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OFFICE OF THE AUDITOR GENERAL
WILLIAM G. HOLLAND

*To the Legislative Audit Commission, the Speaker
and Minority Leader of the House of
Representatives, the President and Minority Leader
of the Senate, the members of the General Assembly,
and the Governor:*

This is our report of the Management Audit of the Department of Central Management Services' Business Enterprise Program and the Illinois Department of Transportation's Disadvantaged Business Enterprise Program.

The audit was conducted pursuant to Senate Resolution Number 102, which was adopted April 21, 2005. This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

The audit report is transmitted in conformance with Section 3-14 of the Illinois State Auditing Act.

A handwritten signature in blue ink, appearing to read "William G. Holland".

WILLIAM G. HOLLAND
Auditor General

Springfield, Illinois
June 2006

REPORT DIGEST

MANAGEMENT AUDIT

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

Released: June 2006



State of Illinois
Office of the Auditor General
WILLIAM G. HOLLAND
AUDITOR GENERAL

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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.

REPORT CONCLUSIONS

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)

INTRODUCTION

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)

CMS' BUSINESS ENTERPRISE PROGRAM

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.

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

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

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

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)

CMS' BEP CERTIFICATION PROCESS

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...

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)

RESULTS OF VENDOR FILE TESTING

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.

**...in most cases
sampled CMS met
the timeliness
requirement...**

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 ¹	21%
Current Proof of Citizenship	6 of 40	15%
Bank Signature Cards	4 of 40	10%
Proof of Gender/Ethnicity	2 of 37 ²	5%
Notes: ¹ 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. ² 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.

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

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 ²
Control/Ownership	7	\$6,561,069
Gross Receipts Requirements	4	\$14,911,955
Expired Certification	4	\$15,200,439
Total	14¹	\$22,880,140¹
Notes: ¹ One vendor was included in two different categories. Therefore total number and contract dollars may not add. ² 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.

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

CMS BEP Contract Compliance Monitoring

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

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)

IDOT's DBE PROGRAM

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 IDOT'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CONTRACT AWARDS AND DOLLARS COMMITTED Federal Fiscal Years 2001-2005		
Fiscal Year	Contract Awards	Dollars Committed
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)

IDOT'S DBE CERTIFICATION PROCESS

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%
Total	49¹	100%
Note: ¹ 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

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

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 IDOT DBE CERTIFICATION FILES MISSING DOCUMENTATION		
Document	Number of Files Missing	Percentage Missing
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 ¹	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: ¹ 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 IDOT's DBE ELIGIBILITY ISSUES		
Reason	Number	Contract \$ July 2004 through January 2006
Control/Ownership	10	\$23,669,338
No Change Affidavit Not Filed Timely	2	\$3,503,589
Expired Certification	1	\$56,250
Total	12¹	\$27,159,177¹
Note: ¹ 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.

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

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)

RECOMMENDATIONS

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.



WILLIAM G. HOLLAND
Auditor General

WGH:MP
June 2006

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Chapter One

INTRODUCTION AND BACKGROUND

REPORT CONCLUSIONS

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.

INTRODUCTION

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.

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:

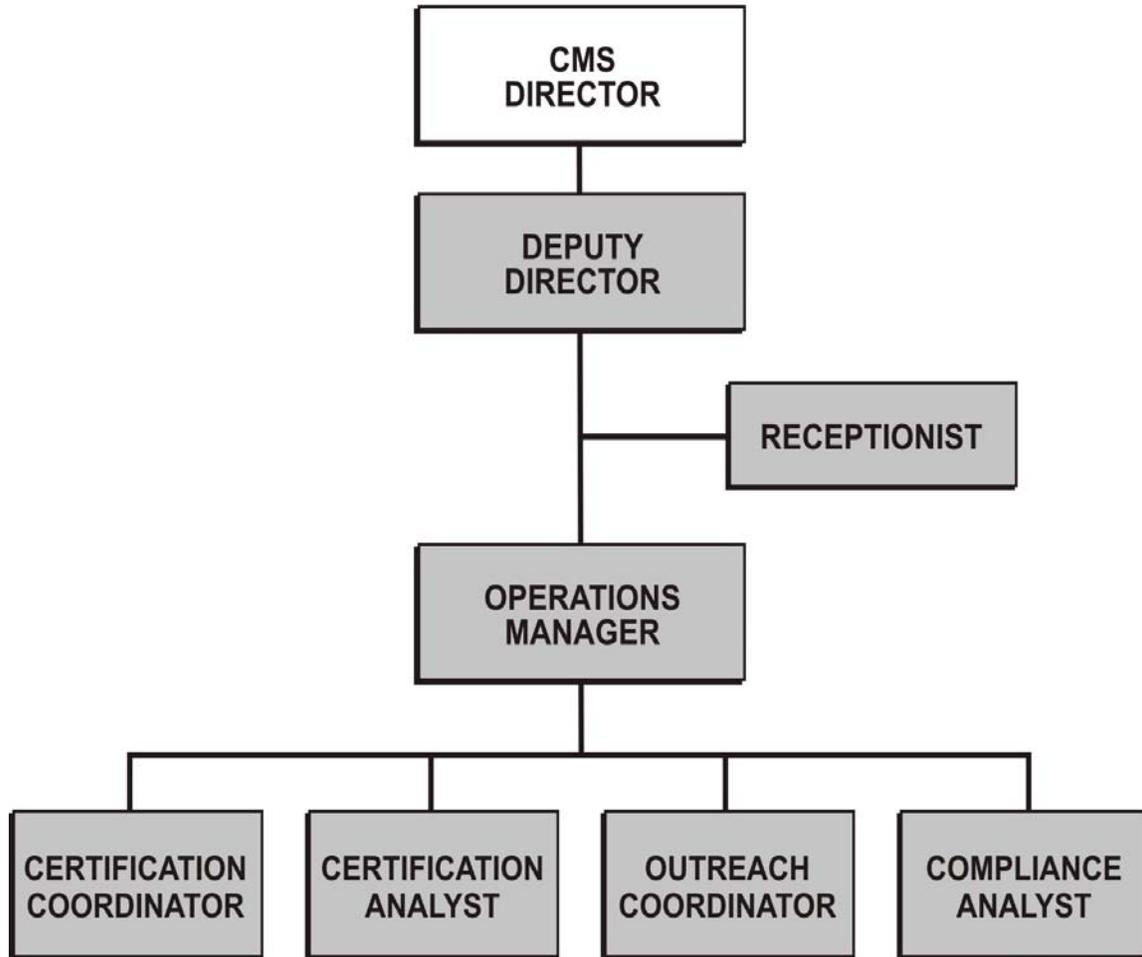
- Whether certification and recertification procedures are adequate to assure that businesses participating in the Business Enterprise Program and businesses certified by IDOT in the IL UCP are legitimately classified as businesses owned and controlled by minorities, females, or persons with disabilities;
- 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.

CMS' BUSINESS ENTERPRISE PROGRAM

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. The BEP Bureau at CMS reports to CMS' Director and has a total of seven employees, including the Deputy Director and the receptionist (see Exhibit 1-1). According to CMS officials, the BEP program has three main components:

- Certification – Reviewing and approving applications for potential Business Enterprise Program participants;
- Compliance – Monitoring State agency compliance with the 19 percent goal adopted by the Business Enterprise Council; and
- Outreach – Advocating on behalf of vendors, conducting workshops, and counseling potential applicants.

Exhibit 1-1
**DEPARTMENT OF CENTRAL MANAGEMENT SERVICES ORGANIZATIONAL CHART
BUSINESS ENTERPRISE PROGRAM**
As of August 2005



Source: Department of Central Management Services.

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). Exhibit 1-2 presents the composition of the Council. The Director of Central Management Services serves as the Council Chairperson and selects a Council Secretary, subject to approval of the Council. Members of the Council serve without compensation but are reimbursed for any ordinary and necessary expenses incurred in the performance of their duties.

The Business Enterprise Council is not fulfilling its statutory responsibilities. The Act gives specific authority and responsibilities to the Council. One of these responsibilities is to:

Exhibit 1-2 COMPOSITION OF BUSINESS ENTERPRISE COUNCIL
Director of Central Management Services (Chairperson)
Director of the Department of Human Rights
Director of Commerce and Economic Opportunity
Secretary of Human Services
Director of Department of Transportation
Director of Capital Development Board
Ten individuals representing businesses that are minority or female owned or owned by persons with disabilities ¹
Two individuals representing the business community ¹
A representative of public universities ¹
Note: ¹ Appointed by Governor for 2-year terms. Source: Business Enterprise for Minorities, Females, and Persons with Disabilities Act.

“...devise a certification procedure to assure that businesses taking advantage of this Act are legitimately classified as businesses owned by minorities, females, or persons with disabilities.” (30 ILCS 575/5 (2)(a))

According to the Act, the Council is also responsible for various duties including, among others:

- maintaining a list of all businesses taking advantage of the Act;
- reviewing compliance plans submitted by each State agency and State university (as required by the Act);
- making annual reports to the Governor and the General Assembly on the status of the program no later than March 1 each year;
- maintaining a list of all pending State contracts upon which businesses owned by minorities, females, and persons with disabilities may bid; and
- making findings, recommendations and proposals to the Governor as necessary and appropriate to enforce the Act.

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 certification denials in cases in which the applicant asks for reconsideration. The Council then votes whether to uphold the committee's decision.

We requested the meeting minutes of the Council for 2004 and 2005 from CMS. We received Council minutes for January, March, and May 2004. Although a meeting was scheduled for November 2004, minutes were not available. 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.

If the Council does not meet on a regular basis, it cannot approve agency compliance plans, review participation goals, rule on certification appeals, or make recommendations to the Governor to improve the program.

BUSINESS ENTERPRISE COUNCIL	
RECOMMENDATION NUMBER 1	<i>The Department of Central Management Services should ensure that the Business Enterprise Council has adequate membership and that meetings are held on a regular basis.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. The Department has been working diligently to complete the membership of the Business Enterprise Council. The Governor's Office has issued the invite letters to the Council members and appointments are imminent. The Department plans to hold a Business Enterprise Council meeting in July and on a regular basis thereafter.

Legislative and Program History

State law has mandated a Business Enterprise Program for minorities and females for more than 20 years (see Exhibit 1-3). The Business Enterprise Program was initiated with the passage of the Minority and Female Business Enterprise Act in 1984. The Act established a goal of not less than 10 percent of State contract dollars to be awarded to minority and female owned businesses. Subsequent legislation in 1985 and 1987 further refined the definition of “control” in order to participate in the program.

Since 1994, the program has been mandated by the Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575). The Act sets a minimum contracting goal of 12 percent (10 percent for minorities and females and 2 percent for persons with disabilities). There are currently 62 agencies and 9 universities letting contracts subject to the Act. The Act is set to be repealed in September 2008. As of November 2005, there were a total of 1,991 BEP certified vendors of which 1,333 were certified by CMS. CMS accepts certifications from other entities. Chapter Two discusses the number of CMS BEP certified vendors by the certifying entity.

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. (The law further defined that at least 50 percent of the 10 percent go to female owned businesses.)

Exhibit 1-3 LEGISLATIVE HISTORY OF CMS’ BUSINESS ENTERPRISE PROGRAM	
1984	Minority and Female Business Enterprise Act (PA 83-1332) becomes effective September 6, 1984 requiring a goal of not less than 10 percent of the total dollar amount of State contracts be awarded to minority and female owned businesses. At least 50 percent of the goal should be to minority or female owned businesses. Also establishes the Minority and Female Business Enterprise Council.
1985	PA 84-192 amends the Act to add a definition of “control”. Also adds criminal penalties for fraudulently obtaining certification, making false statements, or fraudulently obtaining public monies reserved for minorities and females.
1987	PA 85-729 amends the Act to include State universities. PA 85-777 amends the Act to define “Business concern or business” as a business with annual gross sales of less than \$14 million for the most recent year.
1989	PA 86-269 and 270 amends the Act to continue the 10 percent goal. Also requires the Council to conduct regular meetings and to review any evidence regarding racial, ethnic, or gender-based discrimination, which directly impacts State contracting with minorities and females. Also, defines “sheltered market” and allows for set-asides. Repeals all provisions September 6, 1994.
1994	Business Enterprise for Minorities, Females, & Persons with Disabilities Act (PA 88-597) becomes effective August 28, 1994 replacing the old Act. Requires 10 percent minimum goal for minorities and females and a 2 percent contracting goal for businesses owned by persons with disabilities. Also changes makeup of Council and requires an annual report each year. Repeal date of September 6, 1999.
1999	PA 91-0392 Changes repeal date to September 6, 2004.
2002	PA 92-0670 raises the participation requirement for annual gross sales for the most recent fiscal year to less than \$27,000,000.
2004	PA 93-1019 Changes repeal date to September 6, 2008.
Source: Minority and Female Business Enterprise Act and amendments and the Business Enterprise for Minorities, Females, and Persons with Disabilities Act and amendments.	

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 as a result of findings from a 1997 disparity study. The study revealed disparities between the statutory goals and market availability of firms. The Council also increased the female owned and operated business goal from 5 percent to 12 percent with a breakdown for the Female Minority Enterprise goal as follows: Female Caucasians 9 percent and Minority Females 3 percent.

Exhibit 1-4 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.

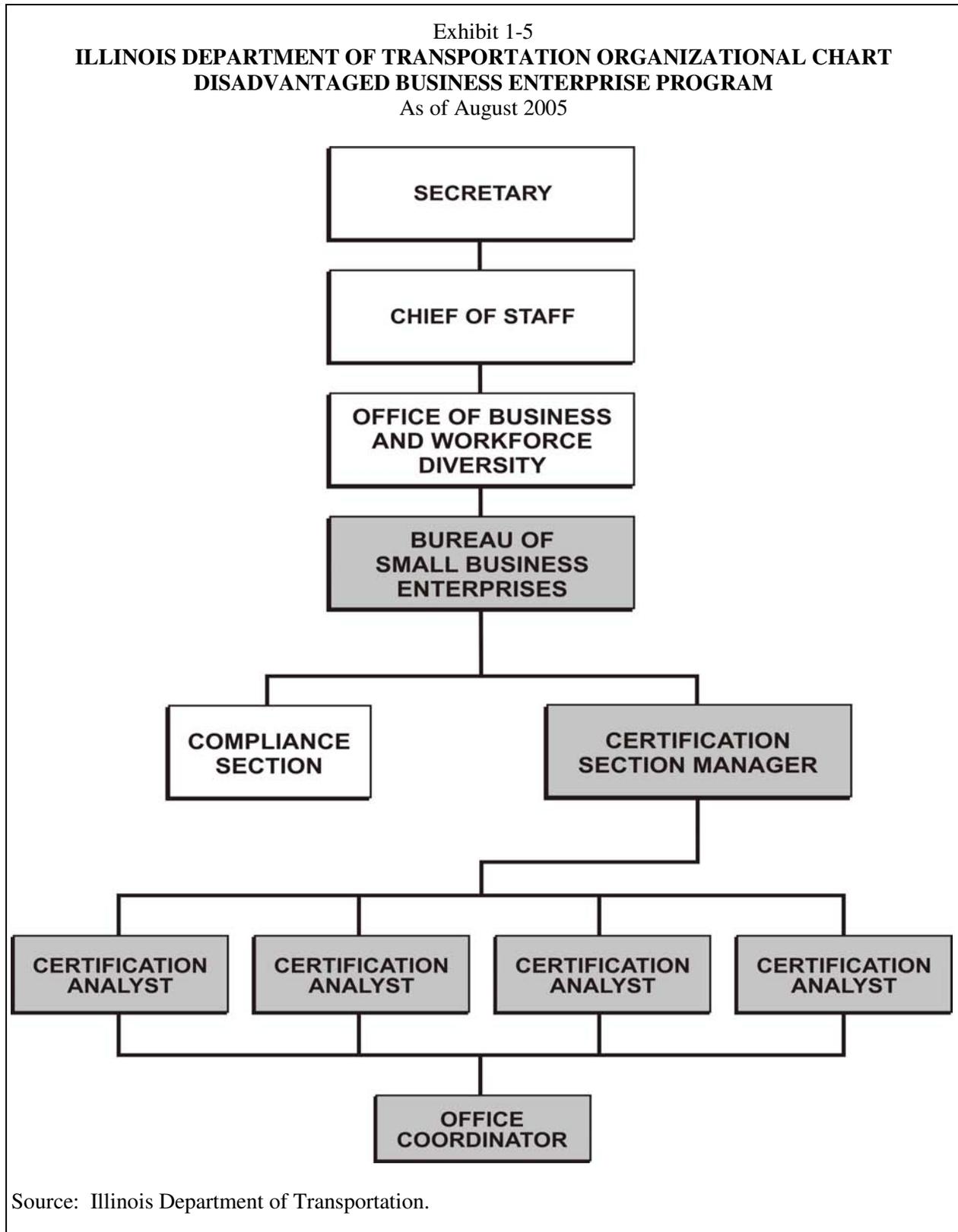
Exhibit 1-4 CMS' BUSINESS ENTERPRISE PROGRAM DOLLARS SUBJECT TO GOAL AND DOLLARS ACHIEVED Fiscal Years 2001-2005		
Fiscal Year	Dollars Subject To Goal	Dollars Achieved
2001	\$2,515,923,458	\$406,950,105
2002	\$2,471,032,138	\$405,348,902
2003	\$2,355,944,921	\$401,076,650
2004	\$1,845,327,869	\$353,730,511
2005	\$1,688,701,151	\$386,958,091
Source: CMS BEP Annual Reports.		

IDOT's DBE PROGRAM

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 Department of Transportation (US DOT). As a condition of receiving federal assistance, IDOT must comply with federal regulations (49 CFR Part 26). The DBE program serves as a vehicle for promoting and encouraging the continuing economic development of businesses owned and operated by minorities and females related to transportation programs. The program is intended to remedy past and current discrimination against DBEs, ensure a "level playing field" and foster equal opportunity in US DOT-assisted contracts, improve flexibility and efficiency of the DBE program, and reduce burdens on small businesses.

The DBE program is located in IDOT's Office of Business and Workforce Diversity. Responsibilities for the program include goal setting, certification, compliance, and the administration of the supportive services program. The Bureau Chief of the Office of Business and Workforce Diversity's Bureau of Small Business Enterprises is designated as the IDOT DBE Liaison Officer. The Bureau Chief's responsibilities include developing and implementing all aspects of the IDOT DBE program and ensuring that the Department complies with all provisions of 49 CFR Part 26.

Exhibit 1-5 is an organizational chart showing IDOT's Disadvantaged Business Enterprise program as of August 2005. As of August 2005 there were 6 employees in the Certification Section.



Legislative and Program History

The Disadvantaged Business Enterprise program has been in operation for more than 20 years and has developed through federal legislation, US DOT regulations, and court cases. Federal law has mandated the program since 1982 with the passage of the Surface Transportation Assistance Act of 1982 (P.L. No. 97-424). The Act contained provisions requiring a goal of at least 10 percent of federal highway and transit funds be expended with DBEs (see Exhibit 1-6). In 1987 the DBE provisions were expanded to include female owned businesses. In 1999, US DOT issued regulations that required each state develop a goal and methodology to support that goal.

In 1999, US DOT regulations were passed requiring all recipients of federal-aid to implement a “one-stop” certification process for Disadvantaged Business Enterprises (49 CFR 26.81(b)(2)). In 2002, a memorandum of understanding was signed establishing the Illinois Unified Certification Program (IL UCP). The IL UCP provides a uniform process for the establishment and administration of the certification component of the DBE program for recipients of federal transportation funds in the state. The five participants in the IL UCP program are IDOT, the City of Chicago, the Chicago Transit Authority (CTA), the Commuter Rail Division of the Regional Transportation Authority (Metra), and the Suburban Bus Division of the Regional Transportation Authority (Pace). As of August 2005, there were 436 firms certified as DBEs through IDOT and a total of 1,736 DBE certified firms in the entire IL UCP database. Chapter Four presents the number of DBE certified firms by the certifying entity.

Exhibit 1-6 LEGISLATIVE AND LEGAL HISTORY OF IDOT's DISADVANTAGED BUSINESS ENTERPRISE PROGRAM	
1980	US DOT publishes regulations for Minority Business Enterprise Programs.
1982	Surface Transportation Assistance Act of 1982 (P.L. No. 97-424) contained the first statutory DBE provision for federal highway and transit programs requiring that 10 percent of funds provided be expended with DBEs.
1987	Section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 expands the DBE program to include women.
1991	DBE program and 10 percent goal continued under section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).
1995	Supreme Court decision of <i>Adarand Constructors, Inc. v Pena</i> set aside ruling of court of appeals and sent the case back to district court.
1997	<i>Adarand Constructors, Inc. v Pena</i> District Court held that the subcontracting compensation clause and related statutory provisions were unconstitutional.
1998	DBE program continued under same section of the Transportation Equity Act for the 21 st Century (TEA-21). Also establishes an annual gross receipts cap of \$16.6 million for participants.
1999	US DOT issues new regulations and sets an aspirational goal of 10 percent participation at the national level. However, states were no longer required to justify goals lower than 10 percent and were to develop their own goals. The new regulations also set a net worth cap of \$750,000 for individuals who own and control DBEs.
2000	IDOT sets a goal of 12.5 percent participation. Goals are revised each year (see Exhibit 1-7).
2000	Northern Contracting, Inc. files complaint against IDOT claiming that the DBE goal denies Northern an equal opportunity to compete for federal-aid highway contracts in Illinois.
2005	Northern Contracting, Inc. court case questioning the constitutionality of IDOT's goal is litigated in IDOT's favor.
Source: Code of Federal Regulations, IDOT, other various sources.	

DBE Goals

Since FFY 1999-2000, IDOT has been required to set its own DBE goals, with approval from the Federal Highway Administration (FHWA). IDOT set a DBE goal of 12.5 percent for FFY 2000. According to FHWA officials, FHWA approves the methodology used to set the goal but not the actual goals. Soon after IDOT set the FFY 2001 goal, Northern Contracting filed a complaint against IDOT. The suit was amended several times between the time it was filed and it was settled and eventually questioned whether the program and its goals were constitutional. The case was litigated in 2005 and the DBE program was found to be constitutional. 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.

Exhibit 1-7 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 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.

Exhibit 1-7 IDOT’S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CONTRACT AWARDS AND DOLLARS COMMITTED Federal Fiscal Years 2001-2005		
Fiscal Year	Contract Awards	Dollars Committed
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.		

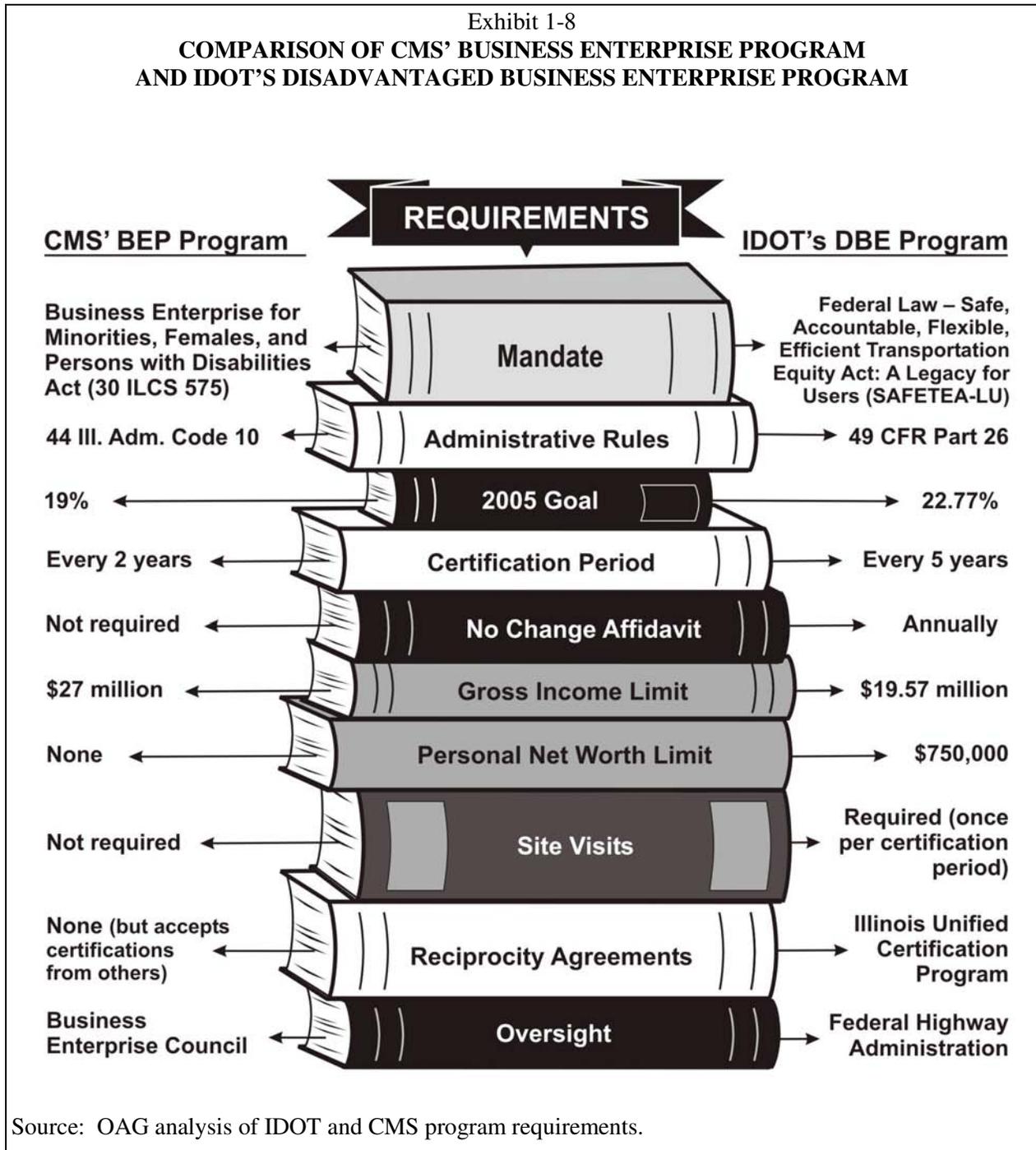
COMPARISON OF CMS’ BEP AND IDOT’S DBE PROGRAMS

Requirements to participate in IDOT’s DBE program are stricter than the requirements to participate in CMS’ BEP program. Exhibit 1-8 shows a summary overview of each program and its general requirements.

IDOT’s DBE program is mandated by federal law and includes a \$750,000 limit on personal net worth. Gross receipts are also limited to a three-year average of less than \$19.57 million. Although the IDOT DBE certification cycle (every five years) is longer than CMS’, an annual No Change Affidavit, including tax returns and a personal net worth statement, is required to show continued eligibility. IDOT is also required by federal regulations to conduct a site visit of every vendor.

CMS’ BEP program is a State mandated program and **does not** include a limit for personal net worth. Therefore, a person participating could have considerable wealth and still be eligible. The BEP’s gross receipts requirement of \$27 million is also much higher than IDOT’s \$19.57 million (average over three years). Therefore, the size of the companies can be larger. Although CMS’ two-year certification cycle is shorter than IDOT’s, the program **does not**

require participants to file any additional information between certifications, such as an annual No Change Affidavit. Therefore, CMS does not know if any changes in the vendor's eligibility or ownership that would affect eligibility occurred in the years when a certification is not completed. CMS also **does not** require a site visit be conducted.



AUDITS AND OTHER REVIEWS

Both IDOT and the Federal Highway Administration have conducted reviews of IDOT's DBE certification program. In March 2005, IDOT's Bureau of Accounting and Auditing initiated an audit regarding the Bureau of Small Business Enterprises' DBE certification program and issued an audit report in August 2005. The audit contained nine recommendations. Appendix C of this report contains a complete list of these recommendations and the status of each.

The Federal Highway Administration also conducted reviews of IDOT's DBE certification files. The most recent review covered the five-year period 1998-2003. The report included five findings related to enforcement and corrective actions, missing documentation, and timeliness.

As a member of the IL UCP, IDOT accepts certifications from other IL UCP participants including the City of Chicago. IDOT, with assistance from the FHWA, conducted a review of the City of Chicago's DBE certification process in 2005. The review contained 13 recommendations for issues regarding staff training, supervisory review, policies and procedures, and file documentation.

CMS BEP staff conducted their own review of BEP certification files during the audit. In June 2005, CMS conducted a file review of BEP certification files, and in some cases, requested additional information be submitted by the already certified vendor.

AUDIT SCOPE AND METHODOLOGY

This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310. The audit's objectives are contained in Senate Resolution Number 102, which 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). Fieldwork for the audit and related follow up was completed in April 2006.

During the audit, we met with representatives of the Department of Central Management Services, the Illinois Department of Transportation, and the Federal Highway Administration. We also conducted a survey of neighboring states' Business Enterprise/Disadvantaged Business Enterprise programs to identify requirements and best practices in those states.

In conducting the audit, we reviewed applicable federal and State laws governing CMS' Business Enterprise program and IDOT's Disadvantaged Business Enterprise program. We reviewed compliance with those laws to the extent necessary to meet the audit's objectives. Any instances of non-compliance we identified are noted in this report. We also reviewed administrative rules and policies and procedures related to these programs.

We reviewed management controls and assessed risk relating to the audit's objectives. A risk assessment was conducted to identify areas that needed closer examination. Significant weaknesses in those controls identified during the audit are included in this report. To the extent necessary, we also reviewed the reliability of computer-processed data used in our audit report.

In order to assess whether certification and recertification procedures and processes were adequate and whether procedures were being followed, we selected 50 certified vendors at CMS and 50 certified vendors at IDOT. These files were reviewed to determine whether required documentation was present, whether each vendor was qualified and met certification requirements, and whether any steps were taken to verify the information submitted by the vendor. A more detailed methodology can be found in Appendix B.

IDOT Bureau of Accounting and Auditing conducted an audit of its Bureau of Small Business Enterprise's DBE certification process in 2005. We followed up on the recommendations in the audit to determine if they had been implemented. Appendix C is an overview of the findings, recommendations, responses from the Bureau of Small Business Enterprises, and the status of each.

REPORT ORGANIZATION

The remainder of this report is organized into the following chapters:

- **Chapter Two** discusses CMS' Business Enterprise Program Requirements and Personnel;
- **Chapter Three** discusses CMS' BEP Certification Process and our review of CMS' BEP Certifications;
- **Chapter Four** discusses IDOT's Disadvantaged Business Enterprise Program Requirements and Personnel;
- **Chapter Five** discusses IDOT's DBE Certification Process and our review of IDOT's DBE Certifications.

Chapter Two

CMS' BUSINESS ENTERPRISE PROGRAM REQUIREMENTS AND PERSONNEL

CHAPTER CONCLUSIONS

Although CMS has promulgated rules for the Business Enterprise Program, the program lacks policies and procedures. A policies and procedures manual would 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. In addition, CMS has not established training requirements for certification staff. Training provided to employees was limited and there was little or no documentation of the training. 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.

CMS has not entered into written agreements with organizations from which they accept reciprocal certifications. Approximately 33 percent of the entities on CMS' BEP vendor list were certified by three other entities. CMS accepts these certifications with minimal review. Although CMS accepts certifications from these other entities in the State, there are no formal written agreements with the entities. Interagency agreements could delineate respective program requirements, procedures, and notification of certification or decertification decisions.

The list of CMS' BEP certified vendors 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. If the certification list were on CMS' Internet website, it could be readily updated and available for use by prospective prime contractors. In addition, a more readily available listing may result in increased opportunities for CMS certified BEP vendors to be considered for use in State contracts.

CMS' BEP ELIGIBILITY REQUIREMENTS

The Business Enterprise Council for Minorities, Females, and Persons with Disabilities Act (Act) (30 ILCS 575) and CMS' administrative rules (44 Ill. Adm. Code 10) establish program requirements and eligibility standards for the Business Enterprise Program. Eligibility depends on several factors, such as socially and economically disadvantaged group status (i.e., minority, female, or a person with a disability) and size (i.e., less than \$27 million in gross sales).

Group Status Requirements

Three general groups are eligible to participate in the Business Enterprise Program: Minority Business Enterprises (MBEs), Female Business Enterprises (FBEs), and Persons With Disabilities Business Enterprises (PBEs). Not-for-profit entities that meet the definition of a sheltered workshop for the disabled are also classified as a PBE. However, these not-for-profit entities are certified under the State Use Program. MBEs, FBEs, and PBEs are all required to be citizens or lawful permanent residents of the United States to participate in the program (see Exhibit 2-1).

Applicants must provide proof of eligible group status and citizenship in the form of official documents such as:

- Birth certificates
- Naturalization papers
- Permanent resident status documents
- Passports
- Tribal I.D. Card
- Other documents

If an individual does not have official documentation, or if it is not sufficient, the Secretary of the Council will consider other evidence, such as whether the individual identifies with, holds himself or herself out as part of, or others recognize him or her as belonging to, an eligible group (for example if the applicant is a member of a minority group).

Exhibit 2-1 CMS BEP ELIGIBLE GROUPS
<p>MBEs – Minority Business Enterprises - a person who is a citizen or lawful, permanent resident of the United States, and who is:</p> <ul style="list-style-type: none"> • African American – a person having origins in any of the black racial groups of Africa. • Hispanic – a person of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean (regardless of race). • American Indian or Alaskan Native – a person having origins in any of the original peoples of North America. • Asian American – a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands.
<p>FBEs – Female Business Enterprise - a person who is a citizen or lawful, permanent resident of the United States, and who is of the female gender.</p>
<p>PBEs – Person with a Disability - a person who is a citizen or lawful, permanent resident of the United States, and has a severe physical or mental disability that substantially limits one or more of the person’s major life activities.</p>
<p>Source: 30 ILCS 575/2 and 44 Ill. Adm. Code 10.</p>

Annual Gross Sales Requirements

To be eligible to participate as a CMS BEP vendor, annual gross sales of the applicant business for its most recent fiscal year must be less than \$27 million. However, in determining the annual gross sales, sales of any affiliated business are also required to be counted. Factors that may be considered in determining affiliation include, but are not limited to, commonality of ownership or management (at least 5% of one company owned by owner or management personnel of the other), and sharing of office space, workers, or equipment.

A business with annual gross sales of \$27 million or more can apply to participate in the program on an individual contract basis, if the contract will provide significant employment and/or subcontracting opportunities for minorities, females, and persons with disabilities. For the impact to be significant in terms of employment, the business would have to hire new

employees to perform the work of the contract and at least 51 percent of those new hires must be minorities, females, or persons with disabilities. For the impact to be significant in terms of use of subcontractors or suppliers, the business must direct 51 percent of the value of the contract to CMS BEP certified vendors as subcontractors or suppliers.

Ownership

The individual claiming ownership and control of the applicant business must own at least 51 percent of the business. Many factors are weighed together to help determine ownership. According to CMS’ rules (44 Ill. Adm. Code 10.67), ownership should be real, substantial, continuing, and not simply a matter of form. “Real” means it is a bona fide investment in the business done at arm’s length and in good faith. “Substantial” means the level of investment necessary to initiate or acquire the particular business in light of its value, the business field, the organization of concern, and the potential sources of outside financing. CMS’ administrative rules for the program list the following factors regarding ownership:

- How ownership was obtained (i.e., purchase, gift, or inheritance).
- How substantial was the contribution toward ownership in terms of expertise, money or other factors? Factors that may indicate insufficient contribution include:
 - Minimal cash outlay or personal investment
 - A promise or agreement to contribute capital
 - A note payable to the firm or other owners who are not eligible group members
 - Contributions for services rather than capital, except where services are unique, specialized or of a value commensurate with the ownership value of such services
 - Payment of contribution with funds loaned by a non-eligible group, former employer or stockholder
- How the applicant holds ownership.

Applicants must provide documentary proof of ownership such as canceled checks, purchase agreements, stock certificates, partnership agreements, profit sharing agreements, and buy-out-right agreements.

Control

According to CMS’ administrative rules, “Ownership by eligible group members does not equate to control” (44 Ill. Adm. Code 10.68). Control includes both management control and operational control of the business.

- **Management Control** – whether the eligible owner has the power to direct or cause the direction of management and policies of the business and to make day-to-day as well as major decisions on matters of management policy and operations (e.g., are decisions made independently?).
- **Operational Control** – whether the eligible owner has sufficient experience, knowledge, and expertise to operate the particular business (e.g., does the owner hold a license in the particular area of business?).

Individuals claiming ownership and control of the applicant business must be in direct control of the day-to-day operations, and must have, and exercise, the power to make major decisions on management, policy, fiscal, and operational matters. CMS' administrative rules provide factors to consider to determine control, which include:

- Are there any stock options/shareholders agreements that, if exercised, will dilute or eliminate eligible group owner control?
- Do eligible group owners make decisions independently?
- Does a review of resumes show the eligible group owners have sufficient background, including education and training, to run the particular business and for the responsibilities assigned?
- Who in the firm negotiates contracts and loans, prepares estimates, and makes other management and supervisory decisions?

Independence is also key in determining whether the eligible owner has control over business operations. This includes whether the business possesses sufficient assets/resources to operate, whether there are contracts with various firms, and whether they are independently able to perform the work or service.

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. CMS provided us with a copy of:

- Their agreement with the State Records Commission regarding the destruction of certification records;
- The Business Enterprise Program Agency User Manual which is a computer systems manual that shows how to enter data into CMS' BEP system; and
- The Business Enterprise Certification Checklist (a one-page checklist for documents that should be attached to a certification).

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.

CMS BEP POLICIES AND PROCEDURES	
RECOMMENDATION NUMBER 2	<i>The Department of Central Management Services should develop and adopt a policies and procedures manual for the Business Enterprise Program including specific certification procedures.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation and has developed a policies and procedures manual, which includes codified BEP certification procedures.

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. The Certification Analyst and the Certification Coordinator are responsible for initial certifications, and the Operations Manager and Certification Coordinator are responsible for recertifications. The Director of BEP reviews and approves certification decisions for both initial certifications and recertifications.

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. In order to determine the extent of training received by BEP employees, we reviewed personnel files and requested additional information from CMS. The only training documented in employee personnel files was related to general employment, such as sexual harassment. A CMS official explained that training was not done in a traditional manner, such as in a classroom setting, but was relied upon through external means, such as being a member on a committee or council.

When we requested evidence of training from CMS officials, CMS provided certificates of completion for the Certification Coordinator and Certification Analyst for a training conducted by IDOT's Small Business Enterprise program in 2001. The Certification Analyst also attended a training regarding the City of Chicago’s new MBE/WBE certification process in June 2005. According to CMS officials, another BEP employee also attended a Chicago Minority Business Development Council (CMBDC) committee meeting. However, the only documentation that was provided was an e-mail reminding the staff member of the date of the training. 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.

CMS BEP STAFF TRAINING	
RECOMMENDATION NUMBER 3	<i>The Department of Central Management Services should establish minimum training requirements for certification staff and ensure that the required training is received. CMS should also track the training received by certification staff.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. The Department has established minimum training requirements, which include providing formal training for BEP staff. As part of these requirements, BEP staff will be attending certification training workshops held by the Chicago Minority Business Development Center and the American Contract Compliance Association.

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, will accept 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. Exhibit 2-2 shows that 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.

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

Exhibit 2-2 CERTIFIED CMS BEP VENDORS BY CERTIFYING ENTITY (as of November 2005)		
Certifying Entity	Number	Percent
Department of Central Management Services (CMS)	1,333	67.0%
Women's Business Development Center (WBDC)	248	12.5%
Chicago Minority Business Development Council (CMBDC)	232	11.7%
Illinois Department of Transportation (IDOT)	178	8.9%
Total	1,991	100%
Note: Totals may not add due to rounding.		
Source: CMS' BEP Directory (November 2005).		

The CMBDC charges a fee of \$500 for the initial certification and \$275 for recertification. The WBDC charges a fee of \$300-\$500 for certification and \$275 for recertification.

The administrative rules require that the Secretary of the Council investigate the requirements and procedures of other certifying entities and report to the Council the names of those certifying entities whose certifications can be accepted. In order for certifications of other certifying entities to be accepted, the entities must meet the following requirements:

1. The other entities must agree to notify the Secretary should their requirements or procedures change in any material way. The Secretary shall periodically meet with the other certifying entities to help ensure Council requirements and procedures are being met.
2. If other entities’ requirements or procedures no longer equal or exceed the requirements and procedures of the Act or the Illinois Administrative Code, the Council will no longer accept those certifications. However, the Council will continue to honor previously accepted certifications until the Secretary reviews each one and, if necessary, revokes those that do not meet requirements.
3. The other entities must agree to report any denial of certification or recertification to the Council, along with detailed reasons for the action. (44 Ill. Adm. Code 10.63)

Because sections 1 and 3 above require the entity to agree to notify the Secretary of changes in requirements and to report denials, we requested any agreements with the agencies from which CMS’ BEP accepts certification. CMS could not provide any agreements. According to CMS officials, BEP staff is part of the WBDC and CMBDC certification committees. CMS also provided us with examples of correspondence sent by these other entities. The correspondence consisted of copies of certification letters and denial letters sent to vendors and, for one of the entities, meeting minutes from their certification committee.

Because the administrative rules require that other entities have requirements that are greater or equal to those that CMS has established, we asked CMS if they had conducted an analysis of the other entities’ requirements. CMS provided us with a summary of the requirements for other entities compared to those of CMS’ BEP program. In some cases, the entities that CMS accepts reciprocal certifications from have different certification requirements than CMS. However, in most instances, the requirements are at least equal to those of CMS’ BEP. The CMBDC and WBDC certify on an annual basis whereas CMS certifies applicants on a two-year cycle. The CMBDC and WBDC also do not have a limit regarding gross sales. IDOT certifies applicants every five years which is not as often as CMS’ BEP requires but has a gross receipts requirement and a personal net worth requirement that are more restrictive than CMS’ BEP requirements. According to CMS and IDOT officials, IDOT refers applicants that are related to general State business to CMS for certification.

There may also be some instances, such as construction or engineering, in which IDOT may be better equipped to determine eligibility. However, there is no agreement regarding which types of applicants should be certified by CMS or IDOT. Establishing written agreements with entities from which CMS accepts certifications would ensure that the requirements are greater or equal to those used by the CMS BEP program, establish formal, documented

procedures for communicating program changes, eligibility decisions, etc., among the entities, and define which entity may be the most appropriate for conducting the certification.

CMS BEP RECIPROCAL AGREEMENTS	
RECOMMENDATION NUMBER 4	<i>The Department of Central Management Services should develop written agreements with those entities that it accepts certifications from to ensure that those entities' requirements and procedures equal or exceed those in the Act and to ensure that vendors are eligible. Agreements should include requirements, procedures, and notification of certification or denial or changes in requirements. The Business Enterprise Council should also approve all agreements.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation and is currently reviewing our arrangement with the entities from which we accept reciprocity, such as CMBDC, Women's Business Development Center, and Illinois Department of Transportation. Once this review is completed, written agreements will be developed.

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. CMS' administrative rules state that "The list shall be available to the public." The rules further state that the list **may** be in the form of a directory available for a fee to cover the cost of compilation, publication, and distribution. According to CMS officials, the list can be requested for a \$25 fee. However, they are currently marketing the vendor list at their various outreach events by providing attendees with free copies in order to promote the program.

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.

During the audit 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. In addition to these states, IDOT has their DBE certification list on the IDOT website for contractors and the public to view along with the IL UCP list of certified DBEs. If the certification list were on CMS' Internet website, it could be readily updated and available for use by prospective prime contractors. As a result, minority and female owned firms may have more opportunities to be considered for use in State contracts.

CMS’ BEP CERTIFICATION LIST	
RECOMMENDATION NUMBER 5	<i>The Department of Central Management Services should make the list of BEP certified vendors available on its website.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. The current rules require that BEP charges a fee to provide written lists. The Department has filed rules with the Joint Committee on Administrative Rules to change the requirement to enable us to waive the fee and also to provide the list on our website.

Chapter Three

CMS' BUSINESS ENTERPRISE PROGRAM CERTIFICATION PROCESS

CHAPTER CONCLUSIONS

The primary purpose of CMS' BEP certification process is to verify that the business is owned and controlled by eligible individuals in accordance with requirements of the Act. CMS does not require site visits to be conducted of BEP applicants. Site visits can provide additional or corroborative information that can be used to verify eligibility.

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.

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. 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 documentation including inventory listings and proof of vehicle ownership.

CMS' requirements for the BEP program are less stringent than those for IDOT's DBE program and other States' programs. 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.

CMS files contained several types of checklists and worksheets. Although most files contained the required checklists and worksheets they were not always filled out adequately. The worksheets and checklists we reviewed 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.

Our testing was also complicated because of the filing system at CMS for BEP certifications. CMS stores some current certification files off site with a document storage company. In some cases, CMS could not locate all certification files.

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 Business Enterprise Program, 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. In four of seven cases in which our review of certification documentation identified control and ownership issues, the issues were discussed by CMS somewhere in the file. However, only three of the seven received a site visit. We identified gross receipts issues with four vendors; three of these were on the basis of whether their gross receipts were more than the \$27 million limit. CMS also had BEP vendors listed as certified when their certifications had expired.

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 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.

In addition to these 10 vendors undergoing full certification reviews, CMS has requested additional documentation from 20 other vendors, which auditors concluded were not found in the certification files. 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 has not been adequately tracking when certifications expire and decertifying vendors. According to its administrative rules, CMS is required to conduct a routine review and reconsideration of each certified business at least one time every two years to ensure continued eligibility. During our testing of 50 CMS BEP certification files we found four certified vendors which had not been recertified within two years of their last certification or recertification. These four certifications should have expired prior to the applicant applying for recertification. 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, decertified, or were pending an investigation to CMS' list of certified BEP vendors as of November 2005. We found that two vendors the City of Chicago had debarred or decertified were listed as certified on CMS' list of certified BEP vendors.

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. Contract performance can be assessed through

monitoring reports or conducting site visits during contracts. CMS only recently began putting specific contract goals in the contracts and reviewing the BEP vendors the prime contractors were planning to utilize. According to CMS officials, as of April 2006, seven contracts had been bid that contained specific goals and CMS had begun monitoring BEP usage on one contract.

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.

CMS’ BEP CERTIFICATION PROCESS

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).

The Business Enterprise for Minorities, Females, and Persons with Disabilities Act (30 ILCS 575) created the Business Enterprise Council to help implement, monitor and enforce the goals of the Act. The Act gives the Council the authority and responsibility to devise a certification procedure to assure that businesses taking advantage of the Act are classified as businesses owned by minorities, females, or persons with disabilities. The administrative rules (44 Ill. Adm. Code 10) provide more specific guidance related to certification policies and procedures. The Secretary of the Council is in charge of overseeing the certification process. “Secretary” means the individual appointed to act as Secretary to the Council and to be manager of the BEP Division of the Department of Central Management Services.

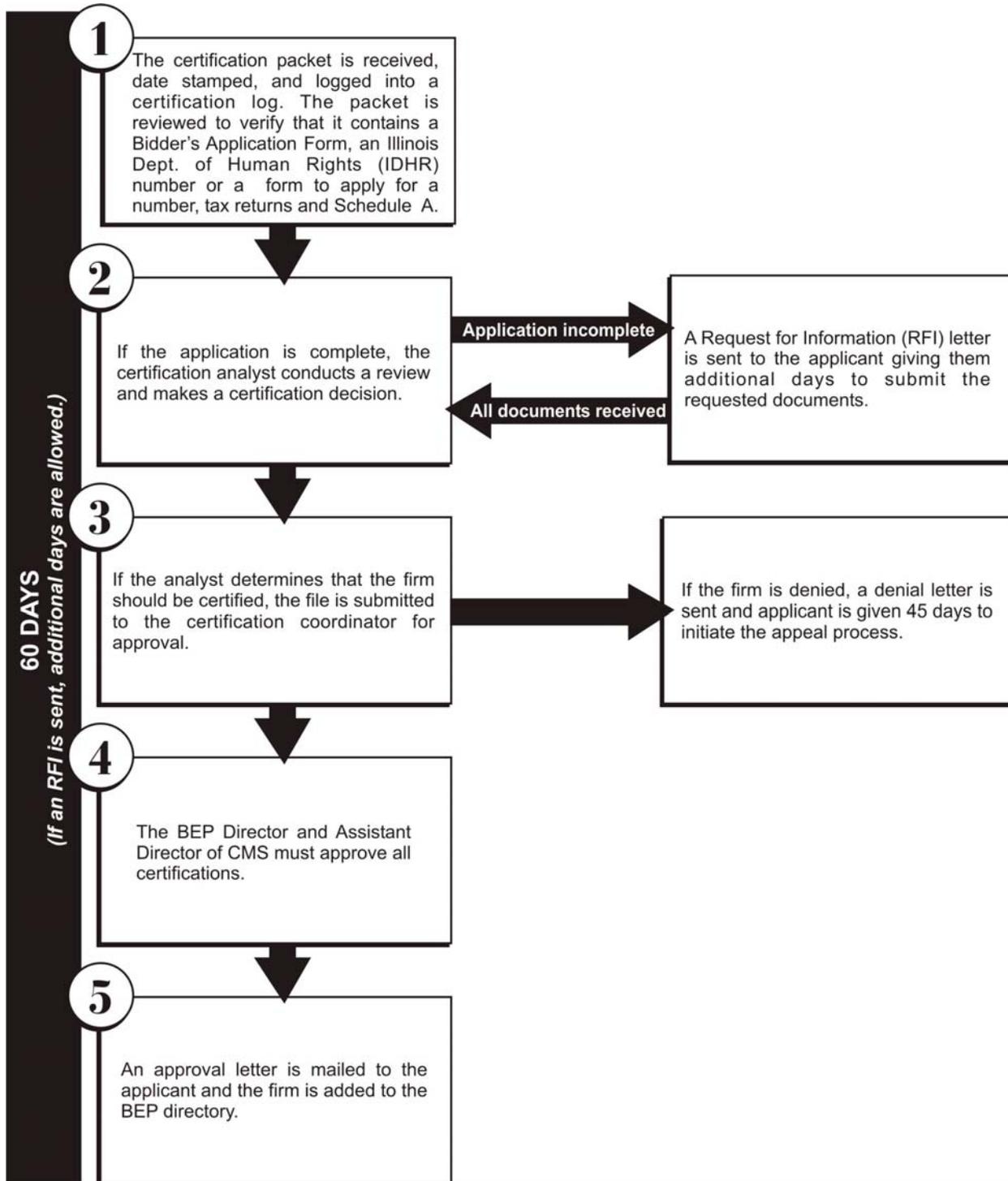
Businesses seeking certification must complete and submit a CMS BEP application packet. On-site visits *may* be conducted at any time during the life of a certification to verify continued eligibility of the Program.

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 by the Secretary, the Secretary can deny certification or recertification.

Certification Process

Exhibit 3-1 shows a general overview of CMS’ BEP certification process. When the application packet is received, CMS is required to make a certification decision or request additional information within 60 days after receipt of the application. According to information provided by CMS, over half of all applicants for certification received a request for additional information each of the last three years (FY03-FY05). However, very few (12.5% in FY04 and 8.6% in FY05) of those applying for recertification are asked for additional information.

Exhibit 3-1
CMS' BEP CERTIFICATION PROCESS



Source: OAG analysis of CMS' BEP certification process.

When the Secretary has determined that the applicant meets the requirements of the Act and administrative rules, the Secretary will notify the applicant by letter that it has been certified. The certification is valid for two years. At the end of the two years, the vendor needs to apply for recertification if it wants to continue in the Business Enterprise Program.

Following a review of all the documentation, if a Certification Analyst makes the decision to deny an application, a denial letter is sent to the vendor. The denial letter explains the reasons for denial as well as the review process.

CMS’ BEP VERIFICATION OF INFORMATION

When the application packet is received, it is date stamped and logged into a certification log. The application packet is reviewed to ensure it contains a Bidder’s Application Form (BAF), an Illinois Department of Human Rights Form (IDHR), Tax Returns, and a Schedule A (certification application). All forms are put into a file.

A Certification Analyst reviews the file using a BEP Certification Checklist. The checklist ensures all documents are included in the file for review (i.e., real estate agreements, resumes, evidence of citizenship/residency/legal permanency, and ethnicity of all owners, etc). If documents are missing, CMS BEP staff sends the vendor a Request for Information (RFI). Exhibit 3-2 shows that more than half of the time CMS sends an RFI for initial certification.

Exhibit 3-2 CERTIFICATION/RECERTIFICATION FILES SENT REQUEST FOR INFORMATION Fiscal Years 2003 - 2005			
Requests for Information	FY03	FY04	FY05
Percent of Certification Files Sent RFI	56.1%	54.6%	54.3%
Percent of Recertification Files Sent RFI	8.9%	12.5%	8.6%
Source: OAG analysis of CMS BEP Statistical Monthly Reports.			

Analysis and Review of Documents

Once the certification checklist is completed and the file has all the required documents, the Certification Analyst begins to analyze the information in the documents. The analyst uses a BEP internal certification worksheet to document the analysis of each document submitted by the vendor. The analyst reviews the information contained in the documents to verify the individual applying for the BEP certification is eligible in accordance with the requirements of the Act and the administrative rules.

After the analyst approves the certification file, it is submitted to the Certification Coordinator for review and approval. The Certification Coordinator uses the BEP Certification

Checklist to verify the information submitted by the applicant. Once the Certification Coordinator approves the file, it is forwarded to the Director of the BEP for approval and signature. The final check is performed when the Assistant Director of CMS signs the certification file.

Checks To Ensure Validity of Information Submitted

There are requirements and checks in place to ensure the validity of information submitted by each applicant. Some of these checks include requiring documents to be notarized, comparing information to look for discrepancies (such as comparing tax return information to the information provided in the application), contacting other certifying entities such as the Chicago Minority Business Development Council (CMBDC) and the Women's Business Development Center (WBDC), and conducting interviews or on-site visits.

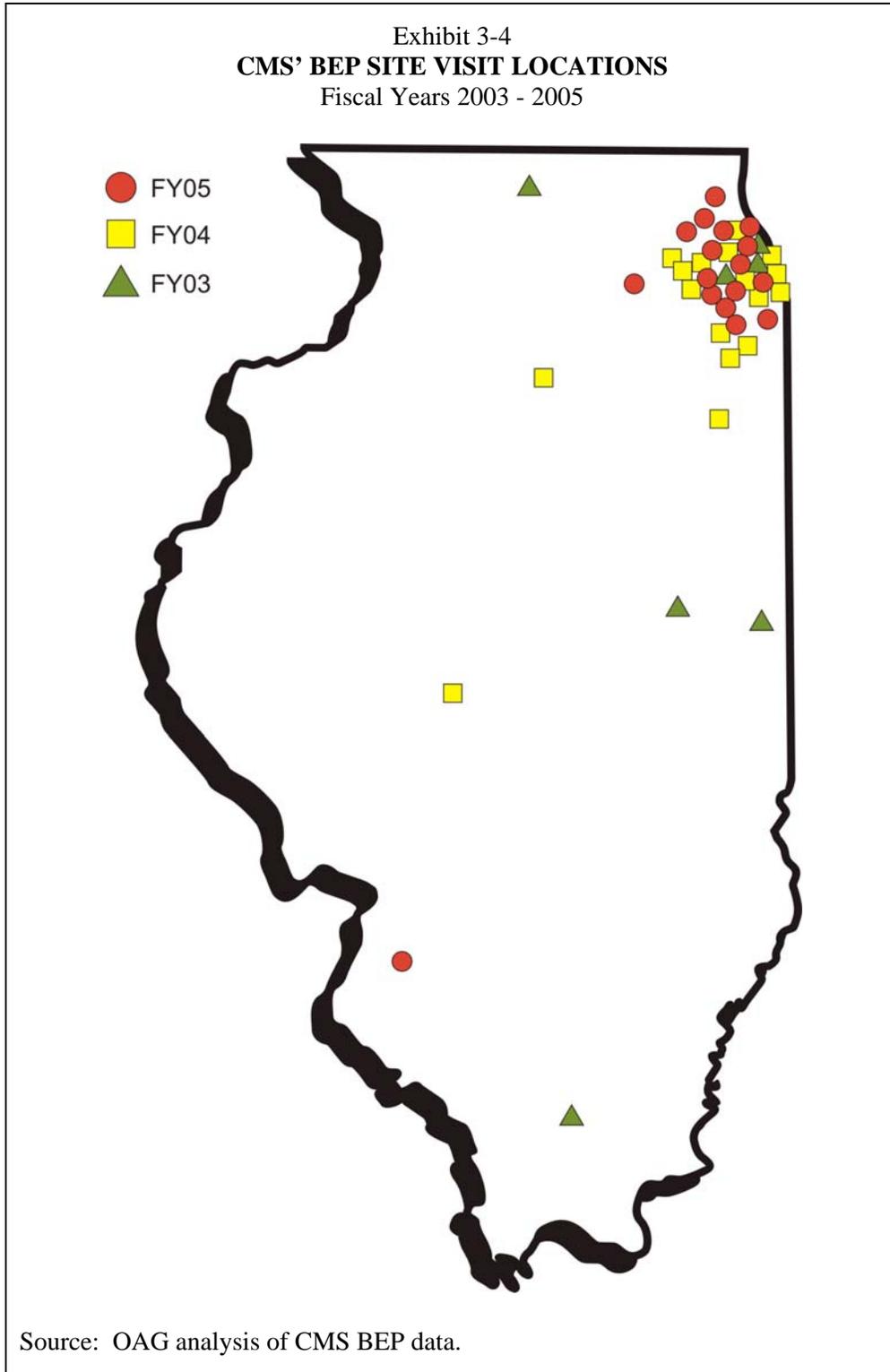
Exhibit 3-3 SITE VISITS COMPLETED Fiscal Years 2003 - 2005			
	FY03	FY04	FY05
Number of Site Visits Completed	7	17	17
Total Applicants Certified and Recertified	797	706	621
Percent Visited	0.9%	2.4%	2.7%
Source: OAG analysis of CMS BEP Statistical Monthly Reports and other data.			

On-site visits are done infrequently and are not done on a regular basis because of limited resources, according to CMS officials. As shown in Exhibit 3-3 site visits were conducted for only 17 of the 621 applicants certified or recertified in fiscal year 2005. 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 Wisconsin) require a site visit for certification. Indiana and Missouri require a site visit for both certification and recertification.

Although, the statutes do not require site visits for BEP certification, CMS' administrative rules allow for site visits at initial certification or at anytime during the life of a certification to verify continued eligibility for the program. Six of the 50 certification files we tested received a site visit. In one case the site visit was conducted because the Illinois based firm was also applying for certification with the City of Indianapolis which required the home state to conduct an on-site visit. In another case, a site visit was conducted because the vendor appealed CMS' denial of its application. In the other four cases we could not determine why the site visit was conducted.

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. Exhibit 3-4 shows the location of CMS’ BEP site visits.



CMS BEP SITE VISITS	
RECOMMENDATION NUMBER 6	<i>The Department of Central Management Services should consider conducting site visits of all applicants.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation to conduct site visits. The Department currently conducts site visits when determined necessary. The BEP policies and procedures manual will provide guidelines regarding site visits.

CMS' BEP RECERTIFICATION PROCESS

The Business Enterprise Program for Minority, Females and Persons with Disabilities is required by the administrative rules to conduct a routine review and reconsideration of each certified business at least once every two years to ensure continued eligibility.

Recertification Process

According to CMS' administrative rules a vendor must apply to be recertified every two years. At least 60 days prior to the end of a vendor's certification date, the Secretary is required to send a letter to the business advising that it may apply for recertification by completing and returning the application. According to a CMS official, the Bureau of Communication and Computer Services (BCCS) automatically generates letters on the first of each month for the vendors that are up for recertification. The application for recertification must be postmarked at least 15 days prior to expiration of the current certification. Failure to meet that deadline results in expiration of the certification. During our testing of CMS' BEP certification files we found that 4 of the 50 certifications, or 8 percent, had expired. None of these four were decertified prior to our testing.

Upon receipt of the recertification application, the Secretary (the Director of the Business Enterprise Program) reviews it for changes that affect the eligibility under the Act and the administrative rules. If no such changes have occurred, the Secretary will recertify the applicant. If changes give rise to questions regarding eligibility, the Secretary will notify the applicant and request clarification and/or additional information. When all questions of eligibility have been resolved, the Secretary will issue a new certification valid for a period of two years. If the Secretary determines that the firm is not eligible, the Secretary will notify the applicant by letter. The letter includes the reasons for the decision and informs the applicant of the review and reconsideration process. Exhibit 3-5 shows that CMS rarely denies recertifications.

Exhibit 3-5
RECERTIFICATION FILES RECEIVED & DENIED
 Fiscal Years 2003 - 2005

	FY03	FY04	FY05
Number of Recertification Files Received	471	391	546
Number of Recertification Files Denied for Cause	0	0	0
Number of Recertification Files Denied for Lack of Information	5	0	3
Number of Recertification Files Graduated ¹	0	0	2
Note: ¹ Graduated firms are those that no longer qualify for the program due to annual sales growth beyond the program maximum.			
Source: CMS BEP Statistical Monthly Reports.			

Changes in Eligibility

Vendors are required by the administrative rules to notify the Business Enterprise Program office if any changes occur in ownership and/or control of the business or other changes affecting the vendor’s operation within two weeks of such changes. According to the letter from CMS notifying applicants of their certification, failure to notify the office of any changes will result in decertification.

RESULTS OF VENDOR FILE TESTING

We tested 50 BEP files at CMS during the audit. Ten of these files were reciprocals or certified by another certifying entity, such as the Chicago Minority Business Development Council (CMBDC) or the Women’s Business Development Center (WBDC). 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. Ten of the 50 certifications sampled were certified by a reciprocal agency and were not included in our analysis of timeliness because reciprocals do not submit an application and do not go through the regular certification process at CMS.

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 which we measured timeliness, 6 applications (15%) were not processed within the required 60 days. The processing times for these certifications ranged from 82 to 118 days. Exhibit 3-6 is an overview of certification timeliness for the vendors sampled.

Exhibit 3-6 CMS CERTIFICATION PROCESSING TIMELINESS		
	Number of Applications Processed	Percent
1-20 Days	23	57.5%
21-40 Days	4	10.0%
41-60 Days	7	17.5%
61-100 Days	3	7.5%
101-120 Days	3	7.5%
Total	40	100%
Source: OAG analysis of CMS certification processing of 40 cases.		

CMS BEP CERTIFICATION TIMELINESS	
RECOMMENDATION NUMBER 7	<i>The Department of Central Management Services should ensure that all applications for certification are processed within the required 60 days.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. The Department has implemented procedures and holds weekly update meetings to determine the status of each pending certification file.

File Documentation

The CMS BEP certification files tested did not always contain all the information currently required. In addition, many of the worksheets and other internal documents used by CMS BEP staff either were not fully completed or "N/A" was used without any indication of why. More importantly, few of the files reviewed contained a discussion of the issues related to the certification or the basis for the certification decision. Exhibit 3-7 is a summary of documents missing from 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 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 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.

Approximately three-quarters of the files were missing the Illinois Department of Human Right’s Form/number and the Bidder’s Application Form. In the letter to BEP applicants located on the CMS website it states:

“Enclosed you will find the following documents that are required to become certified with the Business Enterprise Program:

- o Illinois Department of Human Rights Form*
- o Bidder’s Application Form*
- o W-9 Form*
- o Universal Certification Affidavit”*

According to CMS BEP officials, not all of these forms are part of the formal BEP certification process. Vendors are required to submit these forms in order to be registered in the State system and eligible for State work once they are certified. According to CMS officials,

Exhibit 3-7 CMS’ BEP CERTIFICATION FILES MISSING DOCUMENTATION		
Document	Number of Files Missing Documentation	Percentage Missing
IDHR Number/Form	29 of 40	73%
Bidder’s Application Form (BAF)	26 of 40	65%
Corporate Tax Returns	8 of 38 ¹	21%
Current Proof of Citizenship	6 of 40	15%
Bank Signature Cards	4 of 40	10%
Proof of Gender/Ethnicity	2 of 37 ²	5%
Notes: ¹ 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. ² 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.		

these forms are sent to another bureau (the Bureau of Strategic Sourcing and Procurement) for data entry. CMS officials noted that since August 2005, copies of these forms are being kept in the certification files.

CMS BEP DOCUMENTATION	
RECOMMENDATION NUMBER 8	<i>The Department of Central Management Services should ensure that it receives all required documentation prior to certifying or recertifying vendors.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. In August 2005 the Department implemented a checklist to ensure that all required documents for certification and recertification are received and included in the certification file.

Vendors Certified by Reciprocal Agencies

During testing, we found that files for vendors certified by reciprocal entities that CMS accepts certification from contained little information. These included two of the three largest BEP vendors in the State. BEP vendors certified by the CMBDC and WBDC accounted for more than \$58 million of the more than \$173 million in BEP contract dollars for the period July 2004 through January 2006. Vendors accepted on the basis of reciprocity are only required to submit a Bidder's Application Form, most recent tax returns, IDHR Form/number, and a copy of a certification letter from the reciprocal entity when applying for certification. We tested ten reciprocals that were certified by CMBDC or WBDC and found that all ten of these were missing the Bidder's Application Form.

There are no agreements between CMS and these reciprocal entities regarding the standards that should be used for certifying vendors or notification whenever vendors are denied or decertified. Although CMS could not provide copies of agreements, CMS officials were able to provide examples of the types of information the certifying entities provide (see Recommendation Number 4).

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.

NO CHANGE AFFIDAVITS	
RECOMMENDATION NUMBER 9	<i>The Department of Central Management Services should consider requiring vendors to submit a No Change Affidavit in years when they are not going through the recertification process.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. The Department has submitted rule changes to the Joint Committee on Administrative Rules to remove the current 2-year recertification process, and replace it with a requirement that vendors file an annual no change affidavit and to institute a procedure under which all BEP-certified firms would be required to complete the entire certification process every three years.

Evidence of Review/Verification of Submitted Information

One sign of review by CMS is the presence of Requests for Information, or RFIs. We found RFIs in 18 percent (7 of 40) of the CMS BEP files we tested and 40 percent (4 of 10) of the reciprocal files we tested. Reciprocal RFIs were requesting information such as current certification letters from the certifying entity. As is recommended in Chapter Two, CMS should sign agreements with all entities from which it accepts reciprocal certifications.

Checklists and Worksheets

Another sign of review is the presence of completed checklists and worksheets. Our testing was complicated by the fact that 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 BEP CHECKLISTS AND WORKSHEETS	
RECOMMENDATION NUMBER 10	<i>The Department of Central Management Services should ensure that all worksheets and checklists are adequately completed. Furthermore, CMS should ensure that supervisory review is documented.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. The Department has provided training and counseling to BEP staff to ensure that every certification worksheet and checklist are adequately completed, reviewed by the analyst and approved by the manager. This requirement will be incorporated into the BEP policies and procedures manual.

CMS' Filing System and Missing Files

Our testing was also complicated because of the filing system at CMS for BEP certifications. CMS stores current certification files off site with a documents storage company. 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.

CMS BEP FILING SYSTEM	
RECOMMENDATION NUMBER 11	<i>The Department of Central Management Services should consider establishing a central and easily accessible location for all certification files and institute a file tracking system.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation and has set up both a file-tracking system for current records (up to 3 years) and an archiving system for older files. The Department has submitted a change to the Records Commission to update the records retention policy.

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 Exhibit 3-8). 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.

Exhibit 3-8 ELIGIBILITY ISSUES		
Reason	Number	Contract Dollars July 2004 through January 2006²
Control/Ownership	7	\$6,561,069
Gross Receipts Requirements	4	\$14,911,955
Expired Certification	4	\$15,200,439
Total	14¹	\$22,880,140¹
Notes: ¹ One vendor was included in two different categories. Therefore total number and contract dollars does not add. ² 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.		

Examples of control and ownership issues identified 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 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.

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. Below is a case example of the types of issues that led us to question ownership and/or control of some vendors.

Example A
OWNERSHIP AND CONTROL ISSUE

Firm A has been certified as a Female Business Enterprise with CMS since the 1990s. At the time of its incorporation, the female and non-eligible male each owned 50% of the firm. According to meeting minutes from a 1995 Meeting of the Shareholders and Directors, the non-eligible male gifted 10 shares of stock to his wife, the female owner of Firm A. This transfer of stock gave the eligible female owner 60% ownership. No consideration (payment) was given for the stock and we found no apparent business reason why the stock was transferred, other than to make the business a female owned enterprise.

As of March 2006, the Secretary of State's Corporation database also lists the non-eligible male as President of Firm A. The certification file also included an example of a contract that was signed by the non-eligible male and evidence that he also has signature authority on the firm's bank accounts.

Documentation contained in the certification file showed that the female owner held a degree in general business. However, the non-eligible male was the President of another similar business prior to becoming President of Firm A.

CMS is conducting a full certification review of this vendor.

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. Example B gives an overview of one of these cases.

Example B
ELIGIBILITY REQUIREMENTS

Firm B is a certified Minority Business Enterprise with CMS and is also certified with Chicago Minority Business Development Council. Eligible individuals primarily own the firm.

However, the majority owner (85%) of Firm B is also the 42 percent owner of Firm C. Firm C is certified through the CMBDC and is certified in the BEP program through reciprocity. These firms not only share a common owner, but they also share office space.

According to the administrative rules (44 Ill. Adm. Code 10.64), annual gross sales of the applicant business for the most recent fiscal year must be less than \$27 million. Included in this \$27 million must be gross receipts from any affiliated business with common ownership of at least 5 percent.

After reviewing the most recent gross receipts provided by these two firms, we found that Firm B reported gross sales of \$3.9 million and Firm C reported \$25.5 million. Since these firms share a common owner, CMS must combine the gross receipts to determine whether these firms are eligible to participate in the BEP program. We concluded that these firms' combined gross receipts appeared to exceed the maximum and, therefore, questioned both firms' eligibility to participate in CMS' BEP Program.

CMS is conducting a full certification review of this vendor.

CMS also had BEP vendors listed as certified when their certifications had expired. Of the 50 certifications we tested, 4 expired prior to the applicant applying for recertification. In none of these cases did CMS decertify the vendor prior to being provided with our testing results. Two of these vendors’ certifications were expired because the vendor was issued a new FEIN number and was subsequently recertified without any review for an additional two years, a period greater than what is required by CMS’ rules. According to CMS officials, in these two cases the vendors changed from sole proprietorships to corporations. Therefore, there may have been significant changes in ownership and control of the company that would have warranted a full review prior to recertification. In another case, CMS decertified the vendor after we provided them with the results of our testing. In the final case, the vendor’s certification expired in February 2006; however, the recertification application and information had not been submitted when we were conducting our testing in March 2006.

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 in which we identified gross receipts issues, only one 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.

ELIGIBILITY ISSUES	
RECOMMENDATION NUMBER 12	<p><i>The Department of Central Management Services should:</i></p> <ul style="list-style-type: none"> • <i>Require all applicants to disclose all companies in which an eligible group member(s) owns more than 5 percent interest; and</i> • <i>Prepare a written summary of information for each certification, including any concerns regarding ownership, control, or eligibility issues in order to show the basis for the certification decision.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	<p>The Department agrees with the recommendation and has taken steps to improve the certification process.</p> <ul style="list-style-type: none"> • Since June 2006, we require tax records and a written affidavit from applicants regarding ownership interest in any other companies. • Since May 2006, we record on the status sheet a detailed description from the analyst and approved by the manager, which provides rationale for the basis of the certification decision.

CMS' BEP ENFORCEMENT ACTIONS

According to CMS' administrative rules, there are several remedies that can be used to enforce BEP requirements. Should a vendor violate the Act, or the administrative rules for the Business Enterprise Program, the State may pursue any or all of the following actions.

- Termination of the contract involved;
- Imposition of a penalty not to exceed any profit acquired as a result of violation; and
- Suspension from the BEP program, or from further contracting with the State for a period of no more than a year, depending on the seriousness of the violation.

A vendor can appeal any actions of the BEP Council in the same manner as a vendor denied certification. It is the Secretary's responsibility to notify the Chief Procurement Officers, State Purchasing Officers, and other interested parties of the revocation of certification or of suspension. If any agency finds or suspects that a business is in violation of the Act or the administrative rules, the violation should be reported to the Secretary as soon as possible after the finding.

According to CMS' BEP website, deliberate misrepresentation to obtain certification as a BEP vendor is a Class II felony punishable by three to seven years in prison, or a fine based on the amount of any contract improperly obtained. According to Public Act 94-126, which amended the Criminal Code of 1961, in addition to any penalties authorized by law, the court can order the individual or entity convicted of a violation to pay the government unit that awarded the contract a penalty equal to one and one-half times the amount of the contract obtained because of the false representation. The Governor approved this Act on July 7, 2005 with an effective date of January 1, 2006.

Certification and Enforcement Action

Although CMS has denied certifications/recertifications, CMS has not taken any enforcement actions that are referred to in CMS' administrative rules. These actions include decertification/revocation, suspension, and financial penalty. CMS BEP officials provided us with the certification and enforcement actions taken by the program for the period FY03-05 (see Exhibit 3-9).

Testing Results

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. Therefore, the vendors were not recertified after two years as is required. The other two vendors' certifications expired because the time frame for recertification had passed. In one case the vendor's certification expired in January 2006. According to CMS the vendor was not decertified until April 2006. In the other case, the vendor's certification expired in February 2006, however, the recertification application and information had not been submitted when we were conducting our testing in March 2006.

Exhibit 3-9
CMS CERTIFICATION AND ENFORCEMENT ACTIONS
 Fiscal Years 2003 – 2005

CERTIFICATION ACTIONS	FY03	FY04	FY05
Approved			
New Certifications	335	312	145
Recertifications	462	394	476
Reciprocity	498	506	480
Denied for Cause			
New Certifications	34	31	21
Recertifications	0	0	0
Denied for Lack of Information			
New Certifications	78	56	39
Recertifications	5	0	3
Reciprocity	5	3	3
Files Withdrawn Per Vendor	2	4	1
Appeals Received			
New Certifications	12	14	8
Recertifications	0	0	0
Appeals Overturned			
BEP Council Secretary	5	2	1
BEP Certification Committee	0	0	0
BEP Council	0	0	0
Graduated (Over \$27 Million Gross Sales Cap)			
Recertifications	0	0	2
Reciprocity	3	1	4
Total Certification Actions	1,439	1,323	1,183
ENFORCEMENT ACTIONS	FY03	FY04	FY05
Decertification	0	0	0
Suspension	0	0	0
Debarment	0	0	0
Penalty	0	0	0
Total Enforcement Actions	0	0	0
Source: OAG analysis of CMS data.			

When we questioned CMS regarding these expired certifications, officials responded that vendors are given 120 days to submit recertification documentation. However, according to CMS' administrative rules (44 Ill. Adm. Code 10.72) for recertification, "The application must be postmarked at least 15 days prior to the expiration of the current certification. Failure to meet that deadline shall result in expiration of the certification."

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, decertified, or were pending an investigation to CMS' list of certified BEP vendors as of November 2005. We found that five vendors the City of Chicago had debarred, decertified, or were under investigation were listed as certified on the CMS list of certified BEP vendors. Of those five vendors, one firm was decertified in March 2000, meaning that the firm cannot be used to satisfy City of Chicago MBE/WBE 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. The remaining three were proposed to be either debarred or decertified.

ENFORCEMENT ACTIONS	
RECOMMENDATION NUMBER 13	<p><i>The Department of Central Management Services should track vendors to determine whether recertification documents are submitted in a timely manner and use the enforcement actions that are available to them to decertify any vendors that do not submit for recertification in a timely manner.</i></p> <p><i>The Department of Central Management Services should also monitor vendors that have been debarred by other entities and determine whether these vendors are still eligible to participate in the State's Business Enterprise Program.</i></p>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	<p>The Department agrees with the recommendation. The Department decertifies vendors in the system when recertification documentation is not submitted timely; these vendors are listed on a decertified vendor list. The Department also monitors vendors debarred by other entities through email notification from the entities debarring the vendor. When the Department receives the notification, appropriate action is taken which can include decertification if warranted. The Department will document these procedures in the BEP policies and procedures manual.</p>

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. Upon receipt of information that questions the validity of a certification, the Secretary is to conduct an investigation. This may include on-site or telephone interviews, review of existing records, or collection and examination of new records to supplement, explain or clarify records previously submitted. If the investigation results in a finding that the firm is no longer eligible for BEP status, the Secretary is to notify the firm that it

has been decertified. The applicant can appeal using the review and reconsideration procedures provided in the administrative rules. After decertification, the applicant cannot reapply for certification until one year has passed since the date of decertification.

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 also no evidence of complaints or investigations.

COMPLAINTS AND INVESTIGATIONS	
RECOMMENDATION NUMBER 14	<i>The Department of Central Management Services should track and investigate complaints filed against BEP vendors.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	The Department agrees with the recommendation. The Department has established a formal process to track complaints and will maintain a written log of related investigations and resolution of complaints. The Department will also incorporate this recommendation into the BEP policies and procedures manual and train staff appropriately.

CMS BEP Contract Compliance Monitoring

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. We asked CMS officials if contracts were monitored for compliance with established goals and whether BEP vendors are monitored to ensure that they are completing the work. 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. According to CMS officials, as of April 2006, seven contracts have goals included and CMS has begun monitoring one of these contracts for compliance with the BEP goals. 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.

CMS BEP CONTRACT MONITORING	
RECOMMENDATION NUMBER 15	<i>The Department of Central Management Services should monitor contracts for compliance with required goals and to determine whether BEP vendors are performing the work. CMS should also track dollars BEP vendors receive as subcontractors.</i>
DEPARTMENT OF CENTRAL MANAGEMENT SERVICES RESPONSE	<p>The Department agrees with the recommendation. In November 2005, CMS began requiring that prime vendors on certain contracts subcontract with BEP-certified businesses. Subsequently the Department has implemented a procedure under which the Department requires that prime contractors regularly report their spending with BEP subcontractors. The Department then verifies that information directly with the subcontractor.</p>

Chapter Four

IDOT's DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS AND PERSONNEL

CHAPTER CONCLUSIONS

Because Federal law mandates the Illinois Department of Transportation's (IDOT) 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.

After initially providing auditors with a manual from 1992, IDOT was able to provide us with a policy and procedures manual dated 2003. However, 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. An August 2005 IDOT 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 its 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 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. 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's DBE ELIGIBILITY REQUIREMENTS

Because federal law mandates IDOT's DBE program, the eligibility requirements are contained in the federal regulations (49 CFR Part 26).

Gross Receipts and Personal Net Worth Standards

An analysis of the firm's eligibility relating to business size and personal net worth is conducted for every applicant. The analyst must apply current Small Business Administration (SBA) business size standards in determining if the business is eligible for the DBE program. The firm cannot have average annual gross receipts over the previous three fiscal years that

exceed the cap of \$19.57 million (Note: this figure is adjusted from time to time for inflation by the Secretary of the US DOT). Affiliates must be considered together in determining whether a firm meets small business requirements and the statutory cap on the participation of firms in the DBE program. The personal net worth of each individual owner whose ownership and control are relied upon for DBE certification must be less than \$750,000 which is based upon the equation "Assets – Liabilities = Net Worth." Ownership interest in the firm and equity in the primary personal residence are excluded.

Control and Ownership

To determine ownership and control, the authorized/registered legal name of the firm must be verified for accuracy. The analyst is required to make sure the main address of the firm is the actual physical location of the main office. P.O. boxes are not acceptable by themselves. The analyst also establishes a contact person(s) to obtain answers to questions that may arise during the certification process.

To verify the ethnicity of the applicant, copies of two or more of the following documents are required to be obtained for review:

- Birth Certificate
- Membership letter or certificate from an ethnic organization
- Tribal certificate
- Bureau of Indian Affairs card
- Driver's License
- Passport
- Armed service discharge papers
- Baptismal certificate
- Or any other document that provides evidence of ethnicity

Management and Operational Control

Once a determination is made about whether the firm's owner is socially and economically disadvantaged, the analyst must determine if the owner controls and owns at least 51 percent of the firm. According to 49 CFR Part 26.69, this ownership must be real, substantial, and continuing with the owners experiencing the customary incidents of ownership, and sharing in the risks and profits associated with their ownership share.

Federal regulations (49 CFR Part 26.71) require independence of non-DBE firms in areas such as personnel, facilities, and equipment. Federal regulations state that DBEs "must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations."

The Unified Certification Procedures for the IL UCP provide guidance for reviewing ownership documents to ensure that DBE eligible individuals oversee day-to-day operations, have the technical competence to perform work in their particular industry, and the DBE eligible individual has contributed to the equity of the business. Analysts are to review various documents such as:

- Equipment titles and registrations to determine ownership,
- Resumes and work histories of key personnel,
- Signed loan agreements, and
- Documents that demonstrate authority (e.g., hiring and firing, signature, contract negotiation, etc.).

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 (Numbers 4, 5, & 6) that the Bureau of Small Business Enterprise did not have adequate and up-to-date policies and procedures. Recommendations in the IDOT audit included that:

- DBE certification files contain a DBE certification procedures program in order to promote accuracy, completeness, and standardization of the certification process.
- The Bureau of Small Business Enterprise develop standardized policies and procedures for file preparation and maintenance.
- The Bureau of Small Business Enterprise develop up-to-date policies and procedures that comply with the provisions of the IL UCP and 49 CFR Part 26.

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.

DBE POLICIES AND PROCEDURES	
RECOMMENDATION NUMBER 16	<p><i>The Illinois Department of Transportation should formally adopt an up-to-date policies and procedures manual for DBE certifications and distribute it to all DBE staff.</i></p>
DEPARTMENT OF TRANSPORTATION'S RESPONSE	<p>The Department agrees with this recommendation. This finding was originally developed and cited by IDOT auditors in our management audit of the Department's DBE certification program.</p> <p>With respect to our current Policy and Procedure Manual, the Department's Bureau of Small Business Enterprises' (SBE) Certification Section and Compliance Section had received and implemented the sections of the 2003 Policy & Procedures Manual pertinent to their respective functions. Although the complete Manual had not been formally adopted, all policies and procedures were current with exception to inclusion of the IL UCP certification procedures.</p> <p>With USDOT's December 2002 approval of the IL UCP procedures, these became the operating authority for the certification procedures. The IL UCP procedures were not implemented until the first day of operation under the IL UCP agreement, which began in September 1, 2003. The IL UCP certification procedures have been provided to the OAG.</p> <p>Corrective Action:</p> <p>The Department's SBE will merge and formally adopt the IL UCP certification procedures into its Policy and Procedures Manual and ensure that contract compliance policies and procedures are updated at least every two years at a minimum and as necessary. It should be noted that federal regulations do not specify a required time period with regard to the update of policy and procedure manuals.</p> <p>Expected Date of Completion: December 2006.</p>

**IDOT SMALL BUSINESS ENTERPRISE PERSONNEL,
RESPONSIBILITIES, AND TRAINING**

The IL UCP and federal regulations (49 CFR Part 26.81) require appropriate training be provided to certification analysts. The IL UCP specifically states, "Each participant will ensure that adequate training will be provided to their analysts or the analysts will have access to auditing or accounting personnel so that accurate personal net worth determinations can be made." Federal regulations (49 CFR Part 26.81) require that the unified certification program

“agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part.”

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.

We reviewed personnel files for the employees that have direct certification responsibilities and found no evidence of any relevant training. We also requested documentation from IDOT that would show that Small Business Enterprise (SBE) employees, including those with direct certification responsibilities, are provided the appropriate training. In response to these requests, IDOT officials provided us with:

- Personal Net Worth Statements Training materials dated May 30, 2002;
- An Agenda for FHWA Disadvantaged Business Enterprise Contract Administration Training provided by the Chicago Transit Authority dated December 1-2, 2004; and
- Agendas for certification section staff meetings for September 2005 and January 2006 to discuss program issues.

We were also provided with an e-mail from the FHWA advising IDOT of changes in small business size standards.

Although it appears 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. Although the federal regulations and IL UCP require appropriate training for certification staff, IDOT does not have any specific requirements or core curriculum for certification staff.

DBE STAFF TRAINING	
RECOMMENDATION NUMBER 17	<p><i>The Illinois Department of Transportation should ensure that adequate training is provided to certification staff regarding certification requirements and procedures. IDOT should also document any training received by certification staff.</i></p>
DEPARTMENT OF TRANSPORTATION'S RESPONSE	<p>The Department agrees with this finding. This finding was originally developed and cited by IDOT auditors in our management audit of the Department's DBE certification program.</p> <p>Corrective Action:</p> <p>The Department has already scheduled training for DBE certification staff. Future training events will include a USDOT DBE certification training class to be conducted June 22, 2006, and an American Contract Compliance Association training initiative that will be held August 29, 2006, through September 3, 2006 in Chicago. The Department will continue to provide on-going, in-house training to all DBE certification staff relative to program and regulatory updates.</p> <p>With all future training, IDOT will maintain a log that will track staff participation in all training sessions, i.e, sign-in sheets, agenda and material covered to document the training.</p> <p>Expected Date of Completion:</p> <p>Staff training programs will be implemented immediately and will be on-going for all DBE certification staff.</p>

IDOT'S AUDIT OF THE DBE CERTIFICATION PROCESS

In August 2005, IDOT's Bureau of Accounting and Auditing issued an audit report regarding the Bureau of Small Business Enterprises DBE certification program. The audit contained nine recommendations related to the DBE certification process. These findings were in areas including staff training, documentation, standards, and policies and procedures. We followed up on the recommendations in the audit to determine if they had been implemented. Appendix C is an overview of the recommendations, responses from the Bureau of Small Business Enterprise, and the status of each.

CERTIFICATION BY OTHER IL UCP ENTITIES

IDOT is just one of five entities that certify DBEs through the IL UCP. IL UCP certifying entities include IDOT, the City of Chicago, Chicago Transit Authority, Metra, and Pace. As can be seen in Exhibit 4-1, the City of Chicago has certified more DBEs than IDOT.

We received a policies and procedures manual for the Bureau of Small Business Enterprise, however, it was outdated. The certification procedures sections were dated between 1987-1992, which is prior to the existence of the IL UCP. We reviewed the process by using the IL UCP agreement certification procedures, which were signed in 2002. Each certifying participant in the IL UCP has the responsibility to ensure a standardized approach to all certification decisions. The procedures outlined by the IL UCP agreement provide guidance for establishing policies and procedures for the DBE certification process.

Exhibit 4-1 DBEs CERTIFIED BY IL UCP MEMBER (as of August 2005)		
Certifying Entity	Number	Percent
City of Chicago	770	44.4%
IDOT	436	25.1%
CTA	299	17.2%
Metra	164	9.4%
Pace	67	3.9%
Total	1,736	100%
Source: IL UCP DBE directory (August 2005).		

Although the City of Chicago certified the largest number of DBEs in the IL UCP, the majority of IDOT contract dollars went to DBEs certified by IDOT. We reviewed the number of contracts for the period July 2003 through October 2005 that IDOT had issued using DBEs certified by other entities. We found that 11 percent of contracts and 19 percent of contract dollars were awarded to DBEs certified by entities other than IDOT. City of Chicago certified DBEs accounted for 107 DBE contracts worth \$17.6 million, or about 8 percent of the total dollar amount of contracts awarded to DBEs by IDOT during this period.

LIST OF CURRENT IL UCP CERTIFIED FIRMS

According to the IL UCP procedures, the participants are required to maintain a unified DBE directory containing pertinent information on all certified firms. The procedures further required that the directory be available to the public electronically on the Internet, as well as in print. The procedures also require that the directory be updated on a regular basis. The list of IL UCP certified firms is available on IDOT’s website and is being updated on a regular basis.

Chapter Five

IDOT's DISADVANTAGED BUSINESS ENTERPRISE PROGRAM CERTIFICATION PROCESS

CHAPTER CONCLUSIONS

The Illinois Department of Transportation (IDOT) did not comply with federal timeliness requirements. We found that only 43 percent of Disadvantaged Business Enterprise (DBE) applications (21 of 49) were processed within the required 90-day federal timeframe. IDOT took, on average, 131 days (from the date IDOT received all required information from the applicant to the effective date of certification) to complete their review and certify DBE applicants. Five applications took over 250 days to process, with two applications taking over 400 days. In addition to not complying with federal regulations, the untimely processing also impacts the effectiveness of the analyst's review.

The IDOT DBE certification files tested did not always contain all the information currently required. Our testing of file documentation was complicated because of the extensive timeliness problems in processing certifications and changing documentation requirements. In 28 percent of the files sampled, a statement of personal net worth was missing. An individual tax return or corporate tax return/balance sheet was missing in 30 percent and 13 percent of the files, respectively. Bank signature cards, which help establish control of banking functions, were not present in 14 percent of the files. Timeliness of processing may have led to some of the files missing financial information such as the statements of personal net worth. Some files took so long to certify that more recent tax, gross receipts, and personal net worth information should have been available. Of the files that took more than 200 days to certify, 5 of the 9 were missing a current statement of personal net worth. In these cases, the analyst did not obtain an updated statement.

In 5 of the 50 files sampled we questioned whether the file contained adequate documentation of ethnicity/gender. We also questioned whether there was adequate documentation of citizenship in 4 of the 50 files sampled.

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. IDOT

did not take action to decertify these firms. 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.

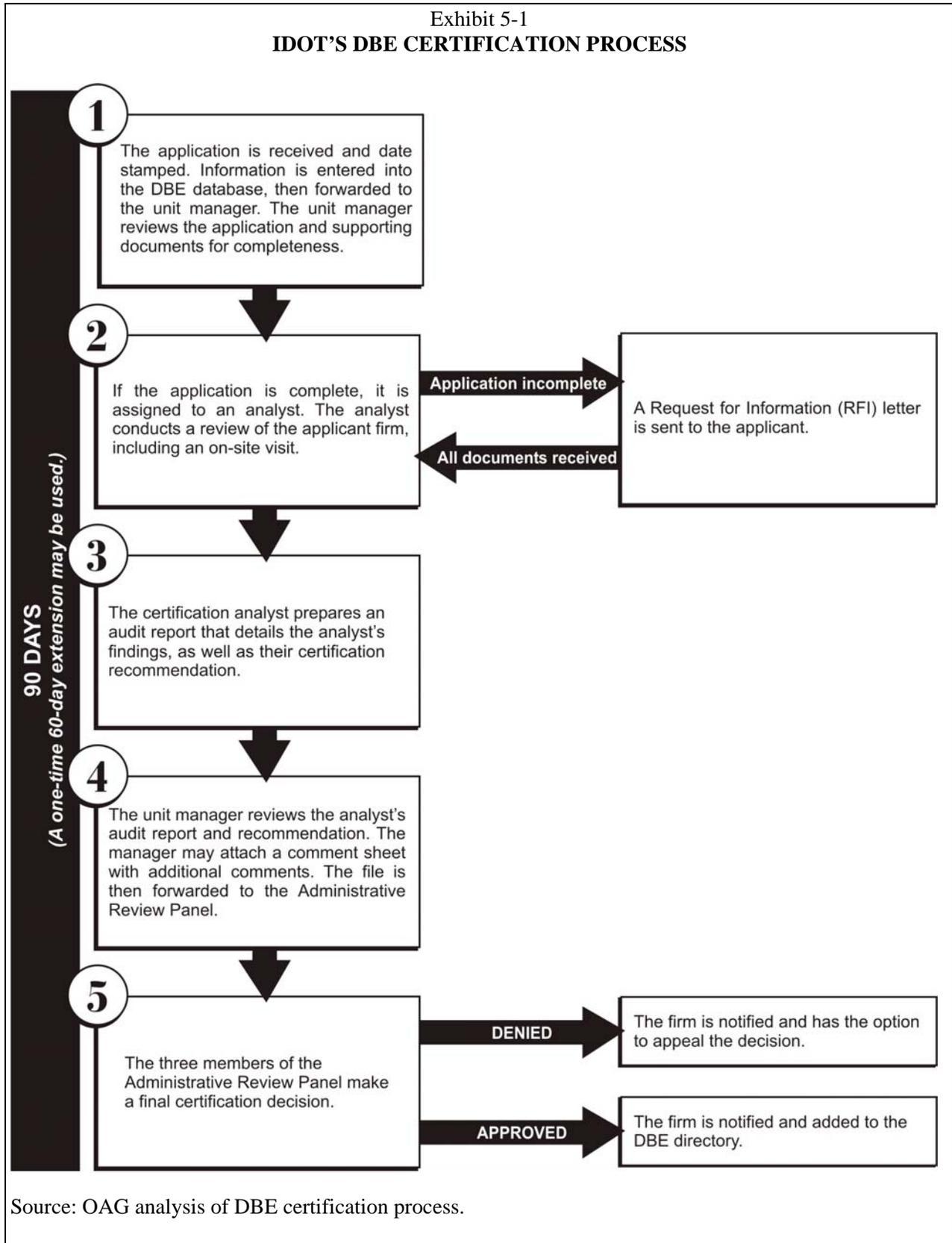
IDOT also could not provide a log or list of complaints filed. However, we did find evidence in the files we tested that investigations had been conducted into allegations.

IDOT'S DBE CERTIFICATION PROCESS

IDOT's Bureau of Small Business Enterprise within the Office of Business and Workforce Diversity 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. After an analysis and an on-site visit have been conducted, the Certification Analyst prepares a summary report. The summary report contains the analyst's recommendations regarding eligibility of the firm to become DBE certified. A supervisor reviews the recommendation and IDOT's DBE liaison officer, who makes the final decision, then reviews it. Exhibit 5-1 shows a general overview of the DBE certification process.

Certification decisions are required to be made within 90 days of receiving all required information from the applicant. The 90-day limit may be extended once, for no more than 60 days. If an extension is needed, IDOT must inform the applicant, in writing, of the specific reasons for the extension.

Once a firm is certified, it will remain certified for five years unless its certification is removed during this time through the procedures set forth in 49 CFR Part 26.87. However, the firm must sign, and have notarized, a No-Change Affidavit each year stating that no changes have occurred within the firm that would jeopardize its certification as a DBE. If a change does occur within a firm's certification period, the firm must contact IDOT in writing within 30 days of the change occurring. Any changes that would affect a firm's ability to meet size, disadvantaged status, ownership and management responsibility requirements would warrant written notification to IDOT notifying them of the change.



Application

Applications are to be date/time stamped when they arrive at the Bureau. An intake analyst enters the pertinent information into the certification database and assembles a folder for the application and supporting documentation. A quick review of the firm's preferred work categories is done and, if the work categories are more appropriate for another Illinois Unified Certification Program (IL UCP) participant's program, the intake analyst should contact the applicant. Upon the applicant's request, the file is either returned to the applicant or forwarded on to the participant whose program is better fitting for the work that the firm performs. For example, a vendor specializing in urban passenger rail construction or maintenance might be better certified by the Chicago Transit Authority instead of IDOT. If the firm's work categories are appropriate for the participant, the file is then forwarded to the Certification Analyst.

The Certification Analyst performs a complete review of the application and supporting documentation against the completed checklist to ensure that all relevant documents have been received. The analyst also keeps a record in the file of all contacts with the applicant including the date of contact, contact persons, questions asked, and responses received.

Firm Specific Requirements

In addition to the normal certification procedures, the Unified Certification Procedures for the Illinois Unified Certification Program (IL UCP) require documents for various business structures and areas of work. Sole proprietorships, partnerships, limited liability companies, and corporations require documents that prove that the business exists (i.e., copies of certificates issued by the county clerk's office, articles of incorporation, etc.) Applicants whose principal place of business is located outside the State of Illinois must be certified by their home state's US DOT-approved UCP-certifying entity before they can apply for IL UCP DBE certification. The IL UCP-certifying analyst must receive and review an on-site visit report from the home state prior to rendering an eligibility decision. The analyst has the option to seek additional information from out-of-state firms that have approved certifications by their home state UCP. Also, applicants seeking certification in the trucking work category must obtain proper intra-state authorization from the Illinois Commerce Commission and own and operate at least one fully licensed, insured, and operational truck capable of being used on a contract.

Review of Financial Information

Federal regulations (49 CFR Part 26.69) state that a firm's "ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements." A close review of the firm's financial information is required to determine if there are any actions that may restrict or dilute the disadvantaged owner's effectiveness to control the business. Financial statements, expense statements, corporate tax returns, partnership/third party agreements, and bonding capacity documents are useful in resolving management, operational, and ownership control concerns.

On-Site Visits and Interviews

Federal regulations (49 CFR Part 26.83) require the performance of an on-site visit to the offices of the firm seeking DBE certification. The purpose of the on-site visit is to conduct an interview while observing the firm’s owner(s) in their place of business. This often clarifies and substantiates documentation submitted with the application. In addition to reconciling information/concerns, the on-site visit assists the analyst in detecting and eliminating “fronts” and “shams.” Depending on the circumstances, a firm might or might not be notified when the on-site visit will be conducted. For very small businesses the owner may be contacted in advance of the visit so that they can arrange to be at the business that day or meet on a job site.

There are specific procedures that the analyst must follow when conducting an on-site visit, including obtaining/verifying certain necessary documentation. The analyst must prepare standardized and specific questions for the on-site interview. The on-site visit/interview should be at the offices of the firm and any job sites in IDOT’s jurisdiction or local area at which the firm is working at the time of the eligibility investigation. The principal officers and majority owners of the firm must be interviewed and their resumes and work histories need to be reviewed to observe:

- Present and prior occupations,
- Length of time in the industry,
- Areas of expertise, and
- Relevant occupational licenses/certifications.

A summary report of the visit/interview is prepared and must include: the name of the firm, the date and location of the on-site visit, the people present at the interview, information supplied to the applicant, and questions asked and the responses that were received. A copy of the on-site questionnaire is attached to the summary report.

After a final decision is rendered by the liaison officer, IDOT must notify the firm in writing and the other IL UCP participants, either in writing or electronically. If the application is approved, it must be submitted for addition to the IL UCP DBE directory. According to IDOT officials, IDOT approved 131 applications in 2004.

IDOT’S DBE VERIFICATION OF INFORMATION

Federal regulations (49 CFR Part 26) require the Certification Analyst to perform a variety of checks to ensure that information submitted by the DBE applicant is accurate. These checks include but are not limited to: a verification of the applicant’s ethnicity, a thorough examination of ownership of the applicant firm, interviews conducted with officials of the firm, and a review of the annual No Change Affidavit and its supporting documentation.

Verification of Ethnicity

The Certification Analyst must verify the ethnicity of the applicant to ensure that they belong to a group that is considered to be socially and economically disadvantaged. In order to make that determination, the analyst should obtain and verify copies of two or more documents

that provide evidence of ethnicity. These documents may include birth certificates, membership letters or certificates from an ethnic organization, tribal certificates, Bureau of Indian Affairs cards, driver's licenses, passports, armed service discharge papers, baptismal certificates, or any other documents that provide evidence of ethnicity.

Examining the Ownership of the Firm

A check must be done to determine that the owner is: able to demonstrate an expertise in the firm's specialized field, indispensable to the firm's potential success, in control of the day-to-day as well as long term management responsibilities, and is the holder of the highest officer position in the firm. A check of the ownership of the applicant firm is to be performed at least once each year, usually when the firm submits its annual No Change Affidavit.

Personal Net Worth Reviews

IDOT has also contracted with a private accounting and auditing firm to audit personal financial statements and determine the accuracy of personal net worth information in cases in which the analyst has questions regarding the personal net worth of the applicant. According to the contract, the firm is also going to design a training manual for personal net worth reviews that will cover identification and substantiation methods and suggested workpaper format. The firm is also to perform on-site training to IDOT employees.

Other Checks Performed

Each file is date and time stamped when it arrives at the Bureau of Small Business Enterprises. This is done as a check to ensure that the applications are being processed in the required timeframe (90 days for a certification decision). A checklist is used to ensure that all required supporting documentation is attached to the application. The certification unit manager and the Certification Analyst review the checklist to make sure the proper documentation has been submitted.

The Administrative Review Panel provides the final check in the certification process. The panel is made up of three members: one from the Bureau of Design and Environment, one from the Bureau of Construction, and one from the Bureau of Small Business Enterprises. These panel members take into consideration the recommendations made by the analyst, the certification unit manager, as well as their own findings to make a final certification decision.

IDOT's DBE CONTINUED ELIGIBILITY

According to 49 CFR Part 26.83(i), a DBE firm must inform the certifying agency or the UCP in writing of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part. This written notification must be provided to the certifying agency within 30 days of the occurrence of the change. Failure to make timely notification of such a change will result in the applicant firm being deemed to have failed to cooperate. Changes in management responsibilities among members of a limited liability company must be reported in order to remain in compliance of federal regulations. The

written notice that must be submitted to the certifying agency must take the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths.

When a firm’s eligibility or certification status changes, the certifying IL UCP participant must inform the other certifying entities of the change(s). These changes are reported monthly when each participant must submit an updated list of certified firms to IDOT’s Bureau of Information Processing. The Bureau of Information Processing uses each list to compile the IL UCP DBE directory based upon these monthly updates.

No Change Affidavits

Annual No Change Affidavits, as required by 49 CFR Part 26.83(j), must be submitted to the certifying agency each year on the anniversary date of their DBE certification. This affidavit affirms that there have not been any changes in the firm’s circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements. The DBE firm is required to submit documentation of the firm’s size and gross receipts with the No Change Affidavit.

IDOT’s practice is to send a No Change Affidavit along with a Statement of Personal Net Worth to the firm 60 days prior to the anniversary date of the firm’s DBE certification. Once the firm completes the No Change Affidavit and Statement of Personal Net Worth and attaches the required supporting documentation, the Certification Analyst reviews the information for completeness. Following the review, the analyst prepares a memo to the DBE Liaison Officer stating whether the firm remains in good standing.

The No Change Affidavit serves as a check for the certifying agency to ensure that their DBE certified firm remains in compliance with size, disadvantaged status, ownership and control guidelines and regulations on an annual basis. According to IDOT officials, in 2004, 223 firms had their certification continued after review of their No Change Affidavit.

In addition to the annual checks conducted on the DBE firm, the certifying agency must require the firm to re-apply for DBE certification every five years. This review follows the same processes and procedures as an initial application review including: submittal of a complete application with appropriate supporting documentation, conducting an on-site interview, and approval by the Administrative Review Panel.

DBE Contract Monitoring

As of August 2005, the office compliance unit was made up of a unit manager, two staff members, two 75-day consultants, and a clerical position. The field compliance section includes an acting field director and two staff. The office unit is responsible for reviewing and approving all DBE utilization plans prior to the contracts being awarded and the field unit is responsible for conducting checks on the job-sites for employee training, minority and female utilization, and DBE contractor performance. They regularly conduct labor and Equal Employment Opportunity (EEO) contract compliance field reviews as well as oversee the employment practices in the field.

IDOT DBE FILE TESTING RESULTS

We tested 50 DBE files at IDOT during February and March 2006. All but one of these was still certified as a DBE at the time of our testing (one had been decertified). During our testing, we focused on timeliness of certification processing, the presence of required documentation, supervisory review/verification of submitted information, and overall concerns related to eligibility.

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, during testing we found that only 43 percent of DBE applications (21 of 49) were processed within the required timeframe (see Exhibit 5-2). IDOT has the option to extend that 90-day requirement by requesting an extension from the applicant firm. During our review of certification files, we found two cases in which an extension was requested.

Exhibit 5-2 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%
Total	49¹	100%
Note: ¹ One application was still under review at the time of our testing. Source: OAG analysis of IDOT certification processing of 50 cases.		

IDOT took, on average, 131 days (from the date IDOT received all required information from the applicant to the effective date of certification) to complete their review and certify DBE applicants. Five applications took over 250 days to process, with two applications taking over 400 days. This does not include the days spent by external auditors (on contract with IDOT) reviewing an applicant's personal net worth.

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. In one case a firm's application was received in May 2003. In July 2004, IDOT certified the firm based on corporate tax information for 2002. According to IDOT officials, the 2003 corporate tax return was never obtained.

We asked IDOT officials how they track timeliness and analyst assignments. IDOT officials responded that they have a database and reports that can be used to track cases. According to IDOT officials, the Certification Analyst is responsible for moving the certification process forward, providing data for input into the database, and reporting to the section manager/unit manager.

From our testing results and the reports provided, it does not appear that IDOT is adequately tracking certifications, renewals, or analyst assignments to determine if the time requirements are being met. The Certification Section Manager finally completed some of the cases that took an inordinate amount of time, including the two cases that we tested that took more than 400 days to complete.

DBE CERTIFICATION TIMELINESS	
RECOMMENDATION NUMBER 18	<i>The Illinois Department of Transportation should take the steps necessary to complete certifications within required timeframes. Furthermore, controls should be implemented so that officials can effectively monitor the timeliness of certifications and the certification analyst assigned.</i>
DEPARTMENT OF TRANSPORTATION’S RESPONSE	<p>The Department agrees with the recommendation.</p> <p>Corrective Action:</p> <p>The Department will work with its Bureau of Information Processing to institute tighter management controls by updating and revising the current computer tracking system to alert DBE certification analysts and managers of needed follow-ups, documentation and action deadlines for pending files.</p> <p>Expected Date of Completion: December 2006.</p>

Required File Documentation

The IDOT DBE certification files tested did not always contain all the information currently required. Our testing of file documentation was complicated because of the extensive timeliness problems in processing certifications and changing documentation requirements. 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 DBE Unified Certification Procedures are dated July 2002, IDOT did not implement these procedures until September 2003.

We provided IDOT with a list of initial exceptions for the certification files we tested. IDOT provided several reasons why documents were not in the files. These included:

- Information was not required at the time the firm(s) was certified (e.g., two forms of proof of ethnicity/gender).
- Personal Net Worth statements were not required to be submitted with the annual No Change Affidavit until late 2003.

Although IDOT's requirements may have changed in some instances, IDOT has not conducted follow-up during the regular certification cycle to bring certification files into compliance with current requirements. In addition, in cases in which applicants filed an extension to file either corporate or individual tax returns, the tax returns were not filed with IDOT after the extension had expired and staff did not follow up to obtain these items.

Federal regulations require that a DBE's personal net worth cannot exceed \$750,000. In 28 percent of the files sampled, a statement of personal net worth was missing (see Exhibit 5-3).

An individual tax return or corporate tax return/balance sheet was missing in 30 percent and 13 percent of files, respectively. Bank signature cards, which help establish control of banking functions, were not present in 14 percent of the files.

Timeliness of processing may have led to some of the files missing financial information, such as the statements of personal net worth (PNW). Some files took so long to certify or recertify that more recent tax, gross receipts, and PNW information should have been available. Of the files that took more than 200 days to certify, 5 of the 9 were missing a current statement of personal net worth. In these cases the analyst did not obtain an updated statement.

In 5 of the 50 files sampled we questioned whether the file contained adequate documentation of ethnicity/gender. We also questioned whether there was adequate documentation of citizenship in 4 of the 50 files sampled. Three of these four were the same cases for which we questioned proof of ethnicity/gender. In one case, IDOT accepted a snapshot of the person with their name typed under it as proof of ethnicity. Although the file contained a letter saying a birth certificate was delayed but would be sent, there was no documentation that it was ever submitted. In another case, IDOT accepted the applicant's father's birth certificate as proof of ethnicity without any proof that this was the applicant's biological father.

In September 2003, IDOT began requiring all applicants to submit at least two forms of ID for proof of citizenship and ethnicity and gender. Only 6 of the 50 files we tested were certified after September 2003. Two of the six certifications processed after September 2003 did not have the required two forms of ID.

Exhibit 5-3 IDOT's DBE CERTIFICATION FILES MISSING DOCUMENTATION		
Document	Number of Files Missing	Percentage Missing
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 ¹	13%
Proof of Ethnicity/Gender	5 of 50	10%
Proof of Citizenship	4 of 50	8%
Site Visit	2 of 50	4%
Audit/Summary Report	0 of 50	0%
Note: ¹ Three firms tested were sole proprietorships and, therefore, did not file corporate tax returns.		
Source: OAG analysis of 50 IDOT DBE certification files.		

Two of the 50 files did not contain documentation that a site visit was conducted within the last five years. According to IDOT officials, for one of the two files missing a site visit, the visit was conducted but was not documented in the file.

Although IDOT was missing required 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.

An audit completed by IDOT’s Bureau of Accounting and Auditing in August 2005 contained a finding regarding file documentation. The audit recommended that the Bureau of Small Business Enterprise develop appropriate workpapers, which clearly document that the DBE analysis is being performed in accordance with IL UCP and federal requirements.

The audit also noted that files were not organized, and because of the number of years that the DBE program had been in place, some files were becoming cumbersome and unmanageable due to the amount of information included from prior years. The audit recommended that the Bureau develop standardized policies and procedures for file preparation and maintenance. In our testing, we found that some files were voluminous (6-8 volumes) and contained old information making it difficult to locate critical information.

DBE FILE DOCUMENTATION	
RECOMMENDATION NUMBER 19	<p><i>The Illinois Department of Transportation should ensure that complete and current documentation is obtained from applicants during the certification process and included in the certification files. IDOT should also consider revisions to its record keeping process in order to make files more manageable.</i></p>
DEPARTMENT OF TRANSPORTATION’S RESPONSE	<p>The Department agrees with this recommendation. This finding was originally developed and cited by IDOT auditors in our management audit of the Department’s DBE certification program. (<i>see Auditor Comment #2</i>) The Department will continue to ensure that complete and current documentation is obtained from applicants during the certification process.</p> <p>IDOT does not concur with the missing documentation findings which were commented on in the report. (<i>see Auditor Comment #3</i>) With regard to the missing documentation findings, cited examples include:</p> <p>*Only one form of proof of ethnicity. As discussed in our initial response to OAG, the African American owner of a construction company was born in rural Mississippi over 50 years ago. Per a letter from the firm, they were awaiting a copy of the birth certificate. Although a birth certificate was never provided, the owner’s ethnicity was documented with a photo and verified through the onsite interview. In addition, this individual is recognized by the community as an African American, and this is how he has held himself out. As in the case of the second example,</p>

<p style="text-align: center;">DEPARTMENT OF TRANSPORTATION'S RESPONSE</p> <p style="text-align: center;">(Continued)</p>	<p>the owner's ethnicity was verified during the onsite interview and supported by his father's birth certificate. It should be noted that the father was a previously certified DBE. In the third example, for proof of gender, the female owner of the construction company submitted a copy of her birth certificate which identified her as a Caucasian Female. Since women are presumed socially and economically disadvantaged, only one form of documentation of gender is requested rather than two forms. IDOT and the IL UCP participant agencies have determined that one form of documentation is sufficient to support an individual's claimed ethnicity/gender in most cases, and the practice is to request only one form rather than two, except when there are questions regarding ethnicity. The federal regulations that govern group membership determinations state that <i>in making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.</i> (see Auditor Comment #4)</p> <p>*Personal Net Worth (PNW) statements missing. As discussed in our initial response to the OAG, IDOT did not require PNWs to be submitted with No Change Affidavits until late 2003 with the implementation of the IL UCP. As a rule, PNW statements are completed on an annual/fiscal basis. IDOT and the IL UCP accept a firm's most current PNW statement, as of the date of the filed No Change Affidavit. Note: The federal regulations governing No Change Affidavit submittals do not require PNWs or tax returns to be submitted on an annual basis with the Affidavit. (see Auditor Comment #5)</p> <p>*Tax information missing. As discussed with OAG, an example was provided for an applicant who applies for DBE certification in late 2005, using 2004 tax information. The eligibility decision for the firm was rendered in February 2006. While the file was processed without 2005 tax information, the review relied upon the most current information available at the time the decision was rendered – three years of filed tax returns (2004, 2003, & 2002). A No Change Affidavit and 2005 tax information will then be due upon the firm's next anniversary date in February 2007.</p> <p>Although the file does not contain 2005 information, it would not be considered "missing" by IDOT or the IL UCP participant agencies, as the most current information available was used at the time the eligibility decision was rendered. Note: Robert Ashby, USDOT Deputy Counsel, agreed with this example in a May 2006 teleconference call, and IDOT has requested his written concurrence. (see Auditor Comment #6)</p>
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<p style="text-align: center;">DEPARTMENT OF TRANSPORTATION’S RESPONSE</p> <p style="text-align: center;">(Continued)</p>	<p>*Bank signature card missing. In instances when the bank signature card was not in the file, a bank resolution was generally on file. While the bank signature card identifies the individuals who can sign checks on behalf of the firm, a bank resolution also identifies those individuals who can financially obligate the firm through loans, lines of credit, etc., thus making the bank resolution more pertinent in the review process. The resolution also identifies officers of the firm with authority to effect all transactions for the firm. In addition, in the majority of the cases cited, the firms are <i>solely</i> owned by a socially and economically disadvantaged individual and as such, this is the only person who can financially obligate or conduct business on behalf of the firm. (<i>see Auditor Comment #7</i>)</p> <p>Corrective Action: IDOT will maintain the process of ensuring that the most current year of corporate/individual tax returns and a PNW statement is received with each annual No Change Affidavit submitted. With this practice, IDOT will always have the most recent three years of corporate/individual tax returns and PNW statements in file. In addition, IDOT will contact firms and make every effort to acquire any missing file information. We expect to accomplish this by September 1, 2006.</p> <p>IDOT, in order to make files more manageable, will maintain the original filed certification application and supporting documentation and consolidate the last three years of No Change Affidavits with financials. Documentation of filed No Change Affidavits between these periods will be stored apart from these files.</p> <p>Expected Date of Completion: July 2007</p>
	<p>AUDITOR COMMENTS:</p> <p><i>#2: This finding was not developed by IDOT auditors. This finding was developed by OAG auditors upon their review of 50 IDOT DBE certification files.</i></p> <p><i>#3: While the Department does not concur with the OAG’s missing documentation finding in this report, the Department did concur with a similar finding in IDOT’s August 2005 audit of its DBE certification process. That audit similarly concluded that “. . . certification files were absent critical information necessary for the certification process.” The IDOT audit report then goes on to list the “missing Required Eligibility Decision Documentation” for 24 cases. Documentation cited as missing included items similar to those identified as missing by OAG auditors, such as tax returns, financial statements, and bank resolutions. IDOT agreed with the IDOT auditors’ recommendation to improve certification file documentation noting that it “will focus its immediate attention on securing the required documents cited prior to performing any new certification renewals on the identified firms”</i></p>

AUDITOR COMMENTS (Continued)

#4: The exceptions developed by OAG auditors were based on testing compliance with policies and application documentation requirements established by IDOT. Regarding ethnicity, certification procedures state:

*“Ethnicity should be resolved early. In cases where the ethnicity status cannot be determined, additional documentation is required. Copies of **two or more** documents evidencing ethnicity are necessary. . . .” (emphasis added)*

In one of the cases cited by IDOT, the only documentary evidence in the case file of the applicant’s ethnicity was a picture of an individual standing by a truck, with his name typed below the picture. The auditors questioned whether the picture provided sufficient evidence (such as whether the person in the picture was actually the person making the application), and, therefore, concluded that pursuant to IDOT requirements, additional evidence should have been obtained.

In another case, the only evidence of ethnicity was a birth certificate – not of the applicant, but of the applicant’s father. No other documentation, such as a driver’s license, baptismal certificate, etc. for the applicant was found in the file. Again, the auditors questioned whether this provided sufficient evidence (the applicant could be adopted, could be from a prior marriage, etc.) and concluded that pursuant to IDOT requirements, additional evidence should have been obtained.

The auditors do not dispute that on-site interviews, or site visits, are an effective certification tool. However, IDOT certification requirements specify that applicants are required to submit adequate documentary evidence of ethnicity, and in the cases cited, such documents were not submitted.

*#5: The OAG **did not** include missing PNWs as an exception if the No Change Affidavit preceded late 2003.*

*#6: The example cited by IDOT is a **fictional** example, and is not an exception cited in the audit report. The example cited by IDOT **would not** have been counted as an exception by the auditors. As an example of one of the exceptions cited by OAG auditors, the eligibility decision was rendered by IDOT on May 11, 2004; the most recent corporate tax information in the file at that time was from 2001. Tax information from at least 2002, and possibly 2003, should have been available to the Department at the time the eligibility decision was made.*

#7: Per IL UCP Certification Procedures and IDOT’s 2003 policies and procedures both bank signature cards and bank resolutions are required for corporations.

Evidence of Review and Verification of Submitted Information

One sign of review by IDOT is the presence of Requests for Information, or RFIs. An RFI is generated when it is determined that an applicant did not submit required information or additional information is needed for certification. We found RFIs related to the most recent certification or recertification application in 24 percent (12 of 50) of the files we tested.

According to an IDOT official, if an applicant’s Personal Net Worth (PNW) is close to the maximum allowed by 49 CFR Part 26.67 (\$750,000), IDOT refers the applicant to an accounting firm to conduct a PNW review. We found evidence of a PNW review in 12 percent (6 of 50) of the files we tested. All six of these reviews concluded that the DBE applicant’s PNW did not exceed the \$750,000 PNW maximum.

Supervisory Review

We reviewed the certification files to determine whether a supervisor reviewed each. In all the files sampled there was evidence of a second review and signature.

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. Exhibit 5-4 is an overview of the 12 cases and the eligibility issues.

In 10 of the 50 (20%) certification files sampled, we identified items in the file which raised questions concerning whether the minority or female owner of the firm had complete control or 51 percent ownership.

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 ARP committee to discuss the issue in person. Exhibit 5-5 shows a summary of the 10 cases in which we questioned control or ownership and what steps IDOT had taken to address the issues.

As an example, in one case the wife of the original non-eligible owner purchased 51 percent of the business from her husband and applied for DBE certification in 1997. IDOT

Exhibit 5-4 ELIGIBILITY ISSUES		
Reason	Number	Contract \$ July 2004 through January 2006
Control/Ownership	10	\$23,669,338
No Change Affidavit Not Filed Timely	2	\$3,503,589
Expired Certification	1	\$56,250
Total	12¹	\$27,159,177¹
Note: ¹ 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.		

initially denied certification to the firm based on issues of equity, independence, control, expertise, and timing. In 1998, the wife purchased the remaining 49 percent ownership from her husband to become sole owner of the firm. She reapplied for DBE certification in 1999, and became certified in 2000. The summary reports in the file pointed out concerns regarding the owner's son, a non-eligible individual, possessing the dominant background and sufficient expertise to control the critical operations of the firm. The file also contained DBE monitoring reports that documented concerns about the owner's lack of experience. A 2003 summary report again noted concerns and recommended the firm be denied on the basis of control. Prior to being recertified in 2003, the Administrative Review Panel (ARP) met with the eligible owner of the firm. The ARP determined that while the owner delegated many of the tasks to her son, she appeared to have sufficient knowledge to independently control the firm without relying on non-disadvantaged individuals. Evidence in the file suggests that IDOT conducted a detailed and thorough analysis of the certification.

There was only one case in Exhibit 5-5 that we identified control issues for which IDOT did not discuss the issue as a concern in the file summary or take additional actions. This case involved a firm that was 51 percent female-owned and 49 percent owned by an ineligible male. The ineligible male originally owned the firm, which he purchased from his father. Later he sold 51 percent ownership to the female owner. However, the firm leases its office space from the ineligible male and the ineligible male and his wife have bank signature authority.

Exhibit 5-5 IDOT'S REVIEW OF ELIGIBILITY				
Case #	Issue Discussed during Site Visit	Issue Discussed in Summary	Issue Discussed with ARP	Monitoring Conducted by Compliance Section
1	✓	✓		✓
2		✓		✓
3		✓		
4		✓		✓
5			✓	✓
6				
7		✓		
8		✓	✓	✓
9	✓	✓	✓	✓
10		✓		✓
Totals	2	8	3	7
Source: OAG analysis of IDOT DBE certification files.				

Contract Compliance Unit

Eight of 50 certification files contained evidence of field compliance monitoring. An IDOT official said that one duty of the field compliance section is to conduct field visits to ensure that Equal Employment Opportunity (EEO) and DBE requirements are being followed and met. During visits to assess EEO standard achievement, field compliance analysts review the DBEs being used, whether they are using their own equipment, have their own employees, and are serving a commercially useful function.

IDOT’S DBE ENFORCEMENT ACTIONS

According to federal regulations (49 CFR Part 26.107), a firm may be suspended or debarred if the firm does not meet the eligibility criteria of subpart D (Certification Standards) and attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations. If a firm is found to be participating in the DBE program based upon false or fraudulent information, IDOT may initiate suspension or debarment proceedings on the firm based upon federal regulations 49 CFR Part 29. IDOT can also refer the case to the Department of Justice for prosecution to any DBE certified firm who makes false or fraudulent statements.

Complaints and Investigations

IDOT, along with all other IL UCP participants, accepts written complaints from any person alleging that a currently certified firm is ineligible. In the written complaint, the complainant must state specific reasons for ineligibility as well as attach any documentation that supports the complaint.

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. If IDOT has a complaint with a firm that is hosted by IDOT, IDOT will conduct an investigation. If the result of the investigation is “unfounded or resolved”, other IL UCP agencies may not be made aware of the situation other than by informal discussion. If another IL UCP agency files a complaint about a firm IDOT hosts, then the IL UCP is formally notified. If IDOT receives a complaint regarding a firm certified by another IL UCP member, the complaint is forwarded to the certifying member for investigation.

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. IDOT provided us with documentation of field visits conducted of DBEs. According to US DOT OIG, IDOT refers approximately 7 to 10 DBEs per year for investigation and most of these would be founded. However, according to the OIG official, it is difficult to debar or suspend a firm without a civil conviction. Therefore, the certification part of the DBE process is key to keeping out firms that are not legitimate.

DBE COMPLAINTS	
RECOMMENDATION NUMBER 20	<i>The Illinois Department of Transportation should keep a log of complaints received as a control to ensure that complaints are adequately investigated and resolved.</i>
DEPARTMENT OF TRANSPORTATION'S RESPONSE	<p>The Department agrees with the recommendation. A complaint log will assist with managing the complaint process.</p> <p>Corrective Action:</p> <p>A log will be maintained as a control to ensure that complaints are investigated and resolved. In addition to IDOT's current process of a firm's individual file containing documentation and related follow-up activities, IDOT's log will record and date all investigations and resolutions.</p> <p>Expected Date of Completion: July 2006.</p>

Removal of DBE Certified Firm by US DOT Directive or IL UCP Initiated Proceeding

If the US DOT determines that information contained in the certification records or other available information provides reasonable cause to believe that an IL UCP-certified DBE firm does not meet the eligibility criteria of 49 CFR Part 26, the US DOT may direct the certifying state to initiate a proceeding to remove the firm's certification. The certifying state and the firm are provided notice setting forth the reasons for the directive, including any relevant documentation or other information. The certifying state must immediately commence and prosecute a proceeding to remove eligibility.

In the case where there must be a proceeding, the certifying state is required to thoroughly conduct an investigation of the complaint/inquiry within 60 days. Prior to the investigation, the certifying state must notify the firm being challenged, in writing, by stating the reasons their certification is being challenged along with the relevant regulations. The IL UCP-certifying participant will review the records concerning the firm, and if necessary, request additional information from the firm. Upon a decision being rendered, a letter is sent to the firm explaining the decision and the reasons behind that decision.

IDOT Certification and Enforcement Action

Exhibit 5-6 shows certification and enforcement actions by IDOT for the three-year period 2002 to 2004. Although IDOT has taken some actions in the form of decertification and administrative removal, the Department has not suspended or debarred any firms for the three

Exhibit 5-6 IDOT DBE CERTIFICATION AND ENFORCEMENT ACTIONS Calendar Years 2002-2004			
CERTIFICATION ACTIONS	CY02	CY03	CY04
No Change Affidavit Reviewed – Certification Continues	407	113	223
Approved	97	253	131
Returned	68	130	50
Certification Lapsed – Failure to Submit Renewal Application	0	52	27
Denied – For Cause	25	23	19
Withdrawn	23	24	10
Application Not Processed – Certification With Other UCP Agency	0	21	7
Referred to CMS by Unit Manager	17	15	4
Administratively Withdrawn	0	0	2
Transferred to UCP Host – Metra	0	58	2
Administratively Reinstated	0	1	1
Currently Certified With Another UCP Agency	0	0	1
Denied – Failure to Cooperate	26	3	0
Graduated	1	2	0
Referred to Metra by Unit Manager	0	1	0
Transferred to UCP Host – City of Chicago	0	74	0
Transferred to UCP Host – CTA	0	28	0
Transferred to UCP Host – Pace	0	18	0
Total Certification Actions	664	816	477
ENFORCEMENT ACTION	CY02	CY03	CY04
Decertified – Failure to Cooperate	0	4	8
Administratively Removed (Excessive PNW)	0	1	2
Administratively Removed (Lack of Home State Certification)	3	0	1
Decertified	5	6	1
Administratively Removed (Structure/Ownership Change)	1	3	0
Debarred	0	0	0
Suspended	0	0	0
Total Enforcement Actions	9	14	12
Source: IDOT Log of Administrative Review Decisions.			

year period. According to information provided by the Department, IDOT decertified 24 vendors over the three-year period 2002 through 2004.

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.

According to IDOT officials, all applications received into the office are date and time stamped and forwarded to the Intake Coordinator/Analyst who does the data input. According to internal procedures, intake should be completed within 10 days of the application being received in the Bureau. The application is forwarded to the unit manager for a completeness review and assignment to the analyst within 10 days of receipt. The goal for the analyst is to review the application, send the Request For Information (RFI) letter within 10 days (initial RFI given 20 days and a follow-up RFI is afforded 10 additional days to respond). Currently, the system does not track this. It is the responsibility of the analyst to do so and move the case through the process. The on-site interview should be conducted within 30 days of the analyst's receipt of the case (an on-site interview may require more than one attempt to be accomplished). The summary report should be written and submitted to the next higher level manager for review and sign-off.

The case is then placed on the agenda for the upcoming Administrative Review Panel (ARP). The intake coordinator uses dates that have been input into the system to generate many of the reports used to track firm information/status through the database, but submitting the information to be input is the responsibility of the individual analyst with oversight by the certification unit/section manager.

No Change Affidavits

According to IDOT officials, the annual No Change Affidavits are manually generated monthly, based upon a request by the Intake Coordinator/Analyst and the notification letters are generated and mailed 60 days prior to the firm's anniversary date. A copy of the "no change" letter is forwarded to the analyst assigned to the case. In addition, a report is generated which identifies the firms receiving notice. When the "no change" notice goes out, a new page of history is input into the database. Review of this information prompts the generation of the monthly report, which provides a listing of "no changes" not received. When a No Change Affidavit is received into the bureau, it is date and time stamped and given to the Intake Coordinator/Analyst for input into the database. The Coordinator/Analyst inputs gross receipts, contact information, verifies federal ID/social security number, and other information. Once input, the affidavit is then forwarded to the assigned analyst for processing. The analyst is the individual responsible for follow up with the appropriate correspondence (30-day reminder, proposed decertification or decertification action). The monthly report is reviewed by the Section Manager who monitors processing.

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, this firm should have been decertified.

DBE TRACKING AND DECERTIFICATIONS	
RECOMMENDATION NUMBER 21	<p><i>The Illinois Department of Transportation should more closely track when No Change Affidavits and recertifications are due and decertify vendors that do not file the required applications and affidavits in a timely manner.</i></p>
DEPARTMENT OF TRANSPORTATION’S RESPONSE	<p>The Department agrees with the recommendation. We will work to more closely monitor and track the timeliness of submittals relative to annual No Change Affidavits and supporting documentation.</p> <p>As the DBE program is one of inclusions, IDOT attempts to work closely with certified firms through Requests for Information letters, follow-up calls by analysts and supportive services consultant assistance to assist firms in maintaining their eligibility. IDOT does not start a decertification (due process) proceeding based on technical deficiency (versus one for cause) until all avenues to acquire information have been exhausted for firms who are certified. In effect, the federal regulations state that an already certified DBE no longer has to “reprove” its eligibility. See attached USDOT METRA appeal decision.</p> <p>Corrective Action:</p> <p>IDOT will be better able to more closely track when No Change Affidavits and Affidavits of Continued Eligibility are due and decertify firms that do not file the required documentation in a timely manner with the implementation of the IL UCP portal. The portal, when complete, will provide newer technology programming that will help to eliminate any timeliness issues, i.e., the system will automatically generate correspondence based on tickler dates such as certification anniversary dates, No Change Affidavits, renewals, etc.</p>

	<p>Expected Date of Completion: December 2007</p> <p>In the interim, IDOT will generate No Change Affidavits and Affidavits of Continued Eligibility reports monthly. In addition, the Department's Bureau of Information Processing will work to enhance the current database to assist with monitoring and tracking until completion of IL UCP portal project.</p> <p>Expected Date of Completion: December 2006</p>
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Notification of Enforcement Actions Between IL UCP Participants

According to IDOT officials, each IL UCP participant is responsible for submitting a monthly, updated list of certified firms to IDOT's Bureau of Information Processing. These lists include additions and deletions to the IL UCP directory. According to IDOT officials, the IL UCP is in the process of creating a portal that would allow for additions and deletions to the IL UCP directory to be in real-time instead of just being updated monthly. However, IDOT officials also stated that this could take years to complete.