

# REPORT DIGEST

## MANAGEMENT AUDIT

### DEPARTMENT OF CENTRAL MANAGEMENT SERVICES' BUSINESS ENTERPRISE AND ILLINOIS DEPARTMENT OF TRANSPORTATION'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAMS

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## SYNOPSIS

The State's public policy is to promote the economic development of businesses owned and operated by minorities, women, and persons with disabilities through the Business Enterprise Program (BEP) and Disadvantaged Business Enterprise (DBE) Program administered by the Department of Central Management Services (CMS) and the Department of Transportation (IDOT), respectively. Failure to ensure that only qualified firms participate in these programs undermines the State's public policy of promoting and encouraging eligible businesses that have been victimized by past discriminatory practices. This audit examined the agencies' administration of these programs and whether improvements were needed to ensure that the State's public policy was achieved.

### CMS' Business Enterprise Program

Our review of CMS' Business Enterprise Program found that several aspects of the management controls and operations need to be improved:

- CMS has not always been diligent in addressing ownership and control concerns. In 14 of the 50 (28%) cases, we raised questions with CMS regarding vendor eligibility. As a result of our review, CMS initiated a full certification review of 10 of these vendors.
- Files were lacking critical documentation related to certification eligibility.
- CMS does not have a policies and procedures manual for its certification staff.
- CMS has not established minimum training requirements for its BEP staff.
- CMS has not entered into written agreements with organizations from which it accepts certifications.
- The list of certified BEP businesses is not available on the State's website.

Other areas where CMS' certification procedures could be strengthened include: conducting site visits, requiring applicants to disclose all business ownerships, submitting No Change Affidavits, fully completing certification checklists and worksheets, preparing written summaries for certifications, adequately tracking when certifications expire, tracking complaints, and monitoring contract compliance.

### IDOT's Disadvantaged Business Enterprise Program

Our review of IDOT's DBE Program and certification files found that IDOT, in most cases, was diligent in addressing ownership and control issues. However, certification files were missing some required information. Also IDOT:

- Has not updated their policies and procedures.
- Could not provide adequate documentation of training.
- Is not certifying DBEs in a timely manner in accordance with federal regulations.
- Is not maintaining a log of complaints.



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## REPORT CONCLUSIONS

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It is the public policy of the State of Illinois to promote the continuing economic development of minority and female owned and operated businesses and of businesses owned by persons with disabilities and to encourage the participation of these businesses in the State's procurement process as both prime and subcontractors (30 ILCS 575/1). The mechanism through which the State implements this important public policy is our Business Enterprise and Disadvantaged Business Enterprise programs administered, respectively, by the Departments of Central Management Services (CMS) and Transportation (IDOT) (see 49 CFR Part 26). Those agencies are responsible for following established laws, regulations, and policies and procedures to ensure that only qualified businesses participate in these programs. Failure to ensure that only qualified firms participate in these programs undermines the State's public policy of promoting and encouraging eligible businesses that have been victimized by past discriminatory practices so that they can enjoy open access to State contracts and sustain their further growth and development. This audit was directed by Senate Resolution Number 102, which asks the Auditor General to determine whether the State agencies administering these programs are complying with existing laws, regulations, and policies and procedures designed to implement the State's public policy and reach established contracting goals.

The Business Enterprise Program (BEP) administered by CMS, and the Disadvantaged Business Enterprise (DBE) Program administered by IDOT, certify vendors as disadvantaged businesses, after reviewing documentation submitted by applicant vendors and determining that the vendors meet various program requirements. Certified vendors are then included on lists that State agencies, universities, or contractors can use to identify potential certified businesses for use on State contracts.

CMS' BEP is governed by the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575). As of August 2005, CMS' Business Enterprise Bureau had seven employees. In 2005, the CMS' BEP overall participation goal was that 19 percent of the total dollar amount of eligible State contracts would be awarded to businesses owned by minorities, females, or persons with disabilities. Over the past five years, the total contract dollars subject to the 19 percent goal has decreased from \$2.5 billion to \$1.7 billion; similarly the reported dollars awarded to CMS BEP certified vendors decreased from \$407 million in 2001 to \$387 million in 2005.

IDOT's DBE Program is mandated by regulations established by the U. S. Department of Transportation (49 CFR Part 26). As of July 2005, IDOT's Office of Business and Workforce Diversity had six employees in its Certification Section. In 2005, IDOT's goal was to award

22.77 percent of the total dollar amount of eligible IDOT contracts to DBEs. Over the past five years, the total contract awards has decreased from \$1.80 billion to \$1.36 billion; however, the dollars committed to DBEs increased from \$239 million in 2001 to \$244 million in 2005.

While the two programs share a common function, there are notable differences in the requirements and functions of the two programs. Some of the differences include:

- IDOT's program is conducted pursuant to federal law and regulations; CMS' program is conducted pursuant to State law and administrative rules.
- IDOT is required to conduct site visits of each firm once every five years; CMS is not required to conduct site visits.
- IDOT has a \$750,000 limit on personal net worth; CMS does not have a limit on personal net worth.
- IDOT's gross receipts are limited to \$19.57 million (average over three years); CMS limits gross sales to \$27 million annually.
- IDOT's certification period is every five years, with a No Change Affidavit required from the vendor annually; CMS' certification period is every two years, but does not require an annual No Change Affidavit.

### **CMS' BUSINESS ENTERPRISE PROGRAM**

The Business Enterprise Council is responsible for overseeing the Business Enterprise Program administered by CMS. While the Council met several times in 2004, it did not meet in 2005. According to CMS officials, there are several vacant appointments, which they are waiting for the Governor's Office to fill.

To be effective, programs must have adequate controls and procedures in place to ensure that only those vendors that meet program requirements are certified as vendors. Several aspects of the management controls and operations of CMS' Business Enterprise Program need to be improved:

- **Policies and Procedures:** CMS does not have a policies and procedures manual for its certification staff. Such a manual would help ensure consistency in certification reviews and decisions, as well as document the certification process.
- **Training:** CMS has not established minimum training requirements for its BEP staff. Furthermore, CMS was unable to provide documentation to show that all employees had received relevant training.

- **Reciprocal Agreements:** CMS has not entered into written agreements with organizations from which they accept reciprocal certifications. Approximately 33 percent of the entities on the CMS BEP vendor list were certified by three other entities. CMS accepts these certifications with minimal review. Interagency agreements could delineate respective program requirements, procedures, and notification of certification or decertification decisions.
- **List of Certified Vendors:** The list of certified BEP businesses prepared by CMS is not available on the State's website; rather, it is prepared only in paper format. Consequently, State agencies and/or primary contractors may be using outdated lists.

CMS is required to certify, deny, or request additional information within 60 days of receipt of the application. Although in most cases sampled, CMS met the timeliness requirement, 6 of 40 applications tested (15%) were not processed within the required 60 days.

CMS has not always been diligent in addressing ownership and control concerns. In our review of documentation maintained in CMS' certification files, we identified items that raised questions regarding whether the firms were eligible to participate in the BEP, as well as files missing required documentation. In 14 of the 50 (28%) cases reviewed, we raised questions with CMS regarding the eligibility of the vendor. As a result of our review, CMS initiated a full certification review of 10 of these vendors to determine if they are eligible as BEP certified vendors. Examples of cases with control and ownership issues that CMS is conducting a full certification review included:

- In a business certified as female-owned, non-eligible males are responsible for many decision making/control issues. Also, the Secretary of State's corporation database lists a non-eligible male as President.
- A 51 percent female owner of the certified business was previously employed in another business owned by the male who has a 49 percent interest in the certified business. Also, the certified business has a \$40,400 liability on the books to the 49 percent male owner.
- In a female-owned certified business, a non-eligible male gifted shares to the female to make her the majority owner. The male also has the prior experience in the business and the Secretary of State corporation database lists the male as President.

In addition to these 10 vendors undergoing full certification reviews, CMS has requested additional documentation from 20 other vendors which auditors concluded was not found in the certification files.

Even though CMS had conducted its own review of files in June 2005, files were still lacking critical documentation that should be in the file to establish citizenship, ethnicity, and gender. Files were also lacking critical financial documentation. Ten percent of the certifications (4 of 40) we reviewed that were CMS BEP certified were missing bank signature cards that could be used to help establish control. Twenty-one percent (8 of 38) of the CMS BEP certified files were missing corporate tax returns. Files were also missing other required documentation including inventory listings and proof of vehicle ownership.

CMS conducted very few site visits of firms it certified in 2005. Of the 621 applicants certified and recertified, only 17 (2.7%) received a site visit. While not required by CMS' BEP administrative rules, site visits are an effective tool to verify and follow up on issues raised in the review of documents submitted by the vendor. IDOT requires an on-site visit as part of its DBE certification process. In addition, three of the five neighboring states surveyed reported that they require site visits as part of the certification process.

Our review identified additional areas where CMS' certification procedures and review of certification files could be strengthened. These included:

- Requiring applicants to disclose all companies in which the eligible group member has a five percent or greater ownership interest.
- Requiring vendors to submit a No Change Affidavit the year in which they are not going through a recertification review. IDOT requires a No Change Affidavit from its certified vendors. Furthermore, neighboring states reported similar annual requirements. Use of No Change Affidavits can result in more timely identification of changes, which may impact a vendor's eligibility for the Program.
- Fully completing certification checklists and worksheets. CMS' BEP Internal Certification Worksheets were not fully completed. For example, some parts were left blank; others were marked N/A with no explanation to document why the question or information was not applicable.
- Preparing a written summary of information for each certification application, including any concerns regarding ownership, control, or eligibility issues in order to show the basis for the certification decision.

We also identified other program issues including:

- CMS has not been adequately tracking when certifications expire and decertifying vendors. According to their administrative rules, CMS is required to certify, deny, or

request additional information within 60 days of receipt of the application. During our testing of 50 CMS BEP certification files, we found four BEP vendors which had not been recertified within two years of their certification or recertification. These four should have expired prior to the applicant applying for recertification.

- CMS could not provide us with the number of complaints that had been made or if there had been any investigations conducted related to complaints. According to CMS officials, information related to complaints would be contained in the individual files. In our review of 50 CMS BEP certification files, there was also no evidence of complaints or investigations.
- CMS has not monitored contracts for compliance with established goals or to determine whether BEP vendors are completing the work. CMS also does not track work conducted by subcontractors. We requested a list of CMS' BEP vendors and the amount of State funds they had received for the period July 1, 2004 through January 31, 2006. Although CMS was able to provide a list of the BEP vendors and total dollars received from State contracts, it did not include dollars received as subcontractors.

### **IDOT's DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

Because federal law mandates IDOT's DBE program, the eligibility requirements are contained in the federal regulations. IDOT has an agreement with the other Illinois Unified Certification Program (IL UCP) participants, dated July 2002, that delineates the process and requirements for obtaining DBE certification.

When auditors requested a copy of IDOT's DBE policies and procedures manual, in July 2005 IDOT provided a manual with the most recent effective date of May 1992. However, in February 2006, IDOT provided auditors with a manual dated 2003. It is not clear whether these policies were ever formally approved, whether certification staff was aware of this manual, or why it was not provided to auditors initially. An August 2005 IDOT Bureau of Accounting and Auditing audit also noted in its findings that the Bureau of Small Business Enterprise did not have adequate and up-to-date policies and procedures. The Bureau has not updated their policies and procedures manual since the IDOT audit recommendations were communicated to them in August 2005.

The IL UCP and federal regulations (49 CFR Part 26.81) require appropriate training be provided to certification analysts. Although staff have received some training, IDOT could not provide documentation of training, such as sign-in sheets, to verify that certification staff attended

any of these trainings. IDOT officials also could not provide any documentation that certification staff received training related to the IL UCP procedures. The August 2005 IDOT audit also recommended that certification staff be provided with adequate and proper training with regard to the compliance requirements of the IL UCP manual and the federal regulations.

IDOT is not certifying DBEs in a timely manner in accordance with federal regulations. Only 43 percent of the certifications we reviewed were processed within the required 90-day timeframe. IDOT took, on average, 131 days to complete its review and certify DBE applicants. Five applications took over 250 days to process; two of these applications took over 400 days.

IDOT's DBE certification files were missing some required information. For example, 14 of the 50 files (28%) did not contain the most recent statements of personal net worth. Similarly, 15 files (30%) did not contain the most recent personal/individual tax returns. In some instances, the files contained the statements or tax returns, but due to the delays in processing the application, the documents were outdated.

We also questioned the adequacy of documentation of ethnicity/gender in 5 of 50 files (10%) and documentation for citizenship in 4 of 50 files (8%). Bank signature cards were missing in 7 of 50 (14%) of the files reviewed. All 50 files contained a summary report prepared by the analyst who discussed each certification, concerns regarding control or ownership, and the basis for issuing the certification.

In 10 of the 50 (20%) files reviewed, we initially identified items that raised questions concerning whether the minority or female owner of the firm had complete control or 51 percent ownership. In most of these cases, IDOT was diligent in addressing ownership and control issues regarding these firms. In 8 of the 10 cases, the ownership or control issue was discussed in the analyst's summary report. In three cases, the owners were called in to meet with IDOT's Administrative Review Panel to address the issues. Monitoring of the contractor was also performed in 7 of these 10 cases.

In our file review, there were three vendors that did not file the required No Change Affidavit or recertification application and information with IDOT in a timely manner. During 2002 through 2004, IDOT reported decertifying 24 firms from the DBE program. Also, according to a U.S. Department of Transportation, Office of Inspector General official, IDOT refers between 7 and 10 DBEs each year for investigation.

IDOT also could not provide a log or list of complaints filed. However, we did find evidence in the files we tested that investigations had been conducted into allegations. (pages 1-5)

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## INTRODUCTION

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Senate Resolution Number 102 directs the Auditor General to conduct a management audit of the State's Business Enterprise Program and the Illinois Department of Transportation's certification of businesses as DBEs through the Illinois Unified Certification Program (IL UCP) (see Appendix A). The Resolution asks the Auditor General to determine:

- Whether certification and recertification procedures are adequate to assure that businesses participating in the Business Enterprise Program and businesses certified by IDOT in the IL UCP are legitimately classified as businesses owned and controlled by minorities, females, or persons with disabilities;
  - Whether the established procedures and processes that govern certification of businesses owned and controlled by minorities, females, or persons with disabilities are being followed;
  - Whether staff responsible for certification of these businesses have received adequate training;
  - What steps are followed to verify information provided by businesses participating in the Business Enterprise Program and businesses certified by IDOT in the IL UCP, such as review of pertinent documentation, interviews, and on-site visits;
  - Whether the certifications are periodically reviewed to ensure that businesses in the programs continue to be qualified for participation; and
  - Whether procedures for enforcing compliance with the Act and federal regulation, including contract termination and contractor suspension, are adequate and uniformly enforced.
- (page 6)

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## CMS' BUSINESS ENTERPRISE PROGRAM

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The Department of Central Management Services (CMS) administers Illinois' Business Enterprise Program (BEP). The purpose of the program is to promote the economic development of businesses certified as owned and controlled by minorities, females, and persons with disabilities. According to CMS officials, the BEP program has three main components: certification, compliance, and outreach.

### Business Enterprise Council

The Business Enterprise for Minorities, Females, and Persons with Disabilities Act (Act) establishes the Business Enterprise Council to help implement, monitor, and enforce the goals of the Act (30 ILCS 575). CMS' administrative rules (44 Ill. Adm. Code 10) also give the Council other key responsibilities including: establishing the contracting goal, determining whether specific contracts are exempt from the goal, approving agency compliance plans, accepting certification by another entity, and establishing a committee to review certifications denied in cases in which the applicant asks for reconsideration.

**The Council did not meet during calendar year 2005.**

We requested the meeting minutes of the Council for 2004 and 2005 from CMS. The Council did not meet during calendar year 2005. According to CMS officials, as of May 2006 there were 12 vacancies on the Council, which they are awaiting the Governor's Office to fill.

### BEP Goals

State law establishes that 10 percent of the total amount of State contracts be awarded to minority and female owned businesses and 2

percent to businesses owned by persons with disabilities. Although the Act sets the total participation goal of 12 percent, the Council may establish goals above those contained in the statutes. In November 1998, the Business Enterprise Council adopted a 19 percent participation goal for State agencies and universities.

**...dollars awarded to CMS BEP certified vendors decreased from \$407 million in 2001 to \$387 million in 2005.**

Digest Exhibit 1 CMS' BUSINESS ENTERPRISE PROGRAM DOLLARS SUBJECT TO GOAL AND DOLLARS ACHIEVED Fiscal Years 2001-2005		
Fiscal Year	Dollars Subject To Goal	Dollars Achieved
2001	\$2,515,923,458	\$406,950,105
2002	\$2,471,032,138	\$405,348,902
2003	\$2,355,944,921	\$401,076,650
2004	\$1,845,327,869	\$353,730,511
2005	\$1,688,701,151	\$386,958,091
Source: CMS BEP Annual Reports.		

Digest Exhibit 1 shows CMS' BEP dollars subject to the goal and the dollars achieved for fiscal years 2001 through 2005. Over the past 5 years, the total contract dollars subject to the 19 percent goal has decreased from approximately \$2.5 billion to \$1.7 billion; similarly the reported dollars awarded to CMS BEP certified vendors decreased from \$407 million in 2001 to \$387 million in 2005. (pages 7-12)

### **CMS BEP Policies and Procedures**

CMS does not have a policies and procedures manual for its certification staff. We requested relevant policies and procedures related to certification. Although CMS provided us with several documents, none of these constitutes a policies and procedures manual.

A policies and procedures manual would provide staff with specific criteria for dealing with certain types of situations. A policies and procedures manual would also provide staff with guidance in certifying certain types of businesses (corporations, partnerships, or sole proprietorships) and work categories, serve as a guide for making decisions regarding certifications, and ensure consistency for these certifications. (pages 22-23)

### **CMS' BEP Personnel and Training**

As of August 2005, the BEP Bureau at CMS had a total of seven employees, including the BEP Director and the receptionist. There are three employees with direct certification responsibilities, including one with review authority.

CMS has not established minimum training requirements for its BEP staff. Furthermore, CMS could not provide documentation to show that two employees had received training; training provided to other employees was limited. There was no evidence of training for the Operations Manager or the BEP Director.

Although there are no requirements related to staff training in either the Act or CMS' administrative rules, requiring staff to attend training would benefit those with certification responsibilities by reviewing program requirements, the certification process, and factors that determine whether an applicant is eligible. Training would also provide certification staff with information regarding new developments or techniques used in certifying businesses. (pages 23-24)

### **Certification by Other Certifying Entities**

CMS' administrative rules allow the Business Enterprise Program to accept certifications from other entities (44 Ill. Adm. Code 10.63). The Business Enterprise Council, which oversees the CMS BEP program, accepts certifications by other entities in Illinois. However, the other entities must have certification requirements and procedures equaling or exceeding those in the Act and the administrative rules. Although the majority of CMS' BEP vendors are certified by CMS, there are hundreds that are certified by other entities. As of November 2005, approximately 33 percent of the entities on the CMS BEP vendor list were certified by three other entities.

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**CMS does not have a policies and procedures manual for its certification staff.**

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**CMS has not established minimum training requirements for its BEP staff.**

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**There are no formal written agreements with the entities from which CMS' BEP accepts certifications.**

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There are no formal written agreements with the entities from which CMS' BEP accepts certifications. These include the Illinois Department of Transportation (IDOT), the Women's Business Development Center, and the Chicago Minority Business Development Council. According to CMS officials, there was a written agreement with IDOT. However, CMS could not provide us with a copy of the agreement. (pages 24-26)

### **List of Current CMS BEP Certified Vendors**

The Business Enterprise Council is required by law to maintain a list of all businesses legitimately classified as businesses owned by minorities, females, or persons with disabilities to provide to the State agencies and State universities. The list of CMS BEP certified vendors is not available on CMS' website. Because the list is only available in hardcopy, agencies and contractors may be using old lists and, therefore, may not always know if new vendors have been certified that could be used to meet contracting goals. We surveyed similar programs in five other neighboring states. Of these five states, four have a current listing of certified vendors on their website for viewing at any time. (pages 26-27)

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## **CMS' BEP CERTIFICATION PROCESS**

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The primary purpose of CMS' certification process is to verify that the business is owned and controlled by BEP eligible individuals in accordance with requirements of the Act (30 ILCS 575 and 44 Ill. Adm. Code 10.50). Businesses seeking certification must complete and submit a CMS BEP application packet.

The application for initial certification, or recertification, must meet all the requirements (i.e., business 51 percent owned and controlled by an eligible participant, annual gross sales less than \$27 million, etc.) set forth in the Act and administrative rules. Should the applicant fail to meet any of the certification requirements, or refuse to supply information requested, the Council Secretary can deny certification or recertification.

### **Site Visits**

On-site visits are done infrequently and are not done on a regular basis because of limited resources, according to CMS officials. Only 17 of the 621 applicants certified or recertified in fiscal year 2005, received a site visit. According to CMS officials, site visits are usually conducted if there are any questions regarding certification eligibility or if Illinois is the home state and the vendor is applying for consideration for a program in another state that requires a site visit. We surveyed surrounding states' programs and found that three of the five states (Indiana, Missouri, and

**On-site visits are done infrequently...**

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Wisconsin) require a site visit for certification. Indiana and Missouri require a site visit for both certification and recertification.

Site visits can provide additional or corroborative information that can be used to verify eligibility. On-site visits would allow CMS to conduct an interview while observing the firm's owner(s) in their place of business. This process might clarify and substantiate documentation submitted with the application. The site visits that are conducted by CMS are generally in the Chicago area. (pages 31-37)

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## RESULTS OF VENDOR FILE TESTING

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We tested 50 BEP files at CMS during the audit. Ten of these files were reciprocals or certified by another certifying entity. These ten files generally contained a copy of the certification letter from the other entity and a copy of the vendor's most recent corporate tax return. During our testing, we focused on certification timeliness, the presence of required documentation, supervisory review/verification of submitted information, and overall concerns related to eligibility.

### Timeliness

CMS is required to certify, deny, or request additional information within 60 days of receipt of the application. The average processing time for CMS certifications sampled was 33 days.

Although in most cases sampled CMS met the timeliness requirement, there were some instances in which certifications were not processed in a timely manner. Of the 40 files for certifications conducted by CMS, 6 applications (15%) were not processed within the required 60 days. The processing times for these certifications ranged from 82 to 118 days.

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**...in most cases  
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### File Documentation

The CMS BEP certification files tested did not always contain all the information currently required. More importantly, few of the files reviewed contained a discussion of the issues related to the certification or the basis for the certification decision. Digest Exhibit 2 is a summary of certain documents missing from files.

Digest Exhibit 2 CMS' BEP CERTIFICATION FILES MISSING DOCUMENTATION		
Document	Number of Files Missing Documentation	Percentage Missing
Corporate Tax Returns	8 of 38 <sup>1</sup>	21%
Current Proof of Citizenship	6 of 40	15%
Bank Signature Cards	4 of 40	10%
Proof of Gender/Ethnicity	2 of 37 <sup>2</sup>	5%
Notes: <sup>1</sup> One firm had been in business less than a year and one firm was a sole proprietorship. Therefore, these firms were not required to file corporate tax returns. <sup>2</sup> Three of the vendors tested were certified as a person with a disability, which does not require proof of gender or ethnicity.  Source: OAG analysis of 40 CMS BEP certification files.		

Even though CMS' BEP staff had conducted their own review of files in June 2005, files were still lacking critical documentation that should be in the file to establish citizenship, ethnicity, and gender. Of the 40 files selected that were CMS BEP certified, 6 were missing current proof of citizenship (e.g., expired resident alien card) and 2 were missing proof of gender or ethnicity.

**... files were still lacking critical documentation that should be in the file to establish citizenship, ethnicity, and gender.**

Files were also lacking critical financial documentation. Ten percent of the certifications (4 of 40) that were CMS BEP certified were missing bank signature cards that could be used to help establish control. Twenty-one percent (8 of 38) of the CMS BEP certified files were missing corporate tax returns.

Files were also missing other documentation including inventory listings and proof of vehicle ownership. Although we found professional licenses in 14 of the 40 CMS BEP certified files, because there are no policies and procedures that direct when a license is required, we could not always determine which vendors should have been required to submit professional licenses or permits.

### **Continued Eligibility: No Change Affidavits**

CMS recertifies vendors every two years. CMS does not require vendors to file any additional information between certifications, such as an annual No Change Affidavit. Therefore, unless vendors self-report changes, CMS does not know if any changes in the vendor's eligibility or ownership have occurred that would affect its eligibility in the years when a certification is not completed.

We surveyed Illinois' neighboring states and found that comparable programs in Indiana and Missouri require a No Change Affidavit be submitted annually by vendors to maintain certification. Although Wisconsin does not require a No Change Affidavit, it recertifies participants on an annual basis.

### **Checklists and Worksheets**

CMS files contained several types of checklists and worksheets. The worksheets and checklists we reviewed were not always adequately completed and often were marked "N/A" with no indication of why that part of the worksheet or checklist was not applicable. Parts of some worksheets were simply left blank and were not utilized to ensure that the applicant was qualified for certification. For example, we reviewed files to determine whether each contained a BEP Certification Checklist. Of the 40 files, 21 did not contain the Checklist and 2 files contained the Checklist but there was no second review by a supervisor.

All 40 files tested contained a BEP Certification File Status Sheet. The File Status Sheet documents important dates such as the date the file was received, date due, date assigned to analyst, and date approved. The File Status Sheet also documents the analyst's decision or recommendation, as well as a sign-off by the Certification Coordinator and/or Director.

### **CMS' Filing System and Missing Files**

In some cases, CMS could not locate all certification files. According to a CMS internal e-mail included in one of the sampled certification files, BEP program staff were given direction in July 2005 to request full certification applications from vendors who had been certified but their original file could not be located. According to CMS, as of April 2006, there were still vendors for which the original certification file could not be located and no full certification analysis had been performed.

### **Eligibility Issues**

In our review of certification files, we identified items that raised questions concerning the eligibility of 14 of the 50 BEP vendors we sampled, or 28 percent, because of issues such as control, ownership, gross receipts, or expired certification (see Digest Exhibit 3). In 7 of the 50 certification files tested, documentation in the certification files did not clearly show that a minority or female had control or 51 percent ownership of the business. Examples of cases with control and ownership issues that CMS is conducting a full certification review included:

- In a business certified as female-owned, non-eligible males are responsible for many decision making/control issues.

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**...we identified items that raised questions concerning the eligibility of 14 of the 50 BEP vendors we sampled ....**

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Also, the Secretary of State's corporation database lists a non-eligible male as President.

- A 51 percent female owner of the certified business was employed by another business owned by the male who has a 49 percent interest in the certified business. Also, the certified business has a \$40,400 liability on the books to the 49 percent male owner.
- In a female-owned certified business, a non-eligible male gifted shares to the female to make her the majority owner. The male also has the prior experience in the business and the Secretary of State corporation database lists the male as President.

Digest Exhibit 3 CMS' BEP ELIGIBILITY ISSUES		
REASON	Number	Contract Dollars July 2004 through January 2006 <sup>2</sup>
Control/Ownership	7	\$6,561,069
Gross Receipts Requirements	4	\$14,911,955
Expired Certification	4	\$15,200,439
<b>Total</b>	<b>14<sup>1</sup></b>	<b>\$22,880,140<sup>1</sup></b>
Notes: <sup>1</sup> One vendor was included in two different categories. Therefore total number and contract dollars may not add. <sup>2</sup> Because CMS was unable to provide subcontracted dollars, the amount of contract dollars does not include dollars received as a subcontractor or given to another vendor as a subcontractor.  Source: OAG analysis of 50 CMS BEP certification files.		

We also identified issues in four cases pertaining to gross receipts. In three of these cases their gross receipts appeared to be more than the \$27 million limit; the owners also had an interest in other businesses. In the other case, we questioned

eligibility because it appeared that the owner also owned other interests; however, the amount could not be determined.

CMS has not always been diligent in addressing ownership and control concerns. Of the seven vendors for which we identified control and ownership issues, in four cases the issues were discussed by CMS somewhere in the file prior to our testing. However, only three of the seven received a site visit. There was also no evidence that any of these seven were brought before the BEP Council to discuss the issue. Of the four cases we questioned because of gross receipts, only one of the four had any discussion of the issue by CMS in the file, none had received a site visit, and none of these vendors had been before the BEP Council.

As a result of our review, CMS began a full certification examination of 10 of the 50 BEP certified vendors we reviewed. In addition to these 10, CMS has also requested additional documentation for certification files from 20 other vendors. This documentation included: corporate tax returns, additional information on a merger, list of inventory/equipment, valid resident alien card, and bank signature/authorization cards.

### **CMS' BEP Enforcement Actions**

Although CMS has denied certifications/recertifications, CMS has not taken any enforcement actions that are referred to in CMS' administrative rules for the period FY03-05. These actions include decertification/revocation, suspension, and financial penalty. CMS BEP officials provided us with the certification and enforcement actions taken by the program.

During our testing of 50 CMS BEP certification files, we found 4 BEP vendors that had not been recertified within two years of certification or recertification. Two of these vendors were recertified after approximately a year without review because their FEIN changed. The other two vendors' certifications expired because the timeframe for recertification had passed.

We also found vendors in CMS' BEP directory that had been debarred or decertified by the City of Chicago. We compared the City of Chicago's list of vendors that had been debarred or decertified to CMS' list of certified BEP vendors as of November 2005. We found that one firm was decertified in March 2000, meaning that the firm cannot be used to satisfy City of Chicago minority and women business enterprise participation goals. Another firm was both debarred and decertified in April 2005 by the City of Chicago, prohibiting the firm from participating as a vendor on a City of Chicago contract for three years.

### **Complaints and Investigations**

According to 44 Ill. Adm. Code 10.71, the State, or a third party, may challenge the certification status of a business at any time. We requested the number of complaints filed with CMS. CMS could not provide us with the number of complaints that had been made or if there had been any investigations conducted related to complaints. According to CMS officials, information related to complaints would be contained in the individual files. In our review of 50 CMS BEP certification files there was no evidence of complaints or investigations.

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**... CMS has not taken any enforcement actions that are referred to in CMS' administrative rules...**

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### CMS BEP Contract Compliance Monitoring

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**CMS has not monitored contracts for compliance with established goals...**

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CMS has not monitored contracts for compliance with established goals or to determine whether BEP vendors are completing the work. Contract performance can be assessed through monitoring reports or conducting site visits during contracts. According to CMS officials, the Department only recently started including goals in the contracts and requiring prime contractors to submit the list of BEP vendors that would be used to meet the contract goal for approval. No site visits have been conducted to ensure that BEP vendors are actually performing the work. Contract monitoring would allow CMS to verify that certified BEP vendors are actually performing the work and receiving the appropriate compensation that is being reported for the contract goals.

CMS also does not track work conducted by subcontractors. We requested a list of CMS BEP vendors and the amount of State funds they had received for the period July 1, 2004 through January 31, 2006. Although CMS was able to provide a list of the BEP firms and total dollars received from State contracts, it did not include dollars received as subcontractors. (pages 29-50)

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### IDOT's DBE PROGRAM

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The Illinois Department of Transportation (IDOT) administers the Disadvantaged Business Enterprise (DBE) program. The DBE program was established in accordance with regulations of the United States

Digest Exhibit 4 <b>IDOT'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CONTRACT AWARDS AND DOLLARS COMMITTED</b> Federal Fiscal Years 2001-2005		
<b>Fiscal Year</b>	<b>Contract Awards</b>	<b>Dollars Committed</b>
2001	\$1,797,772,068	\$238,824,940
2002	\$1,770,247,163	\$193,815,348
2003	\$1,564,070,007	\$198,501,173
2004	\$1,634,968,329	\$215,116,481
2005	\$1,361,428,742	\$243,854,742
Source: OAG analysis of IDOT data.		

Department of Transportation (US DOT). As a condition of receiving federal assistance, IDOT must comply with federal regulations (49 CFR Part 26).

#### DBE Goals

Since FFY 1999-2000, IDOT has been required to set its own DBE goals, with approval from the Federal Highway

Administration (FHWA). Since FFY 2001, the State DBE goal has been recalculated every year and the methodology approved by the FHWA. For FFY 2005, the goal increased to 22.77 percent.

Digest Exhibit 4 shows IDOT's total contract awards and dollars committed to DBEs. Although IDOT did not meet its 2005 goal of 22.77 percent, dollars committed to DBEs has increased each year since 2002. Over the past 5 years, the total contract awards has decreased from \$1.80 billion to \$1.36 billion; however, the dollars committed to DBEs increased from \$239 million in 2001 to \$244 million in 2005. (pages 12-15)

### **IDOT DBE Policies and Procedures**

In July 2005 we met with IDOT Small Business Enterprise officials and requested a copy of the most recent policies and procedures related to DBE certification. In July 2005, the Bureau Chief of the Bureau of Small Business Enterprise provided us with a policies and procedures manual for which the most recent effective date was May 1992. Some policies in the manual had effective dates back to 1981.

An August 2005 audit report conducted by IDOT's Bureau of Accounting and Auditing also noted in its findings that the Bureau of Small Business Enterprise did not have adequate and up-to-date policies and procedures.

During our fieldwork, the Bureau of Small Business Enterprise provided us with a policies and procedures manual dated 2003 on the front cover. Only one other page is dated in the policies and procedures manual and it is dated July 30, 2001. It is not clear whether these policies were ever formally approved, whether certification staff was aware of this manual, or why it was not provided to auditors upon our initial request considering it is dated 2003 on the front cover. Regardless, the Bureau has not updated their policies and procedures manual since the IDOT audit recommendations were communicated to them in August 2005. (pages 53-54)

### **IDOT's DBE Personnel, Responsibilities, and Training**

The IL UCP and federal regulations (49 CFR Part 26.81) require appropriate training be provided to certification analysts. An IDOT Bureau of Accounting and Auditing audit recommended in August 2005 that certification staff be provided with adequate and proper training with regard to the compliance requirements of the IL UCP manual and the federal regulations. This recommendation was based on the numbers and types of errors and omissions of critical information found during their review of DBE certification files.

Although it appears staff has received some training, IDOT could not provide documentation of training such as sign-in sheets to verify that certification staff attended any of these trainings. IDOT officials also could not provide any documentation that certification staff received training related to the IL UCP procedures. Although the federal regulations and IL UCP require appropriate training for certification staff, IDOT does not have any specific requirements or core curriculum for staff. (pages 54-56)

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## IDOT'S DBE CERTIFICATION PROCESS

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IDOT's Bureau of Small Business Enterprise is required to conduct a detailed analysis of each application, including an on-site visit conducted at the offices and/or job site of the applicant.

### Timeliness

IDOT is not certifying DBEs in a timely manner in accordance with federal regulations. Although IDOT is required by federal regulations to complete their review of applicant firms within 90 days,

Digest Exhibit 5 IDOT CERTIFICATION PROCESSING TIMELINESS		
	Certifications Approved	Percent
90 Days or Less	21	43%
91-150 Days	12	24%
151-180 Days	3	6%
180 Days or More	13	27%
<b>Total</b>	<b>49<sup>1</sup></b>	<b>100%</b>
Note: <sup>1</sup> One application was still under review at the time of our testing. Source: OAG analysis of IDOT certification processing of 50 cases.		

during testing we found that only 43 percent of DBE applications (21 of 49) were processed within the required timeframe (see Digest Exhibit 5).

In addition to not complying with federal regulations, the untimely processing also impacts the effectiveness of the

analyst's review. For example, in some cases we reviewed, IDOT used personal net worth and gross receipts information that was more than a year old.

### File Documentation

The IDOT DBE certification files tested did not always contain all the information currently required (see Digest Exhibit 6). Our testing of file documentation was complicated because of extensive timeliness problems in processing certifications and changing documentation

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**IDOT is not certifying DBEs in a timely manner in accordance with federal regulations.**

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requirements. In some instances, files contained the statements or tax returns, but due to delays in processing, the documents were outdated. IDOT and the other members of the IL UCP agreed to formulate a set of standard policies and procedures for processing certifications and annual no-change affidavits. Although the IL UCP Procedures are dated July 2002, IDOT did not implement these procedures until September 2003.

Digest Exhibit 6 <b>IDOT DBE CERTIFICATION FILES MISSING DOCUMENTATION</b>		
<b>Document</b>	<b>Number of Files Missing</b>	<b>Percentage Missing</b>
Individual Tax Returns	15 of 50	30%
Statement of Personal Net Worth	14 of 50	28%
Bank Signature Cards	7 of 50	14%
Corporate Tax Returns/Balance Sheets	6 of 47 <sup>1</sup>	13%
Proof of Ethnicity/Gender	5 of 50	10%
Proof of Citizenship	4 of 50	8%
Site Visit (Required every 5 years)	2 of 50	4%
Audit/Summary Report	0 of 50	0%
Note: <sup>1</sup> Three firms tested were sole proprietorships and therefore did not file corporate tax returns.		
Source: OAG analysis of 50 IDOT DBE certification files.		

Although IDOT was missing information in some certification files, all 50 certification files contained an audit/summary. The audits/summaries discussed each certification, concerns regarding control or ownership, and the basis for issuing the certification. (pages 60-73)

**Eligibility Issues**

Based on documentation in IDOT's certification files, we initially identified items that raised questions concerning the eligibility of 12 of 50 (24%) cases reviewed (see Digest Exhibit 7). In 10 of the 50 (20%) certification files sampled, we identified items in

Digest Exhibit 7 <b>IDOT's DBE ELIGIBILITY ISSUES</b>		
<b>Reason</b>	<b>Number</b>	<b>Contract \$ July 2004 through January 2006</b>
Control/Ownership	10	\$23,669,338
No Change Affidavit Not Filed Timely	2	\$3,503,589
Expired Certification	1	\$56,250
<b>Total</b>	<b>12<sup>1</sup></b>	<b>\$27,159,177<sup>1</sup></b>
Note: <sup>1</sup> One firm was included in two different categories. Therefore total number and contract dollars does not add.		
Source: OAG analysis of 50 IDOT DBE certification files.		

the file which raised questions concerning whether the minority or female owner of the firm had complete control or 51 percent ownership.

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**In most cases, IDOT was diligent in addressing ownership and control issues and other concerns regarding these firms.**

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In most cases, IDOT was diligent in addressing ownership and control issues and other concerns regarding these firms. Of the 10 firms we questioned, in 8 cases the issues were discussed in the audit/summary in the file. Of these 10, the compliance section had monitored 7. In addition, 3 of the 10 were brought before the Administrative Review Panel to discuss the issue in person.

### **Complaints and Investigation**

We asked IDOT officials for a listing of complaints. Officials told us that IDOT does not have a complaint file or log. If a complaint is submitted, IDOT follows up on the case and then the complaint gets filed in the firm's certification file. While IDOT could not provide a log or list of complaints filed, we did find evidence in the files we tested that investigations had been conducted into allegations. We met with a representative of IDOT's DBE Field Compliance Section and spoke with a representative of the US DOT Office of Inspector General (OIG). According to US DOT OIG, IDOT refers approximately 7 to 10 DBEs per year for investigation and most of these would be founded.

### **Certification and Recertification Tracking**

Because of the timeliness problems we identified during testing, we inquired with IDOT as to how they track certification, recertifications and No Change Affidavits. Although, according to IDOT officials there are some tracking mechanisms in place, it is the responsibility of the Certification Analyst to move the case through the process in a timely manner.

Of the 50 certifications we tested, one certification had expired months prior to the applicant applying for recertification. This firm's certification expired in June 2005; however, the recertification application was not received by IDOT until January 2006. The firm remained certified during the interim. At the time of our testing, no certification decision had been made.

In two other cases the firm did not file the required No Change Affidavit in a timely manner. In one case a No Change Affidavit, which was due in January 2005, was not received by IDOT until July 13, 2005. This firm remained a certified DBE despite filing a No Change Affidavit six months late. In the other case a No Change Affidavit was due in September 2005. IDOT sent the firm a notice to submit the No Change Affidavit in July 2005. At the time of our testing in February 2006, IDOT still had not received the No Change Affidavit but the firm continued to be

listed as a certified DBE. According to IDOT's responses to our testing exceptions, this firm should have been decertified. (pages 73-80)

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## RECOMMENDATIONS

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The audit contains 15 recommendations to the Department of Central Management Services and 6 recommendations to the Illinois Department of Transportation. Both agencies generally agreed to implement the recommendations. The Department of Central Management Services' responses can be found in Appendix D. The Illinois Department of Transportation's responses can be found in Appendix E.



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WILLIAM G. HOLLAND  
Auditor General

WGH:MP  
June 2006