

**CITY OF NEW YORK**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE  
(M/WBE) PROGRAM**

**Annual Report for Fiscal Year 2014**

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**Compliance Report covering July 1, 2013 – June 30, 2014**

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## Introduction

This report describes the City's efforts to promote fairness and equity in city contracting. The reporting period covers the City's Minority and Women-Owned Business Enterprise (M/WBE) Program accomplishments for Fiscal Year 2014 (July 1, 2013 – June 30, 2014). As per the New York City Administrative Code § 6-129(l)1, the report is jointly submitted by the Director of the Mayor's Office of Contract Services (MOCS), as the City Chief Procurement Officer, and by the Commissioner of the Department of Small Business Services (SBS).

This report, along with the [Agency Procurement Indicators](#) published by MOCS, summarizes M/WBE Program activity, prime contract and subcontract utilization data for City-certified M/WBEs and Emerging Business Enterprises (EBEs), as well as additional data specified in Section 6-129 of the New York City Administrative Code. The report covers contracts that were registered in FY 2014, including procurements that were solicited before Local Law 1 became effective and subject to Local Law 129.<sup>1</sup> The report demonstrates that in FY 2014 the City and its agencies made substantial progress towards achieving citywide goals.

The M/WBE Program was signed into law in 2005 and is administered jointly by SBS and MOCS. Since then, SBS has worked aggressively to expand opportunities for minority and women-owned firms by connecting them to a comprehensive range of programs that provide management training, procurement technical assistance and other resources to help them navigate and compete in the public procurement marketplace. The City's collective efforts have resulted in awarding of more than \$4.1<sup>2</sup> billion in contracts to M/WBE firms to date.

State law requires that a majority of contracts be awarded to responsible vendors that submit the lowest responsive bids or the best proposal. Despite these limitations, the City continues to make great strides in M/WBE utilization, and even more in contracting areas where agencies have most discretion and flexibility. These are contracts that are valued at less than \$100,000 (small purchases) and less than \$20,000 (micro

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<sup>1</sup> Local Law 1 amended the law that created the City's M/WBE program, Local Law 129 of 2005. The new law took effect on July 1, 2013.

<sup>2</sup> This figure extends beyond New York City's M/WBE Program and includes all awards to certified M/WBE firms and contracts that are not subject to the program, including but not limited to emergency and intergovernmental contracts.

purchases). During FY 2014, M/WBE vendors obtained 27% of the City's micro purchases and 31% of small purchases.

### **Changes to the M/WBE Program**

Local Law 1 strengthened the City's M/WBE Program by eliminating the \$1 million cap on contracts to which participation goals apply, significantly increasing the overall number and value of contracts subject to participation goals. Additional changes include: changes to goals in certain ethnic and gender categories; the addition of M/WBE participation goals on standard services contracts; the elimination of goals for goods on contracts valued over \$100,000; the elimination of the Target Subcontracting Percentage (TSP) for the purposes of goal setting; and the establishment of participation goals for women in construction services. As the TSP was eliminated, agencies establish one M/WBE participation goal on eligible contracts after determining availability of M/WBEs to perform the work in question.

The new law also increased accountability for City agencies to meet their contracting participation goals, including: quarterly reporting requirements; the creation of an M/WBE Director position, who oversees agency compliance with M/WBE utilization goals and who will convene quarterly meetings with M/WBE officers to discuss agency performance in attaining such goals; and the creation of Performance Improvement Plans for agencies that fail to achieve their annual utilization goals. Finally, the law requires SBS to expand the online directory of certified firms and to perform site visits in connection with certification.

Local Law 1 became effective on July 1, 2013. This means that the changes to the program applied to solicitations issued after that date. Solicitations issued prior to July 1, 2013 are subject to the requirements of Local Law 129, meaning, for example, that procurements valued at greater than \$1 million fell outside of the M/WBE Program and M/WBE participation was limited to construction and professional services subcontracts valued under \$1 million. During FY 2014, 74% of the value of all reported prime contracts were subject to Local Law 129.

## **Expanding the Base of Certified Firms**

SBS continues to increase the participation of M/WBE firms in City contracting by expanding its base of certified firms. During the certification process, a company's ownership and management structure is thoroughly reviewed to ensure the applicant performs the key functions of the business. Minority- and women-owned firms who choose not to certify with the City are neither tracked, nor measured, in the City's performance reporting. To that end, SBS has worked hard to simplify certification without compromising review standards. Businesses can apply for M/WBE certification online and track the status of their application using the NYC Business Express website available at <http://nyc.gov/BusinessExpress>. SBS also regularly conducts classes to educate small businesses on the certification process and application requirements. During FY 2014, 311 businesses participated in 20 certification workshops conducted by SBS. As part of new Local Law 1 requirements, during the reporting period, SBS started conducting site visits at firms seeking certification, to support the review process and ensure compliance with certification eligibility criteria. SBS also revised the existing M/WBE certification application to include questions to reflect a business's capacity to perform on contracts.

Various community partners extend the reach of SBS's certification outreach efforts. Businesses can rely on these organizations, including the New York City Council-funded community-based groups that comprise the M/WBE Leadership Association, and the SBS network of Business Solutions Centers located throughout the five boroughs, for assistance in applying for certification. These efforts ensure the submission of a more complete application, simplifying the certification review process. In FY 2014, SBS certified 438 new M/WBEs and recertified 485 M/WBEs, bringing the number of City-certified companies to 3,783 as of July 1, 2014. Our community partners support the business growth of M/WBEs with marketing workshops, networking events, and business development services. During the reporting period, SBS collaborated with local development corporations, trade associations, industry membership organizations and local chambers of commerce on 107 events to spread the word about the benefits of certification and the range of capacity-building services available citywide to help businesses grow.

## **Emerging Business Enterprise Program**

In 2006, Local Law 12 created a disadvantaged business enterprise program for the City called the "Emerging Business Enterprise (EBE) Program". Although SBS continues to target potential M/WBE and EBE

groups simultaneously, the outcomes of such measures are quite different. Similar to 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. 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 individual and specific determinations of an applicant's disadvantage.

Since inception of the EBE Program, 38 applications have been received, and a total of two firms are currently certified as EBEs. Unlike the M/WBE Program, limited participation in the EBE Program has made it difficult for City agencies to set goals on contracts. Nevertheless, six contracts (three prime contracts and three subcontracts) were awarded to an EBE certified firm for a total of \$2,156,519 during the reporting period.

SBS continues to strive towards increasing participation in the EBE Program through a wide range of outreach efforts regularly conducted with businesses and community partners. Once increased participation in the EBE Program is achieved, City agencies will have sufficient availability of certified firms needed to set feasible goals on their contracts.

## **Selling to Government**

SBS provides instruction to certified M/WBEs and other small businesses to help them understand how to sell to government, strengthening their ability to navigate the City's procurement system. Services are provided through a combination of workshops, courses and one-on-one assistance. To be an effective bidder on City contracts, small businesses, including M/WBEs, must understand the City's procurement rules and maintain the most current information on their profiles in SBS' Online Directory of Certified Businesses ([www.nyc.gov/buycertified](http://www.nyc.gov/buycertified)) and other City procurement systems. In FY 2014, SBS worked with 682 certified companies to help them understand the City's procurement process and to update their contact information and business profiles. In addition, SBS conducted 200 one-on-one sessions with vendors to provide assistance for responding to contract opportunities, and contract management assistance, including resolution of payments issues. For M/WBEs, it is vital to find the agencies that buy their products and services. During FY 2014, SBS informed and connected over 1,955 M/WBEs to contracting opportunities.

During the reporting period, 215 companies attended SBS' regularly scheduled workshop "Selling to Government" – a monthly workshop open to the public that provides firms with the basic concepts of government contracting. SBS also works with the New York City Council through the M/WBE Leadership Association to provide certified firms with more capacity-building services, including assistance with loan and surety bond applications, preparation of bids and proposals, and marketing to both the public and private sector. In FY 2014, member organizations sponsored 107 events and hosted 1,532 one-on-one technical assistance sessions.

As part of technology enhancements to support implementation of Local Law 1, SBS has been updating the Online Directory of Certified Businesses. Agencies and prime contractors can now see union affiliations and bonding levels of certified firms. Searching by company name has been made more flexible, and buyers can also search for firms that are certified as both minority and women owned. In addition, SBS collects and displays more work experience information for certified companies, including the percent of work that was self-performed and other specific data pertaining to construction companies.

### **Program Expansion**

In February 2012, SBS launched "Compete to Win", a set of capacity building programs for M/WBEs and other small businesses. This set of services is designed to help M/WBEs win more contracts with the City and consists of the following programs: Technical Assistance, Upfront Capital Loan, Bond Readiness, NYC Construction Mentorship and NYC Teaming. These initiatives, along with two other programs targeting M/WBEs, the Corporate Alliance Program (CAP) and Strategic Steps for Growth, made great strides in FY 2014 and are covered in detail in the [Agency Procurement Indicators](#) published by MOCS.

### **Program Compliance**

To ensure that all agency staff responsible for purchasing activities are familiar with the M/WBE Program and their agency's goals, SBS holds agency training sessions at the Citywide Training Center and agency locations. During FY 2014, 180 procurement professionals from 18 agencies attended seven classes. The topics included Local Law 1 implementation, strategies and best practices used to identify M/WBEs for contract opportunities, Online Directory training, and enhancing M/WBE procedures for contracts under \$100,000.

SBS also conducts an annual M/WBE Compliance Audit of randomly selected contracts subject to the Law. In the reporting period, SBS worked on two compliance audits covering 5% of prime contracts with target subcontracting percentages in FY 2012 and FY 2013, and 5% of subcontracts awarded to M/WBE firms. Eleven prime contracts and 12 subcontracts are being audited for the FY 2012 period, and 14 prime contracts and 10 subcontracts are being audited for the FY 2013 period. The findings from both audits will be reviewed and shared with the participating agencies to promote compliance with M/WBE Program requirements, both by City agencies and prime contractors.

Local Law 1 also created the position of a “Director” to perform enhanced M/WBE Program oversight functions. On May 29, 2014, Mayor de Blasio appointed Counsel to the Mayor Maya Wiley as the M/WBE Director. As required by the law, Director Wiley will convene quarterly M/WBE compliance meetings with agency M/WBE officers and commissioners to discuss M/WBE utilization and agency performance. The first meeting with Director Wiley occurred on June 30, 2014, and was attended by 66 staff members representing 31 agencies.

### **Complaints Received**

The M/WBE program (LL 129 and LL 1) requires the tracking of compliance complaints by M/WBE vendors, no such complaints were made during the reporting period.

### **Qualified Joint Venture Agreements**

During FY 2014, two certified M/WBEs participated in one qualified joint venture agreement, in which the percentage of profits to the M/WBE vendor exceeded 25% of the total profit. This joint venture contract was awarded in the Professional Services (Architecture/Engineering) industry. Both partners are certified M/WBEs - Black American and Asian American companies.

Industry	Total Dollar Value	Number of contracts	Ethnicity	Value to M/WBE	Percent
Architecture/Engineering	\$806,142	1	Black	\$403,071	50%
Architecture/Engineering	\$806,142	1	Asian	\$403,071	50%

## **Locally-based Enterprise Program**

Although the Locally Based Enterprises (LBE) Program is not referenced in Administrative Code § 6-129, LBE is a certification category administered by SBS and the applicability of the LBE Program in City procurement is impacted by the MWBE Program. When first established, the LBE Program was designed to promote the growth of small construction firms through greater access to contracting opportunities with the City. Generally, the Program requires agencies to utilize LBEs as prime or subcontractors on specific construction contracts. However, the number of contracts subject to the LBE Program has substantially decreased in recent years due to other goal setting programs established by the City, State and Federal government. Under the LBE Program rules, contracts are excluded from the program if they are federally or State funded and their requisite goal programs apply. Federal construction is generally subject to the Disadvantaged Business Enterprise Program and State contracts are subject to various goals requirements as well, including Article 15-A of the New York State Executive Law. As many City construction contracts are Federally and State funded, and, therefore, subject to subcontracting goals under those programs, they are not covered by the LBE Program. With the creation of the City's M/WBE Program, M/WBE subcontracting goals are applied to City funded construction contracts in lieu of LBE goals. This further limits the applicability of the LBE requirements. With the support of the City Council, SBS has worked to ensure that M/WBE goal requirements are attached to these contract opportunities.

During FY 2014, SBS certified 10 firms as LBEs, bringing the total number of LBE certified firms to 33. Many certified LBEs are also certified as M/WBEs and can be considered for targeted subcontracting opportunities on City construction projects. During the reporting period, LBEs won \$6,536,602 in prime and subcontract awards. Of that total, only \$1,806,582 was awarded to LBEs that are not M/WBEs.

## **Efforts to Reduce or Eliminate Barriers to Competition**

Since the implementation of the M/WBE Program, the City has undertaken a number of efforts to reduce barriers for M/WBEs and small businesses that are competing for contracts and currently doing business with the City. As part of "Compete to Win" initiatives, SBS launched a bond readiness program to help firms secure surety bonds for larger City construction projects, and enrolled the second class for this program in the reporting period.

In July 2013, the City raised the dollar limit from \$5,000 to \$20,000 for micro purchases, a type of procurement under which agencies may buy goods or services from any available vendor at a fair price, without formal competition. Micro purchases are an area where agencies have consistently achieved high M/WBE utilization, and this change will make procuring from qualified certified firms easier.

To simplify doing business with the City, agencies are required to post all solicitation materials through the City Record Online, allowing vendors to identify opportunities and download relevant materials from one convenient, online location. SBS also continues to assist companies in expediting their payment requests from prime contractors and City agencies.