



Metro

Office of the Auditor

MWESB Procurement Program Follow-Up

Angela Owens
Senior Management Auditor

May 2019

SUMMARY

Metro made progress on all recommendations from the 2014 audit report: **MWESB**

Procurement Program: Clarify goals, align activities and improve performance reporting. Two

recommendations were fully implemented and three were in process. To meet Metro's equity in contracting goal, it will be important to ensure consistent application of program requirements. Continued efforts to improve the reliability of performance data will be necessary to effectively track progress over time.

BACKGROUND

Metro is among several governments in Oregon with a program designed to increase equity in contracting for minority-owned, woman-owned, service-disabled veteran-owned, and emerging small businesses (certified firms). The State of Oregon's economic development agency is responsible for certification. Certification is based on business size (determined by revenue or number of employees), industry type, or ownership demographics. This means that some businesses may become ineligible for certification as they grow larger, or if ownership changes.

A version of this program has been in place at Metro since at least the early 1980s. A March 2014 audit by the Metro Auditor found weaknesses in its design and implementation. These included unclear goals and undeveloped program activities. Procedures were unclear and not always followed, and a better performance measurement system was needed.

In 2017, Metro adopted administrative rules to advance equity in public contracting and promote the economic growth of certified firms. Within the Finance and Regulatory Services department (FRS), Procurement was responsible for administering and implementing the Equity in Contracting Program (program). Responsibility for carrying out the program was shared by all Metro departments and venues.

Program requirements depended on the contract type and amount. There were generally two types of contracts that affected requirements; those for public improvements such as major construction and renovation projects, and those for other types of goods or services. The dollar value of the contract also affected program requirements. In general, there were three levels: small, intermediate, and formal.

Exhibit 1: Program requirements vary by contract type and size

Contract	Public Improvement	All Others
Small	\$5,000 and under	\$10,000 and under
Intermediate	Over \$5,000 through \$100,000	Over \$10,000 through \$150,000
Formal	Over \$100,000	Over \$150,000

Source: Auditor's Office analysis of Metro's procurement administrative rules.

BRIAN EVANS

Metro Auditor

600 NE Grand Avenue
Portland, OR 97232
503-797-1892

www.oregonmetro.gov/auditor

RESULTS

Metro made progress on all audit recommendations and fully implemented two. The program more clearly defined its goal and aligned it with program activities. Adoption of administrative rules formalized the program and strengthened Procurement’s authority. During our review, Metro was still in the process of clarifying some requirements and ensuring their consistent application. Although improvements were made to strengthen the program’s performance measurement system, challenges remained. Stronger quality control reviews were necessary to ensure consistency and accuracy in the information reported. Without reliable data, Metro cannot effectively track program performance and assess progress over time.

Exhibit 2 More work was needed to fully implement three audit recommendations

2014 Audit Recommendations	Status
1. In order to strengthen the MWESB program and the procurement function, Metro should:	
a) More clearly define the goals for the program	Implemented
b) Strengthen Procurement’s ability to review and ensure compliance with policies and procedures for all contract types and values	In process
2. To improve management of the MWESB program and procurement generally, the department should:	
a) Align program activities with goals	Implemented
b) Strengthen performance measurement by developing and implementing: <ul style="list-style-type: none"> • performance measures that more accurately assess expected program performance • a methodology for calculating performance measures and to ensure consistency over time • a process to check and ensure data accuracy 	In process (Implemented) (Implemented) (In process)
c) Improve consistency by ensuring that procedures are in agreement and clearly communicate program requirements	In process

Source: Auditor’s Office analysis

Metro demonstrated a commitment to Equity in Contracting by more clearly defining the program’s goal and aligning it with program activities

Since the 2014 audit, Metro strengthened the program by more clearly defining and aligning the program goal with activities. As a result, two audit recommendations (1a and 2a) were fully implemented. The 2014 audit found that unclear goals created inconsistent expectations. There was confusion and sometimes disagreement about what the program was supposed to accomplish or the level of effort it required. Although program activities were outlined generally in Metro Code, some of the program’s activities were underdeveloped.

The program goal, to increase Metro business with certified firms, was formally adopted in the administrative rules in 2017. Program activities were

refined and formalized under the new rules. These activities included outreach and internal training. Workshops for certified firms offered technical assistance on how to navigate government solicitation processes. Work plans and processes were in place to carry out program activities.

The 2014 audit also identified the risk that other Metro plans related to diversity and equity had the potential to confuse the expectations of the program. We found additional initiatives were developed since the previous audit. Although the specifics of these efforts varied, they appeared to complement each other.

Procurement's authority to review and ensure compliance was strengthened, but additional efforts were needed to ensure consistency

The administrative rules adopted in 2017 strengthened Procurement's authority to review and ensure compliance with program requirements. However, conflicting and unclear guidance remained and Metro's ability to ensure consistent application of program requirements for all contracts was in process (recommendations 1b and 2c). Clear and consistent guidance was necessary to ensure businesses were treated equally during the solicitation process. Weaknesses in this area increased the chance that the program rules were applied inconsistently.

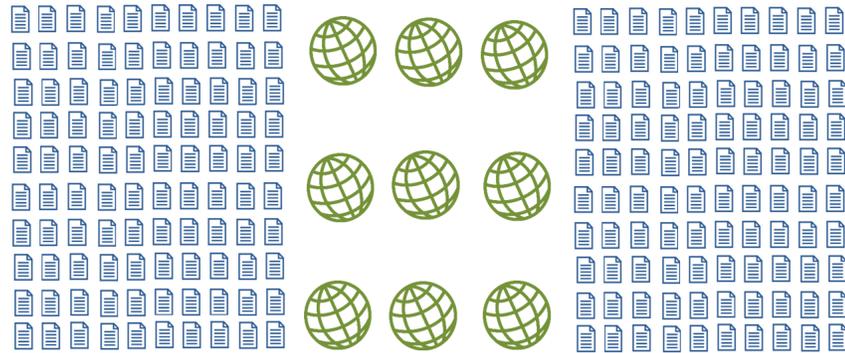
In 2014, lack of authority and unclear guidance were noted as reasons program requirements were not always followed. Program requirements were inconsistent across sources, left room for interpretation, and there was confusion and disagreement about how they applied. This made it difficult to conclude whether requirements were appropriately applied during solicitations. Processes were decentralized, which reduced Procurement's authority to review certain contract types.

Since the 2014 audit, Metro strengthened Procurement's authority to review and ensure compliance with policies and procedures by adopting administrative rules. This formalized program requirements in one place. It also provided the foundation against which Procurement could determine compliance. In January 2019, FRS received approval to centralize administration of contract solicitations.

The 2014 audit also found that documentation was not always available to show program requirements were followed and reviewed. Since that audit, additional forms were developed to document decision-making for program requirements. For example, direct awards for certain types of contracts up to \$50,000 were allowed, but only after the proper form was completed to ensure certain requirements were first met. For the most part, the documentation necessary to determine if program requirements were met was available for the contracts we reviewed. However, it was not always easily accessible.

More clarification was needed for contract type and threshold amounts, both of which can impact the applicability of program requirements. Hundreds of references to documents providing procurement-related guidance existed across nine different webpages. In some instances the information overlapped or was duplicative. As a result, changes in one place may require the same changes in others to avoid confusion.

Exhibit 3 About 200 references to procurement-related documents existed across 9 different webpages



Source: Auditor's Office analysis of Metro's internal website.

Some guidance was inconsistent across various sources. For example, the administrative rules required Metro to only consider quotes, bids, and proposals from certified firms for certain construction contracts over \$5,000. Guidance on Metro's internal website suggested the amount was over \$10,000. Although this difference was small in amount, it could have had an impact on which contracts were made available to certified firms.

In other instances, guidance was ambiguous and more work was needed to apply it consistently. Recent changes to the administrative rules demonstrated some of these challenges. Contractors who want to hire subcontractors needed to follow certain requirements. If they did not substantially follow those requirements, their offer was supposed to be rejected. There were different interpretations of these rules. There were also differences in how this information was tracked in formal and intermediate contracts. Changes to the administrative rules that took place in October 2018 were intended to provide some clarification, but work was still in process to ensure consistent application of program requirements.

Lastly, intermediate contracts continued to present a risk that some rules would be applied inconsistently or not at all. We were told these contracts were handled at the department level for the most part, which meant Procurement did not review the process until the end. Although Procurement expressed confidence that requirements were met, the risk remained.

In order for Metro to fully implement these recommendations, it will be important to review program guidance across various sources for consistency, and clarify how the rules will be applied across all contract types and amounts.

Despite improvements, performance measurement continued to be unreliable

The 2014 audit identified many challenges to reporting accurate program performance. The measures in place were insufficient for assessment. The accuracy of information was challenging to verify. Guidance to develop the annual report and quality control processes were lacking. Despite improvements, gaps remained.

After the 2014 audit, Procurement began using measures that more accurately assessed program performance. In addition to contract award amounts, Metro reported on department performance and the amount of contract dollars spent. This was important because not all contract award amounts are spent, so reporting what is actually received by certified firms can be a more accurate measure of program impact.

Data reliability and performance reporting are common challenges for these types of programs, so it will be important to consider how much risk Metro is willing to accept in terms of potential over- or underreporting. Without accurate data, Metro cannot ensure it is fairly assessing program or department performance. Metro Code requires Procurement to provide an annual report to Metro Council showing certified firm utilization. The utilization rate shows the percentage of eligible contracts awarded to certified firms, and the percentage of eligible contract payments received by certified firms.

Since the 2014 audit, Procurement documented its methodology for developing the annual report and increased some quality control processes to improve data accuracy. However, unreliable data increased the chance to over- or underreport Metro’s utilization rate. Exhibit 4 summarizes some of these risks, which are discussed in more detail in the rest of the report.

Exhibit 4 Data quality challenges have the potential to impact the accuracy of Metro’s utilization report

Issue	Cause	Potential impact
Inaccurate certification status	<ul style="list-style-type: none"> Information needed to be reconciled across three different databases Certification status can change over time Multiple people entering data increased the potential for confusion about roles and responsibilities 	<ul style="list-style-type: none"> Overreported utilization if businesses are incorrectly reported as certified when they are not Underreported utilization if businesses are incorrectly reported as not being certified when they are
Methodology requires manual processes to retrieve, exclude, and calculate data	<ul style="list-style-type: none"> Lack of automated data reporting 	<ul style="list-style-type: none"> Over- or underreported utilization if methodology is not applied consistently
Subcontractors not included	<ul style="list-style-type: none"> Utilization was not tracked for subcontractors 	<ul style="list-style-type: none"> Underreported utilization if uncertified prime contractors subcontract to certified firms Overreported utilization if certified prime contractors subcontract to uncertified firms

Source: Auditor’s Office analysis of the program’s performance measurement methodology and annual report.

Other government agencies experienced challenges in reporting performance information related to equity in contracting programs. Metro management and procurement staff were aware of data and reporting challenges and took efforts to make improvements. To ensure reliable assessment of program and department performance, it will be important to evaluate the significance of these challenges to determine if additional efforts are needed to improve data accuracy. At a minimum, a stronger quality control process is needed to ensure performance data is reported accurately.

Complexity increased the risk of over- or underreporting Metro's utilization

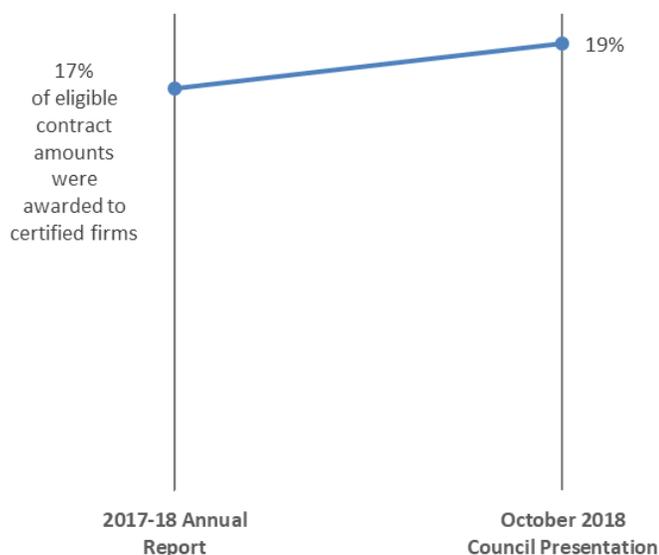
Although Procurement documented the methodology for developing the annual report, challenges remained to ensure the report's accuracy. A firm's certification status was subject to change and updates from a state database needed to be compared to and updated in Metro's two accounting systems. As a result, the data from Metro's accounting systems showed that some vendors were inaccurately classified as certified firms when they should not have been, and others were not when they should have been.

There was also an increased risk for confusion and inaccuracy since multiple people shared responsibilities for entering the data. Evidence suggested there was some confusion about roles and responsibilities for entering and maintaining certification information. During the audit, Procurement requested taking over this responsibility when new businesses are added to Metro's accounting system, which may mitigate some risks.

Inaccurate certification status can impact how program and department performance is reported. If a business is identified in the accounting system as certified when it is not, it would over-report Metro's utilization rate. Conversely, if a business is not identified in the system as certified when it is, this would underreport the utilization rate. During our review, we saw evidence of both scenarios. The overall impact depended on the number of firms with inaccurate certification statuses, and the contract amounts awarded to these firms. The examples we saw for contract awards were in the range of \$1,700 to \$500,000, but higher or lower impacts are possible.

The utilization rate for FY 2017-18 was listed in the annual report at 17% for the contract amount awarded. In the presentation to Metro Council the utilization rate was reported as 19%. We were informed the increase reflected changes that were made in the data to firm certification status. Those changes documented an increase in what was reported as awarded to certified firms by about \$700,000.

Exhibit 5 There was a 2% increase in the reported utilization rate between the annual report and the presentation to Metro Council



Source: Auditor's Office analysis of the program's annual report and presentation to Metro Council, October 25, 2018.

The certification status of a firm may be different at the time the data is gathered for the report than it was at the time the contract was awarded. We were informed this timing issue was a challenge to accuracy and saw its potential impact on two different businesses during our review. One was not listed in Metro's accounting system as a certified firm when it should have been and was awarded three smaller contracts during the fiscal year. Although this would not have an impact on the reported utilization rate, it was an example of the risk to underreport data.

Finally, similar to what was found in the 2014 audit, we were informed that awards and payments made to subcontractors were not included in the annual report. Large public improvement projects, such as the Oregon Convention Center Hotel and projects funded by the 2008 Oregon Zoo bond, could have a big impact on Metro's utilization rates if they included subcontracting with certified firms. Not including subcontractor details could underreport performance in cases where a non-certified firm was awarded a contract, but certified firms completed some of the work. Conversely, over-reporting could happen if a certified firm subcontracts work to a non-certified firm. Because this information was not reported for all contracts, it was not possible to determine the full amount of Metro contract awards and payments made to certified firms.

Continue to identify opportunities to improve methodology

The methodology to report on utilization rates included several manual adjustments to include or exclude certain awards from performance data. For instance, some awards were removed because they were agreements with other governments, or because there was not a certified firm that provided that service. In general, these adjustments seemed appropriate. However, justification for including or excluding certain agreements or contracts was not always well documented. As a result, the risk remained that these adjustments may be inconsistently applied.

For example, we noted during our review that some contracts not subject to the competitive procurement process were included in the totals. These are typically awarded when vendors provide some type of unique service. The administrative rules identified some of these types of awards as exempt from equity in contracting requirements. There were different opinions about the extent to which these contracts should be included in the annual report. Clarifying this expectation and documenting it in the methodology would be helpful, as there were over \$7.5 million in these types of awards identified in FY 2017-18 totals. All of these awards were to firms documented as non-certified. If they would have been excluded, this would have increased Metro’s reported award utilization to 20%.

Exhibit 6 Removing certain awards would increase reported award utilization to 20%



Source: Auditor’s Office analysis of the program’s annual report and data.

We also noted that some contract entries were cancelled, but were still included in the totals. It may not make sense for these entries to be included, such as when they are duplicates. When we brought this issue up, we were informed that Procurement would discuss how to review these types of entries in the future and would update the methodology accordingly.

Strengthen quality control reviews

Stronger quality control processes were necessary in the absence of automated and easy-to-calculate data. Procurement increased some reviews since the previous audit, but more work was needed to ensure accurate performance reporting. A more thorough review of performance data might have caught some of the inconsistencies in the way performance was reported and presented.

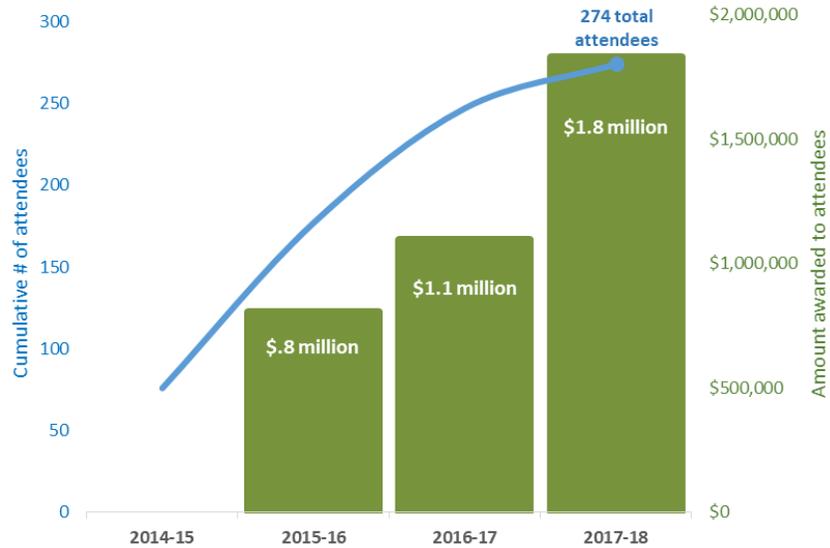
For example, a revised version of the FY 2017-18 annual report was posted to Metro's website in January 2019. It contained different utilization rates for department award amounts compared to the October 2018 version of the report, but neither matched the information that was presented to Metro Council in October 2018. As a result, the most recent version of the annual report continues to have inconsistent data for that measure within the document itself, and as compared to the data that was included in the presentation to Metro Council.

During our review we noticed that Procurement's data showed some awards were made to service-disabled veterans, but this was not reported in either version of the annual reports. We also noticed that some contracts may have been counted more than once because they were included in two different accounting systems. The data only showed a few contracts where this was an increased risk, but nearly \$150,000 in those awards was with certified firms. When we followed up we were informed this was due to a new process of transferring information from one accounting system to another.

In addition, some information was not calculated correctly. For example, Procurement presented award information for people who attended program workshops, but it excluded awards for FY 2015-16. It was also difficult to interpret because the data labels in the graph were inconsistent.

A recalculation of the same data showed a positive trend but at a more gradual rate. Procurement tracked 274 attendees of program workshops since 2014. Contract awards among these attendees were reported to have increased annually for a total of \$3.7 million over the past three years. This is larger than the \$2.9 million in awards that was reported in the annual report and presentation to Metro Council. By showing performance by year (see Exhibit 7), it becomes easier to understand the connection between program activities (hosting or sponsoring workshops) and program performance (amounts awarded to workshop attendees).

Exhibit 7 Award amounts increased annually among workshop attendees



Source: Auditor's Office analysis of performance data for the Equity in Contracting program

AREAS FOR FURTHER CONSIDERATION

Performance targets were inconsistent

Program performance expectations were still unclear in terms of agency-wide targets. This could make it difficult to determine if the Program was on track or if additional efforts were needed. For example, the 2017 Diversity Action Plan had a target of 20% for contract award amounts, but the FY 2017-18 Budget had a target of 15%. In addition, the Diversity Action Plan had a target in place for the amount of contract dollars spent on certified firms, but the FY 2017-18 Budget did not. We also found similar variation in the aspirational targets for individual projects.

The amounts reported for contract awards and actual spending on those contracts have been mostly unchanged over that last three years. The three-year average was about \$8.7 million for contract awards to certified firms, and about \$7 million for actual spending on those contracts. The contract award amounts were reported to have increased by about 8% over three years, while spending declined by about 5%.

In percentage terms, these figures were the equivalent of 16% in contract awards, and 12% in actual spending. If Metro's agency-wide target was 15% for awards, then it met its target. If the target was 20% of awards, the target has not been met.

Confusion about the appropriateness of agency-wide targets remains

When we asked about agency-wide targets, some employees were of the opinion that Metro could not legally set them. Others believed this was allowed, but only if they were identified as aspirational. We were told a target by itself is not problematic, but there is an increased potential for the program to be challenged if there is a corresponding policy in place to affect

the target. From at least 1980 through 1995, Metro Council adopted annual performance targets for contracting with woman-owned, minority-owned and other disadvantaged businesses.

In the mid-1990's several court rulings put limitations on these types of programs. The cases required targets to be based on a documented disparity and narrowly tailored to justify focusing on specific demographic groups. This may be one of the reasons annual performance targets have not been adopted by Metro Council since 1995. Metro participated in a disparity study with a consortium of other government agencies that began in 1994 and was published in May 1996. The study looked at disparity among certain contract types (i.e. construction and professional services) and the demographics of business ownership (i.e. ethnicity and gender).

Targets in Metro's Diversity Action Plan, budget, and for individual projects applied to all certified firms. They were not specific to any one type of certified firm (e.g. woman-owned, minority-owned or service-disabled-veteran-owned). These general performance targets seem to match legal requirements, but could cause confusion for employees and the public who may not differentiate between general goals and certification-specific goals, or targets and aspirational targets. At a minimum, using consistent language to describe the targets could be helpful.

As Metro considers whether additional efforts to ensure equity in contracting are needed, it will be important to assess tradeoffs. General targets set an intention, but are not specific to any one certification type. As a result, Metro could meet its targets without any awards to minority-owned, woman-owned, or service-disabled veteran-owned businesses. Stronger targets among certified firms may increase performance if a disparity is identified, but could require further investment and time to reduce the potential of challenges to the program.

SCOPE & METHODOLOGY

The purpose of this audit was to determine if recommendations from the 2014 audit were implemented. The audit scope focused specifically on changes made within the Equity in Contracting program since 2014 and program information reported for FY 2017-18.

To determine if Metro strengthened the Equity in Contracting Program, we interviewed Metro employees involved in the equity in contracting program to learn more about program changes since the previous audit. We also interviewed other Metro employees with knowledge of the program. We reviewed Metro Code, administrative rules, and similar efforts across Metro. We also reviewed information related to similar government programs.

To determine the extent to which Metro ensured consistency in guidance and the implementation of program requirements, we reviewed and compared examples of how program guidance was communicated. We selected an initial sample of 38 contracts across contract type, size, and department of origin to review contract and solicitation documentation.

During our review we found that some requirements were not applicable to the contracts selected. This reduced the total sample size to 27. We used our professional judgment to select our sample, so the results may not apply to the entire population. We used this method, in part, as a way to review information presented in the annual report. Because the administrative rules were implemented in 2017, we limited contract and report testing to FY 2017-18.

To assess if Metro developed and implemented an adequate performance measurement system for the program, we reviewed the performance measures in place and the methodology for calculating them. We also reviewed information as it was reported across two versions of the FY 2017-18 annual report and the FY 2017-18 presentation to council.

This audit was included in the FY 2018-19 audit schedule. We conducted this follow-up 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.



Memo

Date: Friday, May 17, 2019

To: Brian Evans, Metro Auditor

From: Gabriele Schuster, Procurement Services Manager

Andrew Scott, Interim Chief Operating Officer

Subject: Management Response – MWESB Procurement Program Follow-up

Management would like to thank the Metro Auditor for following up on the 2014 audit of the MWESB Procurement Program and reviewing the progress made on implementing the recommendations provided. Metro has responded to the 2014 audit by implementing the Equity Contracting Program in 2017 as part of the new Local Contract Review Board Administrative Rules (LCRB) and by directing notable resources towards the program. We appreciate your acknowledgement of the program improvements and the guidance provided to help us continue our efforts to implement the audit recommendations.

Background

In response to the audit, Metro staff and leadership throughout the agency worked to address the auditor’s recommendations by implementing process improvements and the new LCRB rules through the Procurement Enhancement Project (PEP). Phase I of PEP delivered clarification of agency procurement procedures, consistent processes across the agency and standard templates for users. An agency-wide procurement training program for Metro staff was established in May of 2014. Phase II of PEP delivered the LCRB rules, including the Equity in Contracting Program and a training program for COBID (formerly known as MWESB) eligible businesses.

Response to Findings in the Auditor’s Report

Management agrees with the auditor’s review of progress made since 2014 and is committed to ensure consistent application of program requirements and continued efforts to improve the reliability of performance data to effectively track progress over time.

Recommendation 1a Implemented

More clearly define the goals of the MWESB Program

Program goals have been defined in Objective 4 of the Diversity Action Plan (DAP). Procurement Services has been working closely with the Diversity Equity and Inclusion (DEI) team as well as the contracting departments to develop equity strategies in order to meet the defined goals. In addition, Metro staff is reviewing program goals to align COBID participation in contracts with market availability of COBID eligible firms.

Recommendation 1b In Process

Strengthen Procurement Services ability to review and ensure compliance with policies and procedures for all contract types and values.

We agree with the audit that the new LCRB rules and Equity in Contracting Program have strengthened Procurement Services' authority to review and ensure compliance with program requirements. To further these efforts, Metro senior leadership directed the centralization of procurement activities in January 2019. Staff is currently transitioning duties from across the agency to bolstered structure within Procurement Services. Additionally, a project to implement an electronic system to provide automated contracting tools, electronic signatures, and clarifying roles and responsibilities in the contracting process is underway. Both efforts will improve Metro's ability to apply program policies consistently and are anticipated to be complete by fall 2019.

Recommendation 2a Implemented

Align program activities with goals

Significant improvements have been accomplished to align program activities by the implementation of the Equity in Contracting Program, which provides clear guidance on equity strategies during the solicitation and contracting process. Program outcomes have been significantly improved with focused activities such as small business training on how to respond to Metro contracting opportunities and how to be successful throughout the term of a contract.

Recommendation 2b In Process

Strengthen performance measurement by developing and implementing:

- *Performance measures that more accurately assess expected program performance* **(Implemented)**

Procurement Services developed and implemented performance measures that allow for measuring the required program activities against contracting results in regards to outreach, small business training, internal training, COBID Marketplace and solicitation equity strategies.

- *A methodology for calculating performance measures and to ensure consistency over time* **(Implemented)**

Procurement Services developed a consistent methodology for calculating performance measures by implementing a report tracking system for COBID contract dollar awarded and spent on those contracts, in addition to tracking contract award results from our small business outreach and training.

- *A process to check and ensure data accuracy* **(In Process)**

Management agrees with the audit that challenges remain in reporting accurate data. The current processes are highly manual and hindered by the need to collect data from multiple systems. Staff is working to improve data reliability within the current systems and is exploring various tools and methods to increase the timeliness and accuracy of

reporting, including tracking of subcontractor utilization. Additional quality control reviews will be conducted on the next annual report. System-wide changes will be assessed in fiscal year 2019-20.

Recommendation 2c In Process

Improve consistency by ensuring that procedures are in agreement and clearly communicate program requirements.

Management agrees with the audit findings and recommendation. As mentioned in the response to Recommendation 1b, Procurement Services is in the process of centralizing all procurement activities. The purpose of this project is to strengthen Metro procurement practices by creating more consistency in the application of processes and improve efficiency overall. Addressing procedural and communication inconsistencies by clarifying roles and responsibilities is a critical component of this effort. As mentioned previously, activities are anticipated to be completed in Fall 2019.

Conclusion

We appreciate the auditor’s effort and recommendations to improve consistent application of program requirements and reliability of performance data in order to better measure the success of the Equity in Contracting Program goals. The follow-up analysis as well as procurement centralization will better position us to further implement the recommendations. Significant progress has been made since the 2014 audit and Procurement Services will continue to improve the effectiveness of this critical program.