

**CITY OF NEW YORK**

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

**First Three Quarters of Fiscal Year 2021**

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**Compliance Report covering July 1, 2020 – March 31, 2021**

**Victor Olds  
City Chief Procurement Officer  
Mayor's Office of Contract Services  
255 Greenwich St., 9th Floor  
New York, New York 10007**

**Jonnel Doris  
Commissioner  
NYC Department of Small Business Services  
1 Liberty Plaza, 11th Floor  
New York, New York 10006**

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## **Introduction**

This report describes the City's efforts to ensure minority and women-owned businesses have greater access to public contracting opportunities. The reporting period covers program accomplishments for the first three quarters of Fiscal Year 2021 (July 1, 2020 – March 31, 2021). 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 City Chief Procurement Officer, and by the Commissioner of the Department of Small Business Services (SBS).

This report summarizes program activity, prime contract, and subcontract utilization data for City-certified Minority and Women-Owned Business Enterprises (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 prime contracts that were registered, and approved subcontracts with a start date in the first three quarters of FY 2021, including procurements that were solicited before LL 1 became effective and are subject to LL 129.<sup>1</sup> The City's M/WBE program is led by J. Phillip Thompson, Deputy Mayor for Strategic Initiatives and Citywide M/WBE Director, and administered in partnership with the Mayor's Office of M/WBEs (OM/WBE), SBS and MOCS.

In addition to the requirement that the City find vendors responsible, State law also requires that most contracts be awarded to the lowest responsive bidder or the best proposer. SBS has worked aggressively to expand opportunities for minority and women-owned firms by connecting them to a comprehensive range of programs that provide procurement technical assistance and capacity building support, as well as other resources to help them navigate and compete in the public procurement marketplace. During the first three quarters of FY 2021, M/WBEs were awarded over \$598 million in prime contracts subject to the M/WBE program and over \$141 million in eligible subcontracts. The City achieved a combined prime and subcontract utilization of 24%.

## **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 businesses. During the certification process, a company's ownership and management structure is

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

thoroughly reviewed to ensure the applicant performs the key functions of the business. The NYC Online Certification Portal (<https://sbsconnect.nyc.gov/>) allows M/WBE firms to certify and recertify online, check the status of applications and update their business profiles to better promote themselves to buyers. In addition to the regular certification workshops, during the reporting period, SBS continued to hold one-on-one certification assistance sessions. These sessions helped ensure that firms submitted complete and quality application packages, reduced back and forth and delays, and increased the chances of obtaining certification. In the first three quarters of FY 2021, SBS conducted 47 certification workshops and application review sessions for 900 businesses.

Various community partners help extend the reach of SBS certification outreach efforts. Businesses receive assistance in applying for certification from 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. This helps to ensure a higher quality application, making the submission and the certification review process easier and simpler. Between July 2020 and March 2021, SBS certified 1,039 new M/WBEs and recertified 650 M/WBEs, bringing the total number of City-certified companies to 10,515 as of March 31, 2021. Community partners help 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 98 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**

Local Law 12 of 2006 created the Emerging Business Enterprise (“EBE”) program, directed at expanding procurement opportunities to disadvantaged businesses. 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. 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 program

criteria relies on individual and specific determinations of an applicant's disadvantage. As of March 31, 2021, there were 27 certified EBE companies. Unlike the M/WBE program, limited participation in the EBE program has made it difficult for City agencies to set goals on contracts. During the reporting period, EBEs were awarded a total of \$647,201 in all types of prime contracts and subcontracts. 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 EBE firms needed to set feasible contract goals.

### **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 M/WBE program. As set forth in Administrative Code §6-108.1, the LBE program is 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 a prime or subcontractor 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 governments. Under the LBE program rules, contracts are excluded from the program if they are federally or State funded and subject to their requisite goal programs. Federally funded construction projects are generally subject to the Disadvantaged Business Enterprise program, and State funded contracts are subject to other 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 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. Accordingly, this further limits the applicability of the LBE requirements.

As of March 31, 2021, there were a total number of 25 LBE certified firms. Many of our LBEs are also certified as M/WBEs and can be considered for subcontracting opportunities on City construction projects with M/WBE goals. During the reporting period, LBEs were awarded \$2,585,181 in all types of prime contracts and subcontracts.

## **Selling to Government**

SBS offers selling to government services that help M/WBEs navigate the City's procurement system. Services are provided through a combination of workshops and one-on-one assistance. To be an effective bidder on City contracts, an M/WBE must understand the City's procurement rules and how to respond to solicitations. M/WBEs must also maintain the most up-to-date information on their profile in the SBS Online Directory of Certified Businesses ([www.nyc.gov/buycertified](http://www.nyc.gov/buycertified)) and other City procurement systems. In the first three quarters of FY 2021, SBS held a total of 39 workshops attended by a total of 1,489 participants to help M/WBEs build knowledge and understanding of the City's procurement rules, City's procurement portals, how to effectively respond to solicitations, and best practices in contract management.

Also, during the reporting period, 1,349 firms were supported through 2,314 instances of one-on-one technical assistance for submitting the most competitive bids and proposals, navigating government procurement, and successfully performing on contracts with the City.

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 help applying for loans and surety bonds, preparing bids and proposals, and marketing to both the public and private sector. During the reporting period, member organizations sponsored 53 events, provided 967 one-on-one assistance sessions, assisted with 123 loan applications, and awarded 132 loans to M/WBEs.

## **Capacity Building**

SBS administers a set of capacity-building programs and services for M/WBEs and small businesses that are designed to help firms better bid on, win, and perform on City contracts.

**Bond Readiness** provides certified construction and trade companies with financial management skills to help them secure or increase surety bonds necessary to compete on City contracts. The program offers a 12-session cohort conducted over 24 weeks that provides classroom instruction, agency participation, training and one-on-one assistance, as well as introductions to a network of surety agents. Firms are encouraged to bid on City contract opportunities where appropriate, while applying for pre-approval for bonding during the

program. During the reporting period, there were 18 graduates in the program representing 14 unique firms.

**Bonding Services** provides certified construction and trade companies with access to six-hour QuickBooks for Construction clinics, webinars and one-hour one-on-one bonding assistance sessions to assist firms with, respectively, organizing their bookkeeping and accounting practices and preparing applications for bonding, understanding surety bond application preparation concepts, in order to compete for larger City contract opportunities. During the reporting period, there were 9 Quickbook Clinic series events with 222 participants, and 33 firms participated in 68 one-on-one bonding assistance sessions.

The **M/WBE Mentors Program**, which officially launched in January 2021, is designed to create spaces for peer mentorship and networking amongst NYC-certified M/WBEs. Through an event series, founders representing a variety of industries and backgrounds will serve as Mentors to less experienced MWBEs. By mining their own experiences for advice, these mentors provide the insight their peers need to chart their own path of growth through government contracting. During the reporting period, there were 5 M/WBE mentor events with 543 participants.

**Strategic Steps for Growth** is an eight-month executive education program designed for M/WBEs, offered in partnership with the NYU Stern School of Business' W.R. Berkley Innovation Lab and NYU Division of Operations. The program provides participants with a new professional network, including business experts, university professors, and other business owners, and offers guidance for every aspects of business operations as well as a focus on capacity building for City and government contract opportunities for the enrolled M/WBEs. Participants learn the strategic skills needed to run a growing company and create a custom, three-year growth plan for their businesses. In July of the reporting period, thirteen M/WBE firms graduated as part of the 2019-2020 cohort.

New York City Economic Development Corporation and SBS launched the **Contract Financing Loan Fund** in FY 2017. The Loan Fund enhances the ability of business owners to access the capital they need to win, take on and perform successfully on NYC contracts, and reduces the cost of capital to a 3% annual interest rate<sup>2</sup>. During the reporting period, 22 loans of \$4,399,909 were awarded through the Loan Fund.

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<sup>2</sup> During the Governor's declared State Disaster Emergency, the interest rate has been reduced to 0% for eligible applicants.

## Program Compliance

To ensure that all agency staff responsible for purchasing activities are knowledgeable about the M/WBE program and their agency's goals, SBS and OM/WBE conduct agency training sessions at the Citywide Training Center and specific trainings at agency offices. During the first three quarters of FY 2021, 373 procurement professionals from 40 agencies attended eight training sessions. 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 in all contract areas.

In the reporting period, the Director of the City's M/WBE program, Deputy Mayor for Strategic Policy Initiatives J. Phillip Thompson and M/WBE Senior Advisor and Director of the Mayor's Office of M/WBEs Magalie Austin held the first three quarterly compliance meetings with agency commissioners and M/WBE officers to discuss utilization and agency initiatives to increase M/WBE performance. The first quarterly meeting was held on September 17, 2020 and was attended by 146 attendees representing 40 agencies. The second quarterly meeting was held on December 4, 2020 and was attended by 145 attendees representing 43 agencies. The third quarterly meeting was held on March 18, 2021 and was attended by 128 attendees representing 44 agencies.

## Qualified Joint Venture Agreements

There was one contract subject to the M/WBE program awarded to a qualified joint venture during the reporting period.

Industry	Total Contract Value	# of contracts	Ethnicity	Value to MWBE	%
Professional Services	\$5,731,296.00	1	Male-Owned MBE - Asian	\$4,011,907.20	70

## Efforts to Reduce or Eliminate Barriers to Competition

To make it easier to do business with the City, agencies are required to post all competitive solicitation materials on the City Record Online, allowing vendors to identify opportunities and download relevant materials from one online location. SBS also continues to assist companies with expediting their payment requests from prime contractors and City agencies.



## **Prime Contract M/WBE Utilization**

Table 1 below summarizes prime contracts awarded by City agencies during the first three quarters of FY 2021. M/WBEs were awarded over \$598 million in prime contracts amounting to 21% of all such awards during this reporting period. The prime contracts in this table include industries and awards pursuant to methods subject to the M/WBE program.

**Table 1 - FY 2021 Q1-Q3 - Prime Contracts Utilization by Industry**

Industry/Size Group	M/WBE			Total	
	Count	Contract Value	%	Count	Contract Value
<b>Construction Services</b>	<b>7,424</b>	<b>\$151,642,628</b>	<b>12%</b>	<b>10,798</b>	<b>\$1,218,674,379</b>
Micro Purchase <sup>3</sup>	7,377	\$5,762,073	64%	10,684	\$8,982,549
Small Purchase <sup>4</sup>	15	\$993,869	78%	18	\$1,274,627
>\$100K, <=\$1M	9	\$4,181,855	50%	19	\$8,370,330
>\$1M, <=\$5M	12	\$25,154,406	36%	28	\$70,524,397
>\$5M, <=\$25M	11	\$115,550,425	25%	41	\$456,340,202
>\$25M	0	\$0	0%	8	\$673,182,273
<b>Goods</b>	<b>1,842</b>	<b>\$36,104,545</b>	<b>62%</b>	<b>3,687</b>	<b>\$58,490,728</b>
Micro Purchase	1,531	\$12,101,408	53%	3,263	\$22,945,456
Small Purchase	284	\$17,621,046	73%	387	\$24,168,524
>\$100K, <=\$1M	27	\$6,382,090	56%	37	\$11,376,749
<b>Professional Services</b>	<b>352</b>	<b>\$352,030,281</b>	<b>30%</b>	<b>851</b>	<b>\$1,185,865,270</b>
Micro Purchase	192	\$1,986,196	39%	557	\$5,044,093
Small Purchase	85	\$5,511,676	63%	138	\$8,763,931
>\$100K, <=\$1M	48	\$15,910,037	60%	73	\$26,407,304
>\$1M, <=\$5M	15	\$33,622,372	33%	43	\$101,221,769
>\$5M, <=\$25M	11	\$245,000,000	60%	26	\$407,996,279
>\$25M	1	\$50,000,000	8%	14	\$636,431,893
<b>Standardized Services</b>	<b>1,333</b>	<b>\$58,346,629</b>	<b>16%</b>	<b>4,110</b>	<b>\$368,642,544</b>
Micro Purchase	1,192	\$9,146,235	37%	3,833	\$25,039,879
Small Purchase	108	\$7,402,310	57%	189	\$12,973,371
>\$100K, <=\$1M	25	\$9,371,659	60%	38	\$15,687,138
>\$1M, <=\$5M	5	\$8,690,676	13%	30	\$66,434,090
>\$5M, <=\$25M	3	\$23,735,748	13%	18	\$187,015,521
>\$25M	0	\$0	0%	2	\$61,492,546
<b>Total</b>	<b>10,951</b>	<b>\$598,124,084</b>	<b>21%</b>	<b>19,446</b>	<b>\$2,831,672,921</b>
Micro Purchase	10,292	\$28,995,912	47%	18,337	\$62,011,977
Small Purchase	492	\$31,528,902	67%	732	\$47,180,453
>\$100K, <=\$1M	109	\$35,845,642	58%	167	\$61,841,521
>\$1M, <=\$5M	32	\$67,467,455	28%	101	\$238,180,256
>\$5M, <=\$25M	25	\$384,286,173	37%	85	\$1,051,352,002
>\$25M	1	\$50,000,000	4%	24	\$1,371,106,712

<sup>3</sup> Micropurchase is a purchase with a value of \$20,000 or less for goods and most services or \$35,000 or less for construction services.

<sup>4</sup> Small purchase is a purchase with a value between the micropurchase limits up to \$100,000. Purchases for goods and most services over \$20,000 up to \$500,000 made utilizing the M/WBE Noncompetitive Small Purchase Method, codified under Section 3-08 of the PPB Rules in November 2018, are also reflected within this table in this size group.

Agencies are not required to apply participation requirements to certain types of contracts. See, NYC Administrative Code § 6-129(q) (1)-(7). Table 1 above and the subsequent discussion of M/WBE performance include those contracts that have been counted towards the City's M/WBE program.

As required by §6-129 of the Administrative Code, the M/WBE performance data (see Appendices – Tables A - F)<sup>5</sup> is summarized separately for each of the following categories: MBE, WBE, minority women (certified as both MBE and WBE), and total M/WBE. MBEs include all minority-owned businesses, regardless of gender. WBEs include all women-owned businesses regardless of race.

In those areas of procurement where agencies have greater discretion to target procurements to M/WBEs (i.e., micro purchases and small purchases), M/WBE utilization remains strong. In the first three quarters of FY 2021, M/WBEs were awarded nearly \$29 million worth of micro purchases, or 47% of the dollar value of all such awards. Additionally, for small purchases the M/WBE utilization rate was 67% of the dollar value of all such awards (approximately \$32 million awarded).

A total of 19,446 prime contracts were awarded during the first three quarters of FY 2021. M/WBE utilization on prime contracts during the reporting period is detailed below. Highlights include M/WBEs being awarded:

- 58% of the value of contract awards valued between \$100,000 and at or below \$1 million (nearly \$36 million);
- 28% of the value of contract awards valued between \$1 million and at or below \$5 million (approximately \$67 million);
- 37% of the value of contract awards valued between \$5 million and at or below \$25 million (approximately \$384 million); and
- 4% of the value of contracts awards valued over \$25 million (approximately \$50 million).

Agency-by-agency and certification category details corresponding to Table 1 above are included in the Appendices to this report (Tables A - B).

Most prime contracts reflected in the data (except the professional services contracts, for example) are required by New York State law to be procured via competitive sealed bid. Under General Municipal Law (GML) § 103, agencies must, for the majority of the contracts covered by the program, accept the lowest

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<sup>5</sup> Appendices - Tables A – I can be found on the MOCS website at <https://www1.nyc.gov/site/mocs/partners/m-wbe-appendices.page>

responsible bid and may not give a bidder preference because of its M/WBE status. City agencies' efforts to achieve their M/WBE participation goals through prime contract awards are thus limited to such means as increased outreach and training aimed at encouraging M/WBEs to bid successfully on various procurements. Even for procurements not covered by GML § 103, such as professional services contracts, GML § 104-b precludes agencies from pursuing social policy goals unrelated to the procurement of goods and services, including M/WBE status. Thus, the citywide goals for prime contract awards must be viewed as aspirational, and agencies' performance may only be evaluated in terms of their efforts to make progress toward achieving the goals in light of the limited tools available to them for that purpose.

#### Prime Contracts with M/WBE Participation Goals

Under the M/WBE program, larger prime contracts with anticipated subcontracting are subject to participation goals and must be reported on pursuant to §6-129(l)(b)(i). During the reporting period, agencies awarded 79 new prime contracts subject to M/WBE participation requirements with 25% of the value of those awards made to certified M/WBE firms.

#### **Subcontract M/WBE Utilization**

M/WBE utilization with respect to approved subcontracts during the reporting period is demonstrated in Table 2 below. As shown, of the 818 approved subcontracts subject to the program, 458 were awarded to M/WBE firms. The approved subcontracts awarded to M/WBEs amounted to approximately \$141 million and represent 60% of the value of all qualifying subcontracts. For more details, see Appendices – Tables E - F.

**Table 2 - FY 2021 Q1-Q3 - Subcontracts Utilization by Industry**

Industry/Size Group	M/WBE			Total	
	Count	Value	%	Count	Value
<b>Construction</b>	<b>277</b>	<b>\$101,144,562</b>	<b>62%</b>	<b>506</b>	<b>\$163,211,799</b>
Micro Purchase	55	\$598,061	49%	115	\$1,216,607
Small Purchase	104	\$5,869,551	55%	197	\$10,734,339
>\$100K, <=\$1M	95	\$31,976,207	58%	162	\$55,320,864
>\$1M, <=\$5M	21	\$45,495,242	82%	27	\$55,795,477
>\$5M, <=\$25M	2	\$17,205,500	43%	5	\$40,144,512
>\$25M	0	\$0	0%	0	\$0
<b>Professional Services</b>	<b>137</b>	<b>\$25,829,875</b>	<b>56%</b>	<b>225</b>	<b>\$45,965,763</b>
Micro Purchase	32	\$284,702	55%	58	\$513,790
Small Purchase	52	\$2,940,754	65%	80	\$4,490,203
>\$100K, <=\$1M	50	\$18,337,555	63%	80	\$29,324,722
>\$1M, <=\$5M	3	\$4,266,865	37%	7	\$11,637,049
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
<b>Standard Services</b>	<b>44</b>	<b>\$14,099,986</b>	<b>52%</b>	<b>87</b>	<b>\$27,152,485</b>
Micro Purchase	10	\$90,037	52%	22	\$174,188
Small Purchase	17	\$1,027,645	44%	39	\$2,342,295
>\$100K, <=\$1M	14	\$5,082,304	68%	19	\$7,505,752
>\$1M, <=\$5M	3	\$7,900,000	46%	7	\$17,130,250
>\$5M, <=\$25M	0	\$0	0%	0	\$0
>\$25M	0	\$0	0%	0	\$0
<b>Total</b>	<b>458</b>	<b>\$141,074,423</b>	<b>60%</b>	<b>818</b>	<b>\$236,330,046</b>

**Waivers**

A vendor that plans to submit a bid or proposal in response to a solicitation for a contract that is subject to M/WBE participation goals may seek to request a reduction in the goals by filing a waiver request with the contracting agency during the pre-bid or pre-proposal stage. The agency and MOCS then evaluate the extent to which the vendor’s business model and subcontracting history is consistent with this request. In order to qualify for a waiver, a vendor must show both the capacity to execute the contract with less subcontracting than projected and legitimate business reasons to do so. A vendor that receives a full waiver has demonstrated that they would be able to fully self-perform the contract without using subcontractors if

awarded the contract. A vendor that obtains a partial waiver has demonstrated that they will subcontract at a lower amount than the participation goal established by the agency.

During the reporting period, vendors sought a total of 47 requests for waivers of the M/WBE participation requirements. Of those requests, 19 were denied, while 15 were approved as full waivers and 13 were approved as partial waivers, see Appendices – Table G. Since waivers may be granted only to vendors that demonstrate both the capacity to perform the prime contract without subcontracting and a prior contracting history of doing similar work without subcontracting, some of the waivers that were granted involved repeated requests from the same firms, as they sought multiple bidding opportunities. Thus, the 28 full and partial waivers were granted to a total of 20 individual firms. Waivers are determined during the pre-bid stage of the procurement.

During the reporting period, no contracts were registered where a winning vendor obtained either a full or partial waiver of the total participation goal. For more details, see Appendices – Table H.

### **Large-Scale Procurement Approvals**

Prior to soliciting procurements with an anticipated value of over \$10 million, City agencies are required to seek MOCS approval to determine whether it is practicable to divide the proposed contract into smaller contracts and whether doing so would enhance competition among M/WBEs. During the reporting period, there were 55 registered contracts for which MOCS conducted large-scale procurement reviews. A full list is shown in Appendices Table I. The value of the 55 approved contracts shown in Appendices Table I is approximately \$1.4 billion.

Approximately 23% of the value of the large-scale approvals in the first three quarters of FY 2021 was for either single indivisible projects or projects with multiple sites. These approvals were for projects in which separate and smaller contracts would not enhance M/WBE opportunities. For more details, see Appendices – Table I.

## **Complaints, Modifications and Noncompliance**

There were three findings of noncompliance and two modifications determined during the reporting period.

The first noncompliance matter involved a Department of Design and Construction (“DDC”) contract for the construction of pedestrian ramps. Due to design issues, DDC removed two out of the three worksites from the scope of the project during the performance of the contract. While the prime contractor was able to utilize M/WBE subcontractors for two of the three scopes originally outlined in their MWBE utilization plan, the removal of worksites led to the loss of the MWBE subcontractor outlined for the third scope. As an alternative, the prime contractor attempted to find an M/WBE subcontractor to perform additional scopes of work but failed to receive any proposals from the M/WBE vendors solicited. Given that the contractor’s inability to meet the goal was largely caused by DDC’s removal of the worksites from the scope of the contract, DDC did not pursue enforcement actions against the vendor. However, due to the contractor’s failure to seek assistance from DDC to help mitigate the issue when they determined they would be unable to meet the overall M/WBE goal on the contract, DDC issued a formal letter of noncompliance to the contractor.

The second noncompliance finding involved a DDC contract for the installation of distribution water mains and appurtenances. Due to design changes after the start of the contract, one of the prime contractor’s initial M/WBE subcontractors was unable to complete their anticipated scope of work. The contractor was unsuccessful in finding other qualified M/WBEs even after undertaking good faith efforts. Additionally, the removal of two worksite locations from the project by DDC and the significant reduction of another scope to be performed by an M/WBE, further impacted the prime vendor’s ability to subcontract additional work to M/WBEs to meet the goal. However, the prime contractor failed to submit a modification request to reduce the M/WBE participation goal until after the project’s substantial completion. While DDC issued a letter of noncompliance as the contractor failed to request a modification in a timely manner, the agency did not pursue enforcement actions in light of the reduction of several scopes of work affecting the vendor’s ability to meet the goal and the contractor’s good faith efforts to find additional M/WBE firms.

The final noncompliance matter related to a DDC contract for the construction of right-of-way green infrastructure. The prime contractors, as part of a Joint Venture (JV), agreed to meet the goal through subcontracting a number of work areas to M/WBE firms. Several of these scopes were reduced due to a

number of causes including field conditions, fabrication errors and inaccurate bid quantities which significantly impacted the JV's ability to maximize the use of M/WBE firms. Throughout construction, the JV showed good faith efforts to meet the goal by proposing additional M/WBE firms to DDC, facilitating M/WBE certification for one of their existing subcontractors, and providing updates and documents in a timely manner. However, these attempts could not adequately mitigate the substantial reduction in various scopes with M/WBE availability. DDC issued a letter of noncompliance to the JV, but did not pursue enforcement actions due to the JV's documented good faith efforts.

The first modification determination involved a DDC contract awarded to a JV for resident engineering inspection services. The prime contractors awarded a subcontract to a vendor who was a certified M/WBE at the beginning of the contract, but lost their certification status during the contract, resulting in less than half of the subcontractor's initial award being credited towards M/WBE participation. The prime contractors were initially able to secure another M/WBE subcontractor to make up the shortfall, however the agency's need to conserve funding on the project in light of COVID-related budget cuts led to a further reduction in work for one of the M/WBE subcontractors on the contract. Due to the unanticipated impact of COVID-19 on the project's funding, and the prime contractors' good faith efforts to find alternative M/WBE subcontractors to meet the goal, MOCS approved a modification of the goal.

The second modification determination involved a DDC contract awarded to a JV for the construction of sewers. The prime contractors initially chose to meet the entire goal by subcontracting a single scope of work, geotechnical engineering, to an M/WBE subcontractor. However, this scope was included as a contingency item and proved not to be required once work on the contract had begun. The prime contractors identified other scopes of work to be subcontracted to M/WBEs, but the value of these scopes was at a much lower value than the overall goal on the contract. Additionally, the prime contractors continued to self-perform work areas where there was M/WBE availability. Because it was determined that the JV had not yet made all good faith efforts to meet the goal, and there were several years left before the end of the contract term for additional efforts to be made, MOCS denied the modification request.

There were no formal complaints made during the reporting period.