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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 6, 2024

Jeanette M. Moy  
Commissioner  
Office of General Services  
Corning Tower, 41st Floor  
Albany, NY 12242

Re: Monitoring of Construction  
Management  
Report 2023-F-44

Dear Commissioner Moy:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Office of General Services (OGS or Office) to implement the recommendations contained in our initial audit report, *Monitoring of Construction Management* (Report [2020-S-42](#)).

**Background, Scope, and Objective**

Established in 1960, OGS facilitates the work of State agencies through the provision of architectural, engineering, and construction management services for buildings statewide. One component of its mission is to design and build facilities for State agencies and public authorities. To achieve that mission, OGS operates the Design & Construction Group (D&C), which is a 588-person organization consisting of 287 State employees and 301 contract employees with approximately 65 licensed professional engineers and registered architects on staff. D&C provides State agency clients a full range of architectural, engineering, contracting, and construction management services, including the management of a construction project's schedule, cost, quality, safety, scope, and function.

D&C is generally responsible for managing OGS' construction contracts. However, contracts may be managed by either D&C staff or a combination of D&C and construction management consultant staff, or may be contracted out completely to a construction management consultant that assumes most of D&C's responsibilities. If OGS determines that a construction management consultant is needed, OGS solicits bids through a Request for Proposals (RFP). The RFP specifies the nature of the project as well as requirements. For each proposal, OGS completes a Cost and a Technical Review, including an assessment of the bidder's experience; personnel; planning and execution; and minority- and women-owned business enterprise (MWBE), small business, and subcontracting goals. OGS selects the top three firms for further evaluation and recommends awarding the contract to the highest-ranking firm.

Pursuant to Article 15-A of the New York State Executive Law—intended to promote economic opportunities for MWBEs and eliminate barriers to their participation in State

contracts—State agencies are required to establish goals for MWBE participation in their contracts. Accordingly, construction contracts and construction management contracts contain specific MWBE utilization goals and related requirements. To count toward OGS' overall MWBE participation goal, the MWBE must perform a commercially useful function—that is, a useful role proportionate to the payment received for the work—and may not act as a pass-through or unnecessary participant.

OGS monitors construction projects through D&C's enterprise web application (DCNet), which contains contract documents, project schedules and timelines, cost data, and meeting details. Its Office of Business Diversity (OBD) is responsible for MWBE contract compliance, which it monitors through the New York State Contract System (NYSCS). During the period April 1, 2018 through March 31, 2023, OGS's inventory of contracts included 3,302 ongoing construction contracts valued at \$3.7 billion and 29 active construction management contracts valued at approximately \$418 million.

The objective of our initial audit, issued on December 30, 2021, was to determine if OGS was adequately monitoring construction management contracts to ensure they met the terms and requirements, and if the oversight and administration costs associated with carrying out this function were supported and related. The audit covered construction management contracts that were active between April 2015 and July 2020 and additional information provided by OGS through August 2021. We found that OGS had generally taken steps to adequately monitor construction management contracts to ensure that the terms and requirements were met and that costs were supported and related. However, we identified several areas that needed improvement. Of the five projects audited, three used a State-certified women-owned business enterprise (WBE) and claimed credits toward each of their contracts' MWBE goals. However, the WBE subcontracted out all its approved services to a non-MWBE independent contractor and, therefore, the WBE did not provide a commercially useful function. As a result, the \$207,316 paid to the WBE should not have been claimed as credits toward the MWBE goals. There was also one construction management consultant's bid proposal, for a contract valued at approximately \$1.8 million, that did not meet the criteria outlined in the RFP, yet this was not reflected in OGS' evaluation and scoring.

The objective of our follow-up was to assess the extent of implementation, as of March 2024, of the four recommendations included in our initial audit report.

### **Summary Conclusions and Status of Audit Recommendations**

OGS officials made significant progress addressing the problems we identified in the initial audit report. Of the initial report's four audit recommendations, three were implemented and one was partially implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

*Continue efforts to revise the RFP templates and requirements to ensure all information required to validate proposal submissions is obtained.*

Status – Implemented

Agency Action – OGS revised the RFP template to ensure that proposal requirements are clear, complete, and accurate so that OGS has a detailed listing of all required supporting

documents it should obtain. This effort includes requiring beginning and completion dates of service/projects.

OGS provided the revisions made to the RFP templates that lent guidance for the five RFPs we reviewed. All five RFPs were issued after the prior audit was completed. Our review of the RFP submission documents involved those related to the Calculation Process section and Criteria Ranking section, which illustrated where OGS has implemented efforts requiring beginning and completion dates of service/projects.

### **Recommendation 2**

*Verify the accuracy of the information in the proposals submitted to the Office.*

Status – Implemented

Agency Action – OGS has employed methods to verify the accuracy of the proposals submitted. These methods include the use of a consultant procurement employee checklist (some within meeting agendas), additional proposer reviews by OGS, and updates to instructions to evaluators. The agenda checklists help ensure the reviewers collect the necessary documentation to support the information in the proposal. The additional reviews also ensure supporting documentation has been submitted to support the proposal and that it is accurate.

To verify the accuracy of information, the checklist requires the evaluators to document whether the required technical pre-screening and administrative documentation has been submitted for evaluation. OGS provided the RFP Consultant Employee Checklist for the five RFPs we reviewed. We reviewed the checklists and found that all five RFPs include documentation that illustrates OGS has made efforts to ensure that the required technical pre-screening and administrative documentation have been submitted for evaluation.

### **Recommendation 3**

*Develop and implement a process to ensure that MWBE subconsultant payments claimed to meet MWBE participation goals are for MWBE work that has served a commercially useful function.*

Status – Implemented

Agency Action – OGS procedures have been updated to ensure prime consultants have entered all second-tier subconsultants and their relationships to first-tier MWBE subconsultants within the NYSCS to help ensure that only appropriate MWBE goal credit is applied on the contract.

OGS has updated the Consultant's List of Sub-Consultants for Vendor Responsibility Review form and OBD's Internal Policy and Procedures by adding Sub-Consultants/ Multiple-Tier Sub-Consultants, to ensure that certified utilization credit has been properly assigned. OGS also updated the OBD Compliance Team's direct communications with primes and subconsultants via the NYSCS by adding an additional note for Multiple-Tier Sub-Consultants/Suppliers that requires those that have listed and approved subconsultants utilizing another subconsultant/supplier to complete the work to indicate such on their Consultant's List of Sub-Consultants for Vendor Responsibility Review form and NYSCS record.

#### **Recommendation 4**

*Ensure the amounts claimed on MWBE compliance reports reflect the actual payments made to MWBE subconsultants.*

Status – Partially Implemented

Agency Action – OGS believes that by implementing procedural changes identified in its response to Recommendation 3, it can ensure that only appropriate MWBE goal credit is applied on the contract. Although OGS has implemented procedural changes to ensure that only appropriate MWBE goal credit is applied on the contracts, these changes have no bearing on MWBE payment reconciliations and will not result in the ability to determine and measure the MWBE utilization error rate.

OGS has also provided proof that it is in the process of replacing its current project management software system, DCNet, with a new system, Unifier. OGS provided a copy of the mini-bid RFP that went out, but it was unsuccessful in selecting a vendor. OGS also provided the draft scope RFP with specific highlights and changes made to issue a subsequent RFP. Due to funding delays, the RFP is projected to be released in August 2024 and the firm selected will begin work at the beginning of 2025, with full implementation of the system taking approximately 18 months. OGS has also provided instructions from the web service provider on how D&C will have the ability to develop a direct data feed from NYSCS to the Unifier system when it has been implemented, as well as the OGS Web Service Fields spreadsheet to show what information will be captured.

Major contributors to this report were Brandon Ogden, Brian O'Connor, Andrew Davis, and Lisa Tarullo.

OGS officials are requested, but not required, to provide information about any actions planned to address the unresolved issues discussed in this follow-up within 30 days of the report's issuance. We thank the management and staff of OGS for the courtesy and cooperation extended to our auditors during this follow-up.

Very truly yours,

Bob Mainello, CPA  
Audit Manager

cc: David Sears, Office of General Services  
Pierre Alric, Office of General Services