



## MWDBE COMPLIANCE MONITORING AT MTA'S DEPARTMENT OF DIVERSITY AND CIVIL RIGHTS

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### OVERVIEW

In accordance with federal and state law, MTA's Department of Diversity and Civil Rights (DDCR or the Department) oversees two similar programs aimed at increasing the participation of historically disadvantaged individuals and businesses in MTA's contracts with private companies. The program for federally funded contracts terms those certified eligible to participate as "Disadvantaged Business Enterprises" (DBEs); for state-funded contracts, those certified eligible are termed "Minority and Woman-Owned Enterprises" (M/WBEs). This report uses "MWDBE" as a compound term to refer generally to both programs and the participating contractors. These laws and the DDCR programs embodying them serve an important governmental function of ensuring that certified firms have the opportunity to compete on a level playing field against those already established in the field.

Both federal and state programs set contract-specific goals for MWDBE participation in most of MTA's larger contracts. The winning bidder for such a contract must then submit a list of the MWDBE subcontractors it intends to use on the project along with the scope and value of each planned subcontract. For its part, the MTA contract itself establishes an agreed-on share of MWDBE participation. Compliance with the contract obligates each prime contractor to make documented "good faith efforts" to utilize certified subcontractors to perform the stipulated percentage of the work based on the total contract value. DDCR's Contract Compliance Unit is responsible for monitoring each project to ensure that certified subcontractors actually do the work and get paid for it.

Certainly, careful monitoring is essential to further the letter and spirit of the laws and the goals of the programs. For example, a prime contractor may falsely claim that a certified subcontractor has performed and been paid for work, when it is actually the prime contractor itself or an ineligible subcontractor that does all of the work and receives the money. In those cases, the MWDBE subcontractor serves only as a "pass-through" for the payment, receiving a fee for enabling the subterfuge.

Indeed, the Office of the MTA Inspector General (OIG) and other investigative agencies have found such pass-throughs on MTA contracts in the past. This audit is a follow-up to previous reviews that linked instances of such fraudulent activity and related violations with weaknesses in compliance monitoring. Federal regulations mandate that funding recipients "have a monitoring and enforcement mechanism" that includes visits to work sites to prevent such violations. Consistent with that mandate, DDCR's procedures require multiple monitoring tasks, including verifying payments to subcontractors and performing site visits.

In this audit, the OIG assessed DDCR's performance in completing monitoring tasks that have the potential to detect and deter contractor fraud and other serious compliance violations. Based on a sample of federally funded contracts, OIG found that DDCR frequently does not complete one or more of those tasks that are required by its own procedures and critical to fraud prevention. These deficiencies directly affect DDCR's ability to confirm that prime contractors have utilized and paid MWDBE subcontractors as claimed.

### Summary of Findings

OIG examined DDCR's work on 17 completed federally-funded contracts and found serious gaps in its compliance monitoring. Though the Department's policy mandates multifaceted monitoring to verify that prime contractors have actually utilized and paid their subcontractors, DDCR had performed far too few of these crucial tasks. Specifically, we found the following:

- In many cases that we examined the Department did not verify claimed payments to subcontractors as required. Indeed, while five of the projects we examined had purportedly used a total of 23 subcontractors, DDCR did not independently confirm that any of those subcontractors had actually been paid as claimed. The absence of such critical verification enables fraud.
- In 71 percent of the examined cases, DDCR's compliance managers had apparently never inspected the projects they were charged with overseeing. And as of early 2013, the Department had largely ceased conducting site visits to see whether the listed subcontractors were actually at work on projects.
- DDCR had seriously neglected its responsibility to close out its own case files relating to individual contracts that the agencies have completed—doing so in only 12 percent of the cases we examined—and so had infrequently made and documented its determination as to the prime contractor's compliance with MWDBE requirements. This close-out includes establishing the final percentage of work performed by MWDBE subcontractors and comparing that information to both the contract goal and the prime contractor's claims. The Department acknowledged that it had not kept up with this work, and also admitted that it could not provide a listing or count of the number of contracts making up its backlog.
- DDCR unevenly gathered important documentation about MWDBEs' participation in MTA contracts, and then inconsistently filed the documents so that much remains unclear or difficult to access. In nearly 50 percent of sampled cases, DDCR could not provide even a single subcontract agreement or a single direct confirmation from a subcontractor, despite procedures that require it to directly verify subcontractors' participation and then acquire *all* subcontract agreements. DDCR also had no summary form or similar document for each project that tracked compliance status and showed which monitoring tasks had been conducted and which had not been completed.

In short, compliance monitoring through regular site inspections, participation and payment verifications, and careful recordkeeping is necessary to prevent fraud. The DDCR Compliance

Unit's weak oversight falls far short of the Department's own monitoring requirements, runs the risk that MTA may be found noncompliant with federal rules, and undermines the goals it is charged to promote.

### **Summary of Recommendations**

DDCR must regularly conduct on-site inspections, verify subcontractor performance and payments, and obtain critical documentation. DDCR must also promptly finish its own case close-outs to assess contractor compliance with MWDBE requirements on completed contracts and address its own backlog in this area. Additionally, DDCR should develop and use performance measures in tracking critical tasks. Further, DDCR should more fully implement its contract management system, and should create and apply to each Department case file a uniform case-tracking chart providing a current "snapshot" of each contractor's compliance with MWDBE requirements. Finally, DDCR should report on its compliance monitoring to the Audit Committee of the MTA Board.

### Agency Response

*In response to our report, Michael J. Garner, the MTA Chief Diversity Officer wrote:*

*We appreciate the recommendations offered by your report for improving the monitoring of prime contractors to ensure that they are achieving the established MWDBE goals on contracts awarded by the MTA and its agencies.*

*We agree with your office's conclusion that this is an opportunity to improve performance by verifying subcontractor payments, conducting site inspections, timely closing out of contracts, reporting compliance to the MTA Board, and improving administrative controls and accept the report's recommendations. We have begun implementing corrective action that includes implementing our Skyline system's "Site Visit and Close Out" module, increasing site visits, expediting the closing out of contracts, and revising internal standard operating procedures.*

## BACKGROUND

To broaden the access of historically disadvantaged individuals and businesses (i.e., “minority- and women-owned”) to government contracts, the Federal Transit Administration (FTA) requires that recipients of its grants, such as the MTA, establish programs to increase those businesses’ participation in federally funded contracts. MTA fulfills this obligation largely by setting goals for providing such businesses with a certain percentage of the work on most large contracts. Only those eligible contractors certified after satisfying specific asset/income limits, demonstrating relevant expertise, and meeting additional criteria, are qualified to participate. The federal and state programs are generally similar regarding compliance monitoring, but they have separate application processes for interested contractors and distinct eligibility criteria.

MTA administers both federal and state programs, each with its own overall percentage goal for participation by certified enterprises. Currently, the MTA seeks to use DBEs for 17 percent of the work in its federally-funded contracts and M/WBEs for 20 percent in its state-funded contracts. This report uses “MWDBE” to refer globally to any certified contractor participating in the state and/or federal programs.

DDCR also sets specific objectives for each individual contract. Prime contractors bidding on an MTA contract must agree to award a stipulated percentage of that contract’s value to certified subcontractors. And, before receiving the contract, the winning bidder must furnish a plan (the Participation Plan), declaring its intent to use specific certified subcontractors, whose work on the project will equal or exceed the contract goal. The prime contractor must also submit “intent to perform” documents signed by those subcontractors. DDCR procedures mandate that its Contract Compliance Unit (Compliance Unit) then directly contact each listed subcontractor to obtain a written confirmation of its intent to participate.

To reduce opportunities for fraud in the programs, the FTA requires that the MTA (and other recipients of federal funding) “...include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.”<sup>1</sup> As of 2011, federal regulations require that an entity receiving federal funds “include a written certification that it has reviewed contracting records and monitored work-sites for this purpose.”<sup>2</sup>

The Compliance Unit oversees contracts with MWDBE goals, from pre-bid goal-setting to completion. A compliance manager is assigned to monitor each contract, and DDCR’s detailed set of Standard Operating Procedures (SOPs) governs the manager’s and prime contractor’s required actions at every stage of the process. DDCR’s computer network maintains records for each case<sup>3</sup> in a separate folder, and its contract management system (Skyline), a computer-based

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<sup>1</sup> *FY2014 Triennial Review Workshop Workbook*. U.S. Department of Transportation, Federal Transit Administration, p. 7-10, [http://www.fta.dot.gov/documents/FY\\_2014\\_Triennial\\_Review\\_Workshop\\_Workbook\\_Rev\\_2.pdf](http://www.fta.dot.gov/documents/FY_2014_Triennial_Review_Workshop_Workbook_Rev_2.pdf)

<sup>2</sup> *Id*

<sup>3</sup> The term “case” is used in the SOPs to refer to DDCR’s work on the MWDBE aspects of specific MTA contracts.

compliance network, also stores information on each contract. The SOPs require that managers review progress reports, visit sites, verify prime contractors' payments to their subcontractors, and vigilantly monitor for signs of noncompliance and fraud. For example, if a prime contractor makes an unapproved change to its listed MWDBE subcontractor(s), the manager must contact the prime contractor and obtain the required justification for the change and any associated paperwork.

Once the contract has been signed, the compliance manager must regularly and by several different methods (e.g., site inspection and document gathering) confirm that MWDBE subcontractors are actually working on the project, and doing the type and amount of work that the prime contractor has claimed. At the least, this monitoring requires that managers communicate directly with subcontractors, as well as obtain authoritative documents (e.g. subcontract agreements) from the prime contractor. As the project continues, the prime contractor must always submit monthly progress reports and obtain pre-approval from DDCR before adding or changing any subcontractors. Ultimately, when a contract is completed (and/or at earlier points), DDCR must confirm with each subcontractor that it was appropriately paid by the prime contractor. DDCR must also do an overall case closing review of each completed contract, as part of which the Department makes a final assessment of the contractor's compliance with MWDBE requirements.

Past audits by OIG and MTA Audit Services found significant gaps and lapses in DDCR's MWDBE contract compliance monitoring. Issues noted included deficiencies in obtaining critical documentation from contractors and in properly closing DDCR's case files on completed contracts. These past audits also found examples of fraud and other serious violations facilitated by lax monitoring. In response, DDCR agreed to take steps to improve its monitoring processes, including strengthening its monitoring procedures and documentation, consistently performing specific monitoring tasks such as obtaining payment verifications from subcontractors, closing cases, and implementing a computerized contract management system.

## FINDINGS

To measure the effectiveness of DDCR's monitoring, we selected 17 completed construction contracts entered into by MTA's Metro-North Railroad and New York City Transit. The contracts were all FTA-funded and ranged in value from \$600,000 to over \$112 million. DDCR had monitored all of these contracts to some extent and many compliance managers (past and present) had been assigned to oversee them. All of these contracts had been closed (completed) by the operating agencies between July 1, 2012 and June 30, 2013, at least six months before we began our review of the Department's cases in January 2014—a lag-time to allow for DDCR's final assessment of each. During our review, we examined DDCR's records, both paper and electronic, as well as information available on the Skyline system. Additionally, we met with compliance managers and supervisors to discuss their work and our findings.<sup>4</sup>

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<sup>4</sup> Though our audit examined 17 federally funded contracts, DDCR's monitoring procedures and contractors' required submissions are essentially the same for both federal and state contracts; thus, our findings and recommendations apply to both.

Our review examined DDCR's monitoring, to determine how rigorously the Department follows its own procedures and meets FTA's requirement to verify that listed subcontractors actually work on the covered projects and are appropriately paid. We determined that while DDCR adequately oversees some activities, such as regularly collecting prime contractors' monthly progress reports, the Department frequently does not comply with its own procedures explicitly requiring it to perform the following five critical monitoring tasks needed to ensure that prime contractors abide by their MWDBE commitments (listed in chronological order as managers would normally perform them):

- Obtaining subcontractors' written statements that they intend to participate in a project
- Obtaining actual subcontract agreements
- Conducting on-site investigations (site visits)
- Obtaining verifications that subcontractors have been paid
- Conducting a final review (case closing) to determine the extent of subcontractors' participation.

All five are fundamental controls designed to verify that prime contractors are legitimately fulfilling their MWDBE contract obligations, and two of these tasks—payment verifications and on-site investigations—are particularly important in combatting fraud.

### **DDCR Compliance Monitoring Is Seriously Deficient**

As shown in Table 1, DDCR did *not* perform these five required compliance monitoring tasks at all (i.e., in relation to even one subcontractor) in a range of 29 to 88 percent of sampled contracts.

**Table 1: Deficiencies in DDCR Compliance Monitoring Performance**  
(Based on a Review of 17 FTA-Funded Contracts)

<b>Compliance Monitoring Task</b>	<b>Task NOT Performed (Percent of Contracts)</b>
Verification of Subcontractor Participation	59%
Subcontract Agreements Obtained	53%
Site Visits Performed	71%
Subcontractor Payment Verification	29%
Case Closing	88%

For all but case closings, DDCR's own procedures require that each task be carried out at least once for each MWDBE subcontractor. In case closings, DDCR performs a single final review of the contract after all work has been completed, and at that point does a final examination of the participation and pay of each MWDBE subcontractor. Each of the five critical monitoring tasks is discussed more fully in the sections that follow.

### **Subcontractor Participation Not Verified**

An initial step in DDCR's monitoring is the evaluation of prime contractors' plans for MWDBE participation in a project. According to DDCR procedures, after receiving the prime contractor's Participation Plan, but before awarding the contract, the compliance manager must ask each MWDBE subcontractor listed in the Plan to inform DDCR, in writing, of the subcontractor's intent to work on the project. A DDCR manager told us that this request amounts to the Department's first independent, direct dealing with subcontractors. Yet, while DDCR asks subcontractors to return these confirmatory forms within 24 hours, DDCR did not confirm *any* subcontractor's participation on 59 percent of the contracts in our sample (See Table 1), let alone within the 24-hour time frame. Going forward, DDCR management must reinforce with subcontractors the need for timely responses and diligently follow up on any lapses.

We also observed that DDCR's SOPs do not require this independent confirmation from any firms added after the contract award. In our view, this confirmation should be required from any and all certified subcontractors and DDCR should revise its procedures accordingly.

### **Subcontract Agreements Not Obtained**

Subcontract agreements, establishing the scope of each MWDBE subcontractor's work and pay, are important to corroborate prime contractors' claims that they intend to use specific certified subcontractors for specific work. Furthermore, should legal issues arise—such as prosecutions for fraud—DDCR might well need copies of these agreements as evidence of false claims.

DDCR instructs prime contractors that it must enter into agreements with each listed subcontractor "... no later than thirty (30) days before they are scheduled to begin work on the project," and further instructs them to submit copies of each agreement to the designated compliance manager. But our review found that the Department had not acquired or maintained copies of most subcontract agreements. Only three of the 17 case files we examined contained each such agreement; another five files (29 percent) contained some; but the remaining nine files (53 percent) contained none. Clearly, these numbers are unacceptable. As a standard practice, many organizations use performance measures such as periodic reports for management that track how well tasks are being done. In this instance, DDCR should establish a performance measure that tracks and summarizes the number and percent of cases in which subcontract agreements were obtained by each case manager.

### **Site Visits Not Performed**

Compliance managers who make unannounced work-site visits are, by their presence, better positioned to ensure that subcontractors are actually performing the work listed in the prime contractor's Participation Plan, as well as to discover evidence of "pass-throughs" and help deter these and other abuses. But we found that in 12 of our 17 sample cases, the Department's managers, though responsible over many years for overseeing compliance on these projects, had never once visited those project work-sites. In April 2014, we interviewed three DDCR managers who told us that such visits had largely ceased early in 2013—that they had each inspected only about five sites during all of 2013 and none at all in 2014. To explain this drop-off, compliance managers primarily cited staff shortages. They also told us that the compliance manager responsible for coordinating site visits had left early in 2013, and that no one had since assumed that manager's role.

Clearly, compliance managers must visit as many sites as is practicable and assign priority to those sites where the risk of fraud appears greatest. Indeed, the Department's applicable SOP now requires that managers visit at least three each month, assigning priority as warranted. In practice, though, DDCR is ignoring its own rules. And given this practice, DDCR runs a substantial risk of being found out of compliance with FTA's monitoring requirements. At a minimum, the Department must resume the risk-based approach when targeting sites for inspection. These visits themselves should be accorded high priority, as they provide a visible and tangible deterrent to fraud.

### **Subcontractor Payments Not Verified**

Written payment verifications by subcontractors help to confirm that they actually worked on projects and received the dollar amounts reported by the prime contractor. This verification process is critical to deterring and detecting fraud. Indeed, DDCR's payment verification SOP requires that, "prior to project completion," the compliance manager must send a blank verification form directly to each MWDBE subcontractor, requesting that the firm enter the total amount it has been paid for the job, include relevant supporting information, sign the form, and submit it to DDCR.

Despite the importance of the task, however, DDCR's compliance managers did not verify payments made to 23 subcontractors who worked on 5 projects—29 percent of the completed

projects that we reviewed. Further, our examination of another three projects that in combination used 26 certified subcontractors showed that only 5 subcontractors had completed the verification form—though DDCR’s SOP requires that compliance managers obtain at least one form from each certified subcontractor on the job.<sup>5</sup>

Notably, though, while this SOP does not establish any definite time frame for completing the verification process in relation to when the subcontractor finishes its work, its provisions afford compliance managers a potentially valuable measure of flexibility. Indeed, the SOP provides that payment verification should be performed “when we believe it will provide the greatest likelihood of detecting fraud, or having the greatest deterrent effect.” In our view, certainly, the best way to achieve both deterrence and detection is by confirming payments as early as practicable. For this reason, we believe that the SOP should be strengthened by requiring compliance managers to request and obtain a final verification from each subcontractor immediately after it completes its own work on a project—work that often terminates a year or more before the entire project concludes. Faster action by the Department may also improve the rate and accuracy of subcontractors’ responses. Additionally, for larger subcontracts, we recommend that the SOP should require obtaining at least one payment verification while the subcontract is still active.

For their part, though, DDCR managers told us that staffing deficiencies had resulted in a common practice of requesting verifications only during the Department’s case-closing process—which is after the entire project had been completed. As noted with respect to the SOP discussed above, this practice results in too great a lag in verification and should be changed.

### **Case Closings Not Completed**

As noted above, careful monitoring of contractors’ compliance, and the consequent detection and deterrence of fraud, depend on a timely review of contracts completed by the MTA operating agency. DDCR’s own final assessment of each prime contractor’s compliance is supposed to take place after the operating MTA agency has completed the contract. At that point, when the Department calculates the final percentage of work done and pay received, it relies in part on the subcontractors’ own verifications that they actually worked and were compensated as claimed. The DDCR Case Closing form summarizes original and revised goals for MWDBE participation in the contract, describes visits to sites, and permits explanation of other relevant issues. The Department’s closing process also provides compliance managers with the opportunity to catch and correct any earlier mistakes in processing, such as errors in entering payment data into the Skyline case management system.

Yet, despite the importance of case-closing reviews, we found that DDCR had largely neglected the entire process. Initially we discovered that of the 17 contracts in our sample, DDCR had completed final reviews of only two—the other 15 remained unresolved although the operating agencies had completed each of these contracts at least six months before our audit. It then

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<sup>5</sup>Compliance managers told us that DDCR deems this information so critical that if the subcontractor does not return the verification, the manager must obtain cancelled checks from the prime contractor to prove payment.

became apparent that those 15 cases were part of a sizeable backlog. When we tried to gauge the extent of that backlog, however, managers told us that the Department kept no comprehensive list of contracts already completed by MTA's agencies but not yet reviewed by DDCR.

Therefore, to estimate the number of backlogged case-closings, we accessed DDCR's Skyline system and identified 973 "inactive" contracts<sup>6</sup>—and then found that the Department had apparently performed its own closing review on only 31 (3 percent).<sup>7</sup> These figures strongly suggest that DDCR has a massive case-closing backlog.

Senior management acknowledges that DDCR's case-closing backlog is substantial and blames it chiefly on a lack of staffing—the same reason it gave us for why it deferred requesting contractor verifications of payment to this case-closing phase. While DDCR asserted that the MTA's operating agencies have not consistently informed the Department of completed contracts, in our view the Department must have its own mechanism for detecting newly-closed contracts requiring its final review. To that end, it must work with the operating agencies to receive timely notification of each contract closing, and must also separately ensure that its own managers promptly act on these notifications. More specifically, the Department should revise its Case Closing SOP to require that its final reviews be completed within a specific period. It should also develop performance measures to assess its own progress in closing cases, which measures we suggest should be included in DDCR's future reports to the appropriate committee(s) of the MTA Board.

### **DDCR Files Do Not Adequately Reflect the Extent of Contractors' Compliance**

During our review of DDCR's case files, it became apparent that the Department has not imposed a rigorous and consistent order on the extensive records that must be maintained for each monitored contract. For example, while we found similarities in the nomenclature of the standard computer folders, the types of documents contained in these folders varied from case to case. We also found inconsistencies in the filing of critical documents: some were placed in correspondence folders, others attached to e-mails, and yet others scanned together into one long document.

We began our search for case records electronically with readily accessible computer files. But when these proved insufficient, compliance managers next searched for additional documentation in a variety of paper files, leading to reports by some of these managers of difficulties in working with poorly-organized boxes of records that former managers had left behind. This inefficient and disorganized departmental filing system hindered our search for key documents, as well as our broader effort to assess the effectiveness of the Department's own

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<sup>6</sup> As noted, DDCR's final assessment of a prime contractor's compliance occurs only after the operating agency has completed the contract. While DDCR uses "inactive" to refer to all cases whose contractors are not currently expected to submit monthly reports, DDCR does not know how many of these involve contracts that have actually been completed by the operating agencies—the triggering event for the Department's own final review (closing).

<sup>7</sup> Our estimate is based on a Skyline report that shows DDCR had recorded a "DDCR close date" for only 31 of its inactive cases.

monitoring. DDCR must impose order by creating a uniform system for both its electronic and paper filings.

Another fundamental problem we encountered is that DDCR's case files, as well as its electronic Skyline case management system (discussed below), lacks any standardized document summarizing each contractor's compliance at any given time with MWDBE requirements. In the absence of such a document, neither the Department nor any reviewing entity (such as the OIG) can readily determine compliance status even of the Department's most extensively documented cases. We believe that efficient and transparent management of DDCR's work requires a comprehensive form or chart for each case, clearly showing the prime contractor's compliance status as it affects each subcontractor, and including such matters as alterations in any subcontractor's percentage of the contract's value; payments disbursed to subcontractors; verifications obtained from subcontractors; visits to sites; and other monitoring steps completed. For each certified subcontractor working on a contract, the chart would make clear which required documents (e.g., subcontract agreements) DDCR has acquired or lacks, and exactly what significant monitoring has occurred. To facilitate this approach, DDCR should require that an electronic tracking form or check-list be attached to each file, so that managers can readily evaluate at a glance the current level of compliance on each and every project.

This information, made readily available, should also be used to generate comprehensive measurements of prime contractors' compliance, monitor the performance of DDCR's own managers, and gauge DDCR's efficacy in monitoring different types of contracts. Performance measures assessing the Department's most important monitoring acts, including visiting sites and getting payment verifications, should also be included in its reports to the appropriate committee(s) of the MTA Board.

### **Skyline Contract Management System Is Not Yet Fully Working**

DDCR had long sought to establish a computer-based management system to support its work—a system that would accurately track each project's compliance. In 2009, MTA contracted with Skyline Connections, Inc. for \$765,000, to develop “a web-based Contract Compliance System for the MTA Office of Civil Rights.” The web-based system was intended to track all M/W/DBE subcontracts; monitor prime contractors' compliance with M/W/DBE participation commitments; generate various compliance-related notifications, form letters and emails; and generate key regulatory reports, such as semi-annual FTA reports, as well as various internal management reports.

But Skyline remains an unfinished project. Presently, it tracks prime contracts and subcontracts, and extracts summaries of contract values, MWDBE participation percentages, and payments to prime and subcontractors. Significantly, though, Skyline does not provide a current and complete picture of each prime contractor's compliance. As discussed above, the Skyline system also does not provide a summary of compliance-related documents sent in by prime contractors and other oversight tasks completed by DDCR. Of the five monitoring tasks discussed in this report, only the receipt of subcontract agreements from prime contractors is clearly tracked by Skyline. DDCR officials informed us that unused modules on Skyline such as “Site Visit” and “Close-out Report” do not presently track those monitoring tasks. DDCR case closings are still

done on paper and Skyline continues to classify them erroneously as “inactive,” rather than “closed.” The program’s ineffectiveness in flagging closed cases thus contributes to the Department’s inability to tell which of its “inactive” cases actually require final review. Clearly, the Skyline system could be more effective if DDCR activated more modules, particularly “Site Visit” and “Close-out Report.”

### CONCLUSION

This audit found serious deficiencies in DDCR’s execution of one of its chief function: monitoring to detect and deter fraud in contractors’ claimed use of MWDBE subcontractors. Two critical checks to ensure that fraud does not compromise the achievement of MWDBE goals—risk-based site visits to ensure that certified subcontractors are performing their work, and payment verifications to ensure these subcontractors are being paid for it—are often not performed at all. Given the history of problems raised in this and past audits, which evidence an ongoing risk that fraud or serious compliance violations will go undetected, we see a need for additional oversight and recommend that DDCR develop performance measures on compliance monitoring and report them semiannually to the Audit Committee of the MTA Board.

DDCR must take the steps necessary to improve its monitoring, and should revise and clarify its procedures where necessary to provide clear and realistic guidelines dictating the frequency, timing, and targeting of its monitoring activities. Toward that end, we urge DDCR to implement our 10 recommendations that follow.

## RECOMMENDATIONS

### DDCR should:

1. Develop a reliable system for measuring DDCR's effectiveness in performing the following essential monitoring functions: a) verifying subcontractor participation; b) obtaining subcontractors' agreements; c) conducting site inspections; d) verifying subcontractor's payment; and e) closing cases.
2. Revise the Standard Operating Procedures to require that managers also directly contact and verify participation of subcontractors added after contract award.
3. Greatly increase its inspections of work-sites and establish a risk-based priority for selecting sites to inspect.
4. Adjust the Payment Verification procedure to require the Department to request and verify final payment to the subcontractor immediately after that subcontractor completes its work on a project. For larger subcontracts, the procedure should be modified to also require obtaining at least one payment verification while the subcontract is active.
5. Work with MTA agencies to develop a comprehensive, current list of completed contracts for DDCR's final case-closing review, and establish a plan for addressing the backlog.
6. Establish protocols that require (a) MTA operating agencies to promptly inform DDCR when they complete their contracts and (b) DDCR staff to promptly close cases following contract completion.
7. Report performance measures on compliance monitoring semiannually to the Audit Committee of the MTA Board.
8. Establish standardized procedures that (a) govern the structure and usage of paper and electronic filings, including whether and when to use either or both of these formats, and (b) ensure that records of all critical documents and events affecting each MWDBE case are properly stored and accessible regardless of format.
9. Develop a tracking form for each case that presents both a comprehensive snapshot at any given time of the contractor's compliance with MWDBE requirements, as well as a checklist of DDCR's own completion of necessary tasks.
10. Implement necessary Skyline's compliance tracking modules, including the "Site Visit" and "Close-out Report."