



ACCURACY OF REPORTING ON DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION IN MTA CONTRACTS

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INTRODUCTION

The laws and regulations of New York and the United States have established programs designed to increase the participation of minority and women-owned firms in publicly-funded contracts with private businesses. The program for federally-funded contracts uses the term Disadvantaged Business Enterprise (DBE), meaning a for-profit small business owned by individuals defined to be “socially and economically disadvantaged” and who do not exceed a specified net-worth limit.¹ The program for New York State-funded contracts has essentially the same purpose but uses the term “Minority or Women-Owned Business Enterprises” (MWBE).² These programs apply federal and state guidelines respectively to provide eligible firms with these opportunities. Given the essential similarities of these programs for purposes of our review, this report uses the general term “MWDBE” to cover both programs and the certified contractors participating in them.

Because the Metropolitan Transportation Authority (MTA) and its agencies seek to provide eligible individuals with equal access to procurement and contracting opportunities, the MTA has designated its Department of Diversity and Civil Rights (DDCR or the Department) to administer the MWDBE programs for firms wishing to do business with the MTA.

As required by New York State and federal law, DDCR sets overall percentage goals for the MTA for the participation of certified MWDBEs. The Department also sets goals on specific contracts, gathers and analyzes the relevant data, and makes periodic official reports on MTA’s performance in this area. These reports cover total contract awards and payments, as well as the amounts/percentages going to certified MWDBE contractors. Because the reported results are used by the MTA Board and others to gauge MTA’s progress toward established goals, and to help guide policy-making and future goal-setting, it is essential that the gathering, analyses, and reporting of data be complete and accurate.

¹ “Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual’s control.” See 49 C.F.R. 26.5.

² New York State Executive Law Article 15-a.

The Office of the MTA Inspector General (OIG) recently released a report regarding the manner in which DDCR oversees compliance by participating contractors in MWDBE programs.³ Specifically, that review focused on the Department’s performance in completing monitoring tasks that have the potential to detect and deter a range of compliance violations, up to and including contractor fraud. Based on our findings, we conducted this second review, which focused on the accuracy and completeness of DDCR’s final report to the MTA Board regarding payment information as to ongoing federally-funded contracts during fiscal year (FY) 2013. We also reviewed DDCR's reports to the Federal Transit Administration (FTA) on payments for the MTA's federally-funded contracts that were completed in that period. Our findings follow.

³ “*MWDBE Compliance Monitoring at MTA’s Department of Diversity and Civil Rights*” MTA/OIG #2014-16

FINDINGS

Our current review revealed a combination of design flaws, errors in data entry and analysis, and inadequate internal controls. DDCR needs to correct these errors, improve the systems and controls that allowed them to occur, and ensure that all future reports are accurate and complete.

DDCR's 2013 Report to the MTA Board Overstated DBE Participation

OIG found that a total of \$1.4 billion in payments by the MTA to prime contractors during 2013 was underreported by \$245 million. Similarly, payments to DBE subcontractors were underreported by \$8.7 million out of \$146.7 million. Therefore DDCR inadvertently overstated the final rate reported to the MTA Board for FY 2013 as 11.9 percent when correcting for the errors we found, the percentage was actually closer to 10.4. For the reasons set forth below, this overstatement is attributable to the following mistakes by DDCR.

DDCR's Monthly Progress Report Form Unknowingly Elicited Misleading Information

The Monthly Progress Reports submitted by prime contractors are the key documents used by DDCR managers to track MWDBE performance. DDCR's Standard Operating Procedure (SOP) for these reports states:

These reports document the participation of DBE or W/MBE firms on contracts. The reports show, among other things, payments to the prime contractor/consultant as well as payments to DBE or the W/MBE firms during the preceding month. The report must be submitted by the 15th day of the following month...

Chart 1 below shows the relevant data items called for by DDCR's monthly progress report form.

Chart 1: Prime Payment Fields on Monthly Progress Report

<p>Contract Number: _____</p> <p>Prime Contractor: _____</p> <p>Total Payments to Prime to Date: \$ _____</p> <p>Amount of Last Payment to Prime:* \$ _____</p> <p>Date of Last Payment to Prime: _____</p>
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*Note: Emphasis added

While DDCR has a large MWDBE information packet for contractors that includes a brief instruction to include *all* payments received in the month, the form itself has no such instructions. Indeed, the field where DDCR expects the prime contractor to report its *entire* monthly payment is confusingly labeled “*Amount of Last Payment to Prime.*” Compounding the potential for confusion is the next field, labeled “*Date of Last Payment to Prime*”—which focuses attention on a single payment rather than any total. While most prime contractors typically receive only one payment each month, there are many circumstances where two or more payments are made in that period. When we reviewed monthly payment amounts reported by six major prime contractors in 2013, we found that they duly reported only the last payments they received from the MTA as called for by the form—meaning they did not report \$96 million, comprising the total of the first of two payments made to them in any given month.

Following submission of the progress reports by contractors, DDCR managers had the opportunity to catch these omissions when they entered the payment data from those reports into DDCR’s Skyline computer contract management system, which DDCR uses to input and maintain payment data on all contracts with MWDBE goals. Notably, while the progress report calls for the “last” payment made to the contractor, the Skyline system labels the corresponding field: “*Amount of **Monthly** Payment to Prime*” (emphasis added). Nevertheless, the managers routinely filled in that field by supplying the last payment information from the progress reports as the total of all payments for the month, thereby perpetuating the deficiency.⁴

Significantly, we noted that contractors are routinely—and properly—including all payments received in the “*Total Payments to Prime to Date*” field on the progress reports. However, DDCR does not use this same field to calculate or check the accuracy of the monthly payment field on the Skyline system by subtracting the prior month’s “*Total Payments to Prime to Date*” amount from the current month’s amount. (See recommendation #4)

DDCR should promptly revise its monthly progress report forms to make clear that prime contractors are being asked to report their *total* payments received in the month. (See recommendation #1.) DDCR should also immediately instruct all prime contractors to report the sum of all payments received in the month. (See recommendation #2.) Further, DDCR should promptly implement an aggregate edit check that automatically compares the reported monthly payment with the change in “Total payments.” (See recommendation #4).⁵ Without corrective action, incomplete payment data will continue to affect the accuracy of DDCR’s reports.

⁴ MTA programmers have developed WebFOCUS computer programs that take data from Skyline to compile DDCR’s period payment reports. These reports use this often erroneous “Monthly Payment” data in Skyline to calculate the total quarterly payments to prime contractors.

⁵ An aggregate edit check is performed by a computer system to cross check entries across multiple fields /variables to ensure the data is logical and consistent. For example: Prime’s Contractor’s Current Month’s Total to Date Payments minus Prior Month’s Total to Date Payments = Prime’s Current Monthly Payment.

DDCR Omitted September 2013 Payments to Contractors/Subcontractors from DBE Report

DDCR personnel produced the quarterly report on federal payments for July to September 2013 before receiving and entering many of the contractors' monthly reports. As a result, the MTA Board received incomplete data for that period. Specifically, DDCR produced its report showing \$227 million in payments to prime contractors along with \$34 million in payments to DBE subcontractors. We found, however, that DDCR had downloaded the WebFOCUS reports providing this data on October 10, 2013—five days *before* the October 15th deadline for prime contractors to submit their September monthly progress reports. Concerned that many September 2013 payments were omitted, OIG subsequently re-ran the WebFOCUS reports for the July to September 2013 period and found (see Table 1 below) that nearly \$113 million of September payments to prime contractors and \$12.9 million to DBE subcontractors were omitted from the DBE report for the period.

**Table 1: Dollar Effect of Premature Download of Quarterly Reports on Payment Totals
July - September 2013
(\$ millions)**

DBE Data Category	DDCR Results (10-10-2013)	OIG Correction (8/22/2014)	DDCR Underreporting
Payments to Subcontractors	\$34.2	\$47.1	\$12.9
Payments to Prime Contractors	\$227.2	\$340.0	\$112.8

Most if not all of the omitted payments would have been included if DDCR had used a later date, such as October 31, 2013, as the earliest cutoff date for running the WebFOCUS reports. Since DDCR's Reporting SOP includes no timeframes or deadlines for downloading quarterly data for the Board reports, establishing a cutoff date, such as the end of the month following each quarter, would help to prevent this kind of error and ensure that the Board receives complete data. (See recommendation #3.)

DDCR Mistakenly Counted Some Subcontractors Certified Only as MWBE's

As noted, the DBE and MWBE programs are separate programs, run under the auspices of and reported to federal and state agencies respectively. A subcontractor may be certified for one or both programs, but prime contractors should not receive DBE credit for using subcontractors who are certified only as MWBEs. In the past, DDCR had a practice of allowing prime contractors to submit subcontracts with MWBE certified contractors as an indication of making a good faith effort when they could not achieve their DBE goals. But a June 2011 FTA audit report objected to this practice and DDCR agreed to end it.

Nevertheless, OIG found that for the period July to August 2013, DDCR did not exclude \$4.1 million in payments to MWBE subcontractors who worked on DBE contracts. In its report to the

MTA Board, DDCR included the \$4.1 million with the \$138 million it represented as “payments to certified DBEs.” In the previous quarters for FY 2013, DDCR properly excluded payments to MWBE’s working on federal contracts. To avoid reoccurrence of this error, the program needs better reporting procedures and stronger controls. DDCR should clarify in its relevant SOPs the need for MWBE payments to be excluded from DBE program reports. (See recommendation #6.)

Data Entry Errors Caused Large Payments to a Prime Contractor to be Omitted

Our review identified two payments to a prime contractor totaling \$35 million that DDCR had not manually entered into DDCR’s Skyline system from the monthly progress payments reported by the contractor. As a result, the prime payments reported by DDCR on federal DBE contracts for FY 2013 were understated by an additional \$35 million.

An aggregate edit check would have caught the error we found. As shown in Chart 1 above, the monthly progress report form has a field labeled “*Total Payments to Prime to Date.*” The Skyline data entry system has a matching field. If Skyline had performed this check, the \$35 million error would have been evident. The edit check would also have identified the \$95 million in underreported initial payments in months with multiple payments discussed earlier in this report. Thus, we believe that Skyline should be programmed to run this aggregate edit check so that DDCR compliance managers are alerted to resolve such discrepancies by reviewing data entries and checking with the contractors.

Combined Effect of Errors on DBE Participation Rates

As shown in Table 2 below, DDCR's report to the MTA Board understated payments to prime contractors by almost one-quarter billion dollars. As a result the report incorrectly stated that payments to DBE contractors in federal FY 2013 constituted 11.9 percent of total payments when that total, after correcting for the errors we found, was closer to 10.4 percent.

Table 2: Impact of Errors on DBE Participation Rate

<u>Errors</u>	<u>Prime Payments</u>	<u>Subcontractor Payments</u>	<u>DBE Participation Percent</u>
	(\$ millions)		
Payment Amounts Reported to Board – November 13, 2013	\$1,159.4	\$138.0	11.9%
FY 2013 Reporting Errors:			
Initial Payments Unreported in Multiple Payment Months	\$96.5		
September Omissions	\$112.7	\$12.9	
4th Qtr Payments to MWBE Subcontractor Incorrectly Included		(\$4.1)	
Unreported Payments: June & August	\$35.6		
Total Payment Errors	\$244.8	\$8.7	
Corrected FY 2013 Totals per OIG	\$1,404.2	\$146.7	10.4%

MTA Audit Services Review of July 2014 Payments

In response to OIG audit findings, including the above-reflected errors in 2013 data, MTA Audit Services worked with DDCR to improve the program's systems and controls. During its work, Audit Services found similar errors in the July 2014 payment data, i.e., \$19 million in data entry errors and \$48 million in underreported payments to prime contractors. Additionally, in early 2015, OIG reviewed a large NYC Transit construction contract and found that four payments to the prime contractor in 2014 totaling \$10 million had not been entered in Skyline. Each of these missing payments was the first of two payments in a month. Thus, the deficiencies are continuing.

DDCR Must Take Additional Steps to Ensure the Accuracy of Future Reports

The correction of the monthly progress report form and improvements to system controls discussed above are essential to eliminate the errors we found. Additionally, we identified other steps DDCR needs to take to ensure that all required information is promptly and accurately entered into Skyline and downloaded into the WebFOCUS reports used to prepare its periodic reports to the MTA Board, New York State, and the FTA.

DDCR Should Obtain Prime Contractor Payment Data directly from the MTA Business Service Center (BSC)

Currently, for technical reasons, DDCR cannot routinely download MTA agency payment data from the BSC into DDCR's Skyline system. Rather, the monthly progress reports *from* prime contractors are DDCR's only current source of such information on payments *to* prime contractors. Indeed, the progress report requires the prime contractors themselves to report to DDCR their own payments received from the MTA. Aside from being unduly cumbersome, we believe this procedure is inherently risky as DDCR did not have a way until very recently to readily verify these contractor-reported amounts.

In January 2015, as an interim solution, BSC provided DDCR managers the ability to view BSC payments made in 2015 alongside prime contractor reported payments in Skyline. However, these payments cannot be directly entered into Skyline, so managers must be careful to compare reported figures and resolve any discrepancies. To ensure consistent and reliable data, DDCR needs to get payments made to prime contractors downloaded directly into Skyline from the MTA's payment system. Because this access is currently unavailable, the other changes described above, including revisions to the monthly progress report form and aggregate edit checks of data entered into the Skyline system, are essential alternatives until the technical problems are resolved.

Better Safeguards Are Needed to Detect Skyline Data Entry Errors

As noted, we found that the data entered on Skyline is not always accurate or reliable. Aside from the errors discussed above regarding contractors, our review of subcontractor payment data on Skyline for sampled contracts revealed three entry errors regarding those payments. Most significantly, a 2011 DDCR data entry erroneously showed a payment to a subcontractor of \$562,312 rather than \$62,312. This one-half million dollar error had been carried in Skyline, unnoticed until the OIG audit, even though this single payment was higher than the total value of the subcontract. That error caused the DBE goal attainment for this contract to be overstated by over one percentage point.

Compliance managers informed us that while this \$500,000 data-entry error is certainly substantial, Skyline failed to catch it because the system currently performs only a single edit check that seeks confirmation from managers about the accuracy of the payment figure, but only when it is over \$1 million. We believe that this edit check is far too narrow and should be broadened to ensure that managers are alerted appropriately to a range of data errors and

inconsistencies. For example, it is important that Skyline alert managers when a subcontractor's (1) previous total paid plus (2) the current monthly payment does not equal (3) the current total-paid- to- date. Once alerted, the manager must determine whether the inconsistency results from inaccurate or incorrectly-entered data, and whether the error occurred in the current month or before. Adding edit checks to detect individual payments that exceed the total contract balance or that constitute a large percentage of the total contract value would also help detect data errors.

For their part, though, compliance managers told us that such data entry errors should be detected and corrected through the case-closing process that DDCR performs after that the contract is completed. However, DDCR frequently does not conduct a timely final review (case closing) of completed contracts. Additionally, this approach allows erroneous data to stay in the system for years, affecting the payment totals for DDCR's official reports and providing inaccurate information about the contractor's compliance with MWDBE goals.

For these reasons, DDCR should work with MTA programmers to implement edit checks that will catch a broader range of input errors. (See recommendation #4.) Even more pressing, in light of a very recent announcement by the MTA Information Technology (IT) department that further work on Skyline has been suspended,⁶ DDCR managers should also personally review data entries and question any that seems unreasonable or inaccurate.

DDCR Procedures Must Address Proper Handling of Late/Revised Monthly Reports

We observed that nine revised monthly progress reports for one contract had not been entered into Skyline. The prime contractor had left the payment amounts blank for the involved subcontractors in its initial reports, in some cases alerting DDCR in cover letters that it was not ready to report the DBE payments because of unresolved issues. The prime contractor eventually submitted groups of revised monthly progress reports reflecting payments to the subcontractors. With each such submission to DDCR, the prime contractor included cover letters that named the specific subcontractor involved and explained the reasons for the revised payment figures. Nevertheless, none of the payments shown on the nine revised monthly progress reports had been entered into Skyline over a year later. We found total omissions of over \$2 million in subcontractor payments on this one contract.

We learned from DDCR managers that late and/or revised monthly progress reports occur frequently. Clearly, DDCR must ensure that it timely enters and updates on Skyline all information from the monthly progress reports submitted by contractors. (See recommendation #7.) This issue is part of the broader topic of revising and updating DDCR's periodic reports to the MTA Board, covered in the next section.

⁶ In late February 2015, MTA told us that IT had halted "all further work" on the Skyline compliance module in light of a pending transition to a new system (B2GNow) that has been mandated by New York State. Since no further programming changes are being made to Skyline, DDCR should work to mitigate the concerns about Skyline identified in this report and should ensure that any successor system to Skyline addresses these concerns.

DDCR Should Update its Reports to the MTA Board to Address Errors and Late Submissions

DDCR compliance managers acknowledged that if data is received after a WebFOCUS quarterly report is generated for the MTA Board, no revisions are made to the prior period data in future reports to that Board. They stated that the WebFOCUS reports are run only once for each payment report and are never updated.

In the interests of having the most accurate and complete data, DDCR should have procedures in place for revising the MTA Board reports to incorporate late-arriving data and to correct for errors discovered after a report has been released. Any revised figures in the MTA Board reports should be clearly noted as such. (See recommendation #8.)

DDCR Must Improve Its Reporting to FTA on Completed Contracts

In addition to the reports discussed above, DDCR is required to make a semi-annual report to the FTA summarizing the overall payments and participation rates for all relevant federally funded contracts completed by the MTA and/or its constituent agencies (collectively the MTA) in the previous six-month reporting period. We found in our recently issued report on DDCR's MWDBE compliance monitoring⁷ that DDCR lags far behind in its case closing process and, as a result, its reports to the FTA do not cover most recently completed contracts. During 2013, DDCR reported on only seven completed contracts with a total final value of \$169 million. OIG's review of a sample of 13 completed contracts in FY 2013 found that DDCR had finalized its work and reported on only one of the 13. The other 12 contracts were not reported and had an aggregate final value of \$445 million.

The federal instructions require DDCR to timely report the aggregate payment data for all contracts with DBE goals that have been completed by the operating agencies in the covered period. Nevertheless, DDCR told us that it does not include a completed contract in its report unless and until it has finished reviewing it and as to seven of the completed contracts that DDCR reported on in 2013, two had actually been completed in 2012. By way of explanation for DDCR's departures from reporting requirements, compliance managers stated that their payment verifications and other closing work can take months to complete after they learn that an agency has completed a DBE contract. While it is understandable that DDCR wants to conduct a final review before reporting contract results to the FTA, DDCR must take care to do this within the required timeframe. (See recommendation #9.)

Another concern we have about DDCR's limited reporting on completed contracts is that it does not report some contracts with weaker DBE performance. For example, NYC Transit had completed a contract with a final value of \$117.7 million on December 27, 2012. The assigned compliance manager completed the DDCR case closing form in 2013 and confirmed that the DBE participation rate was 18 percent against a goal of 20 percent. The manager told OIG in

⁷ MTA/OIG #2014-16, see footnote 3.

May 2014 that DDCR senior management did not want to finalize the case until the contractor came in to explain its DBE shortfall. We pointed out that no such explanation could change the results of a completed contract; therefore, there was no reason to delay DDCR's case closing, which had the effect of excluding the results for this contract from DDCR's report to the FTA.⁸ Currently, DDCR's SOP makes does not provide guidelines for the required reporting of the payment data on MTA's completed FTA-funded contracts. DDCR should correct this deficiency. (See recommendation #9.)

⁸ The total value of the three completed contracts reported in DDCR's next semiannual report to FTA was \$69.0 million. Thus, this one additional contract for \$117.7 million had a much greater value than the combined three contracts that DDCR did report.

CONCLUSION

Our review of DDCR's processes for collecting and reporting DBE contract payments found major errors, systemic deficiencies, poor controls, and inadequate SOPs in Federal Fiscal Year 2013. Beginning in 2014, MTA Audit Services worked with DDCR to improve the program's systems and controls. During its work, Audit Services found significant errors in the July 2014 payment data that echoed our findings. Additionally, in early 2015, OIG reviewed a large NYC Transit construction contract and found that four payments to the prime contractor in 2014 totaling \$10 million had not been entered in Skyline. Evidently, the past problems we identified are continuing.

Notably, effective in June 2015, federal reporting requirements will include the payment data on current contracts that DDCR is now reporting only to the MTA Board. This heightens the importance of implementing the recommendations and addressing the problems found in this audit. Further, while OIG did not review the adequacy in general of DDCR's data and reports on contract awards, or the accuracy of its state MWBE program reports, the deficiencies we found in federal payment reporting raise concerns that the Department's data collection, analysis, and reporting systems in these other respects are similarly deficient. For this reason, DDCR should broadly revisit and test these systems to ensure that they produce timely and accurate results. (See recommendation #10.)

In this audit, OIG's methodology provides an example of such testing. We took a sample of contracts and compared the BSC payment data with the monthly progress report data, the data entered on Skyline, and the WebFOCUS reports. Our sampling revealed extensive discrepancies in the prime contractor payment totals for specific contracts. Similarly, in reviewing the data entry process and the design of the monthly progress report form, we found the major contributing causes behind these errors. For their part, then, to ensure accuracy, DDCR and MTA programmers should conduct similar tests and reviews of all of DDCR's statistical reports.

RECOMMENDATIONS

DDCR should:

1. Revise the monthly progress report form to make clear that prime contractors are to report the total of all payments received in that month.
2. Immediately instruct prime contractors to report on the progress report the sum of all payments (not merely the last one) received each month.
3. Establish an earliest allowed date, such as the last day of the following month, for downloading quarterly WebFOCUS report data reflecting payments to contractors. This specified date should allow adequate time for the monthly progress reports to be received and processed in Skyline.
4. Develop aggregate edit checks for Skyline that verify total monthly payments to prime and subcontractors reported on the progress report by comparing them to the difference between the total payments to date amounts for the current and prior months. DDCR should also work with MTA programmers to implement other edit checks that will catch a broader range of data input errors and flag potentially erroneous data submitted by contractors.
5. Obtain data directly from the MTA Business Service Center on payments made by the MTA to prime contractors.
6. Update DDCR's reporting procedures to clearly indicate that MWBE payments must be excluded from all reports on federally funded contracts.
7. Take steps to ensure that all monthly progress report data—including late and revised reports—are entered in Skyline on a timely basis.
8. Develop procedures for updating prior period data in reports to the MTA Board to appropriately reflect and correct for late-arriving information, revisions, and data collection or processing errors.
9. Revise its procedures to ensure that the Department reports on all completed DBE contracts within government-specified timeframes.
10. Broadly revisit and test its data collection, analysis, and reporting systems to ensure that they produce timely and accurate results

Agency Response

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

We appreciate the recommendations offered by the above referenced report for accurately capturing and verifying the level of DBE participation in MTA and its agencies contracts and reporting this information to the MTA Board and the Federal Transit Administration (“FTA”). We agree with your office’s conclusion that this is an opportunity to improve performance in this area; and, we will implement all 10 recommendations.

DDCR has already begun to implement corrective action, which includes revising the format of the monthly progress report. In addition, we have instructed contractors to report all payments made to subcontractors in a given month. We are also verifying payments made to prime and subcontractors, and obtaining data directly from MTA Business Service Center on payments made by MTA to prime contractors. DDCR either has revised, or is in the process of revising procedures for updating data previously reported to the MTA Board to reflect any errors or revisions, timely reporting of completed contracts to the FTA, and to review data in general to ensure timely and accurate production of reports. Regarding the downloading of the WebFOCUS report, the end of quarter report will be generated as soon as the data has been checked and verified. Specific to the Skyline System, we plan to migrate to the State B2G System by the end of the year; and in the meantime, we have implemented internal controls to confirm payments made to prime and subcontractors.