



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

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Deputy Comptroller for Audit

Audit Report on the Department of
Parks and Recreation's Monitoring of
Minority- and Women-Owned Business
Enterprise Utilization on Its Contracts

MH18-080A

May 31, 2019

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

May 31, 2019

To the Residents of the City of New York:

My office has audited the New York City Department of Parks and Recreation (DPR) to determine whether it adequately monitors the agency's capital project contracts to ensure that contractors are reporting the actual extent of their Minority- and Women-Owned Business Enterprise (M/WBE) utilization, which is required by Local Law 1 of 2013 (LL1). We perform audits such as this to increase accountability and to help ensure compliance with City laws.

The audit found weaknesses in DPR's monitoring to ensure that contractors are reporting the actual extent of their M/WBE utilization. In particular, DPR did not conduct formal reviews of the prime contractors' books and records for evidence of M/WBE utilization. In addition, DPR did not consistently maintain the documents needed to substantiate such utilization, such as payroll records and sign-in sheets. The audit also found that DPR did not perform the required reviews of the City's Financial Management System (FMS) to ensure that its prime contractors were accurately reporting their payments to M/WBE subcontractors in the Payee Information Portal (PIP). Finally, the audit found that DPR has not developed comprehensive policies and procedures to ensure that contractors are reporting the actual extent of their M/WBE utilization.

To address these issues, the audit makes 10 recommendations, including that DPR ensure that prime contractors submit, with their payment requests, supporting documents (e.g., copies of sign-in sheets and payroll reports) and maintain those documents in its contract files; periodically review FMS to verify that prime contractors are documenting all subcontractor payments in PIP; and develop its own written policies and procedures that are tailored to DPR's operational structure to foster compliance with LL1, the Mayor's Office of Contract Services' *M/WBE Policies, Procedures and Best Practices* (M/WBE Guidelines), and any other applicable Citywide guidance.

The results of this audit have been discussed with DPR 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 that reads "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 Department of Parks and Recreation's Monitoring of Minority- and Women- Owned Business Enterprise Utilization on Its Contracts

MH18-080A

EXECUTIVE SUMMARY

The objective of this audit was to determine whether the New York City (City) Department of Parks and Recreation (DPR) adequately monitors its capital project contracts to ensure that contractors are reporting the actual extent of their Minority- and Women-Owned Business Enterprise (M/WBE) utilization. DPR plans, maintains, and cares for the City's municipal parks system by ensuring that public parks, playgrounds, recreational centers, and pools located throughout the City are clean and safe for present and future generations.

Through the enactment of Local Law 1 of 2013 (LL1), the City's M/WBE Program is administered through a partnership of the Department of Small Business Services (DSBS) and the Mayor's Office of Contract Services (MOCS) working with various City agencies, including DPR, that procure goods and services. The program was created to address the disparity between the proportion of City contract awards to businesses owned and operated by members of certain ethnic and gender groups and their representation within the New York City regional market by increasing the contracting opportunities for and participation of City-certified M/WBE firms. Based on the scope of work required by the contract and the availability of certified M/WBEs, agencies determine whether a given procurement contract will be subject to an M/WBE participation goal (i.e., a percentage of the total contract dollars that must be for work to be performed by an M/WBE). When bidding on a contract with an M/WBE participation goal, a prime contractor must submit a completed *Schedule B – M/WBE Utilization Plan* (Schedule B), which lays out its intended methods for meeting the contract's M/WBE participation requirements.

In addition, LL1 requires that City agencies develop and submit an annual *M/WBE Utilization Plan* to DSBS. LL1 also requires that agency M/WBE Officers monitor their agencies' procurement activities to help ensure compliance with their utilization plans and to assess their agencies' progress toward the participation goals established in those plans.

Audit Findings and Conclusion

This audit found weaknesses in DPR's M/WBE Program controls that undermine its ability to ensure that contractors are adequately being monitored and that, as a result, they are accurately reporting their M/WBE utilization. Although we found that DPR has an M/WBE Unit responsible for monitoring compliance with LL1, set the annual agency M/WBE participation goals as required, and performed the M/WBE initiatives described in its Fiscal Year 2016 and 2017 Agency M/WBE Utilization Plans, we also found weaknesses, particularly in DPR's verification of contractor-provided information that need to be addressed. Specifically, the audit found that DPR does not conduct formal reviews of the prime contractors' books and records as the contracts progress to obtain greater assurance that M/WBE subcontractors actually worked on the contracts. As a result, DPR has insufficient evidence that the M/WBE Unit confirmed the level of participation of the M/WBE subcontractors reported by prime contractors on the sampled contracts.

The review of the seven sampled DPR contracts revealed that a DPR prime contractor paid an M/WBE subcontractor \$249,631 for services in a trade for which the subcontractor had no record of prior experience with the agency and for which the subcontractor appeared to have used a few of the prime contractor's workers. DPR credited another prime contractor for \$25,874 paid to three M/WBE subcontractors although DPR had no supporting documents such as payroll records and sign-in sheets to indicate that the three M/WBEs ever worked on the contract in question. For another \$17,765 (8 percent) of the \$234,307 reportedly paid to four M/WBE subcontractors, the cancelled checks were not on file at DPR to show these payments were made.

In addition, our reviews of the payroll reports indicated that 10 workers associated with 1 M/WBE prime contractor and 3 M/WBE subcontractors were paid for services they reportedly performed on a DPR contract on dates for which the corresponding timesheets either did not exist or did not reflect the 10 workers' presence at the DPR job site. Furthermore, DPR has yet to provide us with 99 sign-in sheets associated with 50 payroll reports; therefore, we are unable to reasonably ascertain whether the persons named in those payroll reports worked on the days claimed.

Regarding its reporting of the agency's utilization of M/WBEs, DPR did not perform the required reviews of the City's Payee Information Portal (PIP) to ensure that its prime contractors were accurately reporting their payments to M/WBE subcontractors and did not verify that contracts subject to M/WBE participation goals were consistently recorded in the designated fields to help ensure the accuracy of City reports regarding the M/WBE participation percentage and dollar amounts awarded to M/WBEs. The audit also found that DPR has not developed comprehensive procedures governing its administration of the M/WBE Program and does not track or maintain a central list of all contracts and subcontracts covered by LL1.

Audit Recommendations

Based on our findings, we make 10 recommendations, including the following:

- DPR should ensure that prime contractors submit the required supporting documents with their payment requests, such as copies of the sign-in sheets and payroll reports for the prime contractors and subcontractors, and ensure that those documents are maintained in the Construction Division Unit's contract files.
- DPR should (a) assign specific responsibility to designated staff members to review and compare the sign-in sheets and payroll reports that its prime contractors submit to verify

that all reported payments are corroborated by the related sign-in sheets; and (b) ensure that copies of all such documents are maintained in the contract file.

- The M/WBE Unit should ensure the timely request of cancelled checks from prime contractors and that copies of those checks are maintained in the M/WBE subcontractors' files.
- DPR should establish procedures to confirm that subcontractors approved on a project are the ones performing the work.
- DPR should ensure that all required entries to the City's Financial Management System's (FMS') Contract Goal Header (CTGH) tables are completed and on a timely basis.
- DPR should ensure that periodic reviews are done of FMS to verify that prime contractors are documenting all payments made to subcontractors in PIP.
- DPR should develop its own written policy and procedures that are tailored to DPR's unique operational structure and contracting activities to foster compliance with LL1, the M/WBE Guidelines, and any other applicable Citywide guidance.

Agency Response

In its response, DPR agreed with the audit's 10 recommendations, although it believes that 2 (#5 and #9) pertained to procedures already in place. DPR disagreed with the audit's findings regarding the performance of formal reviews of prime contractors' books and records and the need for DPR to maintain a central list of all of its contracts involving M/WBEs.

AUDIT REPORT

Background

DPR is responsible for planning, maintaining, and caring for the City's municipal parks system, including street and park trees. The agency's primary mission is to ensure that public parks, playgrounds, recreational centers, and pools located throughout the City are clean and safe for present and future generations.

In 2005, Local Law 129 (LL129) was enacted, creating the City's M/WBE Program. The program was later expanded under LL1 and is codified at Section 1304 of the New York City Charter and Section 6-129 of the New York City Administrative Code. The intent of the M/WBE Program is to address the disparity between City contract awards to certain ethnic and gender groups and their representation within the New York City regional market by increasing the contracting opportunities and participation of City-certified M/WBE firms.

The M/WBE Program seeks to provide M/WBEs access to bidding and proposal opportunities for prime contracts in four types of procurements: professional services; standard services; construction; and goods. A significant number of M/WBEs use subcontracting opportunities as a point of entry into City contracting. Based in part on the scope of work required by the contract and the availability of certified M/WBEs¹ that are able to perform the work, the agency determines whether a given procurement contract will be subject to an M/WBE participation goal (i.e., a percentage of the total contract dollars that must be for work to be performed by an M/WBE). When bidding on a contract with an M/WBE participation goal, a prime contractor must submit a completed Schedule B, which lays out its intended methods for meeting the contract's M/WBE participation requirements. The City's M/WBE Program is administered through a partnership of DSBS and MOCS working with various City agencies that procure goods and services. Firms obtain M/WBE certification through DSBS.

As a complement to LL1, MOCS issued a memorandum, *M/WBE Policies, Procedures and Best Practices* (M/WBE Guidelines) to provide guidance to City agencies on best practices for LL1 compliance. LL1 requires that City agencies develop and submit an annual *M/WBE Utilization Plan* 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 agencies' procurement activities to help ensure compliance with their utilization plans² and to assess their agencies' progress toward the participation goals established in those plans. In addition, prime contractors that are awarded contracts are required to complete the List of Subcontractors (LOS) form, which contains information about the subcontractors they anticipate using on the contract. The LOS shows a brief description of the work to be done, the approximate value of the subcontract(s), the subcontractors' M/WBE certification status, and the anticipated start and end dates of their work. DPR procedures require that the agency approve the LOS before a subcontractor begins work on a contract so that only approved subcontractors are permitted to be at the job-site. For

¹ M/WBE certification is designated for businesses authorized to do business in New York State, in which at least 51 percent is owned, operated, and controlled by U.S. citizens or permanent residents who are either minority group members or women.

² The Utilization plan outlines the M/WBE subcontractors to be used, the percentage of work to be awarded to the subcontractors, the description of the type of work and dollar amount designated for the participation by each M/WBE, and the time frame in which the work is to be done.

construction-related contracts, DPR's resident engineers are responsible for documenting all activities at the construction site and noting those activities in daily and weekly reports. The daily and weekly reports are to be maintained in DPR's UNIFIER³ system, which is accessible to the M/WBE Unit. The resident engineers are also expected to check sign-in sheets, perform head counts, and reconcile those workers present at the job-site with an independent roster of workers that are approved to be on site.

According to a November 2014 report issued by a grand jury of the Supreme Court of the State of New York, several individuals and corporations in the construction industry were indicted for allegedly engaging in criminal activities that spanned at least a decade. Non-M/WBE contractors submitted paperwork to State and City contracting agencies that reportedly misrepresented the participation of the purported M/WBEs. The report disclosed that for some government-awarded contracts, contractors purported to use M/WBEs to perform the work or provide the materials required under the contract, but did not actually use them. Instead, invoices and other billing documents were created to make it appear as though the work and payments flowed to M/WBEs, when in fact the money was merely passed through those M/WBEs to non-M/WBEs that actually performed the work. In some of those instances, the M/WBEs added and kept a markup of 2 to 4 percent for their purported billing service, according to the report. Thus, not only were the goals of the M/WBE Program frustrated, but the cost of the work was inflated. The report concluded that the current laws, regulations, and systems are not adequate to prevent and deter individuals and organizations from fraudulently taking advantage of these programs.

As of Fiscal Year 2018, the *MOCS Procurement Indicators Annual Report* showed that DPR was one of the top three agencies with regard to both prime and subcontract awards to M/WBEs, with \$94 million and \$31.7 million, respectively, having been awarded.

Objectives

To determine whether DPR adequately monitors its capital project contracts to ensure that contractors are reporting the actual extent of M/WBE utilization.

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 objective. 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 scope of this audit was Fiscal Years 2016 and 2017. It should be noted there are two M/WBE divisions within DPR—the Purchasing & Accounting M/WBE Unit and the Capital Division's M/WBE Unit. The focus of this audit was of DPR's M/WBE Capital Division. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

³ DPR uses a project management system called UNIFIER, which records and stores all information regarding the construction projects from start to finish. It also includes, but is not limited to, daily and weekly reports and budget information from FMS.

Discussion of Audit Results with DPR

The matters covered in this report were discussed with DPR officials during and at the conclusion of this audit. A preliminary draft report was sent to DPR on March 19, 2019 and was discussed at an exit conference held on March 28, 2019. On April 12, 2019, we submitted a draft report to DPR with a request for comments. We received a written response from DPR on April 26, 2019. In its response, DPR agreed with the audit's 10 recommendations, although it believes that 2 (#5 and #9) pertained to procedures already in place. DPR disagreed with the audit's findings regarding the performance of formal reviews of prime contractors' books and records and the need for DPR to maintain a central list of all of its contracts involving M/WBEs.

After carefully reviewing DPR's arguments, we find no basis to alter any of the report's findings. The full text of DPR's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

DPR needs to improve the monitoring of its contractors to ensure that they are accurately reporting M/WBE utilization. Although we found that DPR has an M/WBE Unit responsible for monitoring prime contractors' M/WBE compliance with LL1, that it has set the annual agency M/WBE participation goals as required, and that it has performed the M/WBE initiatives described in its Fiscal Year 2016 and 2017 *Agency M/WBE Utilization Plans*, we found weaknesses that need to be addressed.

In particular, the audit found that DPR does not conduct formal reviews of the prime contractors' books and records, as the contracts progress, to obtain greater assurance that M/WBE subcontractors actually worked on the contracts. As a result, DPR has insufficient evidence that the M/WBE Unit confirmed the level of participation of the M/WBE subcontractors reported by prime contractors on the sampled contracts.

Our review of a sample of 7 DPR contracts, for which 21 M/WBE subcontractors were reportedly utilized, revealed several discrepancies including the following:

- A DPR prime contractor paid an M/WBE subcontractor \$249,631 for purported services in a trade for which the subcontractor had no record of prior experience with the agency and for which it appeared to have used a few of the prime contractor's workers. The M/WBE Guidelines instruct agencies to inquire into precisely those kinds of circumstances to determine the validity of the claimed M/WBE participation, but we found no evidence in DPR's files to indicate that DPR had done so.
- DPR credited another prime contractor for \$25,874 paid to three M/WBE subcontractors although DPR had no supporting documents such as payroll records and sign-in sheets to indicate that the three M/WBEs ever worked on the contract in question.
- Payroll reports indicate that 10 workers associated with 1 M/WBE prime contractor and 3 M/WBE subcontractors were paid for services they reportedly performed on a DPR contract on dates for which the corresponding timesheets either did not exist or did not reflect the 10 workers' presence at the DPR job site. With respect to the payments to five of those workers associated with one M/WBE subcontractor, DPR informed us that no work took place at the job site on the dates in question. In addition, DPR has yet to provide us with 99 sign-in sheets associated with 50 payroll reports; therefore, we are unable to reasonably ascertain whether the persons named in those payroll reports worked on the days claimed.
- The cancelled checks for \$17,765 (8 percent) of the \$234,307 reportedly paid to four M/WBE subcontractors according to *Subcontractor Compliance Reports* (Form 44s) were not on file at DPR.

Regarding its reporting of the agency's utilization of M/WBEs, DPR did not perform the required reviews of PIP to ensure that its prime contractors were accurately reporting their payments to M/WBE subcontractors. In addition, DPR did not verify that contracts subject to M/WBE participation goals were consistently recorded in the designated fields, known as CTGH tables, in FMS, to help ensure the accuracy of City reports regarding the M/WBE participation percentage and dollar amounts awarded to M/WBEs.

The audit also found that DPR has not developed comprehensive procedures governing its administration of the M/WBE Program and does not track or maintain a central list of all DPR contracts and subcontracts covered by LL1.

Finally, under “other matters,” we learned that in one of our seven sampled contracts, DPR departed from the MWBE Guidelines by awarding a partial waiver of the contract’s 11 percent M/WBE participation goal to one bidder, without obtaining the required MOCS approval and after the applicable deadline. Moreover, after awarding the contract to that bidder, DPR later excused the contractor’s failure to meet its own reduced 7 percent M/WBE participation goal, also without the prescribed MOCS approval. The amount reportedly paid to M/WBEs on the contract—\$217,955—constituted only 3 percent of the \$6,789,100 that the prime contractor was awarded for the contract.

The deficiencies identified in this report are due in part to DPR’s failure to develop and implement its own policies and procedures governing LL1 requirements. These deficiencies hinder DPR from effectively assessing how much it is spending in meeting the requirements established in its Agency M/WBE Utilization Plan and the degree to which contractors are meeting their established participation goals.

The details of our findings are discussed in the following sections of this report.

Deficiencies in DPR’s Reviews of the Prime Contractors’ Books and Records

DPR needs to improve the monitoring of the M/WBEs to ensure that prime contractors’ reports of payments made to M/WBE subcontractors for work performed by those subcontractors are accurate. M/WBE Guidelines state that

as a contract progresses, 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.

However, the audit found that DPR does not perform the kinds of formal desk reviews prescribed by the M/WBE Guidelines, such as reviewing payroll records to verify that the reported payments reflected on voucher payment forms the prime contractors submit match the prime contractor’s records. According to DPR officials, in lieu of performing detailed desk reviews of the prime contractors’ books and records, it requests that the prime contractors submit copies of cancelled checks as proof that they paid the M/WBE subcontractors. It is DPR’s belief that this practice provides the agency with sufficient assurance that the M/WBE subcontractors DPR approved are working on the contracts and being paid for that work.

However, by forgoing periodic reviews of the prime contractors’ books and records and solely relying on the review of cancelled checks, DPR and its M/WBE Unit have limited assurance that prime contractors are submitting accurate billing documents. Additionally, the cancelled checks merely show that the prime contractor paid the M/WBEs the amounts claimed; they do not, by themselves, show whether those M/WBEs in fact worked on the specific DPR projects as claimed by the prime contractors and that the payments they received were in exchange for that particular

work. Without conducting additional reviews of the contractors' books and records, DPR incurs an increased risk that prime contractors may create and submit fictitious billing documents showing payments to M/WBE subcontractors for work that was actually performed by the prime contractor itself or a non-M/WBE subcontractor.

As discussed in the sections below, we found (1) some payments to M/WBE subcontractors that lacked evidence that they were related to the contracts in question; (2) payments to at least one M/WBE subcontractor for work that it has no history of performing; and (3) inconsistencies between contractors' reported payments to workers and the available supporting documents, including missing sign-in sheets and payroll reports and conflicts between some of the sign-in sheets and payroll reports on file, which in sum means that DPR lacked evidence to show the approved M/WBEs' workers in fact worked at DPR's job sites on the dates and at the times for which they were reportedly paid.

No Evidence to Substantiate That \$25,874 in Payments to M/WBE Subcontractors Were Related to Sampled Contracts

We found that DPR lacked evidence that it reviewed supporting documents to substantiate 17 payments valued at \$25,874 reportedly made by the prime contractor, MFM Contracting, to three M/WBE subcontractors on one of the contracts in our sample (CT 20151429448), a \$7 million contract for the reconstruction of the 44th Drive Pier in Queens. Details are as follows:

- Subcontractor A was issued 11 checks valued at \$510,697 by the prime contractor in relation to work reportedly performed on multiple projects, which, according to the prime contractor, included \$22,941 for work on the sampled DPR contract. DPR's M/WBE Unit credited that amount to the prime contractor's participation goal on the sampled contract. However, the unit's files lacked evidence, such as sign-in sheets and invoices, to indicate that its staff verified that these payments were in fact related to work the M/WBE performed on the contract in question.
- Subcontractor B was issued three checks valued at \$10,028 by the prime contractor for multiple projects, \$699 of which the prime contractor claimed as related to the sampled contract. Again, the M/WBE Unit credited the contractor for that amount though its files lacked evidence, such as, sign-in sheets and invoices, that the amount credited reflected work the subcontractor performed on the sampled contract.
- Subcontractor C was issued three checks valued at \$2,234, which the prime contractor reported related to the sampled contract, but the M/WBE Unit's file contained no evidence, such as sign-in sheets, or invoices, indicating that the payment was for work the M/WBE performed on that contract.

In the absence of supporting evidence maintained in the M/WBE Unit's files, we question the extent to which the M/WBE Unit attempted to verify that the amounts credited toward M/WBE participation goals were supported. Without adequate verification of claimed M/WBE participation, DPR incurs increased risks that prime contractors may fraudulently or inaccurately report that they employed M/WBE subcontractors on contracts with M/WBE participation goals when they did not or that the prime contractors may overstate the extent of the M/WBEs' work, and that such misrepresentations may go undetected.

The audit uncovered several additional areas in which DPR's administration and monitoring of this particular contract in relation to M/WBE Program requirements was deficient, as discussed in later sections of this report.

Missing Sign-in Sheets and Payroll Reports

For 6 of our 7 sampled contracts, DPR was missing anywhere from 2 to 54 sign-in sheets per contract, hindering the agency's ability to verify that persons worked on the dates for which they were paid by contractors. Moreover, we found \$10,358 in discrepancies between the payroll reports and corresponding sign-in sheets for four sampled contracts.

MOCS' M/WBE Guidelines state that it is important for prime contractors to submit supporting documentation for every payment request that is made to the agency. According to DPR, supporting documentation should be submitted with payment requests as evidence that approved workers were in fact at the job-site.

DPR informed us that supporting documentation for its M/WBE-participation contracts, including contractor-certified payroll reports and corresponding Daily Site Sign-in Sheets, should be submitted by the prime contractors and be available to DPR's Construction Division and M/WBE Unit for the purpose of reviewing the contractors' payment requests. In addition, MOCS' M/WBE Guidelines instruct agencies to review at least some of the supporting documentation that prime contractors submit for every payment request made to the agency.

Among the 7 contracts in our sample, we found that 10 workers associated with 1 prime contractor and 3 M/WBE subcontractors were reportedly paid \$10,358 for services on days for which the available sign-in sheets conflicted with the contractors' payroll reports. Specifically, five workers reportedly earned \$3,343, according to the payroll reports, for dates on which the contractors' sign-in sheets did not show them working, and the remaining five workers reportedly earned \$7,014 for working on dates on which a DPR official informed us via email that the contractor did not work and for which, accordingly, no sign-in sheets were available. With no sign-in evidence to show that these persons worked on the specific DPR jobs reported by the contractors, we question the basis for DPR's decision to approve the corresponding payment requests.

It should be noted that, in total, DPR did not provide us with 99 (15 percent) of the 665 sign-in sheets and 7 (3 percent) of the 247 payroll reports that should have been in its custody and available for our review, based on the contractor payment requests, which reflected reported payments to M/WBE subcontractors. In the absence of the requested sign-in sheets, we were unable to ascertain whether additional workers were reportedly paid for working on dates on which no sign-in sheets exist or where the sign-in sheets that exist do not list those workers. Conversely, we also cannot determine whether workers listed on a missing sign-in sheet were not included in a payroll report. Table I below is a breakdown of the randomly selected sample of contracts that were part of our review and are still missing sign-in sheets and/or payroll reports.

Table I

Sample of Contracts with M/WBE
Participation Goal Identifying
Missing Sign-in Sheets and/or
Payroll Reports

Registered Contract #	# of M/WBEs with Evidence of Payment	Value of Contract Award (\$)	Value of M/WBE Utilization Amount (\$)	Period Covered by Contract	# of Missing Sign-In Sheets*	# of Missing Payroll Reports*
CT20161409257	2	\$1,357,170	\$285,005	3/21/2016 – 3/20/2018	20	4
CT 20151429448	5	\$6,789,100	\$746,801	9/21/2015 – 3/18/2017	54	1
CT20151429446	1	\$2,049,720	\$286,960	10/15/2015 – 4/14/2017	4	1
CT 20161414342	6	\$4,954,502	\$842,265	9/29/2016 – 3/26/2019	2	0
CT 20151427948	1	\$2,500,000	\$300,000	8/28/2015 – 8/26/2017	0	0
CT 20161421021	4	\$2,160,816	\$518,596	5/23/2016 – 8/10/2017	11	1
CT 20151429612	2	\$618,665	\$61,866	11/2/2015 – 10/31/2018	8	0
TOTAL	21	\$20,429,973	\$3,041,493		99 (15%)	7 (3%)

* The list of missing sign-in sheets and payroll reports include both M/WBE subcontractors and one Prime Contractor who are certified M/WBEs.

As shown in Table I, 6 of the 7 sampled contracts were each missing 2 or more sign-in sheets per contract—one contract was missing 54 sign-in sheets. The discussion above illustrates the importance for DPR to review all supporting documentation submitted by the prime contractors, particularly sign-in sheets, to verify the accuracy of the information noted in the payroll reports. Such reviews would provide the agency with greater assurance that reported payments to M/WBE subcontractors are for work their employees in fact performed. By failing to do those reviews, DPR incurs an increased risk that M/WBE subcontractors are paid for work they potentially did not perform.

Deficient Form 44s and Missing Cancelled Checks

The audit found deficiencies in 42 of the 54 sampled Form 44s that DPR’s contractors submitted to the agency to report their payments to M/WBE subcontractors on the nine sampled contracts, impeding DPR’s efforts to monitor the contractors’ compliance in meeting their M/WBE participation goals.

The M/WBE Guidelines state that to

assist agencies with ensuring prime contractor compliance with their M/WBE requirements, agencies should distribute the ‘Payment Voucher Form (Periodic/Final)’ . . . for prime contractors to attach with each periodic voucher they submit for payment, as well as with submission of the final voucher for payment. The form details the total amount paid to subcontractors (including subcontractors

that are not M/WBEs); the names, addresses and contact numbers of each M/WBE hired as a subcontractor pursuant to the Schedule B, as well as the dates and amounts paid to each M/WBE. The form must be certified by the prime contractor under penalty of perjury.

The guidelines further state, “as a best practice, agencies should require that prime contractors provide cancelled checks for payments made to M/WBE subcontractors as proof of payment.” DPR officials confirmed that the information contained in the Payment Voucher Form referenced in the guidelines and DPR’s Form 44 are the same, except for an additional column included in the Form 44 to capture prior payments made to the M/WBE subcontractors. Through the use of the Form 44s, the M/WBE Unit should be able to track payments reportedly made to the M/WBE subcontractors and monitor each contract’s reported participation goal compliance.

Since both the M/WBE and Construction Division units review the Form 44s, we expected to find the same number of Form 44s in the files of both units. However, we found that the M/WBE Unit did not maintain copies of some of the Form 44s submitted by the prime contractors. Our review of the files found that there were only 28 Form 44s in the M/WBE Unit’s files versus 54 in the files maintained by the Construction Division Unit.

Our review of the 54 Form 44s submitted by the prime contractors found deficiencies in 42 of them, including but not limited to the following: missing signatures through which the contractor should have attested under penalty of perjury to the accuracy of the documents they submitted; missing names, contact numbers and addresses for some of the M/WBE subcontractors; missing aggregate amounts paid to subcontractors; and missing entries concerning the subcontractors’ M/WBE certification status.

DPR officials also stated that the M/WBE Unit uses the information recorded in the Form 44s to request cancelled checks from the prime contractors throughout the life of the contract as evidence that payments were made to the M/WBE subcontractors. However, for two of the sampled contracts, copies of cancelled checks corresponding to \$17,765 in payments to four subcontractors were not found in the M/WBE files. Table II, below, shows a breakdown of the two contracts that were reported in the Form 44s indicating payments were made to M/WBE subcontractors and for which cancelled checks should have been requested by the M/WBE Unit.

Table II

Payments to M/WBE Subcontractors
without Cancelled Checks Being
Maintained in the M/WBE Unit’s
Files

Registered Contract #	M/WBE Subcontractor	Payments Made as per Form 44	Value of Cancelled Checks Received	Difference between Form 44 and Cancelled Checks Amounts Received
CT20161409257	Subcontractor 1	\$59,000	\$50,000	\$9,000
CT20161414342	Subcontractor 1	\$64,000	\$60,800	\$3,200
	Subcontractor 2	\$57,500	\$54,625	\$2,875
	Subcontractor 3	\$53,807	\$51,117	\$2,690
Total		\$234,307	\$216,542	\$17,765

For CT20161409257, DPR stated that the contract's participation goal was met. DPR officials stated that the M/WBE Unit stops requesting additional checks from a prime contractor once the participation goal is met, and directs its efforts and resources to those contracts that have not yet met their participation goals. By doing so, however, DPR is less able to ensure that prime contractors are not inflating the amounts reported on the Form 44s. For CT20161414342, which was still ongoing as of the date of our inquiry (December 3, 2018), the Form 44s in the M/WBE Unit's files indicated that the prime contractor had made payments totaling \$175,307 to the subcontractors, and the file contained the cancelled checks for all but \$8,765 of that amount.

DPR Response: “[W]e disagree with the larger finding in the Report that ‘Parks does not provide formal reviews of the prime contractors’ books and records as the contracts progress to obtain greater assurance that M/WBE subcontractors actually worked on the contracts.’ Formal reviews are not required for all contracts and are instead designated for high-risk contracts. Rather than designating ‘formal reviews’ as a means of providing ‘greater assurance,’ we believe this can be better accomplished working with our Project Managers and Resident Engineers through daily reports and communications on-site in verifying that subcontractors are performing the appropriate work.”

Auditor Comment: DPR provides no support for its argument that “formal reviews are not required for all contracts and are instead designated for high risk contracts,” so we are unable to give credence to its assertion. Furthermore, we disagree with this argument. As stated in this report, we found: (1) contracts lacking evidence that certain payments made to M/WBE subcontractors were related to the specified contracts; and (2) inconsistencies between the amounts that contractors reported that they paid to workers employed by M/WBE subcontractors and the documentation to corroborate those amounts, highlighting the importance of conducting formal reviews on all contracts. We urge DPR to reconsider the need for formal reviews for prime contractors, particularly in light of the findings in this audit.

Recommendations

1. DPR should ensure that prime contractors submit the required supporting documents with their payment requests, such as copies of the sign-in sheets and payroll reports for the prime contractors and subcontractors, and ensure that those documents are maintained in the Construction Division Unit's contract files.

DPR Response: “Parks notes that the audit revealed substantial compliance with these requirements, as evidenced by the fact that the number of missing sign-in sheets and payroll reports noted in this Report's sample is relatively low based on the projects' overall time and scope. Nonetheless, Parks will continue its work toward implementing this recommendation by consulting with the appropriate teams in Capital Projects to ensure that this information is consistently submitted, verified and accessible.”

Auditor Comment: We are encouraged that DPR agreed to implement this recommendation. However, DPR is misguided in its assertion that the number of missing sign-in sheets (at 15 percent) is “relatively low” and that, as such, DPR is in substantial compliance with the requirements of Local Law 1. The issue here is the increased risk that DPR may pay for services that were not provided by M/WBEs as a result of it not consistently ensuring that supporting documents are submitted with payment requests and subsequently verified. Such verifications

can provide DPR with greater assurance that M/WBE subcontractors are being paid for services rendered.

2. DPR should (a) assign specific responsibility to designated staff members to review and compare the sign-in sheets and payroll reports that its prime contractors submit to verify that all reported payments are corroborated by the related sign-in sheets; and (b) ensure that copies of all such documents are maintained in the contract file.

DPR Response: “Parks notes that the audit revealed substantial compliance with these requirements, as evidenced by the fact the negative findings underlying this recommendation account for a small fraction of the projects’ overall scope and dollar value. Nonetheless, Parks will work to implement this recommendation, where possible and given staffing constraints, by updating and supplementing its robust resident engineering program under which these reviews and recordkeeping operations are conducted pursuant to City guidelines. Further, Parks’ Internal Audit Unit and M/WBE Unit are in the process of identifying contracts to select for upcoming reviews, and a plan for those reviews to be consistent.”

Auditor Comment: Although DPR agreed to implement this recommendation, we are concerned that the agency appears to downplay the significance of this issue. For the sampled contracts reviewed during this audit, there were instances in which DPR was not able to provide supporting documentation to justify payments that were made to M/WBEs. In fact, payroll reports evidenced that an M/WBE prime contractor and an M/WBE subcontractor were paid for services rendered over the course of several days even though there was no evidence to show that the days noted in the payroll reports were corroborated with an associated sign-in sheet. When DPR was asked about the days in question, DPR responded that the M/WBE subcontractor did not work on those days. This is a direct contradiction to information recorded in the payroll reports. As stated earlier in this report, contractors have been indicted in connection with a New York State Supreme Court grand jury for submitting paperwork to State and City contracting agencies that reportedly misrepresented the participation of their M/WBE subcontractors.

3. The M/WBE Unit should ensure the timely request of cancelled checks from prime contractors and that copies of those checks are maintained in the M/WBE subcontractors’ files.

DPR Response: “Parks currently requests cancelled checks as proof of payment for M/WBE utilization on contracts and will work to strengthen our processes to ensure that cancelled checks consistently align with other subcontracting records and that copies are maintained on file.”

No Evidence That DPR Consistently Contacted M/WBE Subcontractors to Confirm Participation

The M/WBE Guidelines require that

as the contract progresses, agencies should ensure that only approved subcontractors are used by performing job site inspections [and] contacting M/WBEs to verify their participation. . . . The agency should inquire as to whether the M/WBE subcontractor hired any employees of the prime contractor to perform the work, and whether the prime contractor provided any supplies or equipment to the M/WBE subcontractor. These efforts should be documented in the contract file.

We found that DPR had minimal evidence that it reached out to M/WBE entities that prime contractors listed as subcontractors to verify their participation in the sampled contracts.

The only evidence showing DPR had contacted M/WBEs were inclusion letters it sent to the M/WBE entities, each of which notifies the subcontractor that it is listed on a prime contractor's LOS form for a DPR project. The letter goes on to state the subcontractor's participation dollar amount that will ultimately be credited towards the prime contractor's M/WBE participation goal and asks the subcontractor to sign an attestation confirming that it is aware of the project and in fact signed a contract with the prime contractor for the aforementioned project.

For the 21 M/WBE subcontractors reviewed in our sample, we found evidence that DPR sent inclusion letters to 8 of the subcontractors, of which only 1 responded that it was aware that it was named as a subcontractor on 1 sampled contract. DPR had no evidence that any of the other 7 subcontractors responded to its inclusion letters, and no evidence that it had sent inclusion letters or otherwise attempted to contact any of the remaining 13 subcontractors to ascertain whether they knew they had been named as subcontractors on the sampled contracts.

DPR officials stated that the agency contacted subcontractors through various means, such as telephone calls and emails, but DPR was not able to produce any evidence to substantiate that claim. DPR officials also argued, incorrectly, that the agency is not required to maintain evidence of those contacts, a contention that is inconsistent with the M/WBE Guidelines' requirement that agencies document such contacts. In the absence of documented contact with the subcontractors, DPR (1) has limited assurance that the subcontractors its prime contractors list on their LOS forms are aware of their purported participation in a DPR-awarded contract; and (2) incurs an increased risk that prime contractors, for the purpose of securing a DPR contract, may identify M/WBE entities that they have no intention of utilizing.

In fact, the audit revealed that DPR encountered at least one instance of a prime contractor's questionable claim for M/WBE subcontracting credit by directing payments to an M/WBE subcontractor purportedly for a type of work with which the subcontractor had no recorded experience and for which it used three workers who at different times were also employed by the prime contractor on the same contract. Those two circumstances are mentioned in the M/WBE Guidelines as issues that agencies should inquire about in determining whether the M/WBE subcontractors named by the prime contractors are performing a "commercially useful function," a criterion that must be met to qualify for M/WBE participation credit. The details follow.

M/WBE Subcontractor with No Prior Related Experience Reportedly Used to Perform Paving Work

The M/WBE Guidelines state,

[t]he subcontractor must perform a commercially useful function (i.e., a real and actual service that is a distinct and verifiable element of the work called for in the contract) in order for the subcontract to count for credit. In determining whether a subcontractor performs a commercially useful function, agencies should look to whether it:

- has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses; [and]
- is engaged in the business of performing, managing or supervising the work for which it has been certified and is being utilized.

The guidelines further state, “[t]he agency should inquire as to whether the M/WBE subcontractor hired any employees of the prime contractor to perform the work, and whether the prime contractor provided any supplies or equipment to the M/WBE subcontractor. These efforts should be documented in the contract file.” The previously mentioned grand jury report described some of the same practices as indicators of possible M/WBE fraud. According to the report, the prime contractor may temporarily place some of its employees on the payroll of the M/WBE. When the work was finished, the employees would return to the payrolls of the prime contractor.

For CT 20151429446, the prime contractor, Brighton Builder LLC, submitted a LOS form to DPR on July 18, 2016, which an M/WBE Unit official subsequently approved on July 22, 2016, that listed two M/WBE subcontracts with a total anticipated value of \$260,000. The LOS form named one M/WBE subcontractor (Subcontractor A) to install fencing at an anticipated cost of \$30,000 and another M/WBE subcontractor (Subcontractor B) to perform paving work at an anticipated cost of \$250,000. However, as of October 19, 2018, our review of the prime contractor’s compliance letter revealed that the fencing company received \$279,631 in payments, which included \$249,631 for paving work. In addition, three individuals who appeared to have been part of the group of workers performing the contracted paving work, purportedly for the subcontractor, also worked for the prime contractor on the same contract either before or after working with the subcontractor. (It should be noted that our review of Brighton Builder’s payroll records for the contract in question revealed only those employees who worked on this particular contract. Consequently, we are unable to ascertain whether any of the other workers listed on the subcontractor’s payroll also worked for Brighton Builder on other contracts either before or after working with the subcontractor.) We found no evidence in the files of either the M/WBE Unit or Construction Division to indicate that DPR contacted the fencing company to inquire as to its ability to do the paving work.

DPR looked into this matter separately in connection with an unrelated investigation into the prime contractor’s alleged violation of prevailing wage requirements. A November 2, 2016 DPR memorandum relating to that investigation notes that the M/WBE subcontractor “was submitted for subcontract approval on this project AFTER performing work (at its own risk) which it does not normally perform, and as a Fencing Company, has no history of performing (excavation and concrete paving) for the Agency.”

Without evidence to show that DPR is (1) making the effort to confirm M/WBE subcontractor participation on projects, and (2) reviewing prime contractors’ books and records to help confirm M/WBE subcontractor participation, DPR has limited assurance that authorized M/WBE subcontractors with the required skill and experience are in fact performing the work as described on LOS forms. In addition, there is an increased risk that a prime contractor is either doing the work itself or utilizing a non-M/WBE subcontractor to perform the work and using the M/WBE subcontractor’s information as a means to obtain credit towards the prime contractor’s M/WBE participation goals.

Recommendations

4. DPR should ensure that it maintains evidence in its contract file that all subcontractors were notified of their participation in an awarded contract.

DPR Response: “Any approvals we grant of subcontractor participation should be consistent with what is taking place in the field. Parks currently works on many fronts to ensure that subcontractors are notified of their participation and that they are actually working on site. This is accomplished through the sending of inclusion letters, as well as reviews of daily reports, sign-in sheets, Form 44s, and inspections by resident engineers in the field. We will work to improve our processes and ensure that evidence of such notifications is maintained in the contract files.”

5. DPR should establish procedures to confirm that subcontractors approved on a project are the ones performing the work.

DPR Response: “Parks will continue following protocols to ensure that subcontractors approved on a project are indeed the ones performing the work.”

Auditor Comment: Although DPR states that it will continue to follow protocols to ensure that subcontractors approved on a project are indeed the ones performing the work, we are not certain as to the protocols it is referring to since they are not in writing. While DPR has wide latitude to develop a method it deems suitable to accomplish this mission, DPR needs to ensure that the method employed adheres to the basic tenets of the M/WBE Guidelines, thus providing the assurance that M/WBE subcontractors approved for the projects are the ones performing the work.

FMS Reporting Deficiencies

According to the M/WBE Guidelines, agencies are tasked with accurately entering their M/WBE participation goal information for each contract subject to such goals into CTGH tables in FMS. In addition, the prime contractor should record in FMS’ PIP system, “whether subcontracting is required on their contracts and provide information for each subcontract award they will issue” on contracts valued at \$250,000 or greater. The guidelines also state that agencies have a responsibility to work with vendors to ensure compliance with the required recording of subcontractor and payment information into PIP since that information is used by both MOCS and agencies to identify those prime contracts with associated subcontracts. However, we found that DPR did not ensure that all of its prime contracts and all of its contractors’ payments to subcontractors on contracts subject to M/WBE goals were recorded, as discussed below.

Prime Contracts Not Recorded in CTGH Tables as Required

Regarding data entry into FMS, the M/WBE Guidelines require agencies to “enter the proper M/WBE participation goal information for each contract subject to goals into CTGH” tables. The guidelines further state that agencies must also “enter all data for this table as soon as the contract is registered.”

In response to our request for the prime contracts awarded in Fiscal Years 2016 and 2017 that were subject to LL1 M/WBE participation goals, DPR provided us a list of 207 prime contracts valued at \$470,587,854. We compared that list to a list of DPR contracts we generated from FMS that included M/WBE participation goal information in the CTGH table. Our comparison revealed that 60 contracts valued at \$104,927,217 were included on the list provided by DPR but were not on the list we generated from FMS, meaning that they were not recorded in the FMS CTGH table as required. When we brought this matter to DPR’s attention in March 2018, officials responded

the “CTGH information was inadvertently omitted” by the data entry unit responsible for making updates to the CTGH tables. When we later reviewed the information in FMS in August 2018, we found that all CTGH tables had been updated.

When subcontractor information is not accurately entered into the CTGH tables in FMS, the quarterly compliance reports prepared by MOCS do not accurately reflect DPR’s M/WBE participation percentages or the dollar amounts awarded to M/WBEs.

DPR Does Not Perform Required Reviews of FMS’ PIP

According to the M/WBE Guidelines,

[i]n order to ensure adequate reporting on M/WBE utilization performance, it is essential that agencies monitor contractor PIP compliance through FMS. Agencies can do this by checking the Subcontract Payment Detail table (SCPYMT) [in FMS] to review payment information on each subcontract identified by the prime contractor. Failure of the prime contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in inaccurate reporting on subcontractor utilization, under-reporting for agency utilization, and possibly a declaration of default that could subject the prime contractor to liquidated damages.

DPR’s contractors reported using 21 M/WBE subcontractors on the 7 sampled contracts. Our review of the SCPYMT tables in FMS revealed that payment information was missing for all 21 subcontractors. For 16 subcontractors, we found *no* entries made to the SCPYMT tables in FMS. For one of those 16 cases, the prime contractor’s failure to submit the subcontractor’s information in FMS for DPR’s approval prevented the subsequent entry of the related payment information in the FMS SCPYMT table. For the remaining five subcontractors, we found that some payments reflected in the contractors’ Form 44s and cancelled checks were not shown in the SCPYMT tables.

According to DPR officials, “[t]he MWBE and subcontractor compliance unit works with vendors to encourage reporting compliance in PIP.” However, we found little, if any, evidence of DPR’s enforcement of the reporting requirement for the sampled contracts.

By not periodically reviewing FMS to verify whether prime contractors are making the required entries to the payment screens in PIP, DPR has limited assurance that prime contractors are paying their M/WBE subcontractors and doing so timely. In addition, DPR has limited assurance that the quarterly compliance reports prepared by MOCS accurately reflect DPR’s M/WBE participation percentages, and thereby ensuring that the City is correctly reporting the dollar amounts awarded to M/WBEs.

Recommendations

6. DPR should ensure that all required entries to FMS’ CTGH tables are completed and on a timely basis.

DPR Response: “Parks will work to implement this recommendation.”

7. DPR should ensure that periodic reviews are done of FMS to verify that prime contractors are documenting all payments made to subcontractors in PIP.

DPR Response: “Parks will work to implement this recommendation.”

DPR Has Not Developed Comprehensive Written Procedures Relating to Its M/WBE Program

M/WBE Guidelines state 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.”

Further, Comptroller’s Directive #1, *Principles of Internal Control*, states, “[i]nternal control activities . . . are, basically, the policies, procedures, techniques, and mechanisms used to enforce management’s direction. They must be an integral part of an agency’s planning, implementing, review and accountability for stewardship of its resources and are vital to its achieving the desired results.” The directive also states that internal controls should be documented in management administrative policies or operating manuals.

However, we found that DPR has not developed its own comprehensive written procedures that address management’s requirements for the M/WBE staff involved in the day-to-day monitoring of DPR’s contracts that are subject to the agency’s M/WBE goals.

DPR officials stated that the agency uses the M/WBE Guidelines as its own policies and procedures as a guide for its staff to carry out their responsibilities. As discussed earlier in the report, however, we found that DPR was not in compliance with a number of the requirements contained therein. In addition, DPR also provided us with a four-page document that briefly describes a few selected procedures for (1) setting the goals on contracts subject to LL1; (2) processing waivers; (3) processing the list of subcontractors; and (4) determining compliance. The document, however, does not provide specific guidance on what should be done throughout the compliance monitoring process or address how the workload is to be divided among staff.

DPR’s reliance on the M/WBE Guidelines as a substitute for detailed internal procedures reflects a misconception of the intended roles of the two documents in ensuring that agency objectives are met. The M/WBE Guidelines are intended to provide standard guidance to all City agencies with M/WBE Programs. They do not address DPR’s unique operational structure or designate individual DPR units or officials, by title or area of responsibility, to carry out the various activities that the Guidelines prescribe for City agencies; those would be the functions of *internal* DPR procedures, which are needed to enforce management’s direction and should be tailored to DPR’s specific hierarchy and contracting activities. In fact, the M/WBE Guidelines themselves clearly state that since “[a]gencies differ in their size, mission and staff structure . . . each agency’s own written procedures should be tailored to its own practices, but, at a minimum, all procedures should assign clear responsibility for each of the specific duties mandated by law.”

By not promulgating comprehensive, written policies and procedures, DPR has limited assurance that its goals and requirements as they pertain to the M/WBE Program are properly communicated to and consistently followed by DPR staff and is hindered in holding staff accountable when they fail to perform their duties in a satisfactory manner.

In that regard, we note that the same issue was raised previously in our *Audit Report on the Department of Parks and Recreation’s Monitoring of Subcontracts Covered by Local Law 129 (ME10-143A)*, dated December 22, 2010. That audit recommended that DPR update its written

procedures to ensure that agency personnel are clearly aware of their oversight responsibilities concerning contractor compliance. In its response to that audit, DPR agreed with the recommendation and stated that it “considers the development of a procedures manual to be good business practice to ensure uniformity.”

Recommendation

8. DPR should develop its own written policy and procedures that are tailored to DPR’s unique operational structure and contracting activities to foster compliance with LL1, the M/WBE Guidelines, and any other applicable Citywide guidance.

DPR Response: “Parks is proud of our compliance with Local Law 1 and we will develop our own Standard Operating Procedures to document our existing internal procedures.”

DPR Does Not Maintain a Centralized List of Its M/WBE Contracts

Section 6-129(f)(7) of the New York City Administrative Code, part of LL1, provides that each agency’s M/WBE officer “shall track and record each contractor that is an [M/WBE] and each subcontractor hired pursuant to such officer’s agency contracts that is an [M/WBE] and shall share such information with the *director* [designated by the Mayor to perform certain M/WBE oversight functions], the commissioner [of DSBS], and the city chief procurement officer.” The quoted section effectively makes DPR, through its M/WBE Officer, responsible for tracking and recording each M/WBE prime contractor, as well as each M/WBE subcontractor hired to work on the agency’s contracts. According to the M/WBE Guidelines issued by MOCS, that tracking and recording is a legal responsibility of all agency M/WBE officers, and the guidelines note that “[k]eeping track of M/WBEs that have successfully performed work for the agency is a useful resource to help prime [contractors] that are encountering difficulties in finding M/WBEs to fulfill goals.”

Notwithstanding the above-quoted provisions of LL1 and the M/WBE Guidelines, however, we found that DPR does not maintain a complete list of all its M/WBE prime contractors and subcontractors hired pursuant to LL1. In September 2017, we asked DPR to provide us with a list of its contracts awarded during the two preceding fiscal years—Fiscal Years 2016 and 2017—that were subject to LL1. DPR did not provide us with a complete list until March 2018, a delay of more than five months. DPR first acknowledged that the “reports were put together manually at the request of the Comptroller for this audit,” and later claimed in an October 2018 email that the agency did not have a complete centralized list because “DPR is a Mayoral Agency [and] [t]he centralized list is kept by NYC Department of Small Business Services,” implying that DPR was not required to maintain its own list. However, that contention is contrary to the requirement found in the law.

DPR’s lists of registered contracts for Fiscal Years 2016 and 2017 with M/WBE participation goals contained 207 contracts totaling \$470,587,854. However, we found that two contracts valued at \$9,102,172 were missing from DPR’s lists, which DPR acknowledged and attributed to an inadvertent oversight.

Without a complete list of the M/WBE contractors and subcontractors working on contracts subject to LL1, DPR’s management is hindered in its ability to ensure that all required M/WBE contract information is being entered into the CTGH tables in FMS and that payment information for all

contracts subject to LL1 is being entered into PIP, two areas in which DPR has been deficient as discussed previously in this report.

Recommendation

9. DPR should ensure that it maintains an up-to-date list of all contracts procured and managed by DPR that involve M/WBE contractors and subcontractors.

DPR Response: “Parks maintains an up-to-date list of our contracts but will work so that information can be more readily shared. We would point out that this differs from the audit’s finding that Parks ‘does not maintain a centralized list,’ of our M/WBE firms, as such a centralized list is already maintained by the NYC Department of Small Business Services – the agency which certifies M/WBEs.”

Auditor Comment: It is puzzling as to why DPR believes that the recommendation differs from the audit’s finding. DPR was not able to readily provide a list of all the contracts it procured and managed, taking more than five months to provide a complete list, since it did not maintain its own centralized list. DSBS maintaining a centralized list of all certified M/WBEs Citywide does not absolve DPR of its responsibility to maintain its own list specific to DPR. As discussed in the preceding section of the report, LL1 effectively makes DPR, through its M/WBE Officer, responsible for tracking and recording each contractor and M/WBE subcontractor procured to work on the agency’s contracts.

Other Matter

In reviewing DPR’s contract files for one of our seven sampled contracts, we found no evidence that DPR obtained the required MOCS approvals before (1) awarding a partial waiver of the M/WBE participation goal; and (2) subsequently approving a post-award modification when the contractor failed to meet that reduced goal.

According to the M/WBE Guidelines, for every contract with M/WBE participation requirements, the M/WBE participation goal should be stated in the M/WBE Utilization Plan, also known as Schedule B, which is included in the packet of documents that prospective bidders receive. The guidelines require that agencies include a Schedule B in the solicitation for bids or proposals for such contracts; vendors who bid on such contracts are required to sign Schedule B to acknowledge their intention to fulfill the participation goal it contains. Vendors seeking a full or partial waiver of the M/WBE participation goal must request it at least seven calendar days prior to the bid/proposal due date. The contracting agency is then required to submit its recommendation for approval or denial of the requested waiver to MOCS no fewer than three days prior to the due date for the bids or proposals, and MOCS is supposed to render its decision on the waiver no fewer than two days prior to that date. Vendors are required to submit any approved waivers in their bid submission packages. Bids that do not include a completed Schedule B, and/or have not received a waiver from MOCS of the participation goals set by the agency, may be deemed non-responsive.

However, for one of the sampled contracts, CT20151429448—for the reconstruction of the 44th Drive Pier in Queens—it appears that DPR approved the vendor’s request for a partial waiver of the contract’s M/WBE participation goal without obtaining the required approval from MOCS. According to documentation contained in the contract files, the vendor—MFM Contracting— informed DPR on the day before the bid-due date that it would not be able to meet the contract’s

11 percent M/WBE participation goal and, as a result, was considering whether to submit a bid. The file indicates that DPR advised MFM Contracting that “waiver requests are due seven days prior to the bid due date and that it can still bid on the project and if [deemed] the apparent low bidder and awarded the contract, [the] office will work with them to meet the established goals.” However, the file contained no evidence that DPR informed MOCS that it was considering a participation-goal waiver for this vendor, notwithstanding the fact that the vendor did not request one in a timely manner (i.e., no fewer than seven days prior to the bid due date).

Based on DPR’s above-mentioned advice, the vendor submitted its bid. According to the contract files, MFM Contracting’s bid of \$6,789,100 represented the lowest bid DPR received for the contract. However, the M/WBE participation goal MFM Contracting Corporation proposed in Schedule B was 7 percent of the contract amount (i.e., \$475,237), 4 percentage points below the 11 percent participation goal that DPR had set. The next lowest bid submitted for the contract was \$7,853,580, with the vendor agreeing to meet the contract’s 11 percent M/WBE participation goal, which amounted to \$863,894. The files contained no evidence that DPR submitted what in effect was MFM Contracting’s untimely waiver request to MOCS for its approval before DPR awarded the contract to that vendor. The contract file also contained no justification for DPR’s decision to award the contract to a vendor whose bid reflected a reduced M/WBE participation goal.

The contract files further reveal that MFM Contracting failed to meet its own reduced M/WBE participation goal. If, during the term of a contract, a vendor anticipates a potential shortfall in meeting the M/WBE participation goal set forth in the Schedule B, it may request a post-award modification. The M/WBE Guidelines allow an agency, after consultation with MOCS, to grant such a request if it determines that a contractor can demonstrate that it has made good-faith efforts to meet the participation goal. The guidelines require that all post-award modification requests be approved by MOCS.

Our review found that MFM Contracting, based on DPR’s internal Monitoring form,⁴ paid no more than 3 percent of the contract amount toward M/WBE participation, less than half of the already-reduced M/WBE participation goal percentage reflected in its Schedule B. The files we reviewed contained no evidence that a post-award modification was granted for this contract.

Records in FMS indicate that the contract amount increased to \$7,061,260 and the amount that MFM Contracting reportedly paid to its M/WBE subcontractors was \$217,955, representing an M/WBE participation rate of only 3 percent of the contract amount, significantly lower than both the 7 percent bid by MFM Contracting and the 11 percent that DPR initially set.

The contract files contained no evidence that the vendor requested a post-award modification when it anticipated that it would not be able to meet the seven percent participation goal. According to the files, DPR initially attempted to assess liquidated damages for the vendor’s failure to meet the agreed participation goal. In opposing DPR’s attempt to assess liquidated damages, the vendor argued that it had initially notified DPR of its inability to fulfil the participation goal and was contemplating not bidding on the project but was encouraged by DPR to apply anyway. The vendor also provided a letter to DPR outlining why it was not able to meet the seven percent M/WBE participation goal it proposed in its Schedule B. DPR did not pursue the issue but instead granted the vendor a “good-faith effort” letter, effectively agreeing to a post-award

⁴ The Monitoring form is an internal document created and used by DPR’s M/WBE Unit to track the dollar amounts paid to M/WBE subcontractors based on the cancelled checks it receives as proof of payment.

modification of the goal with no evidence in the contract files that MOCS approved that action, as required by the M/WBE Guidelines.

When required protocols with regard to contractors who do not meet participation goals are not followed, the City's ability to increase M/WBE participation in the City's procurement process—the fundamental goal of its M/WBE Program—is potentially compromised.

DPR Response: “The Report alleges that Parks awarded a partial waiver of the M/WBE participation goal without MOCS approval. Parks did not officially approve a waiver, however the contract was executed in such a way that may leave this issue open to interpretation.”

Auditor Comment: We disagree with DPR's assertion that this issue is open to interpretation. DPR's awarding of this contract to a vendor that proposed to meet an M/WBE participation goal lower than the one set by DPR constituted, in effect, a partial waiver of that goal.

Recommendation

10. DPR should ensure that all participation goal waivers and post-award modifications are approved by MOCS as required.

DPR Response: “Parks concurs with this recommendation but must point out that it is based on a finding detailing one outlier occasion.”

Auditor Comment: While DPR agrees with this recommendation, it asserts that the finding is based on “one outlier occasion,” attempting to give the impression that since only one contract was found not to be in compliance with the required MOCS approval process as it pertains to goal waivers and post-award modifications, somehow this makes the finding inconsequential. However, when this finding is combined with the fact that, as shown in Table I of this report, 54 sign-in sheets pertaining to this contract were also missing, DPR should be very concerned that an appropriate approval was not obtained and that adequate reviews were not done.

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 2016 and 2017 (July 1, 2015, through June 30, 2017). To achieve our audit objective and gain an understanding of the internal controls governing City agencies' responsibilities with the City's M/WBE Program, we reviewed and used the following as criteria:

- Local Law 1 of 2013 (LL1);
- MOCS' M/WBE Policies, Procedures and Best Practices (dated April 16, 2015);
- Comptroller's Directive #1, *Principles of Internal Control*;
- City of New York Standard Construction Contract (dated March 2017);
- A four-page internal document issued to the M/WBE staff highlighting the M/WBE Unit's processes as it relates to waiver requests, M/WBE modifications, LOS' and determining M/WBE compliance;
- Review of DSBS' Online Directory of Certified Businesses; and
- UNIFIER training manual.

To obtain an understanding of the various roles and responsibilities of DPR personnel regarding LL1 compliance, we interviewed the Assistant Commissioner for Equal Employment Opportunity and M/WBE Officer, the Agency Chief Contracting Officer for Purchasing & Accounting, the Director of Purchasing and Accounting, the M/WBE Program Manager for Purchasing & Accounting, the M/WBE Program Manager for Capital, two M/WBE Program Analysts for Capital, the Capital Division's Manhattan Borough Team Leader, the Capital Division's Brooklyn Borough Team Leader, and a Senior Construction Project Manager for the five Boroughs/Citywide Construction Division. In addition, we also interviewed and conducted walkthroughs with two Capital Resident Engineers.

To familiarize ourselves with DPR's organizational structure as it relates to LL1, we reviewed the organizational charts for DPR's Purchasing & Accounting M/WBE Unit; the Capital Division's M/WBE Unit; the Capital Construction Teams in the Bronx, Manhattan, Queens, Staten Island and Brooklyn; and the five Boroughs/Citywide Construction Division.

We reviewed DPR's Agency M/WBE Utilization Plans for Fiscal Years 2015, 2016, and 2017 to obtain an understanding of the agency's M/WBE participation goals and the agency's outreach initiatives to promote M/WBE participation. We requested and received documentation to confirm that DPR performed 14 initiatives it had committed to undertake in its Fiscal Year 2016 and 2017 *Agency M/WBE Utilization Plan*.

DPR provided us with two electronic Excel spreadsheet of Capital contracts with M/WBE participation goals for Fiscal Years 2016 and 2017. The Fiscal Year 2016 list contained 78

contracts valued at \$143,416,846, while the Fiscal Year 2017 list contained 129 contracts valued at \$327,171,008. To determine the reliability and completeness of the datasets, we independently generated from FMS a listing of DPR's contracts subject to LL1 from July 1, 2015, through June 30, 2017. We compared DPR's lists to our FMS generated list to see whether the datasets provided by DPR were accurate and complete. We went further to review information contained in FMS, including ascertaining whether the prime contracts were accurately recorded in CTGH tables. We also reviewed FMS to determine whether the contract information and applicable subcontractor information was accurately recorded by the prime contractor in PIP.

To determine the extent to which DPR documents its monitoring of its prime contractors, we randomly selected 10 contracts registered in Fiscal Year 2016. We requested and reviewed the contract files maintained by the M/WBE Unit and the payment packages maintained by the Construction Division Unit. Of the 10 contracts, one was cancelled. Of the remaining nine contracts, seven of them had utilized M/WBE subcontractors as of the date of our reviews. We reviewed the files for these seven contracts to ascertain whether the contract files and records contained sufficient documentation to support DPR's determinations pertaining to contract compliance with key LL1 provisions. In addition, we determined whether: each contract had evidence of DPR verifying and confirming the M/WBE subcontractor's participation; the prime contractor completed M/WBE Utilization Plan (Schedule B); the prime contractor completed Initial List of Subcontractors Forms; the Subcontractor Compliance Reports (Form 44) was completed; and whether DPR tested the accuracy of these forms by reviewing the prime contractors' books and records. We also determined whether there were proof of payments by the prime contractors to subcontractors (such as cancelled checks); whether there were certified payroll reports and sign-in sheets for the prime contractors and its subcontractors; and whether daily and weekly reports of on-site visits conducted by a Resident Engineer to ensure the completion of the work and ensure that the approved personnel were on site were available.

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

To determine whether the Capital M/WBE Unit has properly reported information pertaining to their M/WBE Program, we reviewed copies of its M/WBE Agency Accountability Data monthly reporting requirements (Appendices A) for September 2015, October 2015, November 2015, January 2016, February 2016, April 2016 and May 2016; copies of the M/WBE Agency Accountability Data quarterly reporting requirements from January 1, 2016, through March 31, 2016; a copy of DPR's PIP Fiscal Year 2017 Monthly Tracker for the months of January, February, March, April, May and June; and copies of MOCS's Agency Procurement Indicators (API) report for Fiscal Years 2015, 2016 and 2017. We also reviewed the Comptroller's *Making the Grade Report* for Fiscal Years 2016 and 2017 for information specific to DPR.

We also reviewed a prior New York City Comptroller's Office audit report, *Audit Report on the Department of Parks and Recreation's Monitoring of Subcontracts Covered by Local Law 129*, (ME10-143A), issued in December 2010 to determine whether similar conditions identified in that audit still exist. The prior audit examined DPR'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 participation goals.

Although the results of our sampling tests were not statistically projected to their respective populations, these results, together with the results of our other audit procedures and tests, provide a reasonable basis for us to determine whether DPR adequately monitors its contracts to ensure that contractors report the actual extent of M/WBE utilization.



NYC Parks

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April 26, 2019

Marjorie Landa
Deputy Comptroller for Audit
City of New York Office of the Comptroller
1 Centre Street, Room 1100
New York, NY 10007

Re: Audit Report on the Department of Parks & Recreation's Monitoring of Minority- and Women-Owned Business Enterprise ("M/WBE") Utilization on Its Contracts; MH18-080A

Dear Deputy Comptroller Landa:

This letter addresses the findings and recommendations contained in the New York City Comptroller's ("Comptroller") Draft Audit Report ("Report"), dated April 12, 2019, on the above subject matter.

We appreciate your interest in the M/WBE program and are pleased that your Report found that Parks has an M/WBE Unit responsible for monitoring prime contractors' M/WBE compliance with Local Law 1 (LL1), that it has set the annual agency M/WBE participation goals as required, and that it has performed the M/WBE initiatives described in its Fiscal Year 2016 and 2017 Agency M/WBE Utilization Plans.

Indeed, Parks' M/WBE Unit makes a tremendous effort to reach out to M/WBE firms and we perform a large amount of outreach to be inclusive to vendors. Parks attends and speaks at various M/WBE and procurement networking events hosted by City, State and Federal Agencies, and hosts its own event where prime contractors can network with M/WBE firms to discuss subcontracting opportunities. Parks is the guest speaker twice a year at SBS' construction and goods and services mentorship class, and meets individually with M/WBE firms to discuss Parks procurements and how firms can engage with the City.

The spirit of Local Law 1 is to ensure a level playing field and Parks works on many fronts to provide opportunities for M/WBE firms to engage with Parks and our contracts. One example is Parks' prequalified list (PQL) for non-complex site work. Most of the contracts solicited to the PQL are awarded to M/WBE firms. To date, 72 contracts have been awarded to MWBE firms for a total of \$88,389,084.00.

While we acknowledge that there is room to enhance our oversight and monitoring efforts, we are also proud of our efforts in complying with Local Law 1 to involve M/WBE firms in our capital projects. Parks has increased our commitment to M/WBEs in recent fiscal years and, as a result, exceeded our anticipated utilization goals over the last several fiscal years.

- In FY15, Parks set a goal of 20% M/WBE utilization; we awarded \$59,015,613.00 to M/WBEs, resulting in a M/WBE utilization rate of 22%.
- In FY16, Parks set a goal of 21% M/WBE utilization; we awarded \$96,993,033.00 to M/WBEs, resulting in a M/WBE utilization rate of 22%.
- In FY17, Parks set a goal of 25% M/WBE utilization; we awarded \$130,546,048.00 to M/WBEs, resulting in a M/WBE utilization rate of 29%.
- In FY18, Parks set a goal of 28% M/WBE utilization; we awarded \$120,167,153.00 to M/WBEs, resulting in a M/WBE utilization rate of 34%.



This Report includes ten recommendations to Parks ("DPR"):

Recommendation 1 - DPR should ensure that prime contractors submit the required supporting documents with their payment requests, such as copies of the sign-in sheets and payroll reports for the prime contractors and subcontractors, and ensure that those documents are maintained in the Construction Division Unit's contract files.

Parks notes that the audit revealed substantial compliance with these requirements, as evidenced by the fact that the number of missing sign-in sheets and payroll reports noted in this Report's sample is relatively low based on the projects' overall time and scope. Nonetheless, Parks will continue its work toward implementing this recommendation by consulting with the appropriate teams in Capital Projects to ensure that this information is consistently submitted, verified and accessible.

Recommendation 2 - DPR should (a) assign specific responsibility to designated staff members to review and compare the sign-in sheets and payroll reports that its prime contractors submit to verify that all reported payments are corroborated by the related sign-in sheets and (b) ensure that copies of all such documents are maintained in the contract file.

Parks notes that the audit revealed substantial compliance with these requirements, as evidenced by the fact the negative findings underlying this recommendation account for a small fraction of the projects' overall scope and dollar value. Nonetheless, Parks will work to implement this recommendation, where possible and given staffing constraints, by updating and supplementing its robust resident engineering program under which these reviews and recordkeeping operations are conducted pursuant to City guidelines. Further, Parks' Internal Audit Unit and M/WBE Unit are in the process of identifying contracts to select for upcoming reviews, and a plan for those reviews to be consistent.

Recommendation 3 - The M/WBE Unit should ensure the timely request of cancelled checks from prime contractors and that copies of those checks are maintained in the M/WBE subcontractors' files.

Parks currently requests cancelled checks as proof of payment for MWBE utilization on contracts and will work to strengthen our processes to ensure that cancelled checks consistently align with other subcontracting records and that copies are maintained on file.

Recommendation 4 - DPR should ensure that it maintains evidence in its contract file that all subcontractors were notified of their participation in an awarded contract.

Any approvals we grant of subcontractor participation should be consistent with what is taking place in the field. Parks currently works on many fronts to ensure that subcontractors are notified of their participation and that they are actually working on site. This is accomplished through the sending of inclusion letters, as well as reviews of daily reports, sign-in sheets, Form 44s, and inspections by resident engineers in the field. We will work to improve our processes and ensure that evidence of such notifications is maintained in the contract files.

Recommendation 5 - DPR should establish procedures to confirm that subcontractors approved on a project are the ones performing the work.

Parks will continue following protocols to ensure that subcontractors approved on a project are indeed the ones performing the work. However, we disagree with the larger finding in the Report that "Parks does not provide formal reviews of the prime contractors' books and records as the contracts progress to obtain greater assurance that M/WBE subcontractors actually worked on the contracts." Formal reviews are not required for all contracts and are instead designated for high-risk contracts. Rather than designating "formal reviews" as a means of providing "greater assurance," we believe this can be better accomplished working with our Project Managers and



NYC Parks

Resident Engineers through daily reports and communications on-site in verifying that subcontractors are performing the appropriate work.

Recommendation 6 - DPR should ensure that all required entries to FMS' CTGH tables are completed and on a timely basis.

Parks will work to implement this recommendation.

Recommendation 7 - DPR should ensure that periodic reviews are done of FMS to verify that prime contractors are documenting all payments made to subcontractors in PIP.

Parks will work to implement this recommendation.

Recommendation 8 - DPR should develop its own written policy and procedures that are tailored to DPR's unique operational structure and contracting activities to foster compliance with LL1, the M/WBE Guidelines, and any other applicable Citywide guidance.

Parks is proud of our compliance with Local Law 1 and we will develop our own Standard Operating Procedures to document our existing internal procedures.

Recommendation 9 - DPR should ensure that it maintains an up-to-date list of all contracts procured and managed by DPR that involve M/WBE contractors and subcontractors.

Parks maintains an up-to-date list of our contracts but will work so that information can be more readily shared. We would point out that this differs from the audit's finding that Parks "does not maintain a centralized list," of our M/WBE firms, as such a centralized list is already maintained by the NYC Department of Small Business Services - the agency which certifies M/WBEs.

Recommendation 10 - DPR should ensure that all participation goal waivers and post-award modifications are approved by MOCS as required.

Parks concurs with this recommendation but must point out that it is based on a finding detailing one outlier occasion. The Report alleges that Parks awarded a partial waiver of the M/WBE participation goal without MOCS approval. Parks did not officially approve a waiver, however the contract was executed in such a way that may leave this issue open to interpretation.

Finally, Parks wishes to thank you and your audit staff for the time and effort devoted to completing this report.

Sincerely,

Therese Braddick