



# City of New York

## OFFICE OF THE COMPTROLLER

John C. Liu  
COMPTROLLER



## MANAGEMENT AUDIT

**Tina Kim**

Deputy Comptroller for Audit

Audit Report on the Administration of  
the Emerging Business Enterprise  
Program by the Department of Small  
Business Services

MD13-077A

June 6, 2013

<http://comptroller.nyc.gov>



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John C. Liu  
COMPTROLLER

June 6, 2013

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

My office has audited the Department of Small Business Services (DSBS) to determine whether it complied with key provisions of Local Law 12 of 2006 with regards to the Emerging Business Enterprise (EBE) program. We perform audits such as this to ensure agency compliance with City laws.

The EBE program is designed to promote opportunities for businesses owned by persons who are socially and economically disadvantaged. The audit determined that DSBS substantially complied with only one of the six key provisions audited. Although DSBS has established and is administering the EBE program, it does not appear to be operating as intended. Overall, DSBS provided minimal evidence of its efforts regarding the EBE program, specifically in identifying and recruiting businesses that qualify as EBEs. In addition, DSBS's outreach efforts and promotional materials make minimal mention, if any, of the EBE program. Further, DSBS has not reported to the Mayor's Office or to the City Council on its activities and efforts relating to the EBE program.

To address these issues, the audit made five recommendations, including that DSBS should update its website and brochures to better promote the EBE program, ensuring that the information is readily available and prominently displayed; maintain adequate documentation regarding its outreach efforts in promoting the EBE program; and submit the required reports to the Mayor and City Council detailing its efforts to promote the EBE program.

The results of the audit have been discussed with DSBS 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 e-mail my audit bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,

A handwritten signature in blue ink that reads "John C. Liu".

John C. Liu

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# THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

## Audit Report on the Administration of the Emerging Business Enterprise Program by the Department of Small Business Services

MD13-077A

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### AUDIT REPORT IN BRIEF

The mission of the Department of Small Business Services (DSBS) is to make it easier for businesses in New York City to form, do business, and grow. As part of its mission, DSBS runs the Emerging Business Enterprise (EBE) program, which was enacted by the City Council and signed by the Mayor as Local Law 12 of 2006. The program is designed to promote opportunities for businesses owned by persons who are socially<sup>1</sup> and economically<sup>2</sup> disadvantaged.

This audit determined whether DSBS complied with key provisions of Local Law 12 of 2006 with regards to the EBE program.

### Audit Findings and Conclusions

Of the six key provisions audited, DSBS substantially complied with only one—preparing and updating an EBE directory. For three other provisions—establishing and operating a program for the identification, recruitment, certification, and participation of EBEs; annually reporting the City’s EBE efforts to the Mayor and City Council; and collecting the necessary information to determine the availability and utilization of EBEs to revise the citywide participation goals accordingly—DSBS substantially did *not* comply. For the remaining two provisions—periodically reviewing City agencies’ compliance with EBE participation requirements and performing EBE-related audits—DSBS was unable to comply due to minimal participation in the program by vendors.

Although DSBS has established and is administering the EBE program, it does not appear to be operating as intended. Overall, DSBS provided minimal evidence of its efforts regarding the EBE program, specifically in identifying and recruiting businesses that qualify as EBEs. To date,

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<sup>1</sup> According to §1304 of Chapter 56 of the New York City Charter, a socially disadvantaged individual is defined as a person who has experienced social disadvantage in the United States as a result of causes not common to persons who are not socially disadvantaged.

<sup>2</sup> According to §1304 of Chapter 56 of the New York City Charter, an economically disadvantaged individual is defined as a socially disadvantaged person whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

there are only three certified EBEs with a total of only 22 applications submitted since the beginning of the program in 2007. As a result, DSBS cannot adequately assess the effectiveness of the EBE program and its lack of information is hindering its efforts in increasing the participation of EBEs in the City's procurement process.

DSBS generally complied with only one of the four aspects (with regard to certification) of the key provision requiring it to establish and operate an EBE program. DSBS developed an EBE certification application which adheres to the requirements of the Local Law and requires the applicants to provide supporting documentation to evidence social and economic disadvantage. Furthermore, DSBS maintains an updated list of certified EBEs in its directory of certified companies posted on its website for use by agencies.

However, there was a lack of evidence that DSBS made any substantial efforts to increase the certification of EBEs. DSBS's outreach efforts and promotional materials used for the EBE program generally speak primarily of the Minority- and Women-owned Business Enterprise (M/WBE) program, with only minimal mention, if any, of the EBE program. In addition, DSBS has not reported to the Mayor's Office or to the City Council on its activities and efforts relating to the EBE program.

## **Audit Recommendations**

To address the audit issues, we made five recommendations, including that DSBS should:

- Update its website and brochures to better promote the EBE program, ensuring that the information is readily available and prominently displayed.
- Maintain adequate documentation regarding its outreach efforts in promoting the EBE program.
- Submit the required reports to the Mayor and City Council detailing its efforts to promote the EBE program, the program's accomplishments, if any, and provide strategies to improve the program resulting from the studies conducted on businesses and/or the feedback obtained from businesses.

## **Agency Response**

DSBS officials generally agreed with four of the audit's five recommendations, but did not address the recommendation that they adequately document their efforts to promote the EBE program. In addition, DSBS strongly disagreed with the audit's finding that there was a lack of evidence that the agency effectively promoted the program. After carefully reviewing DSBS's arguments in its response, we found them to be without merit.



# INTRODUCTION

## Background

The mission of DSBS is to make it easier for businesses in New York City to form, do business, and grow. It provides direct assistance to business owners, fosters neighborhood development in commercial districts, links employers to a skilled and qualified workforce, and promotes economic opportunity for businesses.

As part of its mission, DSBS runs the EBE program, which was enacted by the City Council and signed by the Mayor as Local Law 12 of 2006. The program is designed to promote opportunities for businesses owned by persons who are socially and economically disadvantaged. As stated on the City's Business Express website, the EBE program "works to ensure that business[es] owned, operated, and controlled by individuals who are socially and economically disadvantaged receive preference for contracting opportunities with New York City. The program is designed to promote fairness and equity in city contracting and to level the playing field for these business owners." Certified businesses have greater access to and information about contracting opportunities through classes, networking events, and targeted solicitations. These businesses also receive technical assistance and are included in the City's Online Directory of Certified Businesses.

To qualify as a socially disadvantaged individual, an applicant must provide evidence of each of the following three elements: (1) at least one objective distinguishing feature that has contributed to the social disadvantage, such as a physical handicap or a long-term residence in an environment isolated from mainstream American society; (2) personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and (3) negative impact on entry into or advancement in the business world because of the disadvantage. In addition, an individual claiming economic disadvantage must have a net worth of less than \$1 million, not including the individual's ownership interest in a business enterprise subject to certification or the equity in the individual's primary personal residence.

To be eligible to apply for EBE Certification, the business must be a Sole Proprietorship, General Partnership, Limited Partnership, Limited Liability Partnership, Limited Liability Company, or Corporation (Not for Profit organizations are not eligible for EBE certification), and must be authorized to do business in New York State. The business must have been selling products or services for a period of at least one year prior to the date of application, must be at least 51 percent owned, operated, and controlled by persons who can demonstrate a social and economic disadvantage, and who have experienced chronic and substantial negative treatment in the United States. The person's inability to compete must have been impaired due to diminished access to capital and credit, and the net worth of each socially and economically disadvantaged owner whose combined interest totals 51 percent or more ownership of the business must be less than \$1 million. In addition, the business must have a real and substantial presence in New York City, which means that the business must either be located in the five boroughs of New York City or in one of the following counties: Nassau, Putnam, Rockland, Suffolk, and Westchester counties in New York, or Bergen, Hudson, and Passaic counties in New Jersey. If the company is located outside of New York City, it must have a significant tie to the City's business community (e.g., have derived 25 percent or more of gross receipts from business conducted in the City, possess a license issued by the City, etc.)

The EBE program is administered by DSBS's Division of Economic and Financial Opportunity (DEFO). The rules and regulations governing the program are set forth by Local Law 12 of 2006. The provisions of the law are mirrored in §6-129 of the New York City Administrative Code, *Participation by Minority-owned and Women-owned Business Enterprises and Emerging Business Enterprises in City Procurement*, and in §1304 of the New York City Charter. As part of its responsibilities, DSBS is required to:

- Establish and operate a centralized program for the identification, recruitment, certification, and participation of EBEs,
- Prepare and periodically update a directory of EBEs for use by City agencies and contractors,
- Periodically review the compliance of City agencies with the provisions of the Local Law for the participation of EBEs in City procurement,
- Audit at least 5 percent of all contracts for which utilization plans are established and 5 percent of all contracts awarded to EBEs to assess compliance with the Local Law,
- Annually report to the mayor and the council on the activities of the division and efforts by agencies to comply with the provisions of the Local Law, and
- Collect information every two years to determine the availability and utilization of EBEs and, on the basis of such review and other relevant information, revise the citywide participation goals.

These six key provisions were the focus of this audit.

## Objective

The objective of the audit was to determine whether DSBS complied with the key provisions of Local Law 12 of 2006.

## Scope and Methodology Statement

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

The audit scope was July 1, 2011, to March 31, 2013. Please refer to the Detailed Scope and Methodology at the end of this report for specific procedures and tests that were conducted.

## Discussion of Audit Results

The matters covered in this report were discussed with DSBS officials during and at the conclusion of this audit. A preliminary draft report was sent to DSBS officials and discussed at an exit conference on April 25, 2013. On April 30, 2013, we submitted a draft report to DSBS

officials with a request for comments. We received a written response from DSBS officials on May 21, 2013.

In their response, DSBS officials did not address the recommendation that they adequately document their efforts to promote the EBE program, but generally agreed with the remaining four recommendations. However, DSBS strongly disagreed with the audit's finding that there was a lack of evidence that the agency effectively promoted the program. Officials argue that the seeming lack of interest in the EBE program stems not from their failure to promote the program but from flaws in Local Law 12 that make potential candidates reluctant to participate:

“Despite sustained efforts to market the EBE Program throughout the City, SBS *believes* that the additional and necessarily arduous step that EBE applicants must take to demonstrate that they qualify as ‘disadvantaged’ for certification purposes explains the limited interest in the EBE Program by business owners. It also explains the substantially higher enrollment in other programs, including the City’s own M/WBE program, which do not require evidentiary support of social and economic disadvantage. Moreover, there *may* be a reluctance to certify as ‘disadvantaged’ in an open competitive market with prime contractors even when the program is under the label of emerging business enterprise.” [emphasis added]

DSBS makes assertions about the reasons that it “believes” and that “may” attribute to the limited interest in the EBE program, but we are unable to substantiate any of these assertions and the basis for DSBS’s claims without supporting evidence. During the course of the audit, we asked DSBS officials on numerous occasions for evidence supporting their assertions explaining the seemingly limited interest with the program. However, no evidence was provided, so we are unable to give them any credence. After carefully reviewing DSBS’s arguments in its response, we found them to be without merit.

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



## FINDINGS AND RECOMMENDATIONS

Of the six key provisions audited, DSBS substantially complied with only one—preparing and updating an EBE directory. For three other provisions—establishing and operating a program for the identification, recruitment, certification, and participation of EBEs; annually reporting the City’s EBE efforts to the Mayor and City Council; and collecting the necessary information to determine the availability and utilization of EBEs to revise the citywide participation goals accordingly—DSBS substantially did *not* comply. For the remaining two provisions—periodically reviewing City agencies’ compliance with EBE participation requirements and performing EBE-related audits—DSBS was unable to comply due to minimal participation in the program by vendors.

Although DSBS has established and is administering the EBE program, it does not appear to be operating as intended. Overall, DSBS provided minimal evidence of its efforts regarding the EBE program, specifically in identifying and recruiting businesses that qualify as EBEs. To date, there are only three certified EBEs with a total of only 22 applications submitted since the beginning of the program in 2007. As a result, DSBS cannot adequately assess the effectiveness of the EBE program and its lack of information is hindering its efforts in increasing the participation of EBEs in the City’s procurement process.

DSBS generally complied with only one of the four aspects (with regard to certification) of the key provision requiring it to establish and operate an EBE program. DSBS developed an EBE certification application which adheres to the requirements of the Local Law and requires the applicants to provide supporting documentation to evidence social and economic disadvantage. In addition, DSBS has adequate segregation of duties over the certification process, requiring two levels of review, which helps ensure that the applications are processed accurately, consistently, and free from bias. Furthermore, DSBS maintains an updated list of certified EBEs in its directory of certified companies posted on its website for use by agencies.

However, there was a lack of evidence that DSBS made any substantial efforts to increase the certification of EBEs. DSBS’s outreach efforts and promotional materials used for the EBE program generally speak primarily of the M/WBE program, with only minimal mention, if any, of the EBE program. In addition, DSBS has not reported to the Mayor’s Office or to the City Council on its activities and efforts relating to the EBE program.

Further, because there currently are only three certified EBEs, DSBS stated it was not able to fulfill the requirements to conduct a review of the compliance of City agencies with regard to the participation of EBEs and to audit at least 5 percent of all contracts with established EBE utilization plans and 5 percent of all contracts awarded to certified EBEs to assess their compliance with the Local Law. DSBS has not conducted any studies or solicited feedback from EBE applicants and interested parties to help identify potential causes for the low response that DSBS has received for the EBE program and to assist it in modifying the program accordingly.

These issues are discussed in greater detail in the following sections of the report.

### **Lack of Evidence that DSBS Has Effectively Promoted the EBE Program**

DSBS’s outreach efforts and promotional materials used to promote the EBE program were lacking. According to §1304b of the City Charter, DSBS is required to “administer, coordinate,

and enforce a citywide program . . . for the identification, recruitment, certification, and participation in city procurement of . . . emerging business enterprises.” Although DSBS claims that there is only one certification program for all of the programs it administers, DSBS’s outreach efforts and the information presented on its website and brochures appear to focus primarily on the M/WBE program. We found limited evidence of DSBS’s efforts to promote the EBE program. This could possibly contribute to the limited response that DSBS has received for the program. Since the inception of the program in 2007, only three businesses have been certified as EBEs and only 22 applications have been received from vendors. As a result, businesses that may qualify as socially and economically disadvantaged could miss the opportunity to receive preference in City procurement and make use of the resources available to certified businesses, such as having greater access to and information about contracting opportunities through classes, networking events, and targeted solicitations. In addition, we were unable to determine the extent of DSBS’s outreach to specifically promote the EBE program. The following are the results of our testing and observations:

- There is very limited information on DSBS’s website discussing and promoting the EBE program. In the few places the EBE program is mentioned, the text is not as prominent as the M/WBE program’s text and requires a very careful and thorough reading to identify information about the EBE program.
- A review of the materials disseminated by the outreach unit to interested parties, including e-mails and brochures, determined that this information generally does not make any mention of the EBE program. The follow-up e-mail, sent by the Director of External Affairs to interested parties, makes no mention of the EBE program; the e-mail only mentions the M/WBE program. In addition, apart from an overview of the EBE program and the EBE application, the brochures distributed do not mention the EBE program.
- The Business Assistance webpage presented via the 311 website provides a definition of the EBE program with a link for further information. However, this link brings you to DSBS’s Business Solutions webpage, which makes no mention of the EBE program. The webpage describes certification and the benefits of certification, but the only certification that is mentioned is the M/WBE program.

In addition, there is a lack of evidence of DSBS’s outreach efforts at various events attended by DSBS personnel as they relate to the EBE program. Because the outreach events are not specific to the EBE program, we were unable to determine the extent of DSBS’s outreach efforts relating to the EBE program. Our review of the supporting documentation for a sample of 20 (26 percent) of the 77 external outreach events attended by DSBS and all 23 internal outreach events offered by DSBS during Fiscal Year 2012 revealed the following deficiencies:

- Only three of the 20 sampled external events had some form of attendee contact information on file. Because DSBS does not maintain a record of individuals who attended events who are interested in certification, and which certification program(s) they are interested in, we were unable to ascertain the extent of interest in the EBE program. Furthermore, it is unclear based on the information maintained by DSBS the extent that the EBE program was discussed at these events.
- We were unable to determine the number of interested parties for EBE certification for all 23 in-house certification workshops provided during Fiscal Year 2012. Although the Director of External Affairs states that all certifications are discussed at the workshops, the workshops appear to be mainly directed towards the M/WBE program; in fact, the name of the workshop is *Minority & Women-Owned Business Enterprise Certification*

*Workshop.* If the EBE program is discussed at these workshops, individuals who may be interested in applying for the EBE program would not know that certifications other than M/WBE would be discussed based solely on the name of the workshop and the information presented on the Business Solutions website.

When we asked the Director of External Affairs about the lack of attendance sheets for the sampled external events, he informed us that although they always ask for copies of them, the vendors hosting the events do not always provide the attendance sheets because of privileged information. The Director then indicated that they always distribute brochures to and request business cards from all interested parties at the events so that a follow-up e-mail can be sent to them. However, as previously discussed, the brochures make minimal mention, if any, of the EBE program, and the e-mail referred to by the Director makes no mention of the EBE program at all.

**DSBS Response:** “We strongly disagree with the finding that SBS failed to provide evidence demonstrating it has effectively promoted the EBE program. In fact, not only did SBS submit information to the Comptroller evidencing a wide range of outreach efforts that are regularly conducted by the Agency with businesses and community partners, but SBS also provided the auditors with a comprehensive Fiscal Year 2012 Report (‘FY12 Report’) identifying outreach efforts, including events and initiatives that the Agency’s external affairs team held or attended (citywide) during FY12 to promote SBS services and programs. The FY12 Report evidenced the . . . outreach events and/or presentations that SBS either participated in or hosted during the applicable period.”

**Auditor Comment:** As we state in the report, the supporting documentation of the sampled outreach events that DSBS provided to us focused primarily on the M/WBE program. In addition, several of the sampled public (external) outreach events attended by DSBS specifically referred to the M/WBE program (through the events title or agenda), and there is little, if any, evidence that DSBS presented information on the EBE program at these events. DSBS provides no new information in its response to refute these findings. Therefore, in the absence of credible evidence to the contrary, we reaffirm our finding that there was a lack of evidence demonstrating that DSBS has effectively promoted the EBE program.

## Recommendations

DSBS should:

1. Update its website and brochures to better promote the EBE program, ensuring that the information is readily available and prominently displayed.

**DSBS Response:** “Currently, SBS is working on further enhancements to the Online Directory and to put all certification applications online to make it more convenient for business owners to apply, and once certified, manage their business profiles online through a self-service portal.”

**Auditor Comment:** In addition to these enhancements, we strongly believe that DSBS should update its website and brochures to better promote the EBE program. As previously stated, DSBS’s website has very limited information on the EBE program; in the few places the EBE program is mentioned, the text is not as prominent as the M/WBE program’s text and requires a very careful and thorough

reading to identify information about the EBE program. In addition, the materials disseminated by DSBS generally do not mention the EBE program.

2. Modify the follow-up e-mail sent to interested parties to sufficiently address the EBE program.

**DSBS Response:** “SBS will implement the Report’s recommendation to modify the follow-up email that is sent to business owners interested in the City’s M/WBE program to provide greater information on the EBE program.”

3. Maintain adequate documentation regarding its outreach efforts in promoting the EBE program.

**DSBS Response:** DSBS does not specifically address this recommendation in its response.

## No Reporting on the EBE Program

DSBS has not reported to the Mayor’s Office or City Council its efforts regarding the activities of the EBE program. According to Local Law 12 of 2006, DSBS is required to annually report to the mayor and the council on the activities of the division and efforts by agencies to comply with the provisions of the Local Law. We reviewed the Fiscal Years 2011 and 2012 Annual Reports and the Fiscal Year 2013 Preliminary Report and did not find any information regarding the EBE program. In fact, the Annual and Preliminary Reports, which are intended to report on both the M/WBE and EBE programs, are entitled the *Minority and Women-Owned Business Enterprise (M/WBE) Program*. As a result, information that could potentially aid in the improvement of the EBE program is not reported to lawmaking bodies.

## Recommendation

4. DSBS should submit the required reports to the Mayor and City Council detailing its efforts to promote the EBE program, the program’s accomplishments, if any, and provide strategies to improve the program resulting from the studies conducted on businesses and/or the feedback obtained from businesses.

**DSBS Response:** “Since passage of LL129 and LL12, SBS in conjunction with Mayor’s Office of Contract Services has submitted semi-annual reports to the Council containing extensive information on certifications, the utilization of certified companies and removal of barriers to procurement. Again, given the limited number of certified EBE companies, there has been minimal substantive information to report specifically on EBEs. Additionally, SBS has reported on EBE in various Council hearings concerning certification programs. However, SBS notes the Report’s finding and will include additional information in subsequent semi-annual reports.”

**Auditor’s Comment:** During the course of the audit, we asked DSBS officials for any evidence of their reporting on the EBE program to the Mayor’s Office or to the City Council. However, none was provided. Therefore, we are unable to substantiate DSBS’s assertions regarding reports on the EBE program to the City Council.

## Analysis or Study of the EBE Program Not Performed

DSBS has not conducted an analysis or study to identify strategies to improve the administration of the EBE program. The Local Law requires that every two years DSBS collect information to determine the availability and utilization of EBEs and, on the basis of such review and other relevant information, revise the citywide participation goals<sup>3</sup>. Because DSBS has only certified three businesses as EBEs, the EBE citywide participation goals cannot be met and most likely need revision.

We requested evidence showing that DSBS solicited feedback from EBE applicants and/or conducted any studies to identify the target audience for the EBE program and any areas of the EBE program that may require improvement. However, DSBS did not provide any. The mere fact that only 22 applications have been received since the inception of the EBE program in 2007, of which 14 (64 percent) were withdrawn by the applicant, should have prompted DSBS to investigate this further and determine the causes for the seeming lack of interest in the program. The results of such a study would aid DSBS in making informed decisions on its administration of the EBE program to improve the program in City procurement and in making recommendations to the City Council if modifications to the law are needed. Conversely, in the absence of any formal studies or investigations into this matter, DSBS is hindered in its ability to perform such tasks towards the overall goal of increasing EBE participation in City procurement.

### Recommendation

5. DSBS should conduct studies on businesses and/or solicit feedback from businesses in order to identify strategies to improve the administration of the program and to increase the participation of certified EBEs in City procurement.

**DSBS Response:** “SBS notes this finding and will survey businesses who attend its biweekly certification workshops to solicit feedback on the application and potential benefits of certification.”

**Auditor Comment:** Soliciting feedback solely at certification workshops is not sufficient. As previously stated, the certification workshop’s name, *Minority & Women-Owned Business Enterprise Certification Workshop*, may not be attracting all the individuals who are interested in applying for the EBE program. Therefore, we strongly believe that DSBS should institute the additional measures stated in the recommendation above.

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<sup>3</sup> According to §6-129 of the NYC Administrative Code, the citywide contracting participation goals for EBEs are 6 percent of the total annual agency expenditures on contracts relating to each of the following four industry classifications: construction, professional services, standard services, and goods.



## DETAILED SCOPE AND METHODOLOGY

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

The audit scope was July 1, 2011, through March 31, 2013.

To gain an understanding of the relevant policies and procedures of the EBE program, we reviewed and used as criteria Local Law 12 of 2006, §6-129 of the New York City Administrative Code, and §1304 of the New York City Charter. We also requested the organization charts of the units involved in the EBE program and any policies or procedures governing the EBE program.

To obtain an understanding of DSBS's administration of the EBE program, the certification process, and the goals and objectives of the program, we conducted interviews with the following DSBS officials:

- First Deputy Commissioner of the Financial Management & Administration Division and DEFO,
- Deputy Commissioner of DEFO,
- Assistant Commissioner of DEFO,
- Director of Certification,
- Certification Analyst, and
- Director of External Affairs.

We also met with the Program Manager and Administrative Assistant to obtain a general overview and the functions of the computer systems, the Customer Relationship Management system used by DEFO to log all outreach events DSBS participated in and the C-Track 1 Database used by DEFO to process and track all EBE applications.

To determine whether DSBS established and operates a centralized program for the certification of EBEs, we reviewed its outreach efforts, including the brochures and e-mails disseminated by the External Affairs unit regarding the EBE program. We also reviewed the information contained on the DSBS website, 311, and of several large contracting agencies to determine the extent that the EBE program is mentioned. In addition, we requested and reviewed the EBE application to determine whether it met the requirements of the Local Law and questioned DSBS officials about their certification process.

To determine the extent of interest in the EBE program, we requested a list of all EBE applications submitted to DSBS since the program was established in 2007. In total, there were 22 applications submitted for EBE certification. We requested and reviewed all 22 application files to determine whether DSBS's application review process was adequate. Of the 22 applications, 14 were withdrawn by the applicant. For the remaining eight applications, five

were rejected (because the applications were incomplete or lacking required documents) and three were certified.

For the three certified businesses, we determined whether applications were complete and included the required supporting documentation and determined whether proper approvals were obtained before certifying businesses. For the five applications that were rejected, we determined whether the required deficiency notices were sent to the applicants.

To determine whether DSBS prepared and periodically updated a directory of Certified EBEs for use by City agencies and contractors, we reviewed the directory of certified businesses posted on the DSBS website and verified that the three certified EBEs were included.

To obtain an understanding of the outreach efforts performed by DSBS to promote the EBE program, including the methods, frequency, and level of outreach, we conducted interviews with the External Affairs Unit and requested the methods that it uses to promote the program. In addition, we requested a listing of Fiscal Year 2012 events attended by DSBS and reviewed the supporting documentation for a sample of events to verify the accuracy of the list and legitimacy of the events. As part of our review, we attempted to determine the number of attendees, the purpose of the event (what was discussed), and DSBS's role at the event.

To determine whether DSBS complied with the provision to annually report to the mayor and the council on the activities and efforts of DSBS and agencies regarding EBEs, we reviewed the Fiscal Years 2011 and 2012 Annual Report and the Fiscal Year 2013 Preliminary Report.

To determine whether DSBS complied with the provision to collect information every two years, we requested evidence showing that DSBS solicited feedback from EBE applicants and/or conducted any studies to identify the target audience for the EBE program and any areas of the EBE program that may require improvement. We also requested from DSBS evidence that it tracked the progress of the program to assess whether the program is functioning as intended and whether it identified any areas for improvement.

For the following two key provisions of the Local Law, we inquired with DSBS officials and requested supporting documentation evidencing that they had fulfilled the requirements to:

- Conduct a review of the compliance of City agencies with regard to the participation of EBEs as outlined in Local Law 12 of 2006.
- Audit at least 5 percent of all contracts with established EBE utilization plans and 5 percent of all contracts awarded to certified EBEs to assess their compliance with the Local Law.



Robert W. Walsh  
Commissioner

May 21, 2013

Hon. Tina Kim  
Deputy Comptroller  
Office of the Comptroller  
1 Centre Street, Room 1100  
New York, New York 10007

**Re:** Draft Audit Report on the Administration of the Emerging Business Enterprise Program by the Department of Small Business Services MD13-077A

Dear Ms. Kim:

This letter represents the New York City Department of Small Business Services (SBS) response to the findings and recommendations contained in the Draft Audit Report (Draft Report) issued by the Office of the New York City Comptroller (Comptroller) on April 30, 2013 regarding the administration of the Emerging Business Enterprise (EBE) Program.

Although SBS' responses to the individual findings contained in the Draft Report are included in the body of this letter, it is essential to note at the outset that the evaluation of the EBE Program must take into account the specific eligibility standards for EBE certification, which the Report does not consider. These standards are considerably more involved than other programs with the City and federal government, and therefore may inhibit individuals from pursuing and completing EBE certification. Business owners, potentially eligible as EBEs, understandably may choose to pursue other certifications and programs rather than EBE certification. We would like to provide more clarity on the underlying principles of the EBE program, including who it is intended to serve and how it is intended to operate, in order to offer a more complete and accurate picture of the administration of the program.

#### **Program Precedent at the Federal Level and Underlying Principles**

When legislation was first being considered by the City Council to address findings in a disparity study regarding the under-utilization of minority and women owned business enterprises in City procurement, the City proposed creating a new program modeled after the federal disadvantaged business enterprise ("DBE") program (or the federal SBA 8(a) program). Specifically, the proposal was to establish a "goals" based program for minority and women-owned business enterprises as well as other business owners determined to be economically and socially disadvantaged. The Council at that time, with the administration's support, ultimately passed legislation that Mayor Bloomberg signed into law as Local Law 129 of 2005 ("LL129") or the "M/WBE Program". LL129 established an M/WBE certification and goals program for the City, including various provisions for

training and capacity building that would support the growth and utilization of certified firms. LL129 did not contain a component for socially and economically disadvantaged individuals.

Following passage of LL129, the Council introduced additional legislation to create a disadvantaged business enterprise program for the City. However, the proposed bill when passed, was changed to the "Emerging Business Enterprise Program" and was signed into law by Mayor Bloomberg as Local Law 12 of 2006 ("LL12"). Note that while both LL129 and LL12 are effectively consolidated into Section 6-129 of the NYC Administrative Code, the EBE certification program is separate and distinct from M/WBE certification.

To comply with the various requirements set forth in both LL129 and LL12 as well as to successfully implement both Programs, SBS promulgated rules creating reporting procedures, improved technology for data capture and analysis, and created extensive outreach and capacity building initiatives. Since its passage, the number of certified M/WBEs has grown from approximately 700 to nearly 4,000. These firms have won over 40,000 contracts, worth more than \$3 billion.

Although similar outreach approaches and capacity building initiatives were and continue to be undertaken by SBS to successfully implement the M/WBE and EBE programs (SBS often targets potential M/WBE and EBE groups simultaneously), the outcomes of such measures are quite different. For instance, the number of EBE applications received and EBE certifications granted by SBS since the Program's inception is significantly less than the applications received and certifications granted by SBS under the M/WBE Program. SBS firmly believes that there are legitimate bases for this difference and strongly contests the Report's suggestion that the lesser outcomes are attributable to inadequate outreach by SBS. Additionally, it should be noted that the potential number of business entities that would certify as EBEs pursuant to LL12 was uncertain at the onset of the EBE Program. For example, during SBS' testimony when LL12 was being considered by the City Council Contracts Committee, then Chair Yvette Clarke, questioned the number of business enterprises that would ultimately express interest and pursue EBE certification. And given the stringent and complicated requirements of the eligibility criteria under the EBE Program it has turned out to be very limited.

These eligibility requirements are set by the law and require the submission of extensive financial and personal information by the applicant. Consistent with the federal DBE Program, eligibility for EBE certification under the City's program requires that applicants satisfy a two prong test of economic disadvantage and social disadvantage. Similar to the DBE Program, the "economic disadvantage" element used by the City to evaluate eligibility for EBE certification establishes a net worth ceiling for entry into the program. The overall net worth of the applicant business owner in EBE is limited to \$1 million, excluding the value invested in the business and in the applicant's primary personal residence.

Once the economic disadvantage component is met, the applicant business owner must still demonstrate social disadvantage. Specifically, the standard used to evaluate "social disadvantage" requires that the applicant business owner provide evidence of at least one



objective distinguishing feature that has contributed to its social disadvantage, which in turn has adversely impacted entry into or advancement in the business world within the United States. Examples of circumstances that can be used by the applicant business owner to satisfy the first part of the “social disadvantage” prong include, but are not limited to: long term residence in an environment isolated from mainstream American society; physical handicap; race or ethnicity, gender; or a feature self-identified by the applicant. To satisfy the second part of the “social disadvantage” prong, the EBE applicant must then substantiate this social disadvantage in the areas of education, employment, and/or business history. Some examples of evidentiary support can include court or administrative findings of discrimination, sworn affidavits or statements from independent third parties, personal or payroll records, denials of credit applications, and documents related to rejected contract offers. SBS will consider whether the submitted evidence coupled with the individual’s statement of personal experiences is sufficient to demonstrate social disadvantage.

Unlike the federal DBE Program where social disadvantage is *presumed* for M/WBEs and further evaluation of social or economic disadvantage criteria is not required for those individuals, the City’s EBE Program criteria relies on an individual and specific determinations of an applicant’s disadvantage. This is an important distinction. Despite sustained efforts to market the EBE Program throughout the City, SBS believes that the additional and necessarily arduous step that EBE applicants must take to demonstrate that they qualify as “disadvantaged” for certification purposes explains the limited interest in the EBE Program by business owners. It also explains the substantially higher enrollment in other programs, including the City’s own M/WBE program, which do not require evidentiary support of social and economic disadvantage. Moreover, there may be a reluctance to certify as “disadvantaged” in an open competitive market with prime contractors even when the program is under the label of emerging business enterprise.

Finally, based on discussions SBS has had with the NYS Department of Transportation (which performs DBE certification reviews and approvals), it appears SBS is not the only governmental certifying entity with limited applicants under the social and economic disadvantaged standard. The vast majority of their DBE certifications are for minorities and women, who are presumptively disadvantaged. Similar to SBS, NYS DOT has received few stand alone applications from individuals seeking DBE certification as otherwise disadvantaged. It also appears that for those programs aimed at supporting government contracting with veterans and the disabled, these individuals, who may have the objective factor to support an EBE application, may find it simpler to access these programs due to their disabled or veteran status rather than attempting to meet the more stringent dual standard of social *and* economic disadvantage of the EBE application.

### ***SBS Responses to Specific Findings & Recommendations of the Report***

#### **Finding #1: Lack of Evidence that SBS Has Effectively Promoted the EBE Program**

Recommendation 1: Update its website and brochures to better promote the EBE program, ensuring that the information is readily available and prominently displayed.



Recommendation 2: Modify the follow-up email sent to interested parties to sufficiently address the EBE program.

Recommendation 3: Maintain adequate documentation regarding its outreach efforts in promoting the EBE program

**SBS Response:**

We strongly disagree with the finding that SBS failed to provide evidence demonstrating it has effectively promoted the EBE Program. In fact, not only did SBS submit information to the Comptroller evidencing a wide range of outreach efforts that are regularly conducted by the Agency with businesses and community partners, but SBS also provided the auditors with a comprehensive Fiscal Year 2012 Report (“FY12 Report”) identifying outreach efforts, including events and initiatives that the Agency’s external affairs team held or attended (citywide) during FY12 to promote SBS services and programs. The FY12 Report evidenced the following non-exclusive outreach events and/or presentations that SBS either participated in or hosted during the applicable period:

- SBS representative(s) attended 75 public outreach events where an agency representative was provided with an opportunity to address event attendees in an effort to identify and promote available services and programs. Additionally, SBS used these events to distribute relevant literature and promotional material and brochures/pamphlets, including EBE Program information, to attendees,
- SBS held 19 in-house events/presentations, attended by approximately 250 prospective applicants, promoting EBE and M/WBE certification during this reporting period. These particular events/presentations are conducted by an experienced and knowledgeable SBS/DEFO certification analyst who guides business owners through the overall certification process and answers any questions that arise regarding eligibility and the benefits of certification.

SBS also promotes the EBE program online to further spread the word about the benefits of certification. For example, the “Selling to Government” webpage provides a link to the “How to Certify with the City”, which provides specific information on the EBE certification program, including eligibility criteria and instructions on how to apply. EBE certification status of businesses is available online at the Online Directory of Certified Firms at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), which is used by prime contractors and agency buyers to locate certified firms.

Currently, SBS is working on further enhancements to the Online Directory and to put all certification applications online to make it more convenient for business owners to apply, and once certified, manage their business profiles online through a self-service portal. SBS will implement the Report’s recommendation to modify the follow-up email that is sent to business owners interested in the City’s M/WBE program to provide greater information on the EBE program. SBS will also begin surveying business owners who attend the biweekly certification workshops to better record concerns and interest in the program and document these efforts.

**Finding #2: No Reporting on the EBE Program**

Recommendation 4: SBS should submit the required reports to the Mayor and City Council detailing its efforts to promote the EBE program, the program's accomplishments, if any, and provide strategies to improve the program resulting from the studies conducted on businesses and/or the feedback obtained from businesses.

**SBS Response:**

Since passage of LL129 and LL12, SBS in conjunction with Mayor's Office of Contract Services has submitted semi-annual reports to the Council containing extensive information on certifications, the utilization of certified companies and removal of barriers to procurement. Again, given the limited number of certified EBE companies, there has been minimal substantive information to report specifically on EBEs. Additionally, SBS has reported on EBE in various Council hearings concerning certification programs. However, SBS notes the Report's finding and will include additional information in subsequent semi-annual reports.

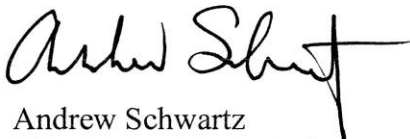
**Finding #3: Analysis or Study of the EBE Program Not Performed**

Recommendation 5: SBS should conduct studies on businesses and/or solicit feedback from businesses in order to identify strategies to improve the administration of the program and to increase the participation of certified EBEs in City procurement.

**SBS Response:**

SBS notes this finding and will survey businesses who attend its biweekly certification workshops to solicit feedback on the application and potential benefits of certification.

Sincerely,



Andrew Schwartz  
First Deputy Commissioner

c: Elizabeth Weinstein  
Andrea Glick  
Robert W. Walsh  
Anne Rascón