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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 4, 2016

Mr. Mitchell Hochberg
Chairman
Westchester County Health Care Corporation
100 Woods Road
Valhalla, NY 10595

Re: Contract Participation of Minority- and
Women-Owned Business Enterprises
Report 2015-S-78

Dear Mr. Hochberg:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we audited the Westchester County Health Care Corporation's *Contract Participation of Minority- and Women-Owned Business Enterprises*. The audit covered the period April 1, 2013 through September 30, 2015.

Background

The Westchester County Health Care Corporation (WCHCC) is a State Public Authority created under Sections 3300-3321 of the Public Authorities Law, with a 19-member Board of Directors consisting of 15 voting directors and four non-voting representatives who have all the rights and powers of voting directors other than the right and power to vote. Eight of the 15 voting directors are appointed by the Governor. The Board is responsible for governing the Westchester Medical Center (WMC). The primary mission of the WMC is to serve as the regional health care referral center providing high-quality advanced health services to the residents of the lower Hudson Valley and the surrounding area. The Board is also responsible for overseeing the actions of its Chief Executive Officer (CEO). The CEO is responsible for establishing policies related to the qualifications, duties, and payments of salaries and other compensation for all WCHCC executive employees.

Article 15-A of the New York State Executive Law requires State agencies and public authorities to promote the participation of minority-owned business enterprises and women-owned business enterprises (MWBEs) in State contracts. The State Department of Economic Development (DED) is responsible for the certification of small businesses that qualify as MWBEs. A business must be a certified MWBE if the payments it receives are to be counted toward MWBE participation goals. State agencies and public authorities are required to: establish annual goals

for MWBE participation (expressed as a percentage of the agency's or public authority's total contract spending for the year, net of exemptions and exclusions); make "good faith" efforts to achieve their goals; and report quarterly on their level of participation to DED.

In January 2011, the Governor declared that State agencies and public authorities should reach MWBE contract participation rates of 20 percent, or double the existing Statewide MWBE utilization rate (10 percent) at the time. On October 1, 2014, the Governor increased the MWBE participation goals for State agencies and public authorities to 30 percent.

WCHCC reported to DED total contract expenditures (less exemptions and exclusions) of \$18.7 million for fiscal year 2013-14, \$13.9 million for fiscal year 2014-15, and \$8.3 million for the first half of the 2015-16 year. WCHCC reported MWBE utilization of \$3.8 million (20.32 percent), \$3.4 million (24.46 percent), and \$2.3 million (27.71 percent) for the same periods, respectively.

Audit Results

Annual Goals for Participation

DED requires each contracting agency to submit an Annual Goal Plan by January 15 of each year, summarizing its MWBE procurement opportunities based on its annual budget and expenditures. Further, written policies and procedures help ensure that management's efforts to attain program goals and objectives are carried out.

However, WCHCC did not have written procedures for the processes used to set annual MWBE participation goals, although WCHCC's procurement policy specifically notes the importance of contracting with MWBE vendors. Officials added that they followed DED's user manuals to set their goals. Nonetheless, the DED manuals generally focused on procedures for creating and uploading the annual goal plan document and did not include specific guidance for determining annual goal plan percentages.

WCHCC's MWBE goal is a percentage of the available budget minus exemptions and exclusions. For the 2013-14 fiscal year, the overall goal was 20.69 percent. For each plan, agencies or public authorities were required to set goals for four categories: Commodities, Construction, Construction Consultants, and Service/Consultants. However, WCHCC developed goals for only three of the categories (Commodities, Construction, and Service/Consultants). WCHCC did not set a goal for the category of Construction Consultants.

For the 2014-15 and 2015-16 fiscal years the goals were 21.71 percent and 30.23 percent, respectively. WCHCC officials told us that they determined the percentage in the goal plan using the anticipated MWBE expenditures compared to the total available budget. However, that was not the case, because the anticipated MWBE expenditures were estimated by multiplying the available budget by a certain percentage for which WCHCC provided the internal spreadsheets used.

Further, for the three years we examined, WCHCC had no documentation of the specific

steps taken to develop its MWBE participation goals. According to a WCHCC official, WCHCC staff derived the goals by examining the anticipated expenditures in each category listed on the budget documents as compared to the total available budget for MWBEs. However, WCHCC officials could not document how the amounts of anticipated expenditures were derived. Moreover, without a clear process to develop the annual goal, WCHCC's ability to ensure it develops achievable and appropriate strategies to meet the objective of the program is limited.

In response to our preliminary findings, WCHCC officials stated that they will reduce their MWBE goal setting processes to writing and incorporate them within WCHCC's administrative policies and procedures.

Outreach Efforts

Article 15-A, Section 315.3 of the Executive Law discusses promoting the employment of minority group members and women and promoting and increasing participation by certified businesses with respect to State contracts and subcontracts. WCHCC's Procurement policy states that it encourages the participation of MWBEs in its procurements. The Procurement policy also indicates that WCHCC will ensure that MWBEs are given full opportunity to provide goods and services sought by the Corporation.

We found that WCHCC had made some efforts to increase MWBE participation. For instance, officials provided copies of 34 letters, from January to August 2014, which were sent to certain WCHCC vendors. Officials believed the vendors were MWBEs; however, they were not certified as such by DED. Further, the letters' primary objective was to encourage the vendors to seek and obtain State MWBE certification. Although WCHCC officials described several activities to attract certified vendors, in most cases, they did not adequately document their activities or assess their impacts. For example, according to WCHCC officials, a WCHCC representative attended various outreach events in Albany and New York City to talk to potential MWBE vendors about contract opportunities at WCHCC. However, WCHCC had no documentation of the results of these events or the benefits that were realized. Such information could be helpful in determining which MWBE events to attend in the future.

Additionally, WCHCC officials stated that they review expiring long-term contracts to identify potential MWBE contract opportunities and increase MWBE participation. However, officials could not provide us the results of these reviews, nor could they demonstrate the impact of these reviews on the agency's MWBE participation. We reviewed eight long-term contracts for services such as lab testing, plumbing, fiber-optic cable installation, security services, ambulance services, sterilization services, housekeeping, and food and nutrition services, and found that only two of them were MWBE vendors. We also reviewed a list of contracts in effect for the 2012-13 year and noted that none of these contracts were with MWBE vendors. These contracts included window cleaning, snow removal, and landscaping services. Further, our review of DED MWBE directories dated April 30, 2014 and May 20, 2015 indicated that MWBE vendors existed for some of these services.

When we presented these findings to WCHCC officials, they reiterated that as long-term

multi-year contracts expire, they will encourage the participation of MWBE vendors. Officials also stated that they have developed an action plan to increase supplier diversity and develop a handout for MWBE vendors identifying the type of goods and services WCHCC purchases. Further, officials advised us that WCHCC had appointed someone to lead its new Office of Diversity and Inclusion. In addition, WCHCC's Board of Directors established the Committee for Diversity and Inclusion in January 2016. WCHCC officials believe these steps will help improve overall MWBE participation.

Program Participation

DED regulations require that each State agency and public authority submit a quarterly compliance report that includes information on the number and value of contracts awarded during the period, the amount expended under these procurements, and the extent of participation of eligible MWBEs. Adequate monitoring and oversight of the MWBE program is dependent upon the accuracy of the data provided by State agencies and public authorities in their quarterly reports to DED.

WCHCC officials initially stated that they reported MWBE utilization to DED based on payments, as required by DED. However, this was not the case, and as a result, WCHCC did not submit accurate quarterly reports to DED for fiscal years 2013-14 and 2014-15 and the first two quarters of fiscal year 2015-16. We sampled 120 invoices (73 payments), totaling \$11.6 million, out of 362 invoices totaling \$14.3 million for this period. We reviewed the 73 payments and found that they could not be reconciled to the appropriate quarterly reports submitted to DED.

For example, invoices totaling \$73,938 were reported in October and November 2013; however, the related payments were not made until May 2014 (or the first quarter of the following fiscal year). Out of the 120 invoices, 91 (76 percent) totaling \$4 million were reported in a different quarter and 39 payments (33 percent) totaling \$1.06 million were reported in fiscal years other than when they were actually paid.

When we brought this to WCHCC officials' attention, they acknowledged that the MWBE utilization information reported to DED was incorrect. Instead of reporting actual expenditures as required, WCHCC reported MWBE utilization based on invoices received from MWBE vendors. Officials attributed this to a misunderstanding between WCHCC's Purchasing Office and Finance Office. Finance provided records for vendors based on when the invoices were entered into the Accounts Payable system and the Purchasing Office reported them to DED as MWBE participation. WCHCC officials advised that, going forward, they will report MWBE participation based on actual payments to MWBEs; however, they will not correct the amounts previously submitted to DED.

We also found WCHCC incorrectly reported payments to a non-MWBE vendor as MWBE utilization. Ten of the 73 sampled payments totaling \$475,598 were paid to this vendor between April 2013 and September 2015. However, this vendor was not a certified MWBE. Moreover, the quarterly utilization reports do not show this vendor as the payee; rather, the reports list another vendor (with a similar name) that was a certified MWBE. However, WCHCC did not have

an adequate system to identify MWBE vendors. Each month, the employee who prepared the quarterly MWBE participation report manually identified MWBEs by referring to the prior report. If the prior report mistakenly identified a provider as an MWBE, the error was likely repeated in the current report, resulting in further overstatement of MWBE participation.

In response to our preliminary findings, WCHCC officials indicated they have established a process to capture payment information electronically, from its automated accounting system, for the MWBE vendors. The accounting system was updated to readily identify payments made to MWBE vendors. Moreover, the MWBE vendors will be clearly identified in the databases used for both contract management and vendor payments.

Recommendations

1. Document the processes used to establish WCHCC's annual MWBE goal plan, including the development of the rates for the individual program components of the overall MWBE initiative.
2. Document the results of WCHCC's MWBE outreach plan and use the results to assess effectiveness and revise outreach efforts, as appropriate.
3. Develop and implement formal procedures to identify and summarize MWBE payments and ensure that MWBE participation data is reported accurately to DED.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether WCHCC: properly established annual MWBE goals; made adequate efforts to reach these goals; and accurately reported the results to DED. The audit included the period April 1, 2013 through September 30, 2015.

To accomplish our objectives, we interviewed WCHCC officials to gain an understanding of the MWBE program and to obtain an understanding of the internal controls related to the program. We also reviewed Article 15-A of the New York State Executive Law and pertinent Sections of the Regulations of the Commissioner of the Department of Economic Development. We reviewed WCHCC's annual goal plans for the 2013-14, 2014-15, and 2015-16 fiscal years, as well as utilization (payments made to MWBE contractors) that was reported to DED and budget documents related to the determination of annual MWBE participation percentages. In addition, we reviewed outreach efforts undertaken by WCHCC with regard to prospective MWBE vendors.

We selected a judgmental sample of 120 invoices (corresponding to 73 payments) totaling \$11,156,046 out of 362 invoices totaling \$14,264,988 paid between April 1, 2013 and September 30, 2015. These invoices were from five vendors WCHCC indicated were MWBEs, and we reviewed canceled checks associated with all of these invoices. We reviewed payments made to five of seven vendors because they represented the great majority of the total payments. Also, we sent confirmation letters to six vendors to determine whether they received payments (and how much) from WCHCC for products or services sold to the agency.

We conducted our 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.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to WCHCC officials for their review and formal comment. We considered WCHCC's comments in preparing this report and have attached them in their entirety to it. In their response, WCHCC officials took issue with several of our report's findings and conclusions. Nonetheless, officials indicated that actions have been and will be taken to address the report's recommendations. Also, our rejoinders to certain statements in WCHCC's response are included in the report's State Comptroller's Comments.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Chairman of the WCHCC shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees advising what steps were taken to implement the recommendations contained herein, and where the recommendations were not implemented, the reasons why.

Major contributors to this report were Robert C. Mehrhoff, Erica Zawrotniak, Richard Moriarty, and Jean-Renel Estime.

We wish to thank the management and staff of the WCHCC for the courtesy and cooperation extended to our auditors during this audit.

Very truly yours,

Carmen Maldonado
Audit Director

cc: J. Switzer, WCHCC
NYS Division of the Budget

Agency Comments



WESTCHESTER
MEDICAL CENTER

Beth Davis
Vice President and Deputy General Counsel

September 12, 2016

Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane - 21st Floor
New York, NY 10038

Re: *Westchester County Health Care Corporation
Contract Participation of Minority and Women Owned Business Enterprises
Report 2015-S-78*

Dear Ms. Maldonado:

I write in response to the proposed final report (the "Report") of the New York State Office of the State Comptroller ("OSC") concerning its audit of the Participation of Minority and Women Owned Business Enterprises ("MWBEs") in State Contracts at Westchester County Health Care Corporation ("WCHCC"). WCHCC takes exception to several of the Report's findings and recommendations, which bear little relation to OSC's stated audit objectives and fail to acknowledge WCHCC's implementation of an MWBE program that complies with Article 15-A of the Executive Law ("Article 15-A"), the regulations promulgated thereunder (the "MWBE Regulations"), and guidance provided by the Division of Minority and Women's Business Development of the Empire State Development Corporation ("DED").

OSC stated three objectives for its audit of WCHCC's MWBE program. Namely, OSC sought to determine whether WCHCC: (i) properly established annual MWBE goals, (ii) made adequate efforts to reach those goals, and (iii) accurately reported MWBE participation in WCHCC contracts to DED. OSC's Report, by contrast, concentrates on whether WCHCC: (i) reduced its established MWBE procedures to writing, (ii) subjected its MWBE outreach efforts to internal audit, and (iii) automated its review of DED's MWBE directory. The inconsistency between OSC's Report and its audit objectives results in a Report that omits any recognition of WCHCC's state approved MWBE goal plans and WCHCC's consistent achievement of its MWBE goals.

WCHCC has properly established annual goals for MWBE participation in its contracts every year since its MWBE program was implemented in 2012. WCHCC has also made meaningful MWBE outreach efforts as evidenced by its robust supplier diversity program and further verified by consistent achievement of its MWBE goals. WCHCC has therefore satisfied its statutory obligations to set "agency-specific" goals for MWBE utilization and to "make a good faith effort to meet the maximum feasible portion of [its] MWBE goals."¹

WCHCC also takes issue with the Report's mischaracterization of WCHCC's MWBE program

¹ 5 NYCRR 141.2; 141.7(a).

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and misinterpretation of Article 15-A and the MWBE regulations. Several of the Report's recommendations impose obligations on WCHCC that are not in New York State's regulatory framework for MWBE utilization. Thus, while WCHCC accepts some of OSC's findings and recommendations we do find it necessary to clarify several facts concerning WCHCC's MWBE program as well as the laws and regulations requiring WCHCC to utilize MWBE vendors.

Recommendation #1

Document the processes used to establish WCHCC's annual MWBE goal plan, including the development of the rates for the individual program components of the overall MWBE initiative.

Response: WCHCC will implement OSC's recommendation that WCHCC document its annual goal planning process. WCHCC will reduce its process to writing and incorporate it in WCHCC's written administrative policies and procedures. There is no legal basis, however, for the recommendation that WCHCC develop rates for "the individual program components of the overall MWBE initiative". Furthermore, the findings made by OSC in support of its first recommendation inaccurately describe WCHCC's achievement of its MWBE goals, WCHCC's goal setting process, and the MWBE regulations.

WCHCC's process for setting annual MWBE participation goals is well established and is in accordance with Article 15-A and the MWBE Regulations. Section 141.2 of the MWBE Regulations requires state agencies and public benefit corporations ("PBCs"), like WCHCC, to establish an "agency-specific" MWBE goal based on "a review of the scope, character, and *relevant expenditures associated with the state contracts that are expected to be let or performed during the relevant fiscal year.*"² The agency-specific goal must be stated as a percentage of the agency's aggregate expenditures. DED and the regulations further require agencies to report what proportion of expenditures comprising its overall MWBE goal will be spent in four contracting categories – construction, construction related services, non-construction related services, and commodities.³ Notably, neither Article 15-A, the MWBE regulations nor DED require that a goal be set in each contract category or require that the overall goal be distributed among the four contracting categories in any particular proportion.

The Office of the Governor has issued guidance recommending that state agencies and PBCs set and endeavor to achieve specific MWBE participation goals. For state fiscal years 2012-13 through 2014-15 the Governor recommended that state agencies and PBCs set and achieve a MWBE participation goal of twenty percent (20%). The recommended MWBE goal for state fiscal years 2015-16 to present is thirty percent (30%). The Governor's recommendations pertain to the overall goal state agencies and PBCs set for MWBE participation. Like DED, Article 15-A and the MWBE regulations, the Governor's recommendations do not require an agency's MWBE goal to reflect a certain distribution of agency expenditures among the four contracting categories.

WCHCC sets its MWBE goals by: (i) examining its total anticipated expenditures for the upcoming fiscal year through a review of its budget; (ii) identifying anticipated expenditures as exempted, excluded, or available for MWBE participation (this is the denominator of the goal percentage); and (iii) applying the factors in Section 141.2(c) of the MWBE Regulations in order to retain known MWBEs and identify new MWBEs to engage in contracts that are available for MWBE participation (this is the numerator of the goal percentage). WCHCC also specifies what portion of its MWBE goal will be achieved through expenditures in the four contract categories of construction, construction related services, non-construction related services, and commodities. This process is prescribed by the MWBE Regulations, and reflects guidance and instruction provided directly by DED during webinars and conference calls. WCHCC does not, and is not required to, develop or set individual MWBE goals in

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² Emphasis added.

³ 5 NYCRR 141.3(c).

each of the contract categories.

OSC suggests that WCHCC's goal plans are non-compliant because WCHCC's MWBE goal does not include expenditures for "construction consultant contracts."⁴ WCHCC's only obligation is to set a single goal based on the percentage of its aggregate expenditures that will be paid to MWBEs. WCHCC has met this obligation. Consequently, DED has approved all of WCHCC's goal plans including those that do not include a goal for or expenditures under construction consultant contracts. OSC's contention that WCHCC must set a goal in each contract category reveals a fundamental misunderstanding of New York State's MWBE framework. Requiring a goal for each contract categories implies that WCHCC *must* have expenditures in each contract category. The MWBE regulations do not compel PBCs to retain MWBEs in particular contract areas. Such a requirement would have the untenable result of forcing agencies to contract with MWBEs just to have MWBE expenditures in each of the four contract categories - regardless of whether the agency actually required that type of service. This outcome clearly does not comport with the spirit or the purpose of the Article 15-A or the MWBE Regulations.

OSC also claims, without basis, that WCHCC provided no documentation of how its MWBE goals are developed. In actuality, WCHCC provided OSC with copies of the internal spreadsheets used to analyze WCHCC's total budget, calculate the amount of the total budget that is available for MWBE participation, and determine WCHCC's MWBE participation goals. WCHCC even gave OSC an annotated version of its spreadsheets that clearly identified the numerator and denominator used to calculate WCHCC's MWBE goal as a percentage of its aggregate expenditures. The Report fails to even acknowledge receipt of this documentation. The Report further contends that WCHCC's anticipated MWBE expenditures were estimated by multiplying the available budget by a certain percentage. The Report makes this assertion despite documentation to the contrary and repeated demonstrations by WCHCC staff showing that WCHCC estimates anticipated MWBE expenditures by using the budget applicable to the given MWBE goal plan year. The Report does not accurately reflect the documentation or information supplied by WCHCC concerning its MWBE goal setting process.

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WCHCC has met or exceeded its stated MWBE participation goals and has adhered to the Governor's guidance recommending achievement of MWBE goals of twenty percent (20%) for state fiscal years 2012-13 through 2014-15 and thirty percent (30%) for state fiscal years 2015-16 to present.⁵ WCHCC stands by its process for setting annual MWBE participation goals and will reduce its process to writing and incorporate it in WCHCC's administrative policies and procedures.

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Recommendation #2

Document the results of WCHCC's MWBE outreach plan and use the results to assess effectiveness and revise outreach efforts, as appropriate.

Response: WCHCC has a strong institutional commitment to encouraging participation of MWBEs in its contract opportunities and will continue its ongoing and multi-faceted effort to engage the MWBE vendor community. The fact that WCHCC has consistently met or exceeded its MWBE goals proves the success of its outreach efforts. The Report ignores this fact - the best evidence of the

⁴ While the MWBE Regulations do not refer to "construction consultants" as contract category, reference is made to construction consultants as a contract category on the DED goal plan reporting website and in related DED materials.

⁵ WCHCC's annual MWBE goals can be summarized as follows: Q4 SFY12-13 - Goal of 20%; SFY13-14 - Goal of 20.69%; SFY14-15 - Goal of 21.71%; SFY15-16 - Goal of 30.23.

effectiveness of WCHCC's MWBE outreach - and instead recommends that WCHCC better document and audit its outreach activities. The Report also incorrectly describes WCHCC's engagement of MWBEs in multi-year contracts and omits details about the multi-year contracts reviewed by OSC that contradict the Report's conclusions. Notwithstanding the foregoing, WCHCC anticipates that its recently established Office of Diversity and Inclusion will better document outreach activities going forward.

WCHCC is compliant with the MWBE regulations and has engaged in meaningful outreach to MWBE vendors. Under Section 141.7(a) of the MWBE regulations WCHCC must "make a good faith effort to meet the maximum feasible portion of [its] MWBE goals." WCHCC is in full compliance with the requirements of Section 141.7(a). While not reflected in the Report, WCHCC has a robust supplier diversity program. The WCHCC Board of Directors Diversity Committee and WCHCC's Diversity Council⁶ are both committed to implementing WCHCC's action plan for increasing supplier diversity. The action plan includes, among other things, participating in MWBE events throughout the region and partnering with MWBEs to raise awareness about procurement opportunities at WCHCC. Representatives of WCHCC also regularly attend the MWBE events hosted by DED. Previously, those events have included: the DED Annual Meeting in Albany (September 30, 2015), the DED Health Care forum in Albany (February 4, 2016); and the DED Meeting on MWBE Participation Opportunities in Health Care in Albany (March 4, 2015).

Although the Report states that WCHCC fails to document its outreach efforts, WCHCC's Vice President of Diversity and Community Relations provided OSC with documentation of supplier diversity events attended by WCHCC (including dates and times), outreach activities being planned, and supplier diversity organizational memberships. While WCHCC will better maintain documentation of its outreach activities, it is unclear what end such documentation will serve. It is also unclear what OSC contemplates when it suggests that WCHCC should audit or assess the impact of its outreach efforts. There is no anecdotal or statistical benchmark that WCHCC must achieve with respect to MWBE outreach. The only applicable standards are good faith efforts and attainment of the annual MWBE goal. WCHCC has satisfied both these standards.

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The Report's assessment of WCHCC's MWBE outreach also relies on a series of inaccurate findings concerning participation of MWBEs in WCHCC's multi-year contracts. OSC criticizes WCHCC for failing to provide results of its "review" of expiring multi-year contracts and failing to demonstrate how such "reviews" impact MWBE participation. This is a gross mischaracterization of WCHCC's process. As multi-year contracts expire they are subject to WCHCC's normal procurement process, which employs multiple mechanisms to contact, and encourage the participation of, MWBE vendors.

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In accordance with its procurement policy, WCHCC's contract solicitations (for multi-year and other contracts) are advertised on its website and in the New York State Contract Reporter. These solicitations include WCHCC's standard language expressly encouraging the participation of MWBE vendors. In addition, WCHCC's internal contract request form (which is used for all contracts including multi-year contracts) requires WCHCC staff to search the state MWBE directory for potential MWBE vendors before selecting a vendor to provide goods and services. WCHCC also requires all bidders, proposers, and new vendors to indicate whether they are majority minority or women-owned and provides such vendors with information to become certified by New York State. What the Report characterizes as a mere "review" of multi-year contracts is in fact the comprehensive procurement process WCHCC uses for all contracts, which includes a systematic effort to facilitate MWBE contract participation. The claim that WCHCC has failed to provide OSC with "the results of" or "demonstrate the impact of" its procurement process lacks merit. WCHCC has shown that its process repeatedly results in the procurement of sufficient MWBE contracts to meet its annual MWBE goal.

⁶ The Diversity Council is comprised of members WCHCC's management and senior management.

The Report's findings also incorrectly imply that WCHCC's MWBE outreach is insufficient because certain multi-year contracts reviewed by OSC did not provide for MWBE participation. Specially, OSC asserts that of eight multi-year contracts reviewed only two were with MWBE vendors and that a list of certain contracts effective during fiscal year 2012-2013 did not include any MWBE vendors. The Report also emphasizes that the DED MWBE directory listed MWBE vendors who perform services that were performed by non-MWBE vendors under some of WCHCC's multi-year contracts. These findings are not in any way indicative of the effectiveness of WCHCC's MWBE outreach or reflective of MWBE participation in WCHCC contracts.

Significantly, the Report omits the fact that many of the contracts sampled by OSC were negotiated before the MWBE Regulations were effective and/or WCHCC's first goal plan was implemented.⁷ Contracts predating WCHCC's MWBE program cannot be the basis of any finding of inadequate outreach (or other non-compliance) by WCHCC. Further, there is no law or rule that requires WCHCC to have a certain statistical distribution of MWBE vendor contracts or to award a contract to an MWBE vendor simply because a vendor supplying the service is listed in the MWBE directory. Any finding to the contrary is completely divorced from the MWBE regulations and overlooks WCHCC's statutory obligation to award non-professional service contracts to the lowest responsible bidder.⁸ Ultimately, OSC's reliance on MWBE participation in multi-year contracts as a metric for MWBE outreach is unsound. An examination of this limited subset of contracts, many of which were effective before the WCHCC's goal plan was approved, simply cannot illustrate the extent to which WCHCC has engaged with the MWBE community. The best evidence of the efficacy of WCHCC's MWBE outreach activity is its demonstrated ability to consistently meet or exceed its annual MWBE goals.

Recommendation #3

Develop and implement formal procedures to identify and summarize MWBE payments and ensure that MWBE participation data is reported accurately to DED.

Response: WCHCC has established a process to capture payment information for MWBE vendors and is currently reporting MWBE payment data to DED.

The Report makes much of two clerical errors in WCHCC's reporting of data to DED. First, the Report finds that WCHCC reported to DED amounts invoiced by MWBE vendors instead of amounts actually paid to MWBE vendors during the applicable reporting period. The Report correctly indicates that this error occurred because of a miscommunication between WCHCC's Purchasing and Finance Departments. WCHCC acknowledged this error and has implemented corrective measures. MWBE vendors are now clearly identified in WCHCC databases used for both contract management and vendor payments. The electronic accounting system used by WCHCC's Finance Department has been updated and now also identifies payments made to MWBE vendors. The Finance Department is providing payment information to WCHCC's Purchasing Department to enable quarterly reporting to DED.

It bears mentioning, however, that the invoiced amounts reported to DED by WCHCC did accurately reflect services rendered to WCHCC by MWBE vendors and the amounts WCHCC is obligated to pay such MWBE vendors. WCHCC did not dispute or refuse to pay any of the invoiced amounts at issue. The only consequence of WCHCC's reporting of amounts invoiced rather than amounts paid amounts is that, because of contract terms stipulating that payments are made thirty to

⁷ The following contracts were all procured prior to the implementation of the MWBE Regulations: CMC-6265 comprehensive food services, CMC-8649 environmental services and infection control, CMC-6542 ambulance services, CMC-7460 reference lab testing, CMC-8958 clinical testing, and CMC-8436 security services.

⁸ The contracts cited by OSC are each valued in excess of \$200,000 and therefore are not eligible for a MWBE procurement waiver under the Executive Law.

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ninety days from the date of the invoice, amounts reported to DED may have been paid in a different reporting period. The clerical error did not change WCHCC's actual financial commitment to, or level of expenditures on, MWBE vendors.

The Report also highlights that WCHCC inadvertently reported payments of a non-MWBE vendor to DED. This reporting issue arose because a non-MWBE vendor had a markedly similar name to an MWBE vendor. The Report finds that WCHCC did not have an adequate system to identify MWBE vendors. This finding ignores the fact that the only way to identify state certified MWBEs is by looking them up in the State directory. This must be done manually and is subject to human error. WCHCC has trained staff to exercise greater diligence in this task. WCHCC has corrected the misidentification of this vendor and its non-MWBE status is now properly reflected in WCHCC's contract management and payment databases.

* Comment 8

WCHCC has implemented an MWBE program that has met or exceeded its goals for MWBE participation in accordance with Article 15-A, the MWBE Regulations, and administrative guidance. WCHCC is engaged in ongoing and meaningful outreach with the MWBE vendor community and will continue to satisfy its statutory requirements and while encouraging increased MWBE involvement in WCHCC's procurement opportunities.

Sincerely,



Beth Davis
Senior Vice President and Deputy General Counsel

State Comptroller's Comments

1. WCHCC's assertion is incorrect. In fact, the audit's objectives and findings are fully consistent. For example, with respect to the proper establishment of annual MWBE goals, we determined that WCHCC estimated MWBE expenditures by multiplying available budgets (funding) by certain percentages for which there was no documented support, as detailed in the report. Further, regarding the reporting of MWBE program participation, we found that purported MWBE payments did not reconcile to the corresponding quarterly program reports that WCHCC submitted to DED, also as detailed in the report. Thus, our findings resulted from audit steps that were directly related to the audit's objectives.
2. Our recommendations are focused on the need for WCHCC to adequately document its activities related to the MWBE program. Further, we did not misinterpret Article 15-A. Instead, we direct WCHCC officials to "Standards for Internal Controls in New York State Government" and specifically the section on Control Activities, which state, in part, that: "Documentation involves preserving evidence to substantiate a decision, event, transaction or system. All documentation should be complete, accurate and recorded timely. Documentation should have a clear purpose and be in a usable format that will add to the efficiency and effectiveness of the 5 Components and 17 Principles of Internal Control organization. Examples of areas where documentation is important include critical decisions, significant events, transactions, policies, procedures and the system of internal control. Critical decisions and significant events usually involve executive management. These decisions and events usually result in the use, commitment, exchange or transfer of resources, such as in strategic plans, budgets and executive policies. By recording the information related to such events, management creates an organizational history that can serve as justification for subsequent actions and decisions and will be of value during self-evaluations and audits."

In addition, documentation of policies and procedures is critical to the daily operations of an organization. The organization deploys control activities through policies that establish what is expected and through procedures that put policies into action. These documents set forth the fundamental framework and the underlying methods and processes all employees rely on to do their jobs. They provide specific direction to employees in their daily decision making. Without this framework of understanding by employees, conflicts can occur and poor decisions can be made, causing harm to an organization's reputation. Further, the efficiency and effectiveness of operations can be adversely affected.

3. WCHCC misses the point. According to the pertinent ESDC regulation, "the Master Plan must include agency specific goals expressed as a percentage of aggregate agency expenditures, specifically including each of the following contracting categories: (i) construction; (ii) construction related services; (iii) non-construction related services; and (iv) commodities." The Master Goal Plan aggregates each of the four categories to reach the annual goal. Based on the underlying supporting documentation for its Master Goal Plan, WCHCC did not specifically address the category of construction consultants, as otherwise required.
4. We revised our report to state that WCHCC did provide a spreadsheet. However, WCHCC

did not provide any information about the specific steps and methods applied to determine MWBE goals. As stated in our report, the supporting documentation merely showed how the goal was calculated mathematically, but it did not describe the basis for determining the goals.

5. Although WCHCC states it met the goals for the periods (2013-14, 2014-15, and 2015-16), this is questionable because 33 percent of its payments were actually made in years other than the years in which they were reported. Further, the utilization amounts were overstated by \$475,598 (or about 5 percent of the total utilization reported for the same period). Moreover, WCHCC officials also stated that they did not plan to correct the amounts reported as utilization to DED.
6. WCHCC's assertion regarding its outreach plan is inaccurate. We started our fieldwork in October 2015. Nevertheless, it was not until March 17, 2016 that WCHCC officials mentioned that WCHCC had an Office of Diversity and Community Relations or that WCHCC's Board established a Diversity Committee in January 2016. To ensure we included this new information in our audit report, on March 24, 2016, we met with the Vice President of the Office of Diversity and Community Relations to obtain information about her Office's role in WCHCC's MWBE outreach efforts. The Vice President informed us that she was hired in March 2015, and consequently, she was not involved in MWBE outreach efforts for the first two years we reviewed. For the third year (2015-16), we received documents for events in September 2015 and January 2016. However, the supporting documentation included no detailed information about any activities that occurred at these events or the tangible results from them. Moreover, the Vice President stated that one of her first projects was to draft a strategic plan to build diversity and inclusion into the culture at WCHCC. However, WCHCC's Diversity and Inclusion Strategic Plan (for 2013-2017) focuses on WCHCC's workforce and its patients. There is no reference in this plan to WCHCC's MWBE program. This is not surprising, as according to the Vice President, her role did not initially include MWBE program matters.
7. WCHCC officials make assertions related to actions they claim to have taken to increase MWBE participation in procurements including multi-year contracts. However, as detailed in our report, WCHCC had no documentation to support that such steps were undertaken. This finding is not about process, but rather about the lack of documentation that the process was actually carried out as described. Further, as noted in Comment No. 2, documentation is a basic part of a sound internal control system.
8. WCHCC's attempt to minimize the significance of the errors that were made in the participation amounts reported to DED is misleading. In fact, 33 percent of the payments totaling \$1.06 million were reported for fiscal years other than the years in which they were actually made. In addition, payments to a non-MWBE vendor totaled \$475,598 (or about 5 percent of the total utilization reported for fiscal years 2013-14, 2014-15, and the first half of 2015-16) and should not have been included in the reported participation amounts. Also, WCHCC asserts that the discrepancy was attributable to human error caused by the need to manually look up MWBE vendors in the State directory. However,

WCHCC made 10 payments to the vendor in question between April 2013 and September 2015, and consequently, we question how/why WCHCC staff made the same mistake in reading the directory 10 times.