

**REVIEW OF CITY OF ROCHESTER CONTRACTS
ROCHESTER SCHOOLS MODERNIZATION PROGRAM CONTRACTORS
M/WBE UTILIZATION PROGRAM**

**Office of Public Integrity
Date: January 4, 2017**

I. EXECUTIVE SUMMARY

The Office of Public Integrity conducted a review of City of Rochester contracts comprised of vendors involved in a recent settlement with the New York State (NYS) Attorney General's Office. We noted the following during our review:

- ◆ One of the four contracts reviewed indicated the contractor subcontracted with two M/WBE companies who provided supplies only. No work was performed by either of the subcontractors for this project.

II. BACKGROUND, OBJECTIVES AND SCOPE

A. Assignment

At the request of the Mayor's Office, the Office of Public Integrity conducted a review of contractors involved in the NYS Attorney General's investigation and the recent settlements related to the Rochester Schools Modernization Program (RSMP) and M/WBE utilization.

B. Background

In 2007, New York State enacted the Rochester School Facilities Modernization Program Act. As part of the Act, the Rochester Schools Modernization Program (RSMP), a three-phase \$1.2 billion program to rehabilitate deteriorating schools was established.

The NYS Attorney General's Office identified companies contracted to work on this project that listed M/WBE companies without their knowledge and using others as "pass throughs", paying mark-ups on supplies to the M/WBE's instead of hiring them to do the work on the project.

The New York State Attorney General's Office announced settlements with five contractors who submitted false reports for work they reported as completed by New York State certified minority and women owned business enterprises. The Mayor's Office requested OPI review City contracts with these same contractors to determine whether any similar practices may have occurred. Following is a list of five contractors and the number of contracts we identified between them and the City of Rochester:

<u>Contractor</u>	<u>No. of Contracts</u>
Mark Cerrone, Inc.	3
Hewitt Young	14
Concord Electric	11
M.A. Ferrauilo Plumbing and Heating	2
Manning Squires Hennig Co., Inc.	0

C. Objectives and Scope

The Office of Public Integrity received a request from City of Rochester Mayor Lovely Warren and City Councilperson Adam McFadden to review City of Rochester contracts with those contractors involved in a legal settlement with the New York State Attorney General's Office.

The Office of Public Integrity identified 30 contracts awarded to 4 of the 5 contractors between May 2010 and October 2016. We did not note any contracts with Manning Squires Hennig Co., Inc. We randomly selected one contract for each of these four vendors.

The following table shows which contracts were reviewed, the original awarded amount of each contract and the amounts paid.

<u>Contractor</u>	<u>Contract Number</u>	<u>Contract Award</u>	<u>Amount Paid</u>
Concord Electric	124863	\$131,000.00	\$149,782.12
Hewitt Young Electric	C00162	185,000.00	127,741.41
Mark Cerrone, Inc.	128856	238,800.00	235,123.16
M.A. Ferrauilo	115362	49,990.00	86,185.00

The objective of this review was to examine supporting documentation for each contract to determine if the contractors submitted false reports for M/WBE contract work.

For the selected contracts, OPI identified the M/WBE companies that the prime subcontractor listed for each of the projects. We requested invoices, checks and any supporting documentation from the subcontractors. All of the companies responded and submitted documents for our review. The subcontractors for each project are listed on the following page.

<u>Contract</u>	<u>Prime Contractor</u>	<u>Subcontractor</u>	<u>Amount Verified Paid to Subcontractor</u>
115362	M.A. Ferrauilo	WYCO Mechanical MGM Insulation	\$ 8,720.00 4,000.00
124863	Concord Electric	Crosby Brownlie Scott Construction	\$15,766.00 19,000.00
C00162	Hewitt Young Electric	Crosby Brownlie Cummings Construction	\$ 2,000.00 14,775.65
128856	Mark Cerrone, Inc.	Bills Topsoil OSO Inc. Samson Fuel MS Unlimited	\$16,280.00 2,165.40 774.65 1,513.26

Management is responsible for establishing and maintaining a system of internal accounting and administrative control. Fulfilling this responsibility requires estimates and judgments by management to assess the expected benefits and related costs of control procedures. The objectives of a system are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of accurate, informative reports that are fairly stated.

Because of inherent limitations in any system of internal accounting and administrative control, errors or irregularities may nevertheless occur and not be detected. Also, projection of any system evaluation to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with procedures may deteriorate.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The recommendations presented in this report include the more significant areas of potential improvement that came to our attention during the course of the examination, but do not include all possible improvements that a more extensive review might develop.

III. RESULTS OF THE REVIEW

The results of this review indicate that there are weaknesses in the M/WBE compliance.

A. "Pass Through" M/WBE Subcontractors

Of the four contracts examined OPI noted Contract 128856, with Mark Cerrone Inc., revealed two M/WBE companies, OSO and MS Unlimited, were used as "pass throughs" for the purchase of supplies for a total of \$3,678.06. Purchase orders indicate the supplies were ordered by Mark Cerrone Inc. and billed to OSO. OSO charged a 10% markup on the sales. MS Unlimited provided OPI with invoices and payment receipts solely for supplies.

The City's M/WBE utilization requirement states that contracts solely for materials and supplies do not count toward the M/WBE utilization goal. In addition, the M/WBE sub-contractor signed an affidavit indicating they will not serve solely as a supplier to another contractor, nor serve as a mere conduit for materials procured through other suppliers.

In accordance with the City's Standard Construction Contract Manual M/WBE requirements, "For any sub-contract that requires materials and/or supplies as part of the contract, the M/WBE sub-contractor must provide a service of installation, connection, set-up, mounting, assembly, construction, erection, raising and/or building using product or material supplied. The M/WBE sub-contract cannot be reduced to merely providing or passing along materials and/or supplies. If an M/WBE sub-contract becomes primarily a materials and/or supplies contract, then the sub-contract agreement between prime contractor and the M/WBE shall no longer be considered a bona fide M/WBE sub-contract that can count towards fulfillment of the M/WBE utilization goals of this contract."

◆ Recommendation

The Bureau of Purchasing should closely monitor compliance of the utilization plan. Vendors who provide materials and supplies only should not be included toward fulfilling M/WBE goals.

OPI noted noncompliance with M/WBE general requirements for each of the four contractors examined. However, for the objective of this review, it appears that M/WBE's may have been used as "pass throughs" for Mark Cerrone, Inc. Further inquiry including interviews with the prime and or subcontractors would be necessary to conclude our initial findings.

Although the remaining three companies are not in full compliance with M/WBE requirements, we did not identify any "pass throughs".

OPI is currently conducting a thorough review of the M/WBE program to address all of the program requirements.