

Performance Audit

**EQUAL OPPORTUNITY  
REVIEW COMMISSION**

Report by the  
Office of City Controller

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August 2012

August 16, 2012

To the Honorables: Mayor Luke Ravenstahl and  
Members of Pittsburgh City Council:

The Office of City Controller is pleased to present this Performance Audit of the *City Equal Opportunity Review Commission (EORC)* conducted pursuant to the Controller's powers under Section 404(c) of the Pittsburgh Home Rule Charter. This audit assesses the effectiveness of the EORC in assisting minority and women business enterprises and Commission compliance with City Code requirements.

## EXECUTIVE SUMMARY

The Equal Opportunity Review Commission (EORC) assists Minority Business Enterprise and Women's Business Enterprise (MBE/WBE) in the pursuit of fair contracting opportunities. The EORC is an 11 member body appointed by the Mayor. The Commission reviews professional service contracts over \$25,000 and construction & development contracts over \$200,000 for MBE/WBE participation. The Commission also reviews construction and development and professional service contracts originating from the City of Pittsburgh-related Authorities.

The board meets monthly to act on an agenda prepared by the EORC staff. City MBE/WBE awards for services, commodities, emergency services, and repairs that do not fall under the Commission's purview are reviewed by the EORC staff. Service contracts valued at \$2,000 or more are included in the review. The EORC is required by City Code to produce three quarterly and one annual report.

## Findings and Recommendations

### EORC Annual and Quarterly Reports

The EORC is required by City Code Chapter § 177A.04 (c and d) to produce three quarterly reports and one annual report.

**Finding:** The EORC Annual Reports present the initial contract fiscal information and M/WBE projections and do not comply with City Code reporting requirements. City Code Chapter § 177A.04 (d) requires EORC to submit "an annual report *which details the extent to which minority-owned and women-owned business have been participants* in the sale of goods and services to the City in the preceding year". The wording "extent to which" requires a reporting of actual, not projected, M/WBE participation in City contracts.

**Recommendation:** The EORC Annual report should include a section that includes not only contracts approved but also the payments made during the life of the contract, showing both the projected and the actual financial information for comparative purposes.

**Finding:** The EORC and its outside participants do not share an electronic financial system. This often prevents the collecting and collating of data from City departments, agencies and authorities in a timely manner.

**Recommendation:** The EORC should work with its City Information Systems liaison to develop a shared software application such as Google shared docs or some other secure application to allow the timely flow of information and reduce duplicative entry tasks.

**Finding:** City Code Chapter § 177A.04 (c and d) also specifies that the reports be submitted to Council, the Mayor, and the Controller. The current distribution list consists of City and authority directors.

**Recommendation:** The EORC should include Council, the Mayor, and Controller on its quarterly and annual report distribution list, as mandated by City Code.

**Finding:** The EORC Quarterly and Annual reports are issued in hard-copy form. The EORC has an electronic version it uses in-house.

**Recommendation:** The EORC reports should be prepared and distributed primarily in electronic form. That would also allow the reports to be shared over the web with the public, and the use of a Portable Document Format would insure security.

#### Equal Opportunity Review Commission

EORC board meetings are held monthly to review larger construction and professional services contracts awarded by the City and its authorities.

**Finding:** City contracts represented \$107,026,143.74 of the overall \$477,161,285.12 worth of contracts that were reviewed during 2010-11 by the EORC. City contracts reviewed represented just 22.4% of the total.

**Finding:** The figures presented to the EORC Board are preliminary and represent only the projected value of the contract and its M/WBE participation. The actual final cost of the contract is not presented to the Board.

The ten largest City contracts that required EORC board approval in 2010-11 were initially valued at \$45,370,147. As of 12/31/2011, the contract value, according to Controller Office records, was \$52,182,785, an increase of 15%. This increase may also trigger an adjustment the M/WBE participation goal.

**Finding:** The EORC Board approves only the preliminary contract value and M/WBE participation plan and does not track contract changes and/or contractor progress in fulfilling its minority plans.

**Recommendation:** The EORC Board should be presented with periodic progress reports of the major contracts it has approved so it can determine compliance with the approved M/WBE plan.

#### Service, Commodity, Professional Service and Other City Contracts

There is no minimal work guarantee for “B” Contracts, as they are not project-specific and are not required to be used. Because of the cost uncertainty, the EORC staff reviews these contracts and does not present them to the Board for review.

**Finding:** Seven “B” contracts exceeded \$1,000,000 during the audit period and several more exceeded the \$200,000 EORC benchmark for board review.

**Finding:** Other “B” contracts received extensions that added to their overall value. Many of these contracts have a past history of equaling or exceeding the \$200,000 requirement for EORC Board approval.

**Recommendation:** “B” contracts that can be reasonably expected to equal or exceed \$200,000 should be presented to the EORC Board for review.

**Finding:** The EORC also reviews City Professional Service and Commodity contracts that exceed the \$200,000 review trigger

**Finding:** The County is increasingly becoming the awarding agency for Commodity and “B” contracts used by the City. As the contracts do not include the City M/WBE goals but those of the County, they are not enforceable by the EORC.

**Finding:** Most construction rehabilitation and repair contracts entered into by the City are either “B” contracts for various repairs or major projects funded and administered by the State or Federal government.

**Finding:** The EORC Board is increasingly limited to reviewing only City Professional Services contracts. In 2010, 18 of the 28 City contracts the Board reviewed were for Professional Services. In 2012, 8 of 9 City contract reviews were for Professional Services. (The remaining contracts were for administrative services to the City and one construction project.)

#### City - County M/WBE Contract Requirements

In 2004, Pittsburgh was authorized to “piggyback” on Allegheny County contracts under City Code Chapter §161 on contracts that are awarded by the County, but used by both units. The contacts used by the County are monitored by the Department of Minority, Women and Disadvantaged Business Enterprise, while those used by the City are monitored by the EORC.

**Finding:** Only Allegheny County M/WBE goals are included with the County bid package. This was done to reduce bidder confusion and was agreed to by City procurement officers. This sometimes leads to vendor/contractor misunderstandings.

**Finding:** The County goals are 13% MBE and 2% WBE compared to 18% MBE and 7% WBE for the City. The MBE targets reflect different non-white populations, as reported by the 2010 US Census Bureau, of 18.5% in Allegheny County and 34% in Pittsburgh. Allegheny County businesses are 9.5% minority-owned, while Pittsburgh MBEs represent 13.2% of its firms. Allegheny County and Pittsburgh have female populations of slightly over 50%. WBEs represent 28% of local business ownership in both the City and County, also according to the Census Bureau.

**Recommendation:** The City and County should cooperatively prepare a brief non-binding rider to Allegheny County bid packages and proposals to make vendors aware of Pittsburgh M/WBE goals.

#### State and Federal Funded Contracts

State and Federally funded contracts are rarely reviewed by EORC. These contracts are usually administered through the Pennsylvania Department of Transportation (PennDOT) or the Federal Highway Administration (FHA).

Community Development Block Grant (CDBG) awards are not reviewed by the EORC, nor are State-bid contracts for services and commodities awarded through the Pennsylvania Department of General Services “*COSTARS*” Cooperative Purchasing Program.

**Finding:** State and federal funded City contracts often require some level of City funding, yet are not reviewed by the EORC for M/WBE plans and compliance.

**Recommendation:** The City Law Department should determine what, if any, legal right the City has to enforce its M/WBE goals on Federal and State funded or awarded contracts utilized by the City.

#### M/WBE Contract Monitoring and Compliance

After the EORC determines that there is a viable M/WBE plan in place or grants a waiver, the City contract approval process begins. The Commission is charged by City Code Chapter § 177A.04 (a) with monitoring the performance of the contract.

**Finding:** Contractor compliance with the timely submission of M/WBE Utilization Forms that track M/WBE participation is inconsistent.

**Recommendation:** The EORC staff should be more proactive in retrieving and entering the M/WBE Utilization Form data on the into the contract files to insure that the information is recorded and available in a timely manner.

**Finding:** Authorities that participate in the City EORC program sometimes do not submit EORC reports in a timely manner.

**Recommendation:** The EORC staff should be more proactive in retrieving and entering participating Authority M/WBE information in its contract files.

**Finding:** EORC staff, Authority Equal Opportunity staff, personnel from City Public Works, Planning and the Controller's Office perform construction site monitoring for compliance with various regulations.

**Recommendation:** The EORC auditors should collaborate with the other City departments and Authorities to inspect various job sites and contracts. Joint inspection visits, regularly scheduled meetings or other cooperative actions would help reduce duplicity and foster inter and intra-governmental cooperation.

**Finding:** The EORC has had meetings with vendors and contractors to resolve compliance issues, but during the audit period have not applied any sanctions. EORC personnel believe that the threat of exercising the sanctions is often sufficient to establish compliance.

#### City Bank Depositories

**Finding:** Under City Code Chapter § 221.03 (e) (5), the Department of Finance is the evaluating unit for City depositories.

**Recommendation:** The EORC is not the reviewing agent for depository contracts and the evaluation of those funds should be performed by the Finance Department as specified by the City Code. Bank depository contracts should not be part of the EORC Annual Report.

#### City Disparity Report

According to City Code Chapter § 177A.04 (e) "The EORC shall update its minority-owned and women-owned business disparity study(ies), pursuant to established Supreme Court precedent at *City of Richmond, VA vs. J.A. Croson Co. 488 U.S. 469 (1989)*, in 2008, 2012 and every five (5) years thereafter." It has been over a decade since the City has issued a Diversity Report on the status of its M/WBE participation.

**Finding:** The EORC has been unable to attract funding to issue a follow-up report, which it estimates will cost \$300,000. The 1999 report cost an estimated \$500,000, and was a joint effort of School Board, Authorities and City.

**Recommendation:** The Mayor's Office and City Council should provide funding for a Diversity Report, perhaps in conjunction with other government units and agencies, to update the City M/WBE status in accordance with the City Code.

### Veteran Owned Small Business

The City Code establishes a goal of 5% participation along with several assistance guidelines, and places it under the jurisdiction of the Finance Department.

**Finding:** The duties of the Finance Department in regards to assisting Veteran-owned small businesses are similar to those of the EORC.

**Recommendation:** The City Administration should consider transferring the Veteran-owned small business assistance program from the Finance department to the EORC, which already has a strong background in procurement assistance and project monitoring.

### Small Business Development

In 2010, the EORC informally added small business development to its mission. The staff is available to meet with entrepreneurs in the office to answer questions in person, to provide business planning assistance and to refer small businesses to other sources of assistance.

**Finding:** The EORC staff's institutional knowledge overlaps into the small business category and its assistance to small business enterprises appears to be a natural progression in services.

**Recommendation:** If the City wishes to establish a more robust in-house small business point of contact, the EORC should be considered for that role.

### City Outreach and Support To Attain MBE/WBE Goals

**Finding:** The EORC has compiled a list of qualified M/WBE vendors. This list is useful not only to the Commission for compliance purposes, but should also be useful to prime contractors seeking M/WBE qualified subcontractors and suppliers.

**Recommendation:** A list of qualified M/WBE businesses should be included in the EORC web site. While the City does not certify businesses, the Allegheny County and Pennsylvania M/WBE certified businesses should be linked from the EORC site.

### EORC Web Presence

Some of the information and technical assistance that the EORC offers is available on its City web site to provide easy access to M/WBE businesses. The "Small Business Resource Guide" is also available on-line.

**Finding:** The EORC publishes quarterly and annual reports, along with periodic studies on Diversity and Sheltered Markets. These reports are available as hard copy, but are not available on the EORC web site or electronically distributed. The EORC also has several business guides available in print but not on-line.

**Recommendation:** The EORC should contact its City Information Systems (CIS) liaison to have its reports and guides made available on its web site in an accessible and secure form such as Portable Document Format (PDF).

**Finding:** The EORC web site section devoted to “Frequently Asked Questions” is linked to the General Services web page. That department no longer exists and the page is not current.

**Recommendation:** The EORC “Frequently Asked Questions” section should be updated to directly link to the City Procurement page.

We are pleased that the EORC administration agrees with many of our audit recommendations.

Sincerely,

Michael E. Lamb  
City Controller

## INTRODUCTION

This performance audit of the Equal Opportunity Review Commission was conducted pursuant to section 404(c) of the Pittsburgh Home Rule Charter. This audit assesses the effectiveness of the EORC in assisting minority and women business enterprises and Commission compliance with City Code requirements.

## OVERVIEW

### Equal Opportunity Commission History

The Equal Opportunity Review Commission (EORC) assists Minority Business Enterprise and Women's Business Enterprise (MBE/WBE) in the pursuit of fair contracting opportunities.

Home Rule Charter Chapter §516 mandated the formation of the EORC: "Council shall, by ordinance, designate and establish an Equal Opportunity Review Commission, enumerating its powers and duties, to review and approve construction contracts and contractors' compliance with city policies regarding minority and women participation."

The EORC was originally known as the Minority and Women's Business Enterprise Committee (M/WBEC) and was established by Mayor Caligiuri's Executive Order in 1980. Committee structure and duties were established under the City Code Chapter §161.18 & 19 and included minority set asides for developers and contractors.

The Commission was based on the recommendations of the November 1st, 1980 "*Minority Business Enterprise Report*" chaired by City Planning Director Reginald Young, assisted by City, City Authority and Human Relation Commission members..

According to the "*Minority and Women Business Development Program, City of Pittsburgh, Pennsylvania, History*" prepared by the EORC:

"In 1989, the US Supreme Court decided *City of Richmond v. J.A. Croson Co.* (488 U.S. 469 – 1989), which called into question set aside programs unless there is a legal showing of past or present discrimination. Even then, the government must first try race-neutral alternatives.

"Mayor (Sophie) Masloff's Executive Order of November 19, 1990 was in response. It included race-neutral measures. The objective was to allow for review without adding significant delay time to the contracting process, with the intent to expand or modify workable procedures. Lawsuits and threats of lawsuits also caused the procedures to be revised over time."

The M/WBEC was renamed the Equal Opportunity Review Commission and had its duties updated by Ordinance 18 of 2000, enacted as City Code Chapter §161.33. Currently, the EORC structure and duties are described under Ordinance 21 of 2004 as City Code Chapter §177A.

## EORC Board and Purpose

“The purpose and authority of the Equal Opportunity Review Commission,” as stated in the City Code, “shall be to review and approve all applicable construction contracts for compliance with Chapter 161 of the Pittsburgh Code of Ordinances, as well as contractor's compliance with City of Pittsburgh's policies regarding minority and women business enterprise opportunities, and employment opportunities for minorities and women in municipal government and covered construction and other contracts with the City of Pittsburgh and its Authorities.”

The EORC is an 11 member body appointed by the Mayor in accordance with City Code Chapter §177A.03. Six original (6) members serve two-year terms and five (5) members serve four-year terms, with the terms determined by lot. Board membership is voluntary and members serve without compensation except for reimbursement of approved expenses.

The Commission reviews professional service contracts over \$25,000 and construction & development contracts over \$200,000 for MBE/WBE participation. The Commission also reviews construction and development and professional service contracts originating from the City of Pittsburgh-related Authorities.

The board meets monthly to act on an agenda prepared by the EORC staff. City MBE/WBE awards for services, commodities, emergency services, and repairs that do not fall under the Commission’s purview are reviewed by the EORC staff. Service contracts valued at \$2,000 or more are included in the review.

The Professional Services Review Committee consists of the City Solicitor, the Mayor’s Budget Office, and the Manager of the Equal Opportunity Review Commission. All professional service contracts that are valued under \$25,000 are reviewed by this group.

## Duties of the Equal Opportunity Review Commission

According to City Code Chapter § 177A.04, the following duties are to be performed by the Equal Opportunity Review Commission:

- The EORC shall gather all information necessary to make a determination of the adequacy of an apparent low bidder's plan to attain the residency requirements and equal employment opportunity goals established in this Chapter.
- The EORC will be responsible for monitoring compliance with the provisions of this Chapter and the contract provisions.
- The EORC shall promulgate regulations to permit the coordination of purchasing between the City and County consistent with the spirit and intent of this Chapter.

- The EORC shall, no later than thirty (30) days following the close of each quarter, submit a quarterly report to Council, the Mayor and the Controller which details the extent to which minority-owned and women-owned businesses have been participants in the sale of goods and services to the City and its Authorities along with other information required by City Code for the preceding quarter.
- The EORC shall, by March 15th of each year, submit an annual report to Council, the Mayor and the Controller which details the extent to which minority-owned and women-owned businesses have been participants in the sale of goods and services to the City for the preceding year and other information required by City Code.
- The EORC shall update its minority-owned and women-owned business disparity studies in 2008, 2012 and every five (5) years thereafter, in accordance with established United States Supreme Court precedent.

#### EORC Office Staffing

The full time staff of the EORC in 2010-11 consisted of five employees: Manager, Administrator, Contract Review Specialist, Outreach & Market Analyst Specialist and Audit & Inspection Specialist. The final amended EORC budgets for the audit period were \$276,044 in 2011 and \$264,554 in 2010.

## **OBJECTIVES**

1. To assess Equal Opportunity Review Commission (EORC) compliance with statutory duties.
2. To assess EORC effectiveness in assisting minority/female businesses to compete for City and authority contracts.
3. To determine public awareness of EORC services.
4. To determine the effectiveness of the EORC in documenting and enforcing M/WBE participation in the City contract process.
5. To make recommendations for improvement.

## **SCOPE**

The Equal Opportunity Review Commission performance audit scope is limited to the examination of EORC activities undertaken between January 1<sup>st</sup>, 2010 and December 31<sup>st</sup>, 2011.

## **METHODOLOGY**

The auditors conducted several interviews with the members of the EORC staff and attended a Commission meeting. The EORC contract process was determined and flowcharted.

The City Code, the City budget document and the City Controller's "General Fund Budget To Actual" report were examined. Also examined were the EORC's Annual and Quarterly Reports, Diversity Report, Sheltered Market Report, commission meeting agendas, PittMAPS, visitor's logs and website, along with the Federal Highway Administration's appendix regarding good faith determination.

Testing was performed to determine the value of City contracts through both the On-Base data system and the Open Book contract archive.

The auditors also examined M/WBE programs operated in other cities to aid in establishing and evaluating performance benchmarks.

## FINDINGS AND RECOMMENDATIONS

### M/WBE Certification

The EORC recognizes all government certifications and certain others granted by non-governmental councils for review purposes. The Commission does not certify businesses itself, but relies primarily on Allegheny County (“County”) and state certification lists. Both are available on line for EORC use as needed. EORC has a self-created data base of several hundred M/WBE businesses available for its internal use.

**Finding:** As a matter of consistency and cost efficiency, County and state governments are traditionally the lead units for M/WBE certification. That model is followed by the City EORC.

### Contract Review

Part of the City definition of a lowest responsible bidder is the requirement that the bidder has “Demonstrated a commitment to the ideal of equal opportunity for all citizens in its own employment practices as well as its use of vendors and subcontractors.” [City Code Chapter §161.02 (c) (2)].

The determination of a contractor or vendor’s good faith effort to meet minority, women, and residency goals is not cut-and-dried, but involves the weighing of several factors. The EORC uses a good faith checklist included in the Federal Highway Administration regulations (49 CFR 23 Appendix A “Guidance Concerning Good Faith Efforts”) and City Code Chapter §177A.06 (“Determination of Good Faith Efforts”) for residency goals.

Every City generated bid package requires vendors:

- To actively solicit the participation of minorities and women in all work to be performed as part of this contract. Bidder shall submit with his or her bid the MBE/WBE Solicitation and Commitment Form which shall detail bidders’ efforts and plans regarding the solicitation and utilization of minority and women's businesses in the work to be performed under this contract, and
- To complete the included Affirmative Action Provisions form.

**Finding:** Contract bids will not be accepted the by department that issued the bid request unless the Provisions and the MBE/WBE Solicitation and Commitment Form are completed and returned with the bid package.

The MBE/WBE plans submitted for City and authority construction contracts valued at \$200,000+ and professional service contracts valued at \$25,000+ are reviewed by EORC board members. City contracts valued at \$10,000+ but under the Commission threshold are reviewed by the EORC office staff. Smaller authority-generated contracts are reviewed in-house by authority staff.

**Finding:** City contracts are delivered to the EORC for review and approval before the Law Department will sign off on the contract.

Commission Meetings

EORC board meetings are held monthly to review larger construction and professional services contracts awarded by the City and its authorities. The staff prepares an agenda (distributed to all in attendance) and a projected M/WBE Participation Plan that is distributed to the board members prior to the meeting.

**Finding:** As of 12/31/2011, the EORC Board has two vacancies.

**RECOMMENDATION NO. 1:**

The Mayor’s Office should fill the vacancies that exist on the EORC.

The contractor and/or a representative from the contracting department or authority are called to the table, and the project is discussed regarding its proposed compliance with City M/WBE goals.

**Table #1 - 2010 Contract Reviews by EORC Board**

	2010						
City of Pittsburgh	Contract Value	MBE Share	WBE Share	MBE %	WBE %	M/WBE %	Reviews
Commodities	\$ 1,917,881.03	\$ 85,504.00	\$ 575.00	4.46%	0.03%	4.49%	26
Waivers	\$ 6,996,249.68	\$ -	\$ -	0.00%	0.00%	0.00%	70
Grants	\$ 7,013,291.00	\$ -	\$ -	0.00%	0.00%	0.00%	22
Services/Constr.	\$ 63,143,940.42	\$ 6,784,286.75	\$ 4,927,539.65	10.74%	7.80%	18.55%	59
<b>Total City</b>	<b>\$ 79,071,362.13</b>	<b>\$ 6,869,790.75</b>	<b>\$ 4,928,114.65</b>	<b>8.69%</b>	<b>6.23%</b>	<b>14.92%</b>	<b>177</b>
HACP Contracts	\$ 37,974,868.00	\$ 6,837,055.44	\$ 8,624,317.36	18.00%	22.71%	40.71%	39
PWSA Contracts	\$ 17,906,184.40	\$ 2,647,731.62	\$ 3,956,774.34	14.79%	22.10%	36.88%	14
URA Contracts	\$ 51,778,821.66	\$ 10,912,624.00	\$ 4,385,624.60	21.08%	8.47%	29.55%	18
SEA Contracts	\$ 50,574,127.77	\$ 2,841,406.00	\$ 7,523,490.00	5.62%	14.88%	20.49%	6
Parking Contracts	\$ 35,085,465.56	\$ 1,227,145.29	\$ 4,361,736.27	3.50%	12.43%	15.93%	13
<b>Total Authority</b>	<b>\$ 193,319,467.39</b>	<b>\$ 24,465,962.35</b>	<b>\$ 28,851,942.57</b>	<b>12.66%</b>	<b>14.92%</b>	<b>27.58%</b>	<b>90</b>
<b>Total EORC</b>	<b>\$ 272,390,829.52</b>	<b>\$ 31,335,753.10</b>	<b>\$ 33,780,057.22</b>	<b>11.50%</b>	<b>12.40%</b>	<b>23.91%</b>	<b>267</b>

*Data from the EORC 2010 Annual Report.*

**Table #2 - 2011 Contract Reviews by EORC Board**

City of Pittsburgh	2011						Reviews
	Contract Value	MBE Share	WBE Share	MBE %	WBE %	M/WBE %	
Commodities	\$ 898,002.40	\$ 44,379.40	\$ 23,422.40	4.94%	2.61%	7.55%	31
Waivers	\$ 4,410,216.63	\$ -	\$ -	0.00%	0.00%	0.00%	64
Grants	\$ 4,471,275.77	\$ -	\$ -	0.00%	0.00%	0.00%	26
Services/Constr.	\$ 18,175,286.81	\$ 2,436,807.96	\$ 2,349,087.77	13.41%	12.92%	26.33%	63
<b>Total City</b>	<b>\$ 27,954,781.61</b>	<b>\$ 2,481,187.36</b>	<b>\$ 2,372,510.17</b>	<b>8.88%</b>	<b>8.49%</b>	<b>17.37%</b>	<b>184</b>
HACP Contracts	\$ 81,317,454.80	\$ 12,427,727.00	\$ 15,415,266.97	15.28%	18.96%	34.24%	37
PWSA Contracts	\$ 14,913,066.94	\$ 3,145,401.81	\$ 1,189,917.21	21.09%	7.98%	29.07%	12
URA Contracts	\$ 74,863,101.05	\$ 16,740,097.50	\$ 13,329,934.14	22.36%	17.81%	40.17%	17
SEA Contracts	\$ 4,953,937.00	\$ 929,750.00	\$ 982,216.00	18.77%	19.83%	38.59%	9
Parking Contracts	\$ 768,114.20	\$ 257,481.92	\$ 10,964.70	33.52%	1.43%	34.95%	12
<b>Total Authorities</b>	<b>\$ 176,815,673.99</b>	<b>\$ 33,500,458.23</b>	<b>\$ 30,928,299.02</b>	<b>18.95%</b>	<b>17.49%</b>	<b>36.44%</b>	<b>87</b>
<b>Total EORC</b>	<b>\$ 204,770,455.60</b>	<b>\$ 35,981,645.59</b>	<b>\$ 33,300,809.19</b>	<b>17.57%</b>	<b>16.26%</b>	<b>33.83%</b>	<b>271</b>

*Data from the EORC 2011 Annual Report.*

**Finding:** City contracts represented \$107,026,143.74 of the overall \$477,161,285.12 worth of contracts that were reviewed during 2010-11 by the EORC. City contracts reviewed represented just 22.4% of the total.

**Finding:** City Authorities provided 78% of the total contract value examined by the EORC Board in 2010-11.

**Finding:** The figures presented to the EORC Board are preliminary and represent only the projected value of the contract and its M/WBE participation. The actual final cost of the contract is not presented to the Board.

**Finding:** Final M/WBE participation rate will be affected by the actual contract costs, that include such variables such as scope and work order changes, potentially different subcontractors, term extensions, etc.

The ten largest City contracts that required EORC board approval in 2010-11 were initially valued at \$45,370,147. As of 12/31/2011, the contract value, according to Controller Office records, is \$52,182,785, an increase of 15%. This increase may also trigger an adjustment the M/WBE participation goal.

**Finding:** The EORC Board approves only the preliminary contract value and M/WBE participation plan and does not track contract changes and/or contractor progress in fulfilling its minority plans.

## **RECOMMENDATION NO. 2:**

The EORC Board should be presented with periodic progress reports of the major contracts it has approved so it can determine compliance with the approved M/WBE plan.

### **Service, Commodity, Professional Service and Other City Contracts**

City “B” (Service) contracts utilize a “not to exceed” figure for services, repairs, and various scattered site public work projects such as electrical repairs, street paving, street lighting and curb cuts. There is no minimal work guarantee, as “B” Contracts are not project-specific and are not required to be used. Because of the cost uncertainty, the EORC staff reviews these contracts and does not present them to the Board for review.

**Finding:** Seven “B” contracts exceeded \$1,000,000 during the audit period and several more exceeded the \$200,000 EORC benchmark for board review.

**Finding:** Other “B” contracts received extensions that added to their overall value. Many of these contracts have a past history of equaling or exceeding the \$200,000 requirement for EORC Board approval.

## **RECOMMENDATION NO. 3:**

While impossible to predict the exact cost of a service contract, “B” contracts that can be reasonably expected to equal or exceed \$200,000 should be presented to the EORC Board for review.

The EORC also reviews City Professional Service and Commodity contracts. The majority of Professional Services contracts during the audit period were bid by the City while nearly all Commodity contracts were awarded through the County. Because the City use of County contracts is increasing, the number of City “B” contracts reviewed dropped from 20 to 12 contracts from 2010 to 2011.

**Finding:** The County is increasingly becoming the awarding agency for Commodity and “B” contracts used by the City. As the contracts do not include the City M/WBE goals but those of the County, they are not enforceable by the EORC.

**Finding:** Most construction rehabilitation and repair contracts entered into by the City are either “B” contracts for various repairs or major projects funded by the State or Federal government.

**Finding:** While the EORC staff reviews a variety of different types of City contracts, the Board is increasingly limited to reviewing only City Professional Services contracts. In 2010, 18 of the 28 City contracts the Board reviewed were for Professional Services. In 2012, 8 of 9 City contract reviews were for Professional Services. (The remaining contracts were for administrative services to the City and one construction project.)

Some contracts are waived entirely from EORC review. These include contracts awarded to sole/unique suppliers, smaller valued contracts that fall under the \$10,000 threshold and contracts with non-profit service providers.

### City Bank Depositories

In the EORC 2010 Annual Report, City bank depository transactions were not included as part of the contract review process. Depository transactions were included in the 2011 Annual report, with a recorded value of \$82,306,557.09, along with “Non-Related” projects, which were City deposits of \$6,940,000.

The EORC included the financial transaction amounts to illustrate their value as part of its effort to have the City do business with a minority financial institution.

**Finding:** Under City Code Chapter § 221.03 (e) (5), the Department of Finance is the evaluating unit for City depositories.

### **RECOMMENDATION NO. 4:**

The EORC is not the reviewing agent for depository contracts and the evaluation of those funds should be performed by the Finance Department as specified by the City Code. Bank depository contracts should not be part of the EORC Annual Report.

The depository transactions were not included on Table #2 “2011 Contracts Reviewed by the EORC” on page nine as the figures would bias the year-to-year comparisons if included.

### Differences in City - County M/WBE Contract Requirements

In 2004, Pittsburgh was authorized to “piggyback” on Allegheny County contracts under City Code Chapter §161 for contracts that are awarded by the County, but used by both units. The contracts used by the County are monitored by the Department of Minority, Women and Disadvantaged Business Enterprise, while those used by the City are monitored by the EORC.

**Finding:** The two governmental units have different M/WBE goals, but only Allegheny County goals are included with the County bid package. This was done to reduce bidder confusion and was agreed to by City procurement officers.

**Finding:** The County goals are 13% MBE and 2% WBE compared to 18% MBE and 7% WBE for the City. The MBE targets reflect different non-white populations, as reported by the 2010 US Census Bureau, of 18.5% in Allegheny County and 34% in Pittsburgh. Allegheny County businesses are 9.5% minority-owned, while Pittsburgh MBEs represent 13.2% of its firms.

Allegheny County and Pittsburgh have female populations of slightly over 50%. WBEs represent 28% of local business ownership in both the City and County, also according to the Census Bureau.

A conflict may arise when a County contract is applied to City purchases and services. The contractor is sometimes unaware of City M/WBE goals, which are more stringent than those of the County.

**Finding:** The Allegheny County contracts utilized by Pittsburgh do not include City M/WBE goals, and that sometimes leads to vendor misunderstanding of City contract targets.

**RECOMMENDATION NO. 5:**

The City and County should cooperatively prepare a brief non-binding rider to Allegheny County bid packages and proposals to make vendors aware of Pittsburgh M/WBE goals.

City Authorities

The Urban Redevelopment Authority (URA), the Housing Authority of the City of Pittsburgh (HACP), the Pittsburgh Water & Sewer Authority (PWSA), the Parking Authority (PPA) and the Sports and Exhibition Authority (SEA) participate in the City EORC program. Major authority projects are brought before the EORC Board for review.

The Authorities have formal approval from their boards to join with the City to encourage Equal Opportunity goals. The exception is the SEA, which participates voluntarily. The Authorities all have internal Equal Opportunity officers/staff to monitor their contracts. These staffs perform much the same duties as the City EORC Office.

Authority contracts provided the major financial share (78%) of projects reviewed by the EORC Board in 2010-11 because of the several large construction projects they sponsored. (See Tables #1 & #2 titled “Contract Reviews By EORC” on pages eight -8- and nine -9-).

Recommendations #8 & #9 under the “M/WBE Contract Monitoring and Compliance” section on page fourteen -14- apply to the Authorities.

State and Federal Funded Contracts

State and Federally funded contracts, commonly used for bridge and heavy highway construction, are rarely reviewed by EORC. These contracts are usually administered through the Pennsylvania Department of Transportation (PennDOT) or the Federal Highway Administration (FHA).

PennDot and FHA interact with the City Public Works Department and claim contractual jurisdiction over the City. The contracts generally require that the City provide matching funds of a predetermined amount dedicated to the particular project.

During the audit period, the McArdle Roadway Viaduct, Bates Street and Wenzell Avenue projects received \$13,289,295 in PennDOT and FHA funding, but were not reviewed by the EORC.

Community Development Block Grant (CDBG) awards are not reviewed by the EORC, because the funds are under federal jurisdiction and are often used by non-profit organizations. State and Federal grant money other than CDBG is also used to operate certain programs, and the grant contracts for those programs are prepared under federal guidelines.

The City also utilizes State-bid contracts for services and commodities through the Pennsylvania Department of General Services “COSTARS” Cooperative Purchasing Program. These contracts are not subject to EORC review.

**Finding:** State and federal funded City contracts often require some level of City funding, yet are not reviewed by the EORC for M/WBE plans and compliance.

#### **RECOMMENDATION NO. 6:**

The City Law Department should determine what, if any, legal right the City has to enforce its M/WBE goals on Federal and State funded or awarded contracts utilized by the City.

#### **M/WBE Contract Monitoring and Compliance**

After the EORC determines that there is a viable M/WBE plan in place or grants a waiver, the City contract approval process begins. The Commission is charged by City Code Chapter § 177A.04 (a) with monitoring the performance of the contract.

Once awarded, the contractor is to supply the EORC with a work schedule and monthly M/WBE Utilization Form, which reports M/WBE subcontractors used on the job and the amount they received, supported by copies of invoices and cancelled checks.

The EORC conducts occasional field inspections and audits to ensure that City contractors are in compliance with MBE/WBE commitments. Some contractors are randomly selected while others are the result of complaints received by the EORC.

**Finding:** Contractor compliance with the timely submission of M/WBE Utilization Forms that track M/WBE participation is inconsistent.

**RECOMMENDATION NO. 7:**

The EORC staff should be more proactive in retrieving and entering the M/WBE Utilization Form data on the into the contract files to insure that the information is recorded and available in a timely manner.

The Authorities that participate in the City EORC program provide the EROC staff with periodic hard-copy reports prepared by authority Equal Opportunity staff.

**Finding:** Authorities that participate in the City EORC program sometimes do not submit EORC reports in a timely manner.

**RECOMMENDATION NO. 8:**

The EORC staff should be more proactive in retrieving and entering participating Authority M/WBE information in its contract files to insure that the information is recorded and available in a timely manner.

The EORC conducts independent inspections and audits of construction sites and contracts, as does the Equal Opportunity staff of the Authorities. The Public Works department, the Planning department and the Controller’s Office also audit contracts and perform on-site inspections.

**Finding:** EORC staff, Authority Equal Opportunity staff, personnel from City Public Works, Planning and the Controller’s Office perform construction site monitoring for compliance with various regulations.

**RECOMMENDATION NO. 9:**

The EORC auditors should form a collaborative effort with the other City departments and Authorities to inspect various job sites and contracts. Joint inspection visits, regularly scheduled meetings or other actions would help reduce duplicity and foster inter and intra-governmental cooperation.

If a non-compliance issue arises, the EORC and contractor will meet in an effort to resolve the problem. If the problem cannot be resolved, the EORC may issue a three day “Alert Notice” to require compliance, have the prime contractor replace a non-complying subcontractor, or use one of the sanctions specified in City Code Chapter § 177A.07. Sanctions include withholding payments, litigation and disbarment from City work for up to three years. The EORC has not had to use any of these sanctions during the audit period.

**Finding:** The EORC has had meetings with vendors and contractors to resolve compliance issues, but during the audit period have not applied any sanctions. EORC personnel believe that the threat of exercising the sanctions is often sufficient to establish compliance.

## EORC Annual and Quarterly Reports

The EORC is required by City Code Chapter § 177A.04 (c and d) to produce three quarterly reports and one annual report.

## Compliance with Code Reporting Requirements

**Finding:** The EORC annual report has been issued on a timely basis during the past two years

The EORC requests monthly/quarterly M/WBE Participation reports by City contractors and Authorities, and notification when a contract is closing. But the EORC reports use the financial data projected at the beginning of a contract award and not the contract final cost.

Often, contracts are entered for multi-year periods and extensions/work changes are common, so the initial financial projections are sometimes inaccurate.

**Finding:** The EORC Annual Reports present the initial contract fiscal information and M/WBE projections and do not comply with City Code reporting requirements. City Code Chapter § 177A.04 (d) requires EORC to submit “an annual report *which details the extent to which minority-owned and women-owned business have been participants* in the sale of goods and services to the City in the preceding year”. The wording “extent to which” requires a reporting of actual, not projected, M/WBE participation in City contracts.

### **RECOMMENDATION NO. 10:**

The EORC Annual report should include a section that includes not only contracts approved but also the payments made during the life of the contract, showing both the projected and the actual financial information for comparative purposes.

According to the EORC Manager, the quarterly reports and contract closing figures are not always reported to the EORC on a timely basis by City departments and Authorities. The process is based on hard-copy reports, making final figures difficult to collect and enter in a timely manner. The City, County and Authority financial systems are not compatible.

**Finding:** The EORC and its outside participants do not share an electronic financial system. This often prevents the collecting and collating of data from City departments, agencies and authorities in a timely manner.

### **RECOMMENDATION NO. 11:**

Until such time as the City, County and Authorities share the same financial software, the EORC should work with its City Information Systems liaison to develop a shared software application such as Google shared docs or some other secure application to allow the timely flow of information and reduce duplicative entry tasks.

**Finding:** City Code Chapter § 177A.04 (c and d) also specifies that the reports be submitted to Council, the Mayor, and the Controller. The current distribution list consists of City and authority directors.

**RECOMMENDATION NO. 12:**

The EORC should include Council, the Mayor, and Controller on its quarterly and annual report distribution list, as mandated by City Code.

**Finding:** The EORC Quarterly and Annual reports are issued in hard-copy form. The EORC has an electronic version it uses in-house.

**RECOMMENDATION NO. 13:**

The EORC reports should be prepared and distributed primarily in electronic form. That would also allow the reports to be shared over the web with the public, and the use of a Portable Document Format would insure security.

City Disparity Report

**Finding:** No Pittsburgh disparity report, which examines M/WBE participation and issues, has been released since the Mason-Tillman Associates report published in September of 2000.

The Mason Tillman report, according to “Barriers Facing Minority-and Women-Owned Businesses in Pennsylvania” prepared by the Pennsylvania Advisory Committee to The U.S. Commission on Civil Rights (August of 2002), showed that minority-owned businesses did not receive any construction contracts over \$250,000 from the city of Pittsburgh. Additionally, firms owned by white males received over 95 percent of the professional services contract dollars. The report also described general discriminatory conditions and barriers for M/WBEs that were encountered from prime contractors and authorities, including the use of front companies.

The report noted that the city lacked a certification process, business enterprise goals and strictly enforced compliance, which contributed to the existence of a significant number of front companies. The report also noted that the City practice of bundling small projects under \$25,000 into a single large contract called a “B” contract reduced the contracting opportunities available to small businesses

Mason Tillman recommended that agencies (1) establish a certification program and compliance monitoring, (2) track subcontractor awards and payments, (3) create sheltered market programs for local businesses and M/WBEs, (4) reduce the size of contracts for goods and services, (5) publish a list of contract opportunities in local media regularly and notify certified M/WBEs about upcoming opportunities, and (6) unbundle small construction contracts.

The EORC has been unable to attract funding to issue a follow-up report, which it estimates will cost \$300,000. The 1999 report cost an estimated \$500,000, and was a joint effort of school board, Authorities and City.

The importance of the report is that the EORC cannot put into place quotas or set-asides without a completed disparity study showing the need for those remedies according to the Supreme Court decision *City of Richmond, VA vs. J.A. Croson Co.* 488 U.S. 469 (1989).

(Richmond had a 30% minority set-aside requirement in its contracts, based on local, state and national statistical trends. In a 6-to-3 decision, the Court held that generalized assertions of past racial discrimination could not justify rigid racial quotas, which it considered to be a violation of the equal protection clause of the Fourteenth Amendment.)

Actual quotas, as opposed to goals, must be narrowly tailored to the local market and supported by a diversity study to pass future scrutiny of the court.

**Finding:** According to City Code Chapter § 177A.04 (e) “The EORC shall update its minority-owned and women-owned business disparity study(ies), pursuant to established Supreme Court precedent at *City of Richmond, VA vs. J.A. Croson Co.* 488 U.S. 469 (1989), in 2008, 2012 and every five (5) years thereafter.” It has been over a decade since the City has issued a Diversity Report on the status of its M/WBE participation.

#### **RECOMMENDATION NO. 14:**

The Mayor’s Office and City Council should fund a Diversity Report, perhaps in conjunction with other government units and agencies, to update the City M/WBE status in accordance with the City Code.

#### **Residency Quota Requirements**

**Finding:** The EORC does not enforce residency quota requirements in construction contracts.

Residency quotas for construction contracts were introduced in 2000 after the “Pittsburgh Works” referendum was passed. Afterward, City Code Chapter § 161.33 (b) (1), required a 35% City resident participation rate for contracts greater than \$200,000.

As part of City Code Chapter § 177A.04, the EORC was charged with verifying that the residency requirement was met. However, upon the advice of the then-City Solicitor, who was concerned by possible legal ramifications regarding the regulations, the EORC has never actively enforced the residency requirement.

It should be noted that under Chapter 188 of the Codified Ordinances of the City of Cleveland (known as the Fannie M. Lewis Cleveland Resident Employment Law), 20% of all work hours spent on construction contracts with a value over \$100,000 must be performed by Cleveland residents. Additionally, there is a 4% Low Income Persons’ objective. The law became effective in 2003, and withstood legal challenge in 2007.

**Finding:** The City Code requires a 35% City resident participation rate in construction contracts valued over \$200,000, which may be a legally unenforceable quota.

**RECOMMENDATION NO. 15:**

The Law Department should issue a definitive opinion regarding the legality of the City Residency Quota Requirement for construction contracts.

Disadvantaged Business Enterprise (DBE)

The City does not recognize a Disadvantaged Business Enterprise (DBE) status, defined by the US Department of Transportation as “a small, for-profit business concern that is at least 51% owned and controlled by socially and economically disadvantaged individuals.”

If the City in the future chooses to recognize DBEs as a separate category, DBE businesses are certified and listed by both the County and State

**Finding:** In the majority of cases, M/WBE companies recognized by the EORC also meet the qualifications of a DBE. Any DBE company that desires EORC assistance should qualify under either M/WBE or small business status.

Veteran Owned Small Business

City Code Chapter § 161.40 recognizes and defines the category of Veteran-owned small businesses. The City Code establishes a goal of 5% participation along with several assistance guidelines, and places it under the jurisdiction of the Finance Department.

**Finding:** The duties of the Finance Department in regards to assisting Veteran-owned small businesses are similar to those of the EORC.

**RECOMMENDATION NO. 16:**

The City Administration should consider transferring the Veteran-owned small business assistance program from the Finance department to the EORC, which already has a strong background in procurement assistance and project monitoring.

Sheltered Market Program

In 2011, Mason-Tillman Associates completed a “Sheltered Market Program” study. The report designed a Sheltered Market Program to maximize the award of contracts valued at \$200,000 and under to minority, woman-owned, and other small business enterprises.

The Sheltered Market program was not in place during the audit period, and the EORC is still involved in working on pre-launch issues.

## Small Business Development

In 2010, the EORC informally added small business development to its mission. In addition to the “Small Business Resource Guide,” the staff also created a “Small Business Startup Information” booklet along with “The Business Plan Booklet” and “Resource Guide” to assist small and developing business enterprises.

The staff is also available to meet with entrepreneurs in the office to answer questions in person, to provide business planning assistance and to refer small businesses to other sources of assistance.

**Finding:** The EORC staff’s institutional knowledge overlaps into the small business category, and its assistance to small business enterprises appears to be a natural progression in services.

### **RECOMMENDATION NO. 17:**

If the City wishes to establish a more robust in-house small business point of contact, the EORC should be considered for that role.

## City Outreach and Support To Attain MBE/WBE Goals

The EORC staff keeps an in-house list of several hundred M/WBE businesses and notifies them of City RFPs and bids. The EORC also has a list of businesses certified at the county, state and federal levels to use if the needed expertise is not available at the City level. With these lists, the total number of M/WBE firms available to the EORC totals over 4,000.

The EORC is notified of construction bids through the City web site and advertised bids (According to City Code Chapter § 161.03, competitive contracts valued at \$30,000+ must be advertised). The staff initiates e-mail communication with known M/WBE firms to make them aware of the bid.

The EORC participates in outreach programs such as training and technical assistance workshops/seminars to assist companies seeking government business opportunities. Some of the events they participate in annually are:

- African American Chamber Luncheon
- Government Assistance Contract Agency annual seminar
- Western Pa Minority Purchasing Council Annual Trades Fair
- Allegheny County MWDBE contract outreach seminar
- Pittsburgh Public Schools annual contract Seminar
- EORC City Departmental contracting seminar for City Departments
- MBE/WBE monthly Governmental Committee Meeting
- Monthly 365DiverCity Task Force Meeting and the Diversity Business Resource Center Annual Net Working Seminar
- A “For the People” Insurance Board Meeting to promote interest in the Insurance business
- Ozanam Cultural Center Annual Banquet

The staff also works with clients one-on-one to provide business assistance as requested.

### EORC Web Presence

Much of the information and technical assistance that the EORC offers is available on its City web site to provide easy access to M/WBE businesses. The “Small Business Resource Guide” is also available on-line.

**Finding:** The EORC has compiled a list of qualified M/WBE vendors. This list is useful not only to the Commission for compliance purposes, but should also be useful to prime contractors seeking M/WBE qualified subcontractors and suppliers.

### **RECOMMENDATION NO. 18:**

A list of qualified M/WBE businesses, or at least links to them, should be included in the EORC web site. While the City does not certify businesses, the Allegheny County and Pennsylvania M/WBE certified businesses should be linked from the EORC site.

**Finding:** The EORC publishes quarterly and annual reports, along with periodic studies on Diversity and Sheltered Markets. These reports are available as hard copy, but are not available on the EORC web site or electronically distributed. The EORC also has several business guides available in print but not on-line.

### **RECOMMENDATION NO. 19:**

The EORC should contact its City Information Systems (CIS) liaison to have its reports and guides made available on its web site in an accessible and secure form such as Portable Document Format (PDF).

**Finding:** The EORC web site section devoted to “Frequently Asked Questions” is linked to the General Services web page. That department no longer exists and the page is not current. The visitor is then referred to the Finance Department’s Procurement FAQ.

### **RECOMMENDATION NO. 20:**

The EORC “Frequently Asked Questions” section should be updated to directly link to the City Procurement page.

### City Cable Television and Media Presence

The EORC is not only supposed to monitor M/WBE work, but tasked to actively seek vendors, service providers and contractors to help meet its participation goals. At one time, the City TV channel featured rotating shows involving the EORC along with City and Authority contracting opportunities. City Cable could also air contract bids over the City Channel as a public service.

**RECOMMENDATION NO. 21:**

In addition to the City TV opportunities, the EORC should have promotional films for seminar/workshop purposes along with 30-to-60 second film clips and sound tracks to use as Public Service Announcements (PSA).

**Finding:** The EORC utilized City Cable TV capabilities more fully in the past than it does currently.

**RECOMMENDATION NO. 22:**

The EORC and its CIS liaison should develop a media program to assist the mission of the EORC.