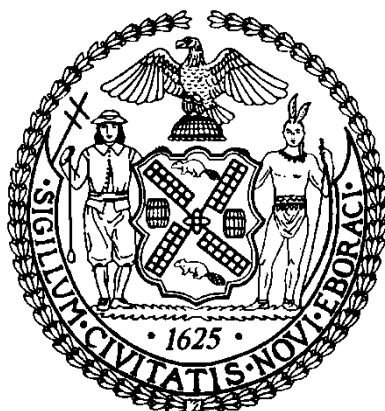


# **CITY OF NEW YORK OFFICE OF THE COMPTROLLER**

**John C. Liu  
COMPTROLLER**

## **MANAGEMENT AUDIT**

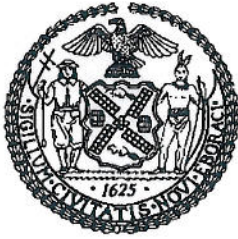
**Tina Kim  
Deputy Comptroller for Audit**



### **Audit Report on the Department of Environmental Protection's Monitoring of Prime Contracts with Subcontracting Goals Covered by Local Law 129**

*MJ11-124A*

**June 1, 2012**



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

John C. Liu  
COMPTROLLER

June 1, 2012

**Dear Residents of the City of New York:**

My office has audited the Department of Environmental Protection's (DEP) efforts to monitor prime contractors' compliance with Local Law 129 (LL129) regarding the use of Minority- and Women-owned Business Enterprises (M/WBEs) and the City's prompt payment rules and regulations with regard to paying their subcontractors. We audit City agencies such as this to ascertain whether they adequately monitor their prime contractors' compliance with contract provisions and applicable regulations.

The audit determined that DEP complied with provisions of LL129 with respect to monitoring prime contractors' use of M/WBEs. However, opportunities for improvement were identified in DEP's monitoring activities. Strengthening its controls in this area would allow the agency to more effectively assess its prime contractors' overall compliance in attaining their M/WBE subcontracting goals. The audit also noted that DEP did not ensure that prime contractors submitted all required quarterly reports and, as a practice, did not adequately review or evaluate the M/WBE subcontracting information reported by the prime contractors.

The audit made nine recommendations, including that DEP should: (1) continue to improve its monitoring of prime contractors' progress in meeting their M/WBE subcontracting goals; (2) ensure that prime contractors promptly submit all key documents required by LL129, DEP regulations, and related contract provisions; and (3) more closely review and evaluate the prime contractors' reported subcontracting plans.

The results of the audit have been discussed with DEP 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](mailto:audit@comptroller.nyc.gov).

Sincerely,

John C. Liu

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***The City of New York  
Office of the Comptroller  
Management Audit***

**Audit Report on the  
Department of Environmental Protection's  
Monitoring of Prime Contracts with Subcontracting Goals  
Covered by Local Law 129**

**MJ11-124A**

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**AUDIT REPORT IN BRIEF**

Local Law 129 ("LL129") of 2005 created the City's Minority- and Women-owned Business Enterprise (M/WBE) Program. LL129 was enacted to address significant disparities in contracting opportunities afforded to certain M/WBE groups in City procurement. LL129 establishes M/WBE certification requirements, contract-participation goals, technical assistance, administrative, and enforcement procedures to promote the use of M/WBE firms for City contracting and subcontracting procurement opportunities under \$1 million. Each City agency that oversees prime contracts covered by LL129 is required to monitor the prime contractors' compliance with their plans to use subcontractors and M/WBEs (i.e., their utilization plans).

The Department of Environmental Protection (DEP) is responsible for protecting the City's environmental health. According to agency records, during Fiscal Years 2007 through 2010, DEP awarded 14 prime contracts (valued at \$47 million) with M/WBE subcontractor participation goals, totaling \$2.6 million, subject to LL129.

This audit determined whether DEP adequately monitors prime contractors' compliance with LL129 and whether those contractors complied with the City's prompt payment rules with regard to paying their subcontractors. The audit scope period covered Fiscal Years 2007 through 2011.

**Audit Findings and Conclusions**

The audit determined that DEP complied with provisions of LL129 with respect to monitoring prime contractors' use of M/WBEs firms. However, weaknesses were identified in DEP's monitoring activities that limit the agency's ability to effectively assess its prime contractors' overall compliance in attaining their M/WBE subcontracting goals.

DEP's primary monitoring activities included performing job site visits, requiring that its prime contractors submit certain periodic reports, and performing a closeout reconciliation near the end of the contract term. In mid-2011, DEP implemented a new procedure requiring a spot

check review of prime contractors' files early on to assess and track issues related to their compliance. Even though these procedures addressed some deficiencies, DEP still did not contact M/WBE subcontractors on a regular basis to verify their use by prime contractors nor did it require proof of prime contractors' payment to their subcontractors until near the end of the contract and the closeout reconciliation is performed. Further, DEP does not periodically audit its contractors' books and records to verify payments made to subcontractors.

The audit also noted that DEP's ability to effectively monitor its prime contractors was limited by other weaknesses, including that: (1) DEP's Bureau of Engineering Design and Construction (BEDC) and the office of the Agency Chief Contracting Officer (ACCO) did not have a clear line of communication with regard to sharing contract matters, and (2) DEP did not ensure that prime contractors submitted all quarterly reports and, as a practice, did not adequately review or evaluate the information reported by the prime contractors.

### **Audit Recommendations**

To address the above weaknesses, the audit made nine recommendations, including that DEP should:

- Continue to improve its monitoring of prime contractors' progress in meeting their M/WBE subcontracting goals.
- Ensure that prime contractors promptly submit all key documents, (e.g., Quarterly Reports and Subcontractor Approval Forms) required by LL129, DEP regulations, and related contract provisions.
- More closely review and evaluate the prime contractors' subcontracting plans as reported on Subcontractor Approval Forms and actual payments to subcontractors reported on quarterly reports.
- Establish formal procedures for communicating problems and relevant contract information between departments to document and communicate to all related parties (BEDC, ACCO's Office, etc.) contractor deficiencies observed at the job sites and other related concerns along with the actions taken to remedy such deficiencies and address matters of concern.

### **DEP Response**

DEP officials generally agreed with eight of the audit's recommendations and stated that it will consider implementing the recommendation that it develop a standard tool for engineers to use to document their job site observations.

## INTRODUCTION

### Background

LL129 of 2005<sup>1</sup> created the City's M/WBE Program. LL129 was enacted to address significant disparities in contracting opportunities afforded to certain M/WBE groups<sup>2</sup> in City procurement, as disclosed in a 2005 study commissioned by the City Council. LL129 establishes M/WBE certification requirements, contract-participation goals, technical assistance, administrative, and enforcement procedures to promote the use of M/WBE firms for City contracting and subcontracting procurement opportunities under \$1 million. The law sets forth subcontractor participation goals for certified M/WBE firms for professional services and construction services. The Department of Small Business Services (DSBS) certifies participating businesses as M/WBEs through an application process to prevent fraudulent claims under the program. Only those M/WBE firms certified by DSBS can participate in City procurement.

Each City agency that oversees prime contracts covered by LL129 is responsible for setting target subcontracting percentages (TSP)<sup>3</sup> and M/WBE participation goals<sup>4</sup> (M/WBE subcontracting goals) for contracts before issuing requests for bids. A bidder must complete a Subcontractor Utilization Plan indicating the expected percentage of the total contract value anticipated to be subcontracted, taking into account the agency-established TSP and M/WBE subcontracting goals. If the bidder anticipates that it will not subcontract at the targeted level, it must seek a TSP waiver from the Mayor's Office of Contract Services (MOCS).

DEP is responsible for protecting the City's environmental health and natural resources, managing the water supply, and enforcing air and water quality regulations, the noise code, and standards governing the handling and disposal of hazardous materials. According to agency records, during Fiscal Years 2007 through 2010, DEP awarded 14 prime contracts (valued at \$47 million) for professional and construction services with M/WBE subcontractor participation goals, totaling \$2.6 million, subject to LL129.<sup>5</sup> DEP's M/WBE Officer is directly responsible for monitoring the activities of its contracting offices and contractors to ensure compliance with LL129 and for generating and maintaining effective procedures to track progress and communicate results.

DSBS (in conjunction with MOCS) publishes an annual report to the City Council providing compliance information on the M/WBE program. This annual report, together with the *Agency Procurement Indicators* reports published by MOCS, provides information and data required by LL129. The annual report provides a summary of program activity and steps

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<sup>1</sup> §6-129 of the New York City Administrative Code formally established the City's M/WBE program.

<sup>2</sup> Covered groups include Black Americans, Hispanic Americans, Asian Americans, and Caucasian Women.

<sup>3</sup> The "target subcontracting percentage" is the percentage of the total contract dollar value that the agency/prime contractor estimates will be awarded to one or more subcontractors in amounts under \$1 million for construction and professional services.

<sup>4</sup> The "M/WBE subcontractor participation goals" for a particular contract are established by the contracting agency and represent a percentage of the total dollar value of all M/WBE construction and/or professional services subcontracts under the prime contract for amounts less than \$1 million.

<sup>5</sup> DEP also has prime contracts with M/WBEs or Disadvantaged Business Enterprises (DBE) subcontractors that fall under New York State M/WBE and federal DBE program requirements.

agencies have taken to comply with the requirements of the law. The *Agency Procurement Indicators Reports* contain prime contractor utilization figures for City-certified M/WBEs.

### **Objectives**

To determine whether (1) DEP adequately monitors prime contractors' compliance with LL129 and (2) DEP's contractors complied with the City's prompt payment rules with regard to paying their subcontractors.

### **Scope and Methodology Statement**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions, based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of our audit initially covered Fiscal Years 2007 through 2011 (July 1, 2006 – June 30, 2011). It was later expanded to include Fiscal Year 2012 (through December 31, 2011) to assess the adequacy of new monitoring procedures implemented by DEP in mid-2011. Please refer to the "Detailed Scope and Methodology" section at the end of this report for the specific procedures and tests that were conducted.

### **Discussion of Audit Results**

The matters covered in this report were discussed with DEP officials during and at the conclusion of this audit. A preliminary draft report was sent to DEP officials and discussed at an exit conference on April 10, 2012. On April 17, 2012, we submitted this draft report to DEP officials with a request for comments. We received a written response from DEP officials on May 1, 2012. In their response, DEP officials generally agreed with eight of the audit's recommendations and stated that it will consider implementing the remaining recommendation that it develop a standard tool for engineers to use to document their job site observations.

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

## **FINDINGS AND RECOMMENDATIONS**

DEP complies with provisions of LL129 with respect to monitoring prime contractors' use of M/WBEs firms. However, the weaknesses we identified in DEP's monitoring activities limit the agency's ability to effectively assess its prime contractors' overall compliance in attaining their M/WBE subcontracting goals.

We found that DEP's primary monitoring activities included performing job site visits, requiring that its prime contractors submit certain periodic reports, and performing a closeout reconciliation near the end of the contract term. In mid-2011, DEP implemented a new procedure requiring a spot check review of prime contractors' files early on to assess and track issues related to their compliance. While these procedures addressed some deficiencies, we found that DEP does not contact M/WBE subcontractors on a regular basis to verify their use by prime contractors nor does it require proof of prime contractors' payment to their subcontractors until near the end of the contract and the closeout reconciliation is performed. Moreover, DEP does not periodically audit its contractors' books and records to verify payments made to subcontractors. Because of these weaknesses, DEP was not aware until after the contract had ended that one of our four sampled prime contractors fell short of meeting its M/WBE subcontractor goals. Further, DEP did not perform a contract closeout reconciliation until prompted by our audit one year after the contract had ended.

In addition, we noted other weaknesses that limit DEP's ability to effectively monitor its prime contractors. Specifically, we found that: (1) BEDC and the ACCO's office did not have a clear line of communication with regard to sharing contract matters and (2) DEP did not ensure that prime contractors submitted all quarterly reports and, as a practice, did not adequately review or evaluate the information reported by the prime contractors.

We also found that the anticipated subcontractor amounts for each of the sampled prime contracts that DEP recorded in the City's Financial Management System (FMS) did not match the amounts reported to DEP by the prime contractors. Accordingly, FMS did not accurately reflect each contractor's anticipated subcontractor amounts. This is of concern because MOCS bases its public reporting of contract, subcontracting, and M/WBE participation on this FMS data.

As to the prompt payment of subcontractors, we found that three of the four sampled prime contractors, upon receiving payment from DEP, promptly paid their subcontractors in line with the City's prompt payment requirements (PPB Rules §4-06). (The fourth contractor filed for bankruptcy in April 2011, so we could not confirm its payment practices.)

The deficiencies identified above are discussed in detail in the following sections of this report.



## **DEP Needs to Improve Its Monitoring of Prime Contractors' Compliance with M/WBE Subcontracting Goals**

DEP has contract monitoring guidelines in place. However, it needs to improve its monitoring procedures to verify the use of M/WBE subcontractors, foster prime contractors' compliance, and assess early on and through the contract term whether prime contractors are making substantial progress toward meeting their respective M/WBE subcontracting goals.

For contracts with established M/WBE subcontracting goals, LL129 requires agency M/WBE officers to monitor each contractor's compliance with its utilization plan by "appropriate means," including but not limited to inspecting job sites, contacting M/WBE subcontractors identified in the plan to confirm their participation, and auditing the prime contractor's books and records.

Until approximately mid-2011, DEP's key procedures for monitoring prime contractors' progress toward meeting their M/WBE subcontracting goals consisted of: (1) resident engineers and/or project managers visiting job sites; (2) requiring prime contractors to submit quarterly reports and Subcontractor Approval Forms<sup>6</sup> (SAF) detailing the use and payment of M/WBE subcontractors; and (3) performing a reconciliation (closeout) of actual payments to subcontractors to amounts reported by prime contractors when a contract is approximately 98 percent complete.

These monitoring activities are still in use and provide DEP with some insight into a contractor's use of M/WBE subcontractors. However, they are limited and do not equip DEP with effective, ongoing compliance monitoring and feedback capabilities throughout the contract term. We noted that through the course of the contract, as a practice, DEP did not regularly or periodically:

- contact M/WBE subcontractors to verify their participation;
- require proof of payments to M/WBE subcontractors;
- audit contractors' books and records to verify payments made to subcontractors; and
- review its own contract files during the course of a contract to identify deficiencies with contractors' submission of required reports and documentation.

For three of the four procedures, DEP did not apply them until a contract was near or at its end and a closeout was performed. The remaining procedure—auditing of contractors' books and records—was not performed by DEP at all. Accordingly, DEP could not effectively assess early on whether contractors were making progress toward or having trouble in meeting their respective M/WBE subcontracting goals.

Because of these weaknesses, DEP was not aware until after the contract had ended that one of our four sampled prime contractors fell short of meeting its M/WBE subcontractor goals; therefore, it failed to comply with LL129 requirements established in its contract. For sample

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<sup>6</sup> Subcontractor Approval Forms are commonly referred to as Request for Subcontractor Approval forms or subcontractor approval requests by DEP.

contract #3, the total target subcontracting value was \$163,333 with an M/WBE subcontracting goal of 31 percent or \$50,633. However, the contractor paid only \$17,050 to M/WBE subcontractors, 66 percent below its M/WBE subcontracting goal amount.

DEP officials stated that the project was delayed because the contractor experienced financial problems. These factors should have raised concerns and triggered DEP's scrutiny of the contractor early on. Despite DEP's procedure to perform a closeout reconciliation when a contract is approximately 98 percent complete, not until prompted by our audit did DEP undertake a closeout, at which time more than one year had passed since the contract had ended. Although it is clear that the contractor failed to comply with its M/WBE utilization plan, there was no evidence to indicate that DEP was aware that the prime contractor had not met its utilization goal or that it had taken steps to ensure that the M/WBE subcontractors were paid.

DEP officials stated that there had been a breakdown in communication among the ACCO's office, BEDC office, and Finance Office. Consequently, DEP issued a final payment to the contractor despite it being out of compliance. At the exit conference on April 10, 2012, DEP officials stated that the agency still holds a retainage amount of approximately \$27,000 for the contractor. However, DEP may not be able to recoup any excess amounts due to the City because the contractor filed for bankruptcy in April 2011. DEP officials stated that the contractor would be sanctioned through the vendor evaluation process by rating the vendor "non-responsive," which may prevent the owners of the firm from having future business with the City.

DEP officials asserted that sometime in April 2011, just prior to the initiation of our audit, the ACCO's office implemented new compliance spot check procedures geared at assessing and keeping track of contractor issues, including compliance of prime contractors awarded contracts with M/WBE subcontracting goals. DEP provided us with a draft of these procedures on June 29, 2011. However, we could not confirm the date the procedures were actually implemented. Nevertheless, we found that DEP had performed spot-check reviews on the four sampled prime contracts we used in audit testing.

These new procedures address some of the deficiencies noted above, particularly DEP reviewing its own contract files to identify issues early on rather than at the end of the contract term. The procedures require that a compliance spot check (review) be performed on selected contracts when they are about 25 percent complete. A minimum of four randomly selected contracts are to be reviewed each week and at least one out of every six reviews is supposed to be of a LL129-covered project.

According to the procedures and DEP officials, reviewers from the ACCO's Office are to:

- Sort, read, and review all documentation in the file, including employment reports, subcontractor approval requests, quarterly reports, and communications between DEP and the contractor.
- Identify issues and other deficiencies with contractors' submission of required reports and other documentation, and contact a sample of M/WBE subcontractors to verify their participation and the accuracy of information reported by the prime.

- Report and follow up with contractors on all “action issues” (i.e., deficiencies).

We commend DEP for implementing the new spot check procedures so that it can better assess issues relating to its M/WBE compliance. However, DEP still does not require proof of prime contractors’ payments to their subcontractors until near the end of the contract. Further, the spot check frequency has not been established and the procedures call for DEP to contact only a sample of M/WBE subcontractors to verify their participation. Due to these factors, along with other weaknesses disclosed by our audit (discussed below), we believe that DEP needs to employ additional steps to enhance its monitoring efforts and to ensure that contractors are making progress toward meeting their M/WBE subcontracting goals.

### **Communication Weaknesses**

Although DEP’s resident engineers have been advised of key M/WBE compliance issues, they are not directly responsible for tracking contractors’ compliance with their M/WBE participation goals. (This is the responsibility of the ACCO’s office.) Among their oversight responsibilities, during job site visits, the resident engineers observe subcontractor (M/WBEs and non-M/WBEs) activity at the site and note this activity. Based on our interviews of the resident engineers for the four sampled contracts, we found that DEP does not specifically require or have a standard formatted tool (i.e., log or checklist) that the engineers must use to record and report their job site observations. Instead, the resident engineers may note their observations in a notebook or other method of their choosing.

Further, the engineers with whom we met told us that, if during a site visit they do not observe a listed subcontractor who is supposed to be at the job site on a given day, such a deficiency is supposed to be reported back to a supervisor in the BEDC office, which is to contact the ACCO’s office. However, DEP officials stated that communication difficulties exist between BEDC and the ACCO’s office. Moreover, there is no formal procedure for communicating problems between departments, and therefore no evidence was available for us to evaluate whether any such deficiencies existed, were reported by the engineers to their supervisors, and, if so, to what extent they were communicated to the ACCO’s office and what actions were taken to remedy such deficiencies.

Without a clear flow of communication between departments, DEP limits its ability to effectively monitor contractors’ compliance with LL129 as well as other contract administration issues not covered by this audit.

### **Weaknesses with Quarterly Reports**

DEP officials asserted that the quarterly reports are key to the agency’s monitoring of prime contractors’ payments to its M/WBE subcontractors during the course of their contracts. However, we found that DEP did not ensure that prime contractors submitted all required quarterly reports and, as a practice, did not review or evaluate the information reported by the prime contractor.

DEP requires prime contractors with agreements covered by LL129 to submit quarterly reports for each quarter from the contract start date. The reports detail the total amount paid by the prime to M/WBE subcontractors, the names and addresses of each M/WBE subcontractor, the work they performed, and the dates and amounts paid to each.

We attempted to reconcile the quarterly reports with the quarterly periods for which they were intended. However, as reflected in Table I below, we found that DEP did not obtain all required quarterly reports from the four prime contractors we sampled.

**Table I**

Analysis of Quarterly Reports Submitted by Four Sampled Prime Contractors  
for the Period 9/1/09 – 7/31/2011

Sample Contract #	Contract Term	Earliest M/WBE Sub-K Start Date as per SAF (1)	Latest M/WBE Sub-K End date as per SAF(1)	<i>a</i> Total # of Quarters for which Reports Should have been Submitted	<i>b</i> Total Quarterly Reports in Contract Files	<i>c</i> Number of Missing Quarterly Reports (Not in Contract Files) (Col a-b)	<i>d</i> Number of Missing Quarterly Reports that DEP Followed up with Contractor
#1	4/27/09–4/27/12	9/1/09	7/31/12	8	4	4	0
#2	2/7/09– 2/7/12	12/14/09	10/31/11	7	0	7	2
#3	2/22/10– 12/10/10	No start/end date on SAF *Used Prime Contract Dates		4	1	3	1
#4	7/6/09–7/5/13	10/1/09	7/5/13	7	3	4	0
Total				26	8	18	3

Note: (1) “SAF” refers to Subcontractor Approval Forms

As reflected above, for the period September 1, 2009 (representing the earliest start date associated with the four sampled contracts) through July 31, 2011 (test cutoff date), we calculated that there should have been 26 quarterly reports for the four contracts. However, only eight (31 percent) of the required 26 reports were in the contract files. (If the date written on a report fell within the test period, we considered it applicable and counted it in our analysis.) There was evidence showing that DEP followed up with the contractors for only three of the 18 missing reports. Further, there was no evidence to indicate that DEP took enforcement actions against the contractors to rectify these deficiencies.

We observed that the quarterly report form does *not* require that the covered quarter and year be indicated. The form has a place for the contractor to indicate the date of the report and four check boxes labeled Quarter 1, Quarter 2, etc. for the contractor to indicate the applicable quarter(s) to which the report covers, but no notation is required for the year. Because DEP did not have all of the sampled contractors’ required quarterly reports and the existing forms were lacking sufficient information, we could not be assured that we identified all missing reports.

Upon discussing this matter, DEP officials agreed that there were deficiencies in the quarterly report form that need addressing.

Although DEP cited some missing quarterly reports in its spot checks of our four sampled contracts, the extent or degree of the deficiencies we noted herein were not reflected in the resulting spot check reports. DEP could greatly enhance its monitoring efforts and be better able to assess contractor efforts in achieving M/WBE utilization goals throughout the course of the contracts if it closely monitored quarterly report submissions from its prime contractors and scrutinized the information reported thereupon.

### **Benchmarks or Indicators Not Used for Assessing Contractor Compliance Issues**

As noted earlier, DEP does not audit its contractors' books and records. Further, it does not require proof of the primes' payments to their M/WBE subcontractors until the contract is near completion and a closeout review is performed. Moreover, DEP's new spot check procedures only call for a sample of M/WBE subcontractors to be contacted to verify their participation and the accuracy of information reported by the prime. As a result, DEP is hindered in identifying early on potential problems with contractors in meeting their M/WBE subcontracting goals.

PPB Rules §4-01 states: "Where practicable, the agency shall develop both qualitative and quantitative performance indicators, including outcome criteria. . . . The agency shall monitor the vendor's performance against such standards and indicators on an ongoing basis and sufficiently far in advance of the end of the contract term . . ."

Only one (sample contract #3) of the four contracts in our sample was completed. However, we were unable to gain access to the contractor's books and records to confirm actual payments to its M/WBE subcontractors because the contractor had filed for bankruptcy. As discussed earlier, based on information in DEP's contract file, sample contractor #3 paid only \$17,050 to its M/WBE subcontractors— 66 percent below its M/WBE subcontracting goal amount of \$50,633. The three remaining sampled contracts were still active as of July 31, 2011; therefore, the contractors' overall compliance in meeting their M/WBE utilization plans could not be fully assessed.

Alternatively, as shown in Table II below, for the three sampled prime contracts that were active as of July 31, 2011, we designed a baseline measure to gain insight into their progress in meeting their M/WBE subcontracting goals. Specifically, we calculated the overall contract completion rate (total DEP payments to the prime divided by the total contract amount). We also calculated each prime's M/WBE completion rate (total actual payments made by the prime to M/WBE subcontractors as of July 31, 2011<sup>7</sup>). Then we compared the two rates, taking into account the anticipated end dates of each of the sampled prime contracts, as a measure to assess the primes' progress in meeting their M/WBE subcontracting goals.

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<sup>7</sup> As reported on its quarterly reports and confirmed by their books and records divided by the prime's M/WBE subcontractor goal amount.

**Table II**

Comparison of Prime Contractors Overall Completion Rate to M/WBE Completion Rate  
Based on Total Actual Payments to Total Contract & M/WBE Targeted Subcontracting Amounts  
for Three of Four Sample Prime Contracts with Active Status as of July 31, 2011

Sample Contract # & Term (Anticipated Start –End Dates)	Status As of 7/31/11	<i>a</i>  Total Contract Value	<i>b</i>  Total Actual Payments DEP to Prime Contractors as of 7/31/11	<i>c</i>	<i>d</i>  Total M/WBE Sub- contracting Goal Amount	<i>e</i>  Total Actual Payments to M/WBE Sub- contractors as of 7/31/11	<i>f</i>
				Overall Completion Rate (Percentage)  <i>Col b/Col. a</i>			M/WBE Sub- contracting Completion Rate (Percentage)  <i>Col e/Col d</i>
#1 (4/27/09–4/27/12)	Active	\$14,985,622	\$6,824,421	46%	\$674,353	\$134,289	20%
#2 (2/7/09–2/7/12)	Active	\$1,362,056	\$772,954	57%	\$204,309	\$120,118	59%
#4 (7/6/09–7/5/13)	Active	\$443,431	\$185,708	42%	\$48,290	\$7,237	15%

Based on the above information, we observed that sampled contractor #2 made good progress toward meeting its M/WBE subcontracting goals, considering that it met 59 percent of its M/WBE subcontracting goal amount in comparison to the overall contract completion rate of 57 percent. We also observed that sample contractors #1 and #4 made some progress toward meeting their respective M/WBE subcontracting goals.

However, because the work M/WBE (as well as non-M/WBE) subcontractors are to perform vary and the actual scheduling of subcontractors depends on the phase of a particular project, our analysis does not serve to definitively measure the progress of the sampled prime contractors in meeting their M/WBE goals. Nevertheless, our analysis serves to illustrate the purposefulness and usefulness that benchmarks/indicators serve in the effective early assessment and ongoing monitoring of prime contractors.

DEP could develop more sophisticated and useful benchmarks or indicators as a means to supplement its monitoring activities to assess contractors' progress and help flag potential problems before they become too great to resolve. By effectively monitoring contractors through the course of their contract, DEP would be better able to identify early on if contractors are experiencing problems or not exercising due diligence in engaging M/WBE subcontractors to the level established in their M/WBE utilization plans and their contracts.

## **Recommendations**

DEP should:

1. Continue to improve its monitoring of prime contractors' progress in meeting their M/WBE subcontracting goals. In this regard, DEP should supplement its monitoring efforts by:
  - requiring that M/WBE subcontractors be contacted on a regular basis to confirm their participation;
  - requiring on a sample or more routine basis that prime contractors submit proof (i.e., canceled checks, bank statements, etc.) of payments to their subcontractors;
  - conducting audits of prime contractors' books and records to verify payments made to subcontractors; and
  - developing criteria (benchmarks or indicators) for assessing potential problems with contractors in meeting M/WBE subcontracting goals to supplement and strengthen its monitoring efforts.

**DEP Response:** "DEP agrees that it should continue to improve its monitoring of prime contractors' progress . . ."

2. Ensure that prime contractors promptly submit all key documents, (e.g., Quarterly Reports and Subcontractor Approval Forms) required by LL129, DEP regulations, and related contract provisions.

**DEP Response:** "DEP agrees that it should ensure that all prime contractors submit all key documents. . . ."

3. More closely review and evaluate the prime contractors' subcontracting plans as reported on Subcontractor Approval Forms and actual payments to subcontractors reported on quarterly reports.

**DEP Response:** "DEP agrees that it should closely review and evaluate payments and is exploring a number of options to do so, including, for example, the tracking of all subcontractor payments in a new centralized data base. DEP's review of prime contractors' subcontracting plans is conducted in accordance with the City directives and the use of the 'Subcontractor Approval Form' developed for this purpose."

4. Establish formal procedures for communicating problems and relevant contract information between departments to document and communicate to all related parties (BEDC, ACCO's Office, etc.) contractor deficiencies observed at the job sites and other related concerns along with the actions taken to remedy such deficiencies and address matters of concern.

**DEP Response:** DEP generally agreed, stating: “The Agency has designated a Bureau Chief Contracting Officer (BuCCO) for each Bureau. BuCCO’s are liaisons between the ACCO’s office and individual Bureaus for all procurement matters and MWBE issues. The ACCO has implemented monthly individual Bureau meetings at which procurement and MWBE issues are discussed as necessary. DEP is also implementing its new centralized data system which will improve the information flow between the ACCO and the Bureaus. After the new system is fully rolled-out and all users have had sufficient experience with the system, DEP will evaluate whether additional, formal procedures are necessary.”

5. Develop a standard formatted tool (i.e., log or checklist) that the engineers must use to record and report their job site observations.

**DEP Response:** DEP neither agreed nor disagreed, but instead stated: “A number of tools and initiatives have been implemented or are underway. At this time, it is not clear that a mandatory log or checklist would be beneficial. DEP will, however, consider this recommendation in the future.”

6. Redesign the quarterly report format to show both the applicable quarter and year for which a prime contractor is reporting subcontractor payment information.

**DEP Response:** “DEP agrees that the quarterly report needed to be redesigned. Instead of redesigning this report, however, the City has incorporated the information in this report into the MBE/WBE Payment Voucher Form, which is required to be submitted with payment vouchers.”

7. Update its contract compliance procedures and guidelines as required to address changes in agency and Citywide policy.

**DEP Response:** “DEP agrees and already updates its procedures and guidelines as they change to make sure they are consistent with City policy.”

### **No Centralized Database System for Tracking Contractor Compliance**

DEP does not have a centralized database system in place to assist in identifying, tracking, and following up on issues related to prime contractors’ compliance with their M/WBE subcontracting goals and associated contract and reporting requirements.

LL129 requires M/WBE officers to “track and record” each contractor that is an M/WBE and each M/WBE subcontractor hired pursuant to a prime contractor with M/WBE utilization goals.

DEP maintains hard-copy paper files for each prime contractor. In response to our initial request for a list of prime contracts with M/WBE subcontracting goals awarded between Fiscal Years 2007 and 2010, DEP officials reported having to go through each of the files (some of



which are voluminous) to identify prime contracts subject to LL129. In the absence of a central tracking system, DEP's staff is limited in its ability to effectively track contractor compliance on a consistent basis.

We observed that the ACCO's new spot check procedures contained language stating that DEP was in the process of developing a contract tracking system to track information as part of the spot check procedures and was working on having it accessible by all necessary parties. DEP's contract administration and monitoring activities involve multiple departments. Hence, the use of a computerized database could help DEP to centrally track and monitor ongoing projects. Regarding LL129-covered contracts, a central database would assist DEP to more effectively monitor prime contractors' progress toward meeting their M/WBE subcontracting goals. It would also help DEP to identify and address contractor compliance issues early on.

### **Recommendation**

8. DEP should facilitate the development and implementation of the proposed contract tracking system.

**DEP Response:** "DEP agrees, has developed a contract tracking system and is in the process of converting data and implementing the system Agency-wide."

### **FMS Data on Anticipated Use of Subcontractors Not Accurate**

The anticipated subcontractor amounts recorded by DEP in FMS do not reconcile with the amounts reported to DEP on the subcontractor approval forms by its contractors. For the four sampled contracts, DEP recorded \$5,884,445 in FMS as the prime contractors' estimated subcontract amounts. However, our review of the sampled contract files revealed that prime contractors' reported anticipated subcontract amounts totaled \$6,614,170, a net understatement in FMS of \$729,725 (11 percent).

FMS is the City's primary computer system for recording, processing, and reporting on all City financial transactions, including procurement. Accordingly, FMS captures Agency-approved payments to prime contractors. Payments to subcontractors by prime contractors are not recorded or tracked in FMS because the City is not a party to the subcontracting agreements. Nevertheless, FMS has a Contract Goal Line (CTGL) table that is intended for agencies to record specific information on each of the subcontractors used by the prime contractors. Information reflected in each prime contract's CTGL record includes (among other things) the name of the subcontractor, the subcontract start date, and total anticipated payments to be made to the subcontractor by the prime contractor.

Based on information reported by the prime contractor on an SAF, the contracting agency enters the subcontractor amounts in the CTGL table. If a record needs to be modified (e.g., the total anticipated amount increases or the subcontractor is not used), FMS allows the user to make changes in the CTGL record. Records are not deleted; rather the original record and all

modifications remain in the system, providing an audit trail of the original record and all subsequent changes.

As shown in Table III below, for the four sampled contracts, we identified differences between the M/WBE and non-M/WBE subcontract amounts entered in the CTGL table by DEP and the amounts reported by the prime contractors on the SAFs available in DEP's contract files.

**Table III**

Differences between Subcontractor (M/WBE and non-M/WBE) Amounts Recorded in FMS and Subcontractor Amounts per Subcontractor Approval Forms

Sample Contract #	Anticipated Subcontractor Amounts in CTGL Table		Anticipated Subcontractor Amounts as per SAFs		Difference between FMS CTGL Amts and SAF Amts	
	#Subs	Recorded Amt	# Subs	Reported Amt	# Subs	FMS \$Amt less-SAF \$Amt
#1	9	\$5,533,875	15	\$6,242,794	-6	\$(708,919)
#2	2	\$91,000	2	\$91,000	0	\$0
#3	No Entries	No Entries	2	\$20,806	-2	\$(20,806)
#4	4	\$259,570	4	\$259,570	0	\$0
<b>Totals</b>	<b>15</b>	<b>\$5,884,445</b>	<b>23</b>	<b>\$6,614,170</b>	<b>-8</b>	<b>\$(729,725)</b>

As reflected above, the total subcontractor amount, including M/WBEs and non-M/WBEs, recorded by DEP in the CTGL table for the four sampled contracts was \$5,884,445, a net difference of \$(729,725) (11 percent) less than the amounts reported by the prime contractors. We reviewed the causes of the differences and noted the following:

- Two of the four sampled prime contracts had eight subcontractors with anticipated payment amounts totaling \$2,485,725 as per the SAFs that were not recorded by DEP in the CTGL table. Therefore, FMS was understated by this amount.
- One of the sampled contractors had two subcontractors with anticipated amounts that DEP recorded in the CTGL table at \$1,756,000 that were not reported on the contractor's SAF. Therefore, FMS was overstated by this amount.

The results of our analysis indicate that DEP underreported the anticipated subcontractor use for two of the four sampled contracts. They also provide indications of a potentially larger problem— that DEP may be inaccurately reporting in FMS prime contractors' anticipated use of subcontractors for its population of contracts. This is of concern because, as discussed later, MOCS bases its public reporting of contract, subcontracting, and M/WBE participation on this FMS data.

## **Recommendation**

9. DEP should ensure that its FMS CTGL data on anticipated payments to subcontractors are consistent with the anticipated payments noted by its prime contractors on Subcontractor Approval Forms.

**DEP Response:** “DEP agrees and will work more closely with Bureau personnel responsible for entering this data. DEP will also obtain additional FMS training for the appropriate responsible staff.”

## **Other Issue**

### **DEP Procurement Data Reported by the Mayor’s Office of Contract Services**

Each year, MOCS publishes its *Agency Procurement Indicator Report*, which among other things, includes information on M/WBE subcontractor participation goals and the use of M/WBE subcontractors in City procurement. MOCS bases its reporting on contract award (anticipated) amounts. The actual payments to M/WBE subcontractors on contracts with established M/WBE goals are *not* publicly reported.

As the City’s primary computer system for recording all financial transactions, including procurement, FMS is the source of data used by MOCS to compile its reports. As previously noted, contracting agencies enter the subcontractors to be used by the primes along with their anticipated subcontract amounts in the FMS CTGL table. The actual payments made by prime contractors to their subcontractors are not entered or tracked in FMS.

As reflected in Table IV below, the total M/WBE subcontractor amount recorded by DEP in the CTGL table for the four sampled contracts was \$601,000, 22 percent less than the \$771,806 reported by the prime contractors on their SAFs.

**Table IV**

Discrepancies between M/WBE Subcontractor Amounts Recorded in FMS  
and M/WBE Subcontractor Amounts per SAFs

Sample Contract#	Total Contract Value per DEP	M/WBE Sub-K Amts in FMS CTGL Table	Total # M/WBE Sub-Ks in FMS	Approx. M/WBE Sub-K Amts per Prime's SAF	Total # M/WBE Sub K on Prime's SAF	Difference between FMS CTGL Amts and Prime's SAF Amts for M/WBE Sub-K
#1	\$14,985,622	\$330,000	2	\$480,000	3	\$(150,000)
#2	\$1,362,056	\$220,000	1	\$220,000	1	\$0
#3	\$544,444	No Entries	No Entries	\$20,806	2*	\$(20,806)
# 4	\$443,431	\$51,000	1	\$51,000	1	\$0
Total		\$601,000	4	\$771,806	7	\$(170,806)

\*Note: For sampled contract #3, DEP did not enter any M/WBE subcontractor information.

MOCS' procurement statistics as reported in its annual *Agency Procurement Indicators Reports* are in terms of anticipated contract amounts. However, MOCS' indicators do not serve as a valid measure to assess the actual use of M/WBE subcontractors under prime contracts covered by LL129 nor do they serve well to assess compliance and attainment of established M/WBE subcontracting goals by prime contractors, agencies, and the City as a whole.

Nevertheless, MOCS bases its public reporting of contract, subcontracting, and M/WBE participation on FMS data. Yet, as noted earlier, we found that FMS did not accurately reflect our four sampled contractors' anticipated M/WBE subcontractor amounts. Accordingly, to ensure that accurate data on Citywide procurement is reported in FMS and to improve the reliability of MOCS reports, all City agencies need to ensure that all subcontractor information is appropriately and accurately recorded in FMS.

## 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 objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of our audit initially covered Fiscal Years 2007 through 2011 (July 1, 2006 – June 30, 2011). It was later expanded to include Fiscal Year 2012 (through December 31, 2011) to assess the adequacy of new monitoring procedures implemented by DEP in mid-2011. To accomplish our objectives, we performed the audit procedures discussed below.

To familiarize ourselves with DEP's contracting information and practices, we reviewed DEP's M/WBE Utilization Plans submitted to DSBS for Fiscal Years 2007 through 2010. We also reviewed MOCS' *Agency Procurement Indicators Reports* for Fiscal Years 2007–2010 and DSBS' *New York City Minority and Women-Owned Enterprise Program City-Wide Progress Report* for Fiscal Year 2010. Further, we reviewed other relevant information obtained from the DEP website and other sources.

To identify applicable audit criteria and understand DEP's contract monitoring responsibilities, particularly those governing the use of M/WBEs by vendors awarded contracts with M/WBE participation goals, we reviewed the following:

- New York City Administrative Code, § 6-129 (Local Law 129 of 2005);
- Rules of the City of New York, Title 66, Chapter 11, Subchapter D; "Participation by Minority- and Women-owned Businesses"
- Mayor's Office of Contract Services' January 20, 2011, memorandums addressing "Implementation of Local Law 129—M/WBE Subcontracting Program Administration" and "Agency Monitoring of Prime Contractors' Compliance with Local Law 129 M/WBE Program Mandates;"
- Procurement Policy Board (PPB) rules, Chapter 4, "Contract Administration;"
- DEP's Contract Compliance Guidelines for Engineers & Project Managers
- DEP's SOP for Subcontractor Evaluations (3/15/2011);
- DEP Small Purchases Policies and Procedures (7/1/2011).
- DEP ACCO's M/WBE Compliance Spot Check Procedures (2011)

To evaluate DEP's internal controls over the monitoring of contractors awarded contracts with M/WBE subcontracting goals (covered by Local Law 129), we interviewed key agency officials and staff, including but not limited to DEP's ACCO, Deputy ACCO (DEP's M/WBE

Officer), and Resident Engineers. We conducted walk-throughs of DEP's contract monitoring, management, and related reporting processes. We also reviewed prime contractor files. Further, we evaluated DEP's established policies and procedures to determine whether DEP incorporated and implemented contract administration and monitoring requirements of Local Law 129 and PPB rules. Specifically, we determined whether DEP had established procedures to:

- track and record each prime contractor's M/WBE utilization goals and mandatory documentation submissions;
- monitor each contractor's compliance with its utilization plans, including but not limited to performing job site inspections, contacting M/WBEs identified in the plan to confirm their participation, and auditing the contractor's books and records; and
- evaluate and assess the contractor's performance in meeting M/WBE participation goals.

To assess DEP's compliance with LL129 and its own procedures with respect to monitoring contractors awarded contracts with M/WBE subcontracting goals, we obtained from DEP a list of 14 prime contracts (valued at \$47 million) with M/WBE goals, which were awarded during Fiscal Years 2007 through 2010. From this population, we judgmentally selected four contracts (with a total value of \$17.3 million) for audit testing. Without duplication, we selected two active contracts nearing their estimated completion date (with a higher rate of completion based on DEP payments compared to the total contract amount) as of July 31, 2011, and two contracts that had ended within the 12 months prior to July 31, 2011.<sup>8</sup> The M/WBE subcontracting goal amounts for our four sampled contracts totaled \$977,585, representing 38 percent of the total \$2.6 million M/WBE subcontracting goal amount for DEP's population of 14 contracts subject to LL129.

We reviewed DEP's files for each of the four sampled contracts. We evaluated communications between the contractors and DEP, ascertained the specifics of each of the prime contractor's proposed M/WBE utilization plans, and determined whether the contractors had requested any waivers of their established TSP goals. As part of our review, we also determined whether the sampled contractors submitted all required documentation to DEP, including quarterly reports and Subcontractor Approval Forms. (DEP requires prime contractors to submit quarterly reports upon which they report the payments to each subcontractor, including M/WBEs. Prime contractors must also complete and submit Subcontractor Approval Forms for each of the subcontractors they anticipate using and final approval must be obtained from DEP before a subcontractor can commence work.) Further, we ascertained DEP's monitoring and follow-up efforts of the sampled prime contractors.

Between September 28 and October 13, 2011, we visited three of the four sampled prime contractors where we reviewed records relating to payments to their M/WBE subcontractors. (One of the four sampled contractors filed for bankruptcy in April 2011; therefore, we were unable to gain access to review relevant supporting documentation. We did not replace this sample contract because certain issues came to our attention that warranted further review.)

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<sup>8</sup> After initiating audit testing, we found that one of the four sampled contracts with an initial end date prior to July 31, 2011, had been extended to February 27, 2012.

Specifically, we reviewed agreements between the prime and M/WBE sub-contractors. We also reviewed invoices submitted by M/WBE subcontractors, along with the prime contractors' general ledgers, bank statements, and corresponding canceled checks upon which the subcontractors were paid. We evaluated the accuracy and completeness of information reported by the prime contractors to DEP on their quarterly reports. Further, we confirmed whether the subcontractors associated with the four sampled contracts were certified M/WBEs and were approved by DEP prior to commencing work.

For the sampled contracts that were active as of July 31, 2011, we evaluated whether the contractors had met or were making progress toward meeting their M/WBE subcontracting goals. We calculated the overall contract completion rate (total DEP payments to the prime divided by the total contract amount). We also calculated each prime's M/WBE completion rate (total actual payments made by the prime to M/WBE subcontractors as of July 31, 2011, as reported on its quarterly reports and confirmed by their books and records divided by the prime's M/WBE subcontractor goal amount). We compared the two rates taking into account the anticipated end dates of each of the sampled prime contracts to gain insight into the primes' progress in meeting their M/WBE subcontracting goals.

We reviewed the entries in the FMS CTGL tables for each of the sampled contracts to determine whether all of the subcontractors were appropriately listed. To test for completeness and accuracy, we compared the amounts recorded in FMS to the anticipated subcontractor amounts reported to DEP by the prime contractors on their Subcontractor Approval Forms.

Lastly, we determined whether the sampled prime contractors paid their subcontractors promptly, in accordance with the City's prompt payment rules. Specifically, we measured the time elapsed between the dates DEP paid the sampled prime contractors (based on the actual funds transfer dates) to the dates that those prime contractors paid their subcontractors (as reflected in the prime contractors' quarterly reports and confirmed by their canceled checks and bank statements).



*Carter H. Strickland, Jr.*  
*Commissioner*

**Steven W. Lawitts**  
Chief Financial Officer  
SLawitts@dep.nyc.gov

59-17 Junction Boulevard  
Flushing, NY 11373  
T: (718) 595-6576  
F: (718) 595-3557

May 1, 2012

H. Tina Kim  
Deputy Comptroller for Audits  
The City of New York  
Office of the Comptroller  
1 Centre Street  
New York, NY 10007-2341

Re: Audit MJ11-124A

Dear Ms. Kim:

Thank you for the opportunity to comment on the above referenced draft audit report on DEP's Monitoring of Prime Contracts with Subcontracting Goals Covered by Local Law 129. The Audit includes nine recommendations to strengthen procedures, controls and accountability in monitoring the goals of Local Law 129 (the M/WBE Program).

We appreciate the diligence of your auditors in performing this audit. We agree with the majority of the report's recommendations and, as discussed below, have in most instances already taken action to implement them.

Below is our response to the specific recommendations contained in the April 17, 2012 draft audit report:

**1. Continue to improve [DEP's] monitoring of prime contractors' progress in meeting their M/WBE subcontracting goals. In this regard, DEP should supplement its monitoring efforts by:**

- **requiring that M/WBE subcontractors be contacted on a regular basis to confirm their participation;**
- **requiring on a sample or more routine basis that prime contractors submit proof ( i.e., canceled checks, bank statements, etc.) of payments to their subcontractors;**
- **conducting audits of prime contractors' books and records to verify payments made to subcontractors; and**
- **developing criteria (benchmarks or indicators) for assessing potential problems with contractors in meeting M/WBE subcontracting goals to supplement and strengthen its monitoring efforts.**



DEP agrees that it should continue to improve its monitoring of prime contractors' progress. With the exception of conducting audits of prime contractors' books, DEP implemented the Comptroller's recommendations prior to the start of the Comptroller's audit. DEP will review the Agency's capacity to audit prime contractors' books and records.

**2. Ensure that prime contractors promptly submit all key documents, (e.g., Quarterly Reports and Subcontractor Approval Forms) required by LL129, DEP regulations, and related contract provisions.**

DEP agrees that it should ensure that all prime contractors submit all key documents. Measures to do so were implemented prior to the start of the Comptroller's audit. DEP performs spot checks on compliance with all MWBE program requirements. The spot check includes reviewing compliance with all key documents and follow up with individual prime contractors that have not complied with submission requirements. In addition, each submission of a Subcontractor Approval Form triggers a review of the prime contractor's overall compliance including submission of documents.

Quarterly reports are no longer required to be submitted. They have been replaced by a standard City "Payment Voucher Form." This form requires the prime contractor to identify the subcontractors paid during the payment period as well as the value of the payments made to each subcontractor. The submission of the Payment Voucher Form is a condition for the release of payment.

**3. More closely review and evaluate the prime contractors' subcontracting plans as reported on Subcontractor Approval Forms and actual payments to subcontractors reported on quarterly reports.**

DEP agrees that it should closely review and evaluate payments and is exploring a number of options to do so, including, for example, the tracking of all subcontractor payments in a new centralized data base. DEP's review of prime contractors' subcontracting plans is conducted in accordance with the City directives and the use of the "Subcontractor Approval Form" developed for this purpose.

**4. Establish formal procedures for communicating problems and relevant contract information between departments to document and communicate to all related parties (the Bureau of Engineering, Design and Construction [BEDC], ACCO's Office, etc.) contractor deficiencies observed at the job sites and other related concerns along with the actions taken to remedy such deficiencies and address matters of concern.**

The Agency has designated a Bureau Chief Contracting Officer (BuCCO) for each Bureau. BuCCO's are liaisons between the ACCO's office and individual Bureaus for all procurement matters and MWBE issues. The ACCO has implemented monthly individual Bureau meetings at which procurement and MWBE issues are discussed as necessary. DEP is also implementing its new centralized data system which will improve the information flow between the ACCO and the Bureaus. After the new system is fully rolled-out and all users have had sufficient experience with the system, DEP will evaluate whether additional, formal procedures are necessary.

**5. Develop a standard formatted tool (i.e., log or checklist) that the engineers must use to record and report their job site observations.**

A number of tools and initiatives have been implemented or are underway. At this time, it is not clear that a mandatory log or checklist would be beneficial. DEP will, however, consider this recommendation in the future.

**6. Redesign the quarterly report format to show both the applicable quarter and year for which a prime contractor is reporting subcontractor payment information.**

DEP agrees that the quarterly report needed to be redesigned. Instead of redesigning this report, however, the City has incorporated the information in this report into the MBE/WBE Payment Voucher Form, which is required to be submitted with payment vouchers.

**7. Update its contract compliance procedures and guidelines as required to address changes in agency and Citywide policy.**

DEP agrees and already updates its procedures and guidelines as they change to make sure they are consistent with City policy.

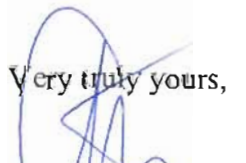
**8. DEP should facilitate the development and implementation of the proposed contract tracking system.**

DEP agrees, has developed a contract tracking system and is in the process of converting data and implementing the system Agency-wide.

**9. DEP should ensure that its FMS CTGL data on anticipated payments to subcontractors are consistent with the anticipated payments noted by its prime contractors on Subcontractor Approval Forms.**

DEP agrees and will work more closely with Bureau personnel responsible for entering this data. DEP will also obtain additional FMS training for the appropriate responsible staff.

We would like to again thank the City Comptroller for this audit and its recommendations. DEP is committed to improving efficiency and accountability in order to provide our customers with drinking water and wastewater services at the lowest possible rates, as well as providing opportunities for qualified minority- and woman-owned businesses. Implementing the above recommendations will help us to achieve those goals.

Very truly yours,  
  
Steven W. Lawitts