2/2/2016	383
11	20151412905	Olson's Creative Landscaping Corp.	3,458,045	1/9/2015	2/1/2016	388

When asked about the delay between contract registration and entry of information into the CTGH table, DDC's OCO Deputy Director stated that the M/WBE Compliance Unit does not receive notice when a contract is registered. Generally the unit learns that a contract has been registered when the unit receives a Notice to Proceed from the Infrastructure and Public Buildings Divisions (DDC Program Units). However, this may not occur until the contract is well under way. For seven of the above-mentioned 20 contracts, the M/WBE Compliance Unit first learned of them when it started receiving M/WBE documents (e.g., the initial List of Subcontractors, the Request for Approval of Subcontractor form) from the prime contractors.

In addition to the 20 contracts above, we found that one of our five sampled contracts also had its CTGH information entered late; the contract was registered June 30, 2014, but the CTGH entry was not made until April 21, 2015, almost nine months later. When we reviewed the M/WBE Compliance Unit's files, we found that the unit did not receive the Notice to Proceed until April 17, 2015, even though the Notice to Proceed was dated July 23, 2014, and eight of the nine Request for Approval of Subcontractor forms had already been approved. We also found that the M/WBE Compliance Unit had not received the initial List of Subcontractors that the prime contractor must submit within 30 days of the issuance of the Notice to Proceed. If DDC had maintained a comprehensive monitoring system for all contracts subject to LL1, this situation possibly could have been avoided.

MOCS relies on agencies' FMS information, which is entered into FMS by the agencies and the prime contractors, to prepare its quarterly compliance reports. Without precise and timely-entered information, MOCS' reports will not accurately reflect each agency's M/WBE's participation percentages, which DDC is exclusively relying on to assess its LL1 compliance. In addition, the City may be incorrectly reporting the dollar amounts awarded to M/WBEs.

Subcontracts Not Recorded in PIP

We found that DDC failed to ensure consistent compliance with the requirement that prime contractors enter all subcontracts into PIP. Only three of the five contracts we sampled had all of their subcontractors entered in PIP and the remaining two contracts did not have any of its subcontractors entered in PIP. Absent complete and accurate subcontractor information reported in PIP, the City may not accurately report M/WBE award amounts.

According to the MOCS Manual, agencies must enter "[a]ll approved subcontractor information, regardless of M/WBE status ... into FMS" using the CTGL table, unless the subcontractor has been approved through PIP. It further states that "in order to obtain subcontractor approval for contracts valued at \$250,000 or greater, contractors must ... list subcontractors in PIP." In addition, it states that "[a]gencies 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. All five sampled contracts had a value of greater than \$250,000; therefore, the prime contractors were required to enter their subcontractors in PIP. Although we found that all of the contracts' subcontractors were recorded in either the CTGL table or PIP, all of them should have been recorded and approved in PIP.

According to the MOCS Manual, "the contractor must report in the system the payments made to each subcontractor within 30 days of making the payment." However, for the three contracts with subcontractor information in PIP, two did not have any subcontractor payments entered in PIP. The remaining contract was missing payment information from October 2014 for one of the three subcontractors recorded. Table III below shows the deficiencies we identified.

Table III

List of DDC Sample Contracts Subject to LL1 M/WBE
Participation Goals with Incomplete PIP Data

Registered Contract #	Vendor Name	Number of Subcontracts	Subcontract Status Detail Table	Subcontract Reporting Detail Table	Subcontract Payment Detail Table	Comments
20141419894	Armstrong Roofing Corp.	3	Yes	Yes	Yes	Missing payment information for 1 of the 3 subcontracts
20141428187	Maspeth Supply Co, LLC	9	Yes	Yes	No	One of the subcontracts has a pending approval status since 4/7/2015
20141407383	The Urban Group, Ltd.	3	No	No	No	Subcontractor information recorded in CTGL instead of PIP. M/WBE information in CTGH and CTGL is inaccurate
20141426552	Power Concrete Co, Inc.	4	Yes	Yes	No	One of the subcontracts has a pending approval status since 10/8/2014
20141417926	Cordial Construction, Inc.	2	No	No	No	Subcontractor information recorded in CTGL instead of PIP

During our scope period, we found that DDC did not have a process to monitor whether prime contractors have entered the necessary subcontractor data into PIP. However, the OCO Deputy Director stated that as of December 2015, the M/WBE Compliance Unit has started to check whether prime contractors enter payments in PIP. However, DDC's recently implemented process does not kick in until a contract is in the closeout process, which can be months (or years) after the subcontractor payments are made and thus, the check on data entry is made late in the process. In addition, since DDC does not have an internal, comprehensive monitoring system for contracts subject to LL1, its ability to ensure that the vendors for those contracts are entering accurate information into PIP, as they are required to do, is significantly hindered.

Unless prime contractors completely and accurately report subcontractor information in PIP, the City may report M/WBE award amounts incorrectly. These amounts get added to an agency's M/WBE award tally reported in the City's API report. However, if the M/WBE prime contractor awards any subcontracts to non-M/WBEs, those subcontracts must be deducted from the M/WBE amount reported. In addition, if FMS does not accurately reflect a prime contractor's M/WBE status, this contract amount will not be recorded correctly.

The prior Comptroller's audit identified similar issues regarding DDC's subcontractor information entries in the CTGL table, and that these problems led to inaccurate reporting of subcontractor payment amounts. We attribute this deficiency to the agency's inadequate monitoring of FMS contract information, and to the M/WBE officer not ensuring that the contract and subcontractor information is recorded accurately and timely in FMS and PIP.

Recommendations

1. DDC should develop and maintain a centralized tracking and monitoring system for contracts subject to LL1 that permits monitoring efforts to gauge the prime contractors' progress towards achieving their M/WBE goals.

DDC Response: "DDC is currently researching the feasibility of leveraging existing internal systems to monitor and track individual contracts M/WBE goals as well as overall agency goals. It is too early in the process to estimate a completion date. DDC will continue to work closely with MOCS to ensure that its data and resulting figures represent a fair and accurate picture of our M/WBE accomplishments."

Auditor Comment: We appreciate DDC's efforts to develop an internal monitoring and tracking system. However, as we noted in our report, until such time as DDC can consolidate its contract information into one system, the agency should immediately create and maintain a list of all DDC contracts subject to LL1 that includes, at a minimum, the primes and subcontractors affiliated with those contracts.

2. DDC should ensure that all prime contracts and subcontracts are accurately entered into the applicable FMS tables in a timely manner.

DDC Response: "DDC agrees to revise procedures, as required, to ensure all prime contracts and subcontracts are accurately entered into the applicable FMS tables once registered."

3. DDC should ensure that all prime contractors are accurately entering subcontractor information into PIP in a timely manner.

DDC Response: "DDC will review and update our procedures for periodically verifying that the PIP system is properly used by our prime contractors."

Inadequate Monitoring of Prime Contractors' Utilization of Subcontractors

We found that DDC does not monitor its prime contractors' utilization of subcontractors in accordance with plans it submits annually to DSBS which purport to set forth its monitoring plan. Such monitoring is necessary to ensure actual full compliance by prime contractors with stated M/WBE utilization plans. LL1 requires agencies to verify contractors' M/WBE participation 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 M/WBEs.

According to NYC Administrative Code §6-129(f)(8), the M/WBE officer shall monitor "each contractor's compliance with its utilization plan by appropriate means, which shall include ... job-site inspections, contacting MBEs [and] WBEs ... identified in the [utilization] plan to confirm their participation, and auditing the contractor's books and records." The MOCS Manual further states:

Agencies should monitor vendor progress at least quarterly, evaluating the quantity of work performed under the contract, percentage of all work subcontracted, [and] amount of work provided to certified M/WBEs As the contract progresses, agencies should ensure that only approved subcontractors are used by performing job-site inspections, contacting M/WBEs to verify their participation, and

periodically auditing the contractor's books and records. ... [Additionally,] agencies should conduct periodic audits and audit-style on-site reviews on randomly selected vendors, as well as vendors whom agencies suspect are non-compliant. Agency personnel, or outside auditors retained by the agency, should perform routine desk reviews of payroll records, payment requisitions and required certificates from prime contractors, and should review at least some of the supporting documentation for every payment request received from the prime contractors. ... [as p]roof that payments and the voucher payment forms submitted by prime contractors to the agency actually match the prime contractor's records.

In each *Agency M/WBE Utilization Plan* that DDC submitted to DSBS in Fiscal Year 2014 and Fiscal Year 2015, DDC stated its plan to regularly monitor prime contractor utilization compliance by, at a minimum, contacting M/WBEs, auditing prime contractors' books and records and visiting job sites. However, we found that the M/WBE Compliance Unit does not conduct the periodic audits, desk reviews of payroll records, or job-site visits called for in the MOCS Manual.

Instead, the unit relies on the work of DDC's Engineering Audit Office (EAO) and the DDC Program Units to make the unit aware of any utilization issues. According to DDC officials, EAO auditors may, on a random basis, conduct reviews of payroll records (i.e. certified payrolls and employee sign-in sheets) as part of its audit of prime contractor payments.¹¹ They stated that the DDC Program Units visit the job sites as part of their project monitoring duties. However, we learned that neither the M/WBE Compliance Unit, the EAO nor the DDC Program Units conducts audits of the prime contractor's books and records. Furthermore, we found that the M/WBE Compliance Unit, EAO, and DDC Program Units do not routinely contact M/WBE subcontractors to verify their participation in the contract.

In addition, the EAO auditors' payroll review work does not provide reasonable assurance that the amounts that prime contractors reportedly paid to M/WBE subcontractors are accurate. We found insufficient evidence that EAO auditors perform routine reviews of the payroll records. The EAO stated that payroll records are reviewed on a sample basis and if there are any discrepancies they would be noted in the EAO's Payment Audit Report. However, it is difficult to determine how many payroll records were reviewed, since no notation is made on the report when no discrepancies are noted.

Moreover, the EAO requires prime contractors to submit certified payroll records for only subcontractors subject to prevailing wage requirements with their payment voucher request. Consequently, the payroll records for those subcontractors not subject to such requirements would not be included in the prime contractors' payment voucher request.¹² This means that contractors subject to LL1 but who do not have M/WBE subcontractors subject to prevailing wage requirements would not have their payroll records reviewed at all since DDC's M/WBE Compliance Unit does not separately obtain and review those records to obtain reasonable assurance that the M/WBE subcontractors hired by the prime contractor actually worked on the project and received payment for their work. Our review of a sample of payment files revealed that of eight M/WBE subcontractors utilized, four were not subject to prevailing wage requirements and consequently, those subcontractor certified payrolls were not reviewed.

¹¹ According to DDC's website, all payments to contractors and consultants are to be audited and certified by this unit. EAO auditors perform final verifications of approved payment requisitions to ensure that the City has received appropriate value under the terms of the contracts.

¹² According to DDC's EAO, contractors not subject to prevailing wage requirement include truckers and flaggers.

We also found deficiencies in the supporting documentation for subcontractor payments. The MOCS Manual notes that agencies should require prime contractors to submit a notarized subcontractor payment form identifying all subcontractors and cancelled checks as proof of payments made to the M/WBE subcontractors.¹³ However, the M/WBE Compliance Unit does not make the cancelled check submission mandatory. Our review of the unit's files revealed that only one (Cordial Construction) of the two completed contracts in our sample contained the one required cancelled check. The other (Armstrong Roofing) had no cancelled checks in the files even though the prime contractor made payments to M/WBE subcontractors. The remaining three sampled contracts were still in progress.

According to the OCO Deputy Director, the M/WBE Compliance Unit makes submission of cancelled checks optional, since a prime contractor may have to pay a bank fee to obtain copies of the cancelled checks. The Deputy Director stated that M/WBE Compliance Analysts must verify subcontractor payments when prime contractors submit only a notarized subcontractor payment form.¹⁴ We found no evidence, however, that compliance analysts confirmed payments with subcontractors for the one completed contract that had no cancelled checks in its file. The prior Comptroller's audit also found issues regarding DDC's verification of M/WBE subcontractor payments, including contacting the subcontractors to verify the work performed.

We also found that the DDC Program Units' job-site inspections do not sufficiently address whether the prime contractors complied with their M/WBE utilization plans. According to the MOCS Manual, as part of agency job-site inspections, "[a]gency personnel who observe subcontractor activity at work sites should document this activity." For our sampled contracts, the units' reports to document the job-site inspections contained no evidence that the inspectors verified the amount of work provided by the M/WBE subcontractors. For example, the inspection reports for one of our sampled contracts did not mention the three M/WBE subcontractors that were supposed to be utilized by the prime contractor. The prior audit also found insufficient evidence that DDC monitored its prime contractors' compliance with their M/WBE utilization plans.

Recommendations

4. DDC should monitor and document prime contractors' efforts to achieve their M/WBE utilization goals by verifying payments made to M/WBE subcontractors.

DDC Response: "DDC will amend our procedures to verify payments randomly throughout the project's life's span. DDC will begin reviews of M/WBE payments once written procedures are finalized."

5. DDC should perform and properly document job-site inspections to ensure M/WBE subcontractor performance and utilization, contact M/WBEs identified in the plan to confirm their participation and audit the contractors' books and records.

DDC Response: "DDC will draft written procedures to clarify roles and responsibilities for job-site inspections and communications with regard to M/WBEs performance and utilization goals. In addition, DDC will look into the most efficient and effective way to audit the contractor's books and records as per best practices from MOCS. DDC procedures will establish requirements for documenting job-site inspections and audits and will take approximately six months to complete."

¹³ A subcontractor payment form lists the subcontractor(s) along with respective payments made in prior payment requests and the amount to be paid in the current payment request. This form is completed by the prime contractor, who is required to have it notarized.

¹⁴ The current OCO Deputy Director was appointed to this position in February 2015 and claimed not to know the protocol followed by her predecessor.

DDC Did Not Perform Two of the Ten “Prime Contractor Utilization Initiatives” Sampled

DDC did not perform two of the 10 sampled prime contractor utilization initiatives to encourage greater compliance with LL1. According to NYC Administrative Code §6-129(h)(2)(a), “[a]gencies shall engage in outreach activities to encourage MBEs, WBEs ... to compete for all facets of their procurement activities.” Additionally, §6-129(h)(2)(b) states that “[a]gencies shall encourage eligible businesses to apply for certification as MBEs, WBEs ... and inclusion in the directories of MBEs, WBEs. ... Agencies shall also encourage MBEs, WBEs ... to have their names included on their bidders’ lists, [and] seek pre-qualification where applicable.” Also pursuant to §6-129(f)(9), the Agency M/WBE Officer must monitor “the agency’s procurement activities to ensure compliance with its agency utilization plan and progress towards the [plan’s] participation goals.”

We found adequate evidence that DDC performed eight of the ten sampled prime contractor utilization initiatives that it stated it would perform in its M/WBE utilization plan for Fiscal Year 2015. (A list of the 10 sampled initiatives is found in the appendix.) However, DDC did not advertise procurement opportunities in minority publications nor did it create a formal means of tracking M/WBE utilization and sharing information within the agency. According to the new DDC ACCO who assumed that position in February 2016, DDC does not advertise projects in any minority specific publications. In addition, DDC’s M/WBE Officer stated that the agency does not internally track its progress towards meeting its agency-wide M/WBE goals. Instead, it relies on the MOCS’ quarterly compliance reports.

Recommendations

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

DDC Response: “DDC’s Industry Relations and Chief Diversity Officer, working with the Agency Chief Contracting Officer, has initiated a process for placing advertisements in publications that serve the M/WBE community.”

7. DDC 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.

DDC Response: “As mentioned in our response to recommendation #1, DDC is researching an automated system that will internally track and monitor the progress in meeting individual contract and overall agency participation goals.”

Auditor Comment: As we noted in our comment to DDC’s response to recommendation #1, until such time as DDC can consolidate its contract information into one system, the agency should immediately create and maintain a list of all contracts subject to LL1 in order to enable DDC to internally track its progress towards meeting its agency-wide M/WBE goals.

Lack of Agency Procedures to Address LL1 Requirements

DDC does not have a comprehensive procedures manual to ensure that agency personnel understand their duties and responsibilities with respect to the agency’s compliance with LL1. Without detailed written procedures, DDC 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.

The MOCS Manual states that:

[A]gencies 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.

In addition, 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 that] [i]nternal control activities help ensure that management's directives [such as LL1 compliance] are carried out. They 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 its achieving the desired results.

The OCO Deputy Director stated that DDC uses the MOCS Manual as its guide for monitoring the agency's M/WBE Program. However, this does not ensure that agency personnel responsible for performing specific duties actually do so. The deficiencies identified in this report may be attributed, at least in part, to management's failure to develop and promulgate detailed written procedures covering LL1 requirements, including the tracking of all prime contractors and subcontractors that are M/WBEs and the recording of contract information in FMS to ensure that accurate M/WBE information is being reported by the City. The MOCS Manual does not constitute or substitute for agency-specific procedures for personnel to follow. Further, as stated above, the MOCS Manual clearly states that an agency should promulgate or update its own procedures. The prior Comptroller's audit also cited DDC for not having written procedures in place to ensure the agency's compliance with M/WBE subcontracting requirements.

Recommendation

8. DDC should immediately develop and disseminate detailed written procedures to key personnel that address all LL1 requirements. These should include, but not be limited to, personnel responsibilities and FMS entries of LL1-applicable contract information and detailed documentation requirements to help ensure DDC's compliance with the law.

DDC Response: "DDC will prepare written procedures, as described in our responses above, and disseminate these internal procedures to all appropriate staff. DDC estimates that this process will be completed before the end of the calendar year."

Other Matter

DEP-Managed Contracts Included in the DDC M/WBE Spending Totals Recorded in FMS

While selecting a sample of contracts to review of DDC's 135 M/WBE contracts subject to LL1, we identified two contracts for projects that DDC officials said were managed by DEP. Upon further review, we found an additional five contracts that DDC officials stated were also managed by DEP. When we requested clarification, the Deputy Commissioner of the Infrastructure Division explained that these were for sewer and water emergency contracts and were procured by DDC for DEP. DDC performed the procurement because the DEP engineering, design, and procurement personnel tasked with procuring these contracts were transferred to DDC when the latter agency was established in 1996. However, the projects are being managed by DEP's construction management staff because they have the appropriate personnel to manage projects of this type.

According to the OCO Deputy Director, since these contracts are managed by DEP, the prime contractor must obtain DEP's approval to use a subcontractor. However, since these contracts are registered under DDC's agency code (850) and not DEP's agency code (826), DEP cannot approve the subcontractors in FMS. Instead, DEP submits the names of approved subcontractors to DDC's Vendor Integrity Unit so that DDC can approve the subcontracts in FMS.

Since these contracts are registered under DDC's agency code and are included as DDC contracts in FMS, DDC gets credit for these contracts towards its agency-wide M/WBE goal. However DDC officials believe that they are not responsible for monitoring these contracts to ensure that they are achieving their M/WBE goals. Under this scenario, it is unclear to which agency the M/WBE spending on these contracts should be credited.

Recommendation

9. DDC should consult with MOCS and DSBS to determine the appropriate agency (or agencies) to whom the M/WBE spending on the above-mentioned contracts should be credited and to ensure that the contracts LL1 compliance is properly monitored by one or the other agency.

DDC Response: "These contracts are unique in that another agency is responsible for their implementation. DDC will investigate this matter to ensure that responsibility for M/WBE compliance and credit for M/WBE goal achievement is clearly assigned to a single entity."

Auditor Comment: As we noted in our recommendation, it is essential that DDC consults with MOCS and DSBS as it investigates the matter since DDC does not have the authority to unilaterally decide which agency should monitor for LL1 compliance and receive credit for achieving the M/WBE goals for these types of 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 Fiscal Years 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 to apply LL1. We also reviewed information posted on the websites of DDC, MOCS and DSBS regarding the M/WBE Program.

To obtain an initial understanding of DDC's organizational structure as it relates to LL1, we reviewed DDC's organization charts for its Agency Chief Contracting Office; the Office of Diversity and Industry Relations; the EAO; the Infrastructure Division; and the Public Buildings Division. We also reviewed the Infrastructure and Public Buildings Divisions' description and individual job responsibilities as provided by DDC officials.

We reviewed DDC's *Agency M/WBE Utilization Plans* for Fiscal Years 2014 and 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 determine whether DDC performed the sampled 10 prime contractor initiatives committed to in its Fiscal Year 2015 *Agency M/WBE Utilization Plans*. We also reviewed the MOCS' API reports for Fiscal Years 2014 and 2015, and the M/WBE Program annual reports (also for Fiscal Years 2014 and 2015) released in conjunction by MOCS and DSBS for information specific to DDC.

To obtain an understanding of the various roles and responsibilities of DDC personnel regarding LL1 compliance, we conducted walkthroughs and interviewed members of the DDC ACCO's office, including the ACCO (who was the M/WBE Officer at the start of our audit), the former OCO Director/former M/WBE Officer, and the OCO Deputy Director. To discuss DDC's M/WBE outreach, we interviewed DDC officials from the Office of Diversity and Industry Relations, including the Chief Diversity and Industry Relations Officer (current M/WBE Officer) and her staff. We met with DDC officials who are responsible for auditing and approving the payment vouchers before the City makes payments to the prime contractors, such as the Engineering Audit Officer and two Deputy Directors for the EAO. We also met with DDC officials who are responsible for managing the projects on a program level, such as the Associate Commissioner for the Infrastructure Division's Construction Management/Project Delivery and Associate Commissioner for the Public Buildings Division's Clients Program. In addition to these interviews, we also observed the OCO Deputy Director and two M/WBE Compliance Analysts in order to gain an understanding of the roles and responsibilities of the M/WBE Compliance Unit.

We received a listing of 127 contracts provided by DDC, totaling approximately \$1.7 billion, awarded from July 1, 2013 (the LL1 effective date), through June 30, 2015, that were subject to LL1 M/WBE participation requirements. (Since DDC does not maintain and could not generate a

list of contracts subject to LL1, DDC reached out to MOCS for assistance with this request. DDC forwarded us the list of contracts they had received from MOCS.) To gain reasonable assurance that we have all the contracts (completeness test), we received a listing of contracts from FMS. We compared the two lists, and found that there were 127 contracts on MOCS' list but 29 of them were not on FMS' list and there were 124 contracts on FMS' list but 26 of them were not on MOCS' list. We requested for an explanation for the discrepancies.

To determine the accuracy and completeness of DDC's listing of contracts subject to LL1, we reviewed information contained in FMS for our five sampled contracts, 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 obtain an understanding of the nature of the contracts subject to LL1, and the extent of the M/WBE participation, we selected our sample from the contracts that appeared most complete. Since neither contract list (from MOCS and FMS) had any information on payments, we used a FMS-generated report that included the revised contract amount and the expended amount. From this data we calculated the completion percentage rate based on the amount expended divided by the revised contract amount. We separated out those contracts that were over 90% complete, which included a total of 13 contracts. We then judgmentally selected 5 of the 13 contracts with M/WBE participation goals: one contract that was not included on the list provided by DDC (i.e., the list generated by MOCS); two contracts because the prime contractors were M/WBEs and awarded subcontracts; and two contracts because the prime contractors were non-M/WBEs and awarded subcontracts.

We determined whether each contract file contained a bid tabulation form, a determination of award form, completed M/WBE Utilization Plan (Schedule B), Initial List of Subcontractors and the Request for Approval of Subcontractor 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 determine the extent of DDC's documentation and the extent to which it monitors prime contractors and the use of and payments to subcontractors, we verified whether the sampled contracts files and records contained sufficient documentation for DDC to determine compliance with following key LL1 provisions: whether prime contractors completed Payment Voucher Forms when requesting payment; whether DDC tested the accuracy of these forms by auditing the prime contractors' books and records; whether DDC obtained proof of payments from prime contractors to subcontractors (such as cancelled checks); whether DDC conducted on-site audits to ensure the completion of work by the approved personnel; whether DDC reviewed certified payroll reports from prime contractors and subcontractors; and whether the Initial List of Subcontractors and Request for Approval of Subcontractor forms were filed on a timely basis after the Notice to Proceed letter was issued to the prime contractor.

To determine whether DDC properly considered Fiscal Year 2015 waiver requests by a proposed bidder and forwarded a recommendation to MOCS, we requested and received documentation that detailed the agency's internal consideration of a contract's M/WBE participation goal as evidence that it provided MOCS with a recommendation for denying or approving the waiver fully or partially. We also requested and received documentation evidencing MOCS determination of the waiver (Schedule B, Part III).

To determine whether DDC established a formal means of tracking agency-wide M/WBE utilization and sharing this information within the agency, we met the current M/WBE Officer to inquire on how tracking was performed.

We also reviewed a prior audit report, *Audit Report on the Compliance of the Department of Design and Construction with the Minority- and Women-Owned Business Enterprise Program* (Audit No. FR10-141A), issued in December 2010 to determine whether similar conditions identified in that audit still exist. The prior audit examined DDC'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

Sampled Prime Contractor Utilization Initiatives as Asserted on DDC's
Fiscal Year 2015 Utilization Plan

Initiatives	Fiscal Year 2015	
	Performed	Not Performed
1. Engage in outreach activities	X	
2. Encourage eligible firms to apply for certification	X	
3. Include language in RFPs and invitations to bid requiring potential bidders/proposers to consult directories of certified M/WBE firms	X	
4. Encourage M/WBEs to join pre-qualified bidder's lists	X	
5. Advertise procurement opportunities in minority publications		X
6. Encourage prime contractors to enter into joint ventures with certified M/WBEs	X	
7. Designate dedicated staff to M/WBE Program, including an M/WBE Officer that is directly accountable to the agency head	X	
8. Participate in networking events, meetings, and workshops for certified M/WBE firms	X	
9. Establish formal means of tracking M/WBE utilization and sharing information within agency		X
10. Post M/WBE Program information on your agency's website	X	
Total Initiatives	8	2

June 13, 2016

Marjorie Landa
Deputy Comptroller for Audit
NYC Office of the Comptroller
1 Centre Street
NY, NY 10007

Re: Audit Report on the NYC Department of Design and Construction's
Administration of the Minority and Women Owned Business Enterprise Program
MH15-124A

Dear Ms. Landa:

The Department of Design and Construction (DDC) appreciates the City Comptroller's efforts with respect to its audit (MH15-124A) of DDC's Minority and Women Owned Business Enterprise (M/WBE) program. DDC is fully committed to the success of the City's M/WBE program and to any recommendations that will result in improving our process of this important program.

The following is the Agency's response to each audit recommendation contained in the draft audit:

Comptroller Recommendation #1

"Develop and maintain a centralized tracking and monitoring system for contracts subject to LL1 that permits monitoring efforts to gauge the prime contractors' progress towards achieving their M/WBE goals."

Agency Response

DDC is currently researching the feasibility of leveraging existing internal systems to monitor and track individual contract M/WBE goals as well as overall agency goals. It is too early in the process to estimate a completion date. DDC will continue to work closely with MOCS to ensure that its data and resulting figures represent a fair and accurate picture of our M/WBE accomplishments.

Comptroller Recommendation #2

"Ensure that all prime contracts and subcontracts are accurately entered into the applicable FMS tables in a timely manner."

Agency Response

DDC agrees to revise procedures, as required, to ensure all prime contracts and subcontracts are accurately entered into the applicable FMS tables once registered.

Comptroller Recommendation #3

"Ensure that all prime contracts are accurately entering subcontractor information into PIP in a timely manner."

Agency Response

DDC will review and update our procedures for periodically verifying that the PIP system is properly used by our prime contractors.

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DDC Response to Comptroller's Office Audit MH15-124A
June 13, 2016

Comptroller Recommendation #4

"Monitor and document prime contractor's efforts to achieve their M/WBE utilization goals by verifying payments made to MWBE subcontractors."

Agency Response

DDC will amend our procedures to verify payments randomly throughout the project's life's span. DDC will begin reviews of M/WBE payments once written procedures are formalized.

Comptroller Recommendation #5

"Perform and properly document job-site inspections to ensure M/WBE subcontractor performance and utilization, contact MWBE s identified in the plan to confirm their participation and audit the contractors' books and records."

Agency Response

DDC will draft written procedures to clarify roles and responsibilities for job-site inspections and communications with regard to M/WBEs performance and utilization goals. In addition, DDC will look into the most efficient and effective way to audit the contractor's books and records as per best practices from MOCS. DDC procedures will establish requirements for documenting job-site inspections and audits and will take approximately six months to complete.

Comptroller Recommendation #6

"Advertise procurement opportunities in minority publications in order to increase opportunities for prospective M/WBE bidders."

Agency Response

DDC's Industry Relations and Chief Diversity Officer, working with the Agency Chief Contracting Officer, has initiated the process for placing advertisements in publications that serve the MWBE community.

Comptroller Recommendation #7

"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

As mentioned in our response to recommendation #1, DDC is researching an automated system that will internally track and monitor the progress in meeting individual contract and overall agency participation goals.

Comptroller Recommendation #8

"Immediately develop and disseminate detailed written procedures to key personnel that address all LL1 requirements. These should include, but not limited to, personnel responsibilities and FMS entries of LL1-applicable contract information and detailed documentation requirements to help ensure DDC's compliance with the law."

Agency Response

DDC will prepare written procedures, as described in our responses above, and disseminate these internal procedures to all appropriate staff. DDC estimates that this process will be completed before the end of the calendar year.

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June 13, 2016

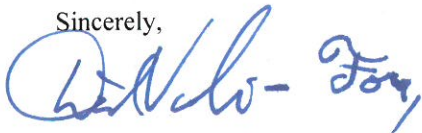
Comptroller Recommendation #9

“Consult with MOCS and DSBS to determine the appropriate agency (or agencies) to whom the M/WBE spending on the above-mentioned contracts should be credited and to ensure that the contracts LL1 compliance is properly monitored by one or the other agency.”

Agency Response

These contracts are unique in that another agency is responsible for their implementation. DDC will investigate this matter to ensure that responsibility for MWBE compliance and credit for MWBE goal achievement is clearly assigned to a single entity.

Sincerely,



Feniosky Peña-Mora