

REVIEW OF CITYWIDE WOMEN AND MINORITY BUSINESS ENTERPRISE
(M/WBE) PROGRAM

Office of Public Integrity
Date: February 12, 2018

I. EXECUTIVE SUMMARY

In this review, the Office of Public Integrity (OPI) examined the City of Rochester's compliance with local and state Minority and Women-Owned Business Enterprise (M/WBE) requirements as well as the City's oversight of the program. We noted the following observations that require corrective action to improve program administration and strengthen relevant internal controls. This will ensure the M/WBE program is administered effectively and that participants receive its full benefit.

General:

- ◆ Even though some of the M/WBE ordinances have expired, the City has continued to administer the M/WBE program requirements listed in the ordinance for public works contracts and competitive bid contracts. Per the Law Department, the City can determine utilization goals for these types of contracts, however, the goals are voluntary and not mandatory.

Public Works Contracts:

OPI'S review examined a sample of contracts for compliance with M/WBE goals on a per contract basis and did not expand the testing to examine the M/WBE program for the City on an annual basis. The original ordinance included both per contract and annual goals.

- ◆ A City contractor evaded the M/WBE participation requirements by using an M/WBE sub-contractor as a "pass-through". Payments were routed through the M/WBE sub-contractor to achieve the appearance of M/WBE participation.
- ◆ The Bureau of Purchasing inadvertently approved the initial plan to authorize materials alone to count toward the M/WBE utilization goals. This is in violation of the City's M/WBE requirements. Furthermore, the Bureau of Purchasing erroneously included additional unallowable expenses to count toward the utilization goals.
- ◆ An M/WBE sub-contractor contracted 100% of their work to a non-M/WBE firm resulting in a utilization shortfall.
- ◆ OPI noted some contracts in which the M/WBE sub-contractor performed a small amount of labor on the contract but purchased large amounts of materials/supplies from a non-M/WBE sub-contractor.
- ◆ OPI noted some of the contracts examined did not meet the M/WBE utilization sub-group goals even though the City's M/WBE Officer granted a waiver or a reduction in the utilization goals for these contracts.

- ◆ OPI noted the majority of contracts examined increased in value due to change orders, however, their M/WBE utilization amounts did not proportionately increase.
- ◆ OPI noted revised “Schedule of M/WBE Participation” forms for contracts incurring a change of 5% or more were either missing or decreased the utilization amount instead of increasing them in proportion to the increase in the contract value.
- ◆ The City is unable to verify whether M/WBE participation expenses are valid because the City relies upon the prime contractor’s word for the amount expended by M/WBE sub-contractors without obtaining supporting documentation to substantiate the M/WBE participation.
- ◆ OPI noted several instances where supporting documentation that OPI obtained directly from the prime contractors and/or the M/WBE sub-contractors differed from the amount the prime contractors reported on the final progress reports at the completion of the project.
- ◆ OPI noted some preconstruction forms were missing from City records.
- ◆ The M/WBE utilization plans are too vague and do not provide a detailed description of services that the M/WBE’s will perform.
- ◆ The Bureau of Purchasing’s M/WBE summary reports do not accurately capture whether M/WBE utilization goals have been achieved. The report includes composite proposed contract amounts prior to the work being performed compared to the M/WBE goals instead of capturing actual M/WBE expenditures paid for all City department contracts to determine whether M/WBE goals were actually achieved.

Professional Service Agreements (PSA’s):

- ◆ OPI noted that the City does not have an adequate reconciliation process to verify whether M/WBE goals have been achieved for PSA’s.
- ◆ We noted the Department of Environmental Services (DES) M/WBE architectural/engineering services utilization report only captures proposed M/WBE goals and does not include actual expenditures paid to M/WBE vendors/consultants nor does it include change orders impacting the percentage of M/WBE utilization.
- ◆ OPI noted that both NYS certified vendors/consultants located outside the Rochester Metropolitan Statistical area and non-certified M/WBE

vendors/consultants were included in DES's M/WBE utilization reports for the PSA category Architectural/Engineering.

- ◆ The Bureau of Purchasing combines both certified and non-certified M/WBE vendors/consultants expenditures in calculating their annual utilization for personnel training/testing and advertising/media professional services.
- ◆ The City lacks a standardized process for vendors/consultants to request and obtain a City M/WBE waiver for architectural/engineering professional service agreements.
- ◆ City administration does not receive a status report on the M/WBE program indicating whether utilization goals were actually achieved for each category.
- ◆ For FY-2014 and FY-2015, OPI noted that the City fell short in meeting the City's annual PSA M/WBE utilization goals for all but one category.
- ◆ DES is communicating to awarded vendors/consultants that they are not required to strictly meet each of the goals, but rather participation in one or more of the goals would be acceptable.
- ◆ DES either did not meet any of the City's M/WBE sub-group utilization goals or only met one sub-group goal for the PSA's tested in the Architectural and Engineering category.
- ◆ The City's M/WBE Officer primarily oversees the Department of Environmental Services (DES) public works contracts for compliance with M/WBE participation goals and acts as a consultant for other City departments that administers contracts and PSA's.
- ◆ The M/WBE goals for public works contracts and PSA's have not been modified since 1994.

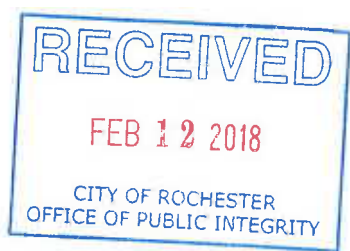
NYS Contracts:

- ◆ Of the seven NYS contracts examined, two received a waiver of the M/WBE utilization goals or an exemption and four did not meet their respective NYS goals in their entirety. Supporting documentation for one of the contacts was not available for OPI to review and therefore we could not verify whether M/WBE goals for this contract were met.
- ◆ OPI noted a lack of communication and standardized process between departments administering contracts with M/WBE components and the City's M/WBE Officer.

- ◆ The Rochester Police Department (RPD) did not complete and submit NYS forms to report actual M/WBE participation for one contract examined. Additionally, there was no M/WBE company utilized on this contract and as a result NYS M/WBE goals were not achieved.
- ◆ Even though NYS granted a waiver to the City for the FY2014-15 SOOP grant administered by DRYS, the City applied and received this waiver a year after program expenditures were incurred.
- ◆ OPI noted that non-certified M/WBE companies were included in the M/WBE utilization plan and/or the *Affirmation of Income Payment to MBE/WBE*.
- ◆ OPI noted an NBD contract lacked sufficient M/WBE documentation to support project utilization amounts. In addition, a required form to be submitted by the prime contractor to a NYS agency was not on file with the City.

MUNIS:

- ◆ OPI noted numerous clerical errors in the MUNIS information programs for M/WBE reporting. Either the MUNIS fields are inaccurate or not consistently utilized. In addition, the City's vendor input forms, to add/modify vendor records on MUNIS, do not distinguish between certified and non-certified M/WBE vendors.
- ◆ The M/WBE progress forms completed by the prime contractor throughout the phases of each public works contract are not included on MUNIS nor are they used to reconcile or to verify goals achieved or actual payments made to sub-contractors.
- ◆ M/WBE data that is collected for a given contract is not centralized in a single, easily accessible location, such as MUNIS. Rather, the data is fragmented amongst various departments/bureaus.



Finance Departmental Response to Executive Summary

Due to the length of this OPI review, the Department of Finance has issued an executive summary response to the OPI Executive Summary above. A more detailed departmental response is attached to the end of this report. The Finance Department's executive summary response begins on the next page.

Executive Summary – Finance Department Response

This audit report identified a number of issues with which we concur, where the City can make improvements to better manage and monitor MWBE contractors and subcontractors to meet the City's MWBE goals. However, the audit only looked at MWBE activity during the period from July 1, 2013 to June 30, 2015 (FY 2013-14 and FY 2014-15), which is now two to four years old and overlapped two different administrations. Further, since the audit was designed as a narrowly focused compliance audit, it does not provide the context of a comprehensive performance audit. For that reason, the audit does not report that the City substantially exceeded the annual aggregate MWBE goals for public works for that time period.

The City's primary public policy objective for MWBE's is to ensure that MWBE companies obtain an equitable share of the City's business. Many of the issues stated throughout the audit are symptoms of the City having to work with outdated MWBE goals based upon ordinances from 1992 through 1994. Clearly there have been many changes to the Rochester marketplace over the last twenty-five years. The state recognizes the changing marketplace by periodically updating its MWBE goals, policies and procedures. The City should consider updating its goals, policies and corresponding administrative procedures.

The audit findings fall into six categories. Our response and proposed action steps are summarized below.

1. Failure to Meet MWBE Ethnic Sub Category Goals

Department Comments

- Ordinance 89-17 has been used as the basis for the City's Public Works MWBE goals since the expiration of Ordinance 92-326 and associated ordinances. The City has continued to use the specific ethnic goals for city funded projects set by the 1992 and related ordinances even though the types and numbers of MWBE companies have significantly changed over time.
- For example, the total number of companies in the City's first MWBE Directory in 1992 was 51. The 2016 Directory listed 396 companies. The greatest change has been in the number of WBE companies. The 1992 Directory did not list any WBE companies. In 2016, there were 260 WBE's and 136 MBE's.
- In addition to the changing dynamics of companies entering the marketplace, the 1992 ordinance set minority sub-group goals by ethnic categories that can no longer be supported by available data. Since 2015, New York State has stopped providing ethnicity data for certified minorities. Therefore, the City has to shift away from ethnicity based minority sub-group goals. The state goals now break MWBE goals into simply M and W categories, which is the recommended approach for the City.
- During and since the time period of the audit, the City has followed administrative procedures for City MWBE goals consistent with the procedures set by those

ordinances, while making adjustments to reflect current market conditions and available information about MWBE contractors. State and Federal MWDBE goals apply when funded by those sources. State and Federal goals can be enforced under state and federal rules.

- PSA goals and procedures are set by Ordinance 2012-318. Specific PSA ethnic goals for MWBE's are those set by the 1992 era ordinances. PSA's funded by State or Federal grants are subject to the MWDBE goals set by the funding agency.

Proposed Action

The City's MWBE policy goals for public works and PSA's should be updated to reflect current market and data considerations. Our recommendation is to have the City mirror the state's MWBE goals and administrative procedures

2. MWBE and Prime Contractor Compliance Issues

Department Comments

- The department concurs that examples of the types of issues identified in the audit such as a "pass-through", un-allowed purchase of materials, use of non-minority third-tier subcontractors and inability to verify valid claimed expenses and other supporting documentation deficiencies have occurred and may occur because the City currently does not have a full 100% compliance process.
- The MWBE Officer knew about the public works subcontractor issues as part of the contract review process, and removed one subcontractor from the approved contractor's list for multiple violations. The department believes that these issues are rare, and, when found, the MWBE Officer addresses the issue. Because the audit is not comprehensive it does not provide the contextual data to show what percentage of total contracts and MWBE contractors actually have these problems.

Proposed Action

The City could develop a 100% compliance review process, which would require additional resources. A cost effective alternative would be to require the prime and subcontractors to submit a certification with each application for payment showing what the MWBE subcontractor was paid for. This process would mirror the State D.O.T. payment tracking process and could be absorbed by existing staff.

3. Public Works Projects Shortfalls

Department Comments

- The audit was based on a strict comparison of the sub-group goals as stated in the 1992 ordinance to amounts paid on a contract-by-contract basis. However, the ordinance clearly identified a waiver process for individual projects and set annual aggregate goals, to take into account the fact that there would be individual variations on a project-by-

project basis. Aggregate annual goals are based upon the sum of various goals achieved in the individual projects. Because the audit is not comprehensive it does not report on the fact that annual aggregate goals were met and exceeded during the time period of the audit.

- The sub-group goals in the audit sample were not met because the MWBE Officer had to grant sub-group waivers in order to address the lack of availability of sub-groups for individual projects. However, the comprehensive department response provides detailed tables which show that the overall aggregate annual MWBE goals (i.e. 9.0% for street projects and 17.5% for buildings and general based on project type) were exceeded.
- The audit demonstrates the challenges the City has faced in meeting the 1992 ethnic category sub-group goals. The City's approach has been to permit shifts between ethnic goals to achieve the overall MWBE project goals. Going forward, the City will not be able to differentiate between minority sub-groups since that data is no longer available from the state.
- Public Works MWBE goal summary reports are based on the value of MWBE subcontract awards as a percentage of the prime contract award. This is standard practice, since it provides the information that can be consistently reported on a timely basis. The audit's recommendation to report achievement of goals based upon actual expenditures should be done in addition to, not to replace existing reports. The difficulty with tracking achievement of goals only by actual expenditures is that reporting on actual expenditures cannot be done until a project is complete, which for large projects takes several years. Since at any point in time multiple projects are at various stages of completion, it is not possible to tell at that slice of time whether or not annual MWBE goals have been met.

Proposed Actions

- The City's MWBE policy goals for public works should be updated to reflect current market and data considerations
- Track accomplishment of goals in two ways: a) based upon initial awards of contracts and MWBE subcontracts (current method); b) based upon actual payment data for each project over time as recommended by OPI

4. PSA Project Issues

Department Comments

- The audit findings relative to PSA's are a result of the fact that administration of PSA's has been decentralized and is the responsibility of individual departments as established by Ordinance 2012-318. Therefore, tracking, monitoring and reporting utilization of and payments to MWBE's is inconsistent for PSA's. The MWBE Officer

provides advice and information to departments when requested, but is not in a decision making or approval capacity.

- Although the 1992 and related ordinances specified that MWBE goals were to be met by contractors within the Rochester MSA, as noted above, market conditions have changed over the last twenty-five years to the extent that the City has solicited MWBE's from outside the MSA for certain types of PSA contracts in order to meet the objective of increasing MWBE participation in city contracts. The state permits any state certified MWBE to be counted towards meeting state goals for state funded projects and PSA contracts.

Proposed Actions:

- The City's MWBE policy goals for PSA's should be updated to reflect current market and data considerations
- Administrative procedures providing for centralized tracking and reporting should be developed

5. State Contracts

Department Comments

- Departments did not start to systematically seek assistance from the MWBE Officer for state grant contracts until mid-2014. This was precipitated by state agencies starting to enforce the state MWBE requirements. By that time, a number of the state contracts identified as deficient in the audit were already well under way or completed. The first actions of the MWBE Officer were to request waivers of MWBE requirements from state agencies for completed or nearly completed contracts, which the state approved.
- Prior to 2014, departments provided MWBE reporting directly to state agencies. Once state agencies developed a contact with the MWBE Officer, they have required her to approve MWBE plans for the state grants involved, including the initial approved plan and final reporting at the conclusion of the project/grant.

Proposed Action:

Administrative procedures to ensure the MWBE Officer reviews and approves state and federal grants with MWBE requirements should be developed.

6. MWBE Data Tracking

Department Comments

- MUNIS is not intended or programed to be used as a central storage repository for MWBE subcontractor information, or to track payments to subcontractors.

Proposed Action:

Purchase currently available software that is being used by other municipalities to track MWBE subcontractor utilization and payments and related software for ensuring compliance with MWBE and workforce utilization goals.

OPI's report continues on the next page.

II. BACKGROUND, OBJECTIVES AND SCOPE

A. Assignment

The Office of Public Integrity routinely reviews contract compliance of vendors who conduct business with the City. OPI selected for examination vendor compliance with the City's M/WBE program as well as the City's oversight and monitoring of the program.

OPI selected for examination, a sample of City public works contracts and non-public works contracts that had a qualifying M/WBE component.

B. Background

Ordinance No. 80-83 authorized the City Manager to establish a Minority Business Enterprise Participation Program in the City. Ordinance No. 89-17 authorized the continuation of the Minority Business Enterprise Program for public works construction contracts but made the goals voluntary rather than mandatory and did not specify these goals. Additionally, this ordinance called for a disparity study to develop the statistical basis necessary for mandatory goals. Per the opinion of the Law Department, this ordinance appears to still be in effect although the disparity study that resulted is outdated.

City Council authorized Ordinance No. 92-326 to remediate discrimination on the basis of race toward African-American and Hispanic-owned companies and on the basis of sex toward woman-owned construction businesses. The intent of Ordinance No. 92-326 was to promote equality of economic opportunities for minority and women-owned businesses and to eliminate barriers to their participation in City contracts. To achieve this objective, Ordinance No. 92-326 established the City's M/WBE program and M/WBE utilization goals for all public works projects. This ordinance remained in effect until June 30, 1997 and is no longer valid.

Ordinance 93-397 expanded the M/WBE program by authorizing M/WBE utilization goals for competitive bid contracts in the areas of office supplies and printing. The ordinance recommended the following annual dollar goals:

Category	African American	Hispanic	Women
Office Supplies	\$7,500/year	\$2,500/year	\$35,000/year
Printing	\$6,500/year	\$2,500/year	\$20,000/year

This ordinance was to remain in effect throughout the existence of the M/WBE Program. Since the M/WBE Program ended on June 30, 1997, this ordinance is no longer valid.

Ordinance No. 94-213 increased the utilization goals set forth in Ordinance No. 92-326 and it authorized the following mandatory participation goals for the M/WBE program for public works contracts exceeding \$50,000:

Category	African American	Hispanic	Women
Street Construction	6.7%	2.2%	1.0%
General Construction	14.5%	2.5%	2.2%

Additionally, this ordinance authorized the following mandatory participation goals for the M/WBE program for public works contracts of \$50,000 or less:

Category	Composite of African American/Hispanic/Women
Street Construction	9.9%
General Construction	19.2%

Also Ordinance No. 94-213 established M/WBE goals for Professional Service Agreements (PSAs). The PSA M/WBE utilization requirements are based on total expenditures per fiscal year amongst all City departments. The goals are as follows:

Category	African American	Hispanic	Women
Architectural/ Engineering	2.1%	0.6%	3.5%
Personnel Training/Testing	6.6%	0.0%	21.7%
Advertising/Media	6.6%	0.0%	16.7%

This ordinance was to remain in effect throughout the existence of the M/WBE Program. Since the M/WBE Program ended on June 30, 1997, this ordinance is no longer valid.

Ordinance 2012-318, Policy for Procurement of Professional Services, includes M/WBE participation goals for the PSA categories stated in Ordinance 94-213. This ordinance is still in effect.

Per discussion with the Law Department, because Ordinance 89-17 has no sunset language, it can be interpreted to allow the City to continue an M/WBE Program and to determine goals. However, except for the PSA

goals stated in Ordinance 2012-318, these goals can only be voluntary and not mandatory.

The City's M/WBE program stipulates companies owned by targeted ethnic groups and by women receive a percentage of the total contract amount for each public works project. The utilization goals depend upon the particular group and whether the project is for street construction or general construction. Contracts solely for material and supplies do not count toward the M/WBE utilization goal. Additionally, in order for M/WBEs' services to count towards the achievement of the relevant utilization goals, the companies must be located within the Rochester Metropolitan Statistical area, or otherwise be approved by the City's M/WBE Officer and be certified by the State of New York.

According to New York State, the definition of a Woman-Owned Business Enterprise (WBE) under Article 15-A of the Executive Law, is a business enterprise in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are women.

Also, under Article 15-A of the Executive Law, the definition of a Minority-Owned Business Enterprise (MBE) is a business enterprise in which at least fifty-one percent (51%) is owned, operated and controlled by citizens or permanent resident aliens who are meeting the following definitions:

Group	Definition
Black	Persons having origins from any of the Black African racial groups.
Hispanic	Persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Native American or Latin American origin, regardless of race.
Asian-Pacific	Persons having origins from the Far East, Southeast Asia or the Pacific Islands.
Asian-Indian Subcontinent	Persons having origins from the Indian subcontinent.
Native American or Alaskan Native	Persons having origins in any of the original peoples of North America.

To qualify for New York State certification as a minority and/or women-owned business enterprise (M/WBE), an applicant must successfully demonstrate the following through the production of relevant documentation:

- All firms seeking MBE, WBE or M/WBE certification must be independently owned, operated and controlled by minority members and/or women.

- The ownership must be real, substantial and continuing, and the minority members and/or women must exercise the authority to independently control the day-to-day business decisions.
- Each minority or woman owner upon whom certification is based, cannot have a personal net worth exceeding \$3.5 million after allowable deductions. Allowable deductions under the law include:
 - Primary residence, or the mortgage for that residence.
 - Ownership interest in the applicant firm.
 - Up to \$500,000 of any qualified retirement savings plan
- Firms must have no more than 300 full time equivalent employees; must operate independently of other firms; must demonstrate they are an active business and, the business must be in operation for at least one year.

During the timeframe covered within the scope of this examination, New York State (NYS) established a 20% M/WBE participation goal. Currently, the M/WBE participation goal is 30%. Unless otherwise noted, the 20% goal applied to any NYS grant in our scope period which had an M/WBE component noted in the grant agreement.

For each eligible public works procurement awarded, City M/WBE policy requires the prime contractor to submit a utilization plan identifying the M/WBE sub-contractors they plan to utilize on the project. City policy also requires each prime contractor to submit M/WBE progress reports detailing payments they have made to NYS Certified M/WBE sub-contractors that participated on the project. The City can grant a waiver of goal requirements in partial or in total upon submission of a waiver request by a contractor or the managing architect assigned to the project. Such request requires documentation of good faith efforts by the contractor to meet the goal requirements of the contract.

For PSAs that have an M/WBE component, each department is required to follow the City's Policy and Procedures for Procurement of Professional Services and Requests for Proposals Ordinance No. 2012-318. The Policy states that each department is responsible for taking steps to obtain a certified M/WBE firm from the City's approved M/WBE directory, maintained by the Bureau of Purchasing, in order to comply with participation goals noted on page 7 of this report.

The City of Rochester's M/WBE Officer reports to the Director of Purchasing and according to the job description, this person is responsible for the development, implementation, and monitoring of the M/WBE

projects and programs. The job description also states, the M/WBE Officer reviews and analyzes M/WBE utilization plans (e.g. construction, goods and services) in conjunction with Contract Manuals and/Requests For Proposals (RFP) to ensure compliance with M/WBE utilization goals for City, state, and federal programs.

C. Objectives and Scope

The objectives of the review were to evaluate compliance with City and New York State M/WBE requirements as well as program oversight. Even though the ordinances for public works contracts have expired, City administration has continued to apply the utilization goals specified in these ordinances.

We examined the City's M/WBE utilization specifications to determine if City contractors are in compliance with City policy and requirements established in the City's Ordinance No. 2012-318 for the scope period July 1, 2013 through June 30, 2015. In addition, we examined contracts that required New York State M/WBE utilization specifications for compliance with the requirements for the same period. Our sample testing of payments to M/WBE's contractors, sub-contractors, and vendors focused on the examination of closed contracts encompassing all City departments.

The following table illustrates the total value of the contracts and total M/WBE participation for each department tested in our sample:

Review of the City's M/WBE Program Value of Contracts Selected for Review & M/WBE Participation Amounts By Department			
Department	Value of Contracts in Sample	Number of Contracts	M/WBE Participation Amount
Information Technology (IT)	\$ 60,000 ^a	1	\$ 0
Rochester Police Department (RPD)	\$ 463,427	2	\$ 0
Department of Recreation and Youth Services (DRYS)	\$ 508,162 ^b	8	\$ 0
Neighborhood and Business Development (NBD)	\$ 25,510,015	4	\$ 4,466,150
Department of Environmental Services (DES) - Public Works	\$ 1,091,353	8	\$ 204,673
Department of Environmental Services (DES) – PSA	\$ 1,421,600 ^c	6	\$ 58,482
Department of Environmental Services (DES) – Grant	\$ 200,000 ^d	1	\$ 0
Total	\$ 29,254,557	30	\$ 4,729,305

^a - Contract not subject to M/WBE requirements. It was incorrectly coded on MUNIS as an M/WBE contract.

^b - Seven of the eight contracts not subject to M/WBE requirements. They were incorrectly coded on MUNIS as M/WBE contracts.

^c - Two of the six contracts not subject to M/WBE requirements. One was incorrectly coded on MUNIS as an M/WBE contract and one was federally funded and not subject to M/WBE requirements.

^d - This project was federally funded and not subject to M/WBE requirements.

In order to properly assess compliance with the goals for PSA's in the areas of advertising and media and personnel training and testing, OPI examined these annual expenditures in their entirety for our scope period. Additionally, via the City's Municipal Uniform Information System (MUNIS) used for data processing, OPI identified all relevant architectural and engineering PSA's closed within our scope period in order to expand upon the data gathered from our sample of DES PSA's and assess this PSA category's M/WBE utilization on an annual scale.

Management is responsible for establishing and maintaining a system of internal accounting and administrative control. In fulfilling this responsibility, estimates and judgments by management are required 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 examination, but do not include all possible improvements that a more extensive review might develop.

III. RESULTS OF REVIEW

The results of the review indicate that there are several discrepancies and weak internal controls diminishing the City's ability to adequately provide proper oversight and program compliance to the M/WBE program. We noted the following findings that require management attention in order to improve the City's internal and administrative controls of the M/WBE program, to increase compliance with New York State and City of Rochester policy requirements, assure the M/WBE program is run effectively and efficiently and, ensure that M/WBE participants are receiving all the benefits of the program to which they are entitled.

A. No Current Ordinance to Support Mandatory M/WBE Goals for Public Works Contracts and Competitive Bid Contracts

City Council authorized Ordinance 92-326 to establish a M/WBE program for public works contracts. This ordinance was based on a study by the Center for Governmental Research, Inc. for fiscal years 1989 and 1990. This study found a significant statistical disparity in the award of City contracts between all qualified business enterprises in the Rochester Standard Metropolitan Statistical Area (RMSMA) and qualified African-American, Hispanic-American and women-owned business enterprises in

the RSMSA. As a result, City Council authorized this ordinance to remediate the discrimination suggested in the disparity study.

This ordinance established mandatory utilization goals for each targeted group. Additionally, this ordinance authorized the Director of Finance to establish rules and regulations for the administration of the program including granting waivers. This ordinance remained in effect until June 30, 1997 and is no longer valid. City Council has not authorized any additional ordinances to continue the M/WBE for public works contracts since this Ordinance expired.

Ordinance No. 93-397 expanded the M/WBE program to certain competitive bid contracts and some PSA's. This ordinance was to remain in effect until the expiration of the program. Therefore, this ordinance was no longer valid after June 30, 1997.

Even though some of the M/WBE ordinances have expired, the City has continued to administer the M/WBE program requirements listed in the ordinance for public works contracts and competitive bid contracts. Per the Law Department, the City can determine utilization goals for these types of contracts, however, the goals are voluntary and not mandatory. This does not apply to utilization goals for PSA's which are outlined in Ordinance No. 2012-318 and contracts/grants with New York State (NYS) M/WBE requirements.

◆ Recommendation

If the City desires to have a M/WBE Program with mandatory utilization goals for public works contracts and competitive bid contracts, City management should consider pursuit of an updated M/WBE ordinance. This would most likely require an updated disparity study.

B. City Contractor Used M/WBE Sub-Contractor as a "Pass-Through"

OPI noted that one City contractor evaded the M/WBE participation requirements by using an M/WBE sub-contractor as a "pass-through". The contractor routed payments through the M/WBE sub-contractor to achieve the appearance of M/WBE participation.

The City selected Thurston Dudek, LLC to perform renovations to the Genesee Valley Park Pool & Ice Rink Building. In order to partially fulfill the African-American utilization requirements on this contract, Thurston Dudek, LLC listed Journee Technology Staffing Inc., DBA Journee Construction, as an M/WBE sub-contractor to be utilized on the project to provide materials estimated in the amount of \$6,500.

OPI interviewed Mr. Orville Dixon, owner of Journee Construction, who stated that his company was hired by Thurston Dudek, LLC to solely provide materials and not labor for the project. Even though the M/WBE's company name was on the invoices from the supplier of the materials, Mr. Dixon indicated to OPI that his company never ordered the materials nor were they aware of what materials were ordered. In addition, Mr. Dixon provided OPI with emails sent to him from Thurston Dudek, LLC requesting "to run materials through your company for the (Genesee Valley Park Pool & Ice Rink) project" and "to use your company as a minority contractor purchasing materials".

The M/WBE sub-contractor was not actively involved in ordering products or making significant decisions. The M/WBE sub-contractor did not take delivery of any products and the supplier shipped all materials directly to the prime contractor, at the job site. The M/WBE was merely used as a conduit to pass payments from the prime contractor to a non-certified supplier.

The M/WBE contractor invoiced the prime contractor \$7,646, which consisted of \$7,393 for the cost of the materials and a 3.5% mark-up fee in the amount of \$253. The prime contractor sent two checks to the M/WBE sub-contractor, one for the cost of the materials payable to both the M/WBE sub-contractor and the vendor that supplied the materials and a separate check payable to the M/WBE sub-contractor for the 3.5% mark-up fee.

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

The Bureau of Purchasing inadvertently approved the initial plan to authorize \$6,500 in materials alone to count toward the M/WBE utilization goals. This is in violation of the M/WBE requirements. Furthermore, the Bureau of Purchasing erroneously included additional unallowable expenses, totaling \$1,146, to count toward the utilization goals as well. These unallowable expenses included an additional \$893 for materials and the sub-contractor's mark-up fee of \$253.

◆ Recommendation

The Bureau of Purchasing's M/WBE Officer and Wage and Compliance personnel should seek training on how to detect fraud and to look for signs of a "pass-through".

DES should monitor and report on M/WBE participation as contracts are performed. Because of their day-to-day management of City public works contracts and their knowledge of the project, DES project managers are best suited to fulfill this role. DES project managers should certify that, to the best of their knowledge, the documents that contractors submit to the City detailing M/WBE participation accurately reflects the work each certified M/WBE sub-contractor performed. This requirement will help establish that the user department is partly responsible for the program's administration.

The Bureau of Purchasing should scrutinize utilization plans more closely to ensure prime contractors are complying with the requirements of the M/WBE program before approving the plans and not permit materials/supplies only to fulfill M/WBE goals.

The Bureau of Purchasing should also consider revising the M/WBE utilization requirements to specify a maximum percentage allowable for materials/supplies paid to the M/WBE sub-contractor which can be applied towards meeting the M/WBE goals. This would prevent a prime contractor from running mostly materials/supplies through an M/WBE sub-contractor who provides minimal labor on the project and counting the total amount paid to that sub-contractor toward meeting the M/WBE goals.

Going forward, the City should request from the prime contractor canceled checks along with all invoices paid to the M/WBE sub-contractor(s) as well as supporting documentation for purchases of materials to provide proof of expenses incurred by the M/WBE firm.

C. M/WBE Sub-Contractor Contracted 100% of Their Work to a Non-M/WBE Contractor

An M/WBE sub-contractor contracted 100% of their work out to a non-M/WBE firm resulting in a utilization shortfall of 100% of the sub-contract value.

As previously noted above, the City selected Thurston Dudek, LLC to perform renovations to the Genesee Valley Park Pool & Ice Rink Building. In order to partially fulfill the African-American utilization requirements on this contract, Thurston Dudek, LLC listed MGM Insulation, Inc., as an

M/WBE sub-contractor to be utilized on the project to provide insulation services estimated in the amount of \$3,260.

MGM Insulation, Inc. did not perform any of the work on the project. According to Thurston Dudek, LLC, MGM Insulation, Inc. contracted out 100% of the work they were hired to perform to LJ Insulation Services, Inc., a non-M/WBE company. In accordance with the M/WBE utilization requirements, it is the prime contractor's responsibility to monitor the progress of the M/WBE participation on the project.

The City of Rochester's M/WBE Form C Affidavit, which the sub-contractor signed and attested to, states, "I understand and acknowledge: however, that if more than 30% of my sub-contract is contracted out to non-M/WBE firms, the sub-contract between my firm and the prime contractor shall no longer be considered a bona fide M/WBE sub-contract; and accordingly the work sub-contracted to me as an M/WBE sub-contractor shall not count towards fulfillment of the M/WBE utilization goal."

According to the M/WBE utilization requirement policy, the City of Rochester reserves the right to retain, at any time, an amount up to but not exceeding the amount cited in the approved M/WBE utilization plan which has not been paid to any M/WBE in accordance to the M/WBE requirements.

The Bureau of Purchasing identified this violation of the M/WBE requirements and imposed a penalty of \$1,136 against the prime contractor.

As stated in the M/WBE utilization requirement policy, "If the City finds a consistent pattern of M/WBE shortfalls by a contractor or determines that a contractor has failed to demonstrate a good faith effort to obtain M/WBE's for this and/or other contracts, the City may declare the contractor a non-responsible bidder and reject any bids by the contractor on future City contracts."

◆ Recommendation

A provision should be added to the M/WBE Form C Affidavit stating that M/WBE sub-contractors will not contract out more than 30% of the work they are hired to perform without first consulting with the prime contractor and the City's M/WBE officer.

Given that the current City policy is based on an expired ordinance, the City should cease retaining payments to contractors for utilization shortfalls.

D. Large Materials/Supplies Purchases Routed Through M/WBE's

In addition to the pass-through contract noted in Finding A above, OPI noted three other contracts in which a M/WBE sub-contractor performed a small amount of labor on a contract but purchased large amounts of materials/supplies from a non-M/WBE sub-contractor.

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 just 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."

During this review, OPI noted the following deficiencies relating to materials and supplies:

- OPI noted one instance where the prime contractor, Difiore Construction, Inc., ordered all the materials/supplies directly from Rochester Windustrial, a non-M/WBE firm, on behalf of the M/WBE sub-contractor, Decca Paving Inc., and counted this expense towards meeting the M/WBE utilization goals. The M/WBE sub-contractor in turn invoiced the prime contractor for the amount of materials/supplies purchased by the prime contractor and then the prime contractor remitted a check payable to both the M/WBE sub-contractor and the non-M/WBE supplier of materials/supplies.

The prime contractor reported to the City that they paid \$13,865 to the M/WBE sub-contractor for this contract. The amount invoiced for materials/supplies was \$12,014 plus an additional 4% mark-up fee totaling \$481. The materials/supplies and mark-up fee equates to 90% of the total amount paid to the M/WBE contractor for the project. The number of on-site hours reported by the M/WBE sub-contractor for this project totaled 23 hours. According to the documentation submitted to the City by the prime contractor, Difiore Construction, Inc., Decca Paving was hired to install a pump for the Genesee Valley Park Marina Building Plumbing Upgrades Project.

- In another contract between John W. Danforth Company, the prime contractor, and MGM Insulation Inc., an M/WBE firm, OPI identified an instance where Liebert Corporation, a non-M/WBE firm, provided \$49,000 in materials/supplies for the project instead of the M/WBE firm. Even though the M/WBE sub-contractor's name was on the invoice for the materials/supplies purchased from the non-M/WBE firm, the prime contractor remitted a check payable to both the M/WBE sub-contractor as well as the non-M/WBE supplier.

The prime contractor reported to the City that they paid the M/WBE \$57,740. Of this amount, \$49,000 was for materials/supplies and \$1,715 was for a 3.5% mark-up fee charged by the M/WBE sub-contractor. The prime contractor also paid an additional \$2,225 to the M/WBE sub-contractor for materials (OPI could not determine if the materials were provided directly from the M/WBE sub-contractor or purchased from another firm). OPI noted \$4,800 was paid to the M/WBE sub-contractor for 27.5 hours of labor reported on the project. The amount paid for the materials/supplies/mark-up fee equates to 92% of the total value of the contract between the prime contractor and the M/WBE sub-contractor and only 8% applicable for labor.

- In another contract between the prime contractor, C.P. Ward, and the M/WBE firm, Journee Construction (same M/WBE firm noted in Finding A of this report), \$16,993 of materials/supplies was purchased from Hanes Supply, a non-M/WBE firm, for the Blue Cross Arena Fall Protection Project. Due to a lack of documentation, OPI was unable to determine whether the prime contractor or the M/WBE sub-contractor ordered the materials/supplies from the non-M/WBE on the contract. The M/WBE sub-contractor invoiced the prime contractor for the amount of the materials/supplies purchased from the non-M/WBE as well as a 3% mark-up fee of \$510.

The total value of the contract between the M/WBE sub-contractor and the prime contractor was \$19,942, of which 88% was paid for materials/supplies and the mark-up fee. The M/WBE sub-contractor provided 40 hours in labor on the project, equating to only 12% of the contract between the M/WBE firm and the prime contractor. OPI was unable to obtain cancelled checks to determine whether the non-M/WBE supplier was listed on the payment to the M/WBE firm.

◆ Recommendation

The Bureau of Purchasing should consider revising the M/WBE utilization requirements and the City's *Standard Construction Contract Manual* to specify a maximum percentage allowable for materials/supplies paid to the

M/WBE sub-contractor which can be applied towards meeting the M/WBE goals. This would clearly define the intent of the utilization goal requirements instead of stating “if an M/WBE sub-contract becomes primarily a materials and/or supplies contract”.

In addition, specifying a maximum percentage allowable would also prevent a prime contractor from running mostly materials/supplies through an M/WBE sub-contractor, who provides minimal labor on the project, and counting the total amount paid to that sub-contractor toward meeting the M/WBE goals.

E. Desired M/WBE Utilization Goals Not Met For Public Works Contracts

OPI noted that the City is not consistently achieving the desired goals it has established for public works contracts. Even though the Bureau of Purchasing is frequently providing waivers or reductions to the level of M/WBE participation required on projects, goals are still not consistently met. OPI also noted that the level of M/WBE participation did not proportionately increase along with project change order increases nor were waivers granted to excuse the M/WBE participation increases.

The City’s M/WBE Officer is responsible for reviewing and analyzing M/WBE utilization plans for public work projects in order to ensure compliance with the City’s established M/WBE utilization goals. According to the City’s M/WBE Utilization Requirements Policy, the M/WBE Officer or other Purchasing representative shall review any waiver requests. Upon review, the Purchasing Agent may adjust the set aside percentage objective downward, including waiving it entirely, as necessary, for any or all target groups. Upon approval of the M/WBE utilization plan and commencement of the project, it is the prime contractor’s responsibility to monitor the progress of the M/WBE participation on the project and inform Purchasing of any issues.

Additionally, the City’s M/WBE Utilization Requirements Policy, states, if a contract adjustment or change order is issued after the M/WBE utilization plan is approved, it is the responsibility of the prime contractor to adjust the M/WBE goals accordingly. If the goals are not adjusted, the prime contractor should seek a waiver or amendment of the M/WBE goals.

The City’s M/WBE utilization requirements state “if the change order increases the contract amount, the M/WBE goals will increase in proportion to the contract dollar amount. The prime contractor may seek a waiver or amendment of the M/WBE goals due to increases in the change order amount for any of the following reasons:

1. If the change order increase is for materials/supplies only.
2. If the change order is outside the scope of the work for the M/WBE sub-contractors currently utilized on the project but is the same type of work currently being done by the prime or other sub-contractor on the project.
3. If the M/WBE sub-contractors are not capable or available to do the work authorized in the change order.”

Section 4.4 of the City’s *Standard Construction Contract Manual*, provided to each prime contractor, states that “if the total cumulative amount of the contract with the City changes the initial contract award amount by 5% or more based upon the net of all change orders approved by the City during the performance of the contract, the contractor must submit a revised Form A (*Schedule of M/WBE Participation*), and related Forms B and C (*Intent to Perform as a Sub-Contractor* and the *M/WBE Affidavit*) and have these approved by the City, in order to ensure that the cumulative total of M/WBE sub-contracts meets the M/WBE goal requirements of this contract.”

In order to ensure consistent compliance with the established M/WBE utilization goals, internal controls over the public works portion of the M/WBE program must be in place. These controls include, proper review and analysis of the M/WBE utilization plan and, when relevant, the presence of proper justification for a waiver or reduction to the utilization objectives.

During this review, OPI noted the following deficiencies relating to public works contracts:

- Of the eight public works contracts examined in our test period, none of the contracts met all three of the M/WBE utilization sub-group goals unless the City’s M/WBE Officer granted a waiver or a reduction in the utilization goals. Even though the M/WBE Officer granted waivers or reduction of utilization goals for seven of the eight contracts examined, two of these contracts still did not meet the City’s M/WBE utilization goals for one or more of the M/WBE sub-groups. As a result, three of the eight contracts reviewed did not meet the City’s M/WBE utilization goals in at least one of the sub-groups based upon the final contract amount.
- All eight of the contracts examined increased in value due to change orders. Of the eight, seven did not proportionately increase their M/WBE utilization by subgroup, as required, nor receive a waiver exempting them from such an increase.

- One of the three contracts that incurred a change of 5% or more of the initial contract award value did not have a revised M/WBE “Schedule of M/WBE Participation” form, as required by the City. The other two contracts had revised forms, however, the forms decreased the level of M/WBE participation instead of increasing it in proportion to the increase in the contract value.
- The M/WBE goals for public works contracts has not been modified since 1994.
- The City is unable to verify whether M/WBE participation expense is valid because the City relies upon the prime contractor’s word for the amount expended by M/WBE sub-contractors without consistently obtaining supporting documentation (M/WBE sub-contractor invoices, cancelled checks from the prime payable to the M/WBE sub-contractor, invoices for materials/supplies provided by the M/WBE sub-contractor, etc.) to substantiate the M/WBE participation expense amount reported.

Only the amount the prime contractor provides as expended for M/WBE services on the final progress report submitted to the City is used as support of M/WBE participation. As a result, the City is unable to verify whether the M/WBE participation expense is valid.

During the course of our review, OPI requested supporting documentation from the 8 prime contractors and the 15 M/WBE sub-contractors to support the M/WBE expenditures reported on the final progress reports. OPI noted six instances where supporting documentation obtained from the prime contractors and/or the M/WBE sub-contractors differed from the amount reported on the final progress reports. While the total amount reported on the final progress reports for these instances, totaled \$80,612, only \$75,228 of supporting documentation was provided for our review. In four instances, the supporting documentation was less than the amount reported to the City on the final progress reports and in two instances it was slightly higher.

- OPI noted two instances where some required preconstruction forms were missing from City records.

According to the City’s M/WBE utilization requirements, “preconstruction Forms A, B, and C must always be submitted”.

- The M/WBE utilization plans do not provide a detailed description of services that the M/WBE’s will perform. In numerous contracts we reviewed, the description of service on these plans is too vague, with

only one word or two to explain thousands of dollars in spending. These short descriptions make it difficult for the M/WBE Officer to have a good understanding of the work that the M/WBE's are supposed to be performing. This, in turn, makes it difficult for the M/WBE Officer to determine whether M/WBE's are capable of providing the services outlined in the initial plan and to properly assess the validity of their participation as projects progress.

The following table illustrates the analysis of the M/WBE utilization goals for the public works contracts examined in our sample:

Department Of Environmental Services
Public Work Contracts Reviewed

Contract Number	Contract Amount	M/WBE Sub-Group	M/WBE Documented Expenditures	Goals	Actual	Over/Under (excludes waivers & reductions)		Shortfalls (includes waivers & reductions)	
						%	\$	%	\$
125799	\$175,142*	African American	\$ 8,967	14.50%	5.12%	-9.38% ^a	(\$16,429) ^a		
		Hispanic	\$ -	2.50%	0.00%	-2.50% ^a	(\$ 4,379) ^a		
		Women	\$ 3,336	2.20%	1.90%	- .30% ^a	(\$ 517) ^a		
126437	\$ 77,769*	African American	\$14,298***	14.50%	18.39%	3.89%	\$ 3,021		
		Hispanic	\$ -	2.50%	0.00%	-2.50% ^a	(\$ 1,944) ^a		
		Women	\$ 3,400	2.20%	4.37%	2.17%	\$ 1,689		
126569	\$152,388*	African American	\$ 7,760***	14.50% ^c	5.09%	-9.41%	(\$14,336) ^c	-2.91%	(\$4,431)
		Hispanic	\$ 3,113	2.50%	2.04%	-0.46%	(\$ 697)	-0.46%	(\$ 697)
		Women	\$ 2,775***	2.20%	1.82%	-0.38%	(\$ 578)	-0.38%	(\$ 578)
126107	\$ 74,588*	African American	\$ 8,624**	14.50%	**	**	**		
		Hispanic	\$ 882***	2.50%	1.18%	-1.32%	(\$ 983)	-1.32%	(\$ 983)
		Women	\$ 525	2.20%	0.70%	-1.50%	(\$ 1,116)	-1.50%	(\$1,116)
125995	\$210,297*	African American	\$55,762***	14.50%	26.52%	12.02%	\$25,269		
		Hispanic	\$ -	2.50%	0.00%	-2.50% ^a	(\$ 5,257) ^a		
		Women	\$ 4,448	2.20% ^d	2.12%	-0.08%	(\$ 179) ^d		
125977	\$178,465*	African American	\$19,942	14.50%	11.17% ^b	-3.33% ^b	(\$ 5,935) ^b		
		Hispanic	\$ -	2.50%	0.00%	-2.50% ^a	(\$ 4,462) ^a		
		Women	\$ -	2.20%	0.00%	-2.20% ^a	(\$ 3,926) ^a		
125963	\$ 63,818*	African American	\$13,865	14.50%	21.73%	7.23%	\$ 4,611		
		Hispanic	\$ 504	2.50%	0.79% ^c	-1.71% ^c	(\$ 1,091) ^c	-0.53%	(\$ 341)
		Women	\$ 2,351***	2.20%	3.68%	1.48%	\$ 947		
125382	\$158,885*	African American	\$43,000	14.50%	27.06%	12.56%	\$19,962		
		Hispanic	\$ -	2.50% ^d	0.00%	-2.50% ^d	(\$ 3,972) ^d		
		Women	\$ 3,458	2.20%	2.18%	-0.02%	(\$ 37)		

^a - Waiver granted by M/WBE Officer.

^b - Reduction in goal granted by M/WBE Officer.

^c - Reduction of goal granted by M/WBE Officer, however, M/WBE goal still not met.

^d - Utilization indicated on initial plan was approved for less than established goals.

* - Includes change orders to contracts.

** - Expenditures inadvertently allowed by City personnel although they are in conflict with M/WBE requirements. See above findings B and C.

*** - Final reported amount from the prime contractor differs from supporting documentation obtained during this review.

◆ Recommendation

- All contracts and utilization plans should be strictly monitored for M/WBE compliance. The City's M/WBE Officer should readily act upon any shortfalls prior to the completion of the project. The M/WBE Officer should be included in all MUNIS workflow for the project including change orders and other actions pertinent to M/WBE utilization goals.
- Increase cooperation and communication between City departments to properly administer the program and provide the M/WBE Officer with timely information of project changes that impact the M/WBE participation and goals.
- Waivers and reductions to utilization goals should be more scrutinized. With seven of the eight contracts OPI examined receiving a waiver or reduction to the goal utilization, it appears that frequently granting waivers or reductions to utilization goals reduces the overall mission of the M/WBE program. The M/WBE Officer should evaluate individual prime contractors that are consistently seeking waivers to determine if these contractors are intentionally avoiding compliance with the M/WBE program requirements.
- Even though the prime contractor is responsible for monitoring the progress of the M/WBE participation on the project, oversight of this monitoring process should be conducted by City personnel to verify actual expenditures are substantiated. Therefore, with the assistance of the DES project manager, the Bureau of Purchasing's Wage and Compliance personnel should review actual M/WBE expenditures reported by the prime contractor throughout the phases of the project and verify that the M/WBE sub-contractors have provided supporting documentation for labor expenses as well as invoices for supplies to support expenditures claimed. The City should request cancelled checks from the prime contractor to support payment(s) to the M/WBE firms. Any deviations from the M/WBE utilization approved in the plan should be immediately reported to the M/WBE Officer for follow-up action.
- The City's M/WBE Officer should compile a collective M/WBE activity/status report for public works projects which captures original contract values, change order increases/decreases, waivers granted, and actual expenditures to certified M/WBE firms in order to verify whether M/WBE utilization goals have been met and to identify trends, patterns, and deficiencies that may inhibit public works contracts from consistently achieving the established M/WBE objectives.

- The M/WBE goals for public works contracts should be reviewed and any necessary changes or modification should be made. In addition, going forward, these goals should be assessed for validity on an annual basis, ensuring that they remain relevant and realistic.
- The City's M/WBE utilization requirements should be strictly enforced, allowing required documentation, such as the preconstruction forms and participation reports, to be consistently collected and reviewed for accuracy and completeness.
- The City should eliminate vague descriptions of M/WBE work on initial M/WBE plans in order for the M/WBE Officer to understand the work the M/WBE's are supposed to be performing. OPI recommends the City revise the form to require prime contractors to provide a detail of the services and materials/supplies the M/WBE will provide in the contract. The prime contractor should provide the City with the sub-contractor(s) bid or quote documentation for each project.

F. The City Lacks A Verification Process for Determining Whether M/WBE Goals Have Been Met For PSAs

OPI noted that the City does not have an adequate reconciliation process to verify whether M/WBE goals have been achieved for PSA's. Neither the City's M/WBE Officer nor DES (for architectural/engineering professional services) review or analyze actual M/WBE utilization expenditures for PSA's to ensure compliance with the City's M/WBE requirements.

According to the City's "Policy and Procedures for Procurement of Professional Services and Request for Proposals", each department is responsible for obtaining a certified M/WBE vendor(s) or making a good faith effort to obtain one. Each department is also responsible for monitoring the agreement to verify that the City's utilization goals have been met.

To ensure adequate compliance with the M/WBE utilization goals, proper internal controls over the M/WBE program must be in place. These controls include, proper monitoring, review, and analysis of the M/WBE program to ensure compliance with the established goals. In addition, a reconciliation of actual annual expenditures compared to program goals should be conducted to verify the City's utilization goals have been met.

Even though each department is responsible for monitoring their individual departments' PSA's for compliance with M/WBE utilization goals, the

utilization goals are based upon an aggregate annual total of all City departments. Therefore, a centralized reconciliation process performed throughout the fiscal year for personnel training/testing and advertising/media PSA's would allow for identification of any shortfalls to the M/WBE utilization goals.

During this review, OPI noted the following deficiencies in our scope period:

- The City lacks a reconciliation process to verify that the proposed goals were actually met.

OPI noted that neither the City's M/WBE Officer nor DES (for architectural/engineering professional services) review or analyze actual M/WBE utilization for all PSA's to ensure compliance with the City's M/WBE requirements.

We noted DES compiles two M/WBE architectural/engineering services utilization reports for PSA's. One report is for environmental quality agreements and the other report is for architectural and engineering (A&E) services. The A&E report only captures proposed M/WBE goals and does not include actual expenditures paid to M/WBE vendors/consultants nor does it include change orders to an agreement that would impact the percentage of M/WBE utilization. The A&E report also includes non-certified M/WBE vendors/consultants. The environmental quality agreement report captures actual total annual expenditures and actual M/WBE expenditures, however, not all M/WBE companies listed in the report are located within the Rochester Metropolitan Statistical Area. Only NYS certified M/WBE vendors/consultants located within the Rochester Metropolitan Statistical area count towards meeting the City's M/WBE utilization goals.

The Bureau of Purchasing combines both certified and non-certified M/WBE vendors/consultants expenditures in calculating their annual utilization for personnel training/testing and advertising/media professional services. These calculations cannot be utilized as a basis to determine whether M/WBE utilization goals for personnel training/testing and advertising/media are actually being achieved.

- The City lacks a standardized process for vendors/consultants to request and obtain a City M/WBE waiver for architectural/engineering professional service agreements.

- City administration does not receive a status report on the M/WBE program for PSA's indicating whether utilization goals were actually achieved for each category.
- OPI noted that the City fell short in meeting the City's annual M/WBE utilization goals set forth in Ordinance No. 2012-318 for PSA's in most of the categories in our scope period except for one (architectural/engineering services for women in FY-2015).

The following charts illustrate an analysis of the M/WBE percentage goals in comparison to the actual percent of total annual expenditures paid to M/WBE's for each of the PSA categories during our scope period:

Percent of Total Annual Expenditures Compared to M/WBE Goals *						
Personnel Training/Testing						
July 1, 2013 through June 30, 2015						
Total Annual Expenditures	M/WBE Sub-Group	M/WBE Expenditure Amount	Goal	Actual	Percent Over/Under	Amount Over/Under
FY 2014 \$2,251,253	African-American	-	6.60%	0.00%	- 6.60%	(\$148,583)
	Hispanic	-	0.00%	0.00%	-	-
	Women	-	21.70%	0.00%	-21.70%	(\$488,522)
FY 2015 \$2,747,490	African-American	-	6.60%	0.00%	- 6.60%	(\$ 18,133)
	Hispanic	-	0.00%	0.00%	-	-
	Women	\$2,433	21.70%	0.09%	-21.61%	(\$593,733)

*Source: MUNIS data provided by the Bureau of Purchasing identifying only certified M/WBE vendors.

Percent of Total Annual Expenditures Compared to M/WBE Goals *						
Advertising/Media						
July 1, 2013 through June 30, 2015						
Total Annual Expenditures	M/WBE Sub-Group	M/WBE Expenditure Amount	Goal	Actual	Percent Over/Under	Amount Over/Under
FY 2014 \$305,527	African-American	-	6.60%	0.00%	- 6.60%	(\$20,165)
	Hispanic	-	0.00%	0.00%	-	-
	Women	-	16.70%	0.00%	-16.70%	(\$51,023)
FY 2015 \$288,865	African-American	-	6.60%	0.00%	- 6.60%	(\$19,065)
	Hispanic	-	0.00%	0.00%	-	-
	Women	-	16.70%	0.00%	-16.70%	(\$48,241)

*Source: MUNIS data provided by the Bureau of Purchasing identifying only certified M/WBE vendors.

Percent of Total Expenditures Compared to Annual M/WBE Goals *						
Architectural/ Engineering Services						
July 1, 2013 through June 30, 2015						
Total Annual Expenditures	M/WBE Sub-Group	M/WBE Expenditure Amount	Goal	Actual	Percent Over/ Under	Amount Over/ (Under)
FY 2014 \$2,565,675	African-American	-	2.10%	0.00%	-2.10%	(\$ 53,879)
	Hispanic	-	0.60%	0.00%	- .60%	(\$ 15,394)
	Women	-	3.50%	0.00%	-3.50%	(\$ 89,799)
FY 2015 \$4,401,032	African-American	\$ 38,432	2.10%	0.87%	-1.23%	(\$ 54,133)
	Hispanic	-	0.60%	0.00%	- .60%	(\$ 26,406)
	Women	\$296,790	3.50%	6.74%	3.24%	\$142,593

*Source: Total Expenditures and W/WBE Expenditures of Contracts Closed in each Fiscal Year per MUNIS.

- Even though the City's M/WBE requirements have established annual goals for each of the sub-groups (African-American, Hispanic, and Women) that must be met for architectural/engineering services, DES has contradictorily indicated in Request for Proposal letters to vendors/consultants that the awarded vendor/consultant is not required to strictly meet each of the goals, but participation in one or more of the goals would be acceptable.

Not requiring strict compliance with the M/WBE goals for each contract might have been a contributing factor in DES not meeting any of the annual M/WBE goals for FY-2014 and only meeting one of the annual M/WBE goals for FY-2015 for architectural/engineering services.

- Of the four DES architectural/engineering PSA's tested, DES did not meet any of the City's M/WBE sub-group (African-American/Hispanic/Women) utilization goals for two of the PSA's and only met one of the sub-group goals in the other two PSA's.

The following chart illustrates the results of our testing:

Department Of Environmental Services – Architectural/Engineering Services Professional Service Agreements (PSA)							
Agreement Number	Agreement Amount *	M/WBE Sub-Group	Documented M/WBE Expenditures	City Goals	Actual	Percent Over/Under	Amount Over/Under
122308	\$674,000	African American	\$ 37,532.00	2.10%	5.57%	3.47%	\$ 23,378
		Hispanic	\$ -	0.60%	0.00%	-0.60%	\$ (4,044)
		Women	\$ -	3.50%	0.00%	-3.50%	\$ (23,590)
124867	\$165,000	African American	\$ -	2.10%	0.00%	-2.10%	\$ (3,465)
		Hispanic	\$ -	0.60%	0.00%	-0.60%	\$ (990)
		Women	\$ -	3.50%	0.00%	-3.50%	\$ (5,775)
125600	\$200,000	African American	This PSA was removed from our testing due to miscoding on the MUNIS system.				
		Hispanic					
		Women					
125131	\$125,000	African American	\$ -	2.10%	0.00%	-2.10%	\$ (2,625)
		Hispanic	\$ -	0.60%	0.00%	-0.60%	\$ (750)
		Women	\$ 20,050.00	3.50%	16.04%	12.54%	\$ 15,675
124477	\$ 42,000	African American	This PSA was removed from testing because it was a federally funded project and does not require M/WBE goals.				
		Hispanic					
		Women					
33965	\$215,600**	African American	\$ -	2.10%	0.00%	-2.10%	\$ (4,528)
		Hispanic	\$ -	0.60%	0.00%	-0.60%	\$ (1,294)
		Women	\$ -	3.50%	0.00%	-3.50%	\$ (7,546)

* - Agreement amount includes change orders.

** - This PSA received \$191,900 in NYS funding, however the agreement was initiated prior to the 20% NYS goal established in 2011. Therefore, only City goals applied.

- The M/WBE goals for PSA's have not been modified since their establishment in 1994.

◆ Recommendation

OPI recommends the following improvements to adequately provide proper oversight and program compliance to the M/WBE program and to help the M/WBE program better fulfill its mission:

- DES M/WBE architectural/engineering utilization reports should be updated on a perpetual basis and encompass not only the proposed M/WBE participation amounts but should also include total actual expenditures paid to certified M/WBE vendors. Cancelled checks should be submitted to verify what M/WBE's were actually paid. This would identify any shortages in meeting the goal requirements. Additionally, this report should also include any agreement change orders.

This report should be provided, on a periodic basis, to the City's M/WBE Officer allowing the Officer to review each PSA as well as monitor compliance with the relevant M/WBE annual goal requirements. The M/WBE Officer should follow up on any shortcomings in achieving the City's and/or NYS's M/WBE participation goals with the awarded vendor/consultant and discuss ways to increase the level of M/WBE participation.

- DES should perform an annual reconciliation process whereas the total annual actual expenditures paid to certified M/WBE vendors/consultants for architectural/engineering professional services is compared against the PSA utilization goals to verify whether the M/WBE goals were actually achieved. The results of the reconciliation should be provided to the M/WBE Officer.
- The Bureau of Purchasing should establish a standardized process for PSA M/WBE waiver requests for DES architectural/engineering services. This process should provide proof that the vendor made a good faith effort to acquire services from a certified M/WBE vendor/consultant or a valid explanation why goals could not be reached.
- City departments should comply with the City's "Policy and Procedures for Procurement of Professional Services and Request for Proposals" policy by ensuring only certified M/WBE vendors/consultants located within the Rochester Metropolitan Statistical area are considered toward the achievement of meeting the M/WBE utilization goal requirements.
- The Bureau of Purchasing should perform an annual reconciliation process whereas the total annual actual expenditures paid to NYS

certified M/WBE vendors/consultants for personnel training/testing and advertising/media professional services is compared against the PSA utilization goals to verify whether the M/WBE goals were actually achieved.

- The Bureau of Purchasing should provide City administration with an annual status report for the M/WBE program encompassing the actual expenditures paid to NYS certified M/WBE vendors/consultants, located within the City's metropolitan statistical area, as compared to the program utilization goals for each of the PSA categories.
- DES should discontinue informing vendors/consultants that they do not need to meet all of the M/WBE goals. A need to achieve all of the goals should be communicated to the vendors/consultants.
- The M/WBE goals for PSA's should be reviewed and any necessary changes or modification should be made. In addition, going forward, these goals should be assessed for validity on an annual basis, ensuring that they remain relevant and realistic.

G. M/WBE Reporting Fails to Accurately Capture Actual M/WBE Participation

Currently, the Bureau of Purchasing submits to City administration an M/WBE report that includes proposed M/WBE amounts for DES public works contracts that are awarded prior to services performed instead of actual M/WBE expenditure amounts incurred. As a result, by capturing proposed expenditures as opposed to actual expenditures paid to M/WBE's for work performed, the report does not capture whether the M/WBE goals were actually met.

In addition, this report combines each of the M/WBE sub-groups (African-American, Hispanic, and Women) proposed utilization and compares the total against the overall M/WBE participation goals for each project prior to the work performed. A composite utilization percentage is only permitted for contracts totaling \$50,000 or less. As a result, the report does not illustrate M/WBE utilization percentages for each individual sub-groups for contracts totaling over \$50,000.

OPI noted the following deficiencies in the M/WBE report submitted to City administration:

- The report does not reflect change orders impacting the amount of the contract or the M/WBE utilization during the course of the project.

- The report does not reflect whether an M/WBE sub-contractor was subsequently hired to perform the work after the initial contract proposal.
- The report does not reflect whether the M/WBE sub-contractor actually performed all the services noted on the award.
- This report does not identify whether each individual M/WBE sub-group has met their goal. The report captures proposed utilization for the three sub-groups as a composite percentage and compares this against the combined utilization goal percentages.
- As previously noted earlier in this report, City's PSA's that have an M/WBE component are not included in this report.
- This report does not include other City department's contracts (state grants) that have an M/WBE component. Only DES public works contracts are summarized in this report.

The City's M/WBE Officer primarily oversees the Department of Environmental Services (DES) public works contracts for compliance with M/WBE participation goals and acts as a consultant for other City departments that administers contracts (including state grants) and PSA's. According to the City's M/WBE Officer's job description, this position is responsible for preparing the annual report on M/WBE projects and programs and correspondence with contractors, sub-contractors, consultants, and other governmental agencies.

◆ Recommendation

The Bureau of Purchasing should prepare a City-wide annual M/WBE report which captures actual M/WBE participation by NYS certified M/WBE firms for all City contracts and PSA's that have an M/WBE component. This report should capture total actual expenditures for each contract, including change orders impacting the amount of the contract as well as total actual expenditures paid to each M/WBE sub-contractor. The report should indicate whether or not the M/WBE firms noted on the initial utilization plan actually performed the work and were paid the amount indicated on the plan as well as any adjustments due to change orders. Also, this report should illustrate individual sub-groups utilization (for contracts \$50,000 and over) and composite utilization (for contracts under \$50,000) and applicable utilization percentages goals for each public works contract, allowing the M/WBE Officer and readers of the report to adequately assess the City's ability to achieve the desired M/WBE goals for public works projects.

The M/WBE Officer should maintain a report of all public works contracts that illustrate the following:

- Contract/agreement numbers
- Proposed contract amount
- Prime contractor name
- Certified M/WBE sub-contractor name(s) and sub-group type
- Dollar amount proposed for each certified M/WBE sub-contractor
- Utilization percentage proposed for each sub-contractor
- Utilization percentage requirement for each sub-group per City Ordinance
- Waivers/Reductions to percentage goals or the contract amount applicable to M/WBE utilization (along with an explanation of why the waiver/reduction was granted)
- Cumulative dollar amount of change orders during the course of the project
- Percentage of M/WBE utilization increase/decrease as a result of change orders
- Actual expenditures of M/WBE sub-contractors (amounts taken from supporting documentation – invoices, cancelled checks, certified payroll, etc...)
- Analysis of M/WBE sub-contractor(s) actual expenditures as it relates to the total amount the City paid to the prime contractor for the M/WBE portion
- Determination of whether M/WBE goals were achieved

The M/WBE Officer should maintain reports of all PSA's that illustrate the following:

- Perpetual accounting records of M/WBE expenditures for architectural/engineering, personnel training/testing, and advertising/media, compared to M/WBE utilization goals to verify achievement of annual goals.

The results of the above reports should be shared with City administration.

In addition, the M/WBE Officer should oversee all City departments that administer contracts or PSA's that have an M/WBE component. The M/WBE Officer should monitor the progress of each department or the City as a whole in meeting the M/WBE goals and follow-up on any shortcomings.

H. M/WBE Goals Are Not Consistently Met for New York State (NYS) Contracts/Grants

During our scope period, OPI examined seven contracts/grants with New York State (NYS) M/WBE requirements. The following table illustrates the analysis of the M/WBE utilization goals for these contracts/grants:

Review of the City's M/WBE Program Contracts Selected for Review with NYS M/WBE Requirements							
Department	Contract/ Grant	Contract Amount	Type of Group	NYS Goal	M/WBE Actual Expended	Percent Over/ (Under)	Amount Over/ (Under)
DRYS	SOOP	\$ 300,000	Composite	20%	0.00% ^b	(20.00%) ^b	(\$ 60,000) ^b
NBD	124378	\$15,229,423	Composite	20%	21.16%	1.16%	\$176,930
			Minority	15% ^{**}	13.21%	(1.79%)	(\$272,133)
			Women	10% ^{**}	7.95%	(2.05%)	(\$312,409)
NBD	123615	\$ 5,883,143	Composite	20%	20.79%	.79%	\$ 46,707
			Minority	15% ^{**}	15.73%	.73%	\$ 43,226
			Women	10% ^{**}	5.06%	(4.94%)	(\$290,677)
NBD	125797	\$ 400,000	Composite	20%	5.00% ^c	(15.00%)	(\$ 60,000)
NBD	124310	\$ 2,011,873	Composite	20%	32.82%	12.82%	\$257,949
			Minority	15% ^{**}	17.16%	2.16%	\$ 43,528
			Women	10% ^{**}	15.66%	5.66%	\$113,827
		\$ 1,985,576	Minority	10% ^{***}	a	a	n/a
			Women	10% ^{***}	a	a	n/a
Police	123821	\$ 49,927*	Composite	20%	0.00%	(20.00%)*	(\$ 4,123)*
Police	126933	\$ 413,500	n/a	exempt	n/a	n/a	n/a

- * - \$8,937 of this amount is a non-M/WBE expense. In addition, \$20,373 of this project is exempt due to equipment purchased from a State contract.
- ** - NYS Homes and Community Renewal (NYSHCR) funds included. NYSHCR goals set for these projects were 15% minority and 10% women business enterprise utilization.
- *** - Office of Temporary and Disability Assistance (OTDA) funds included. OTDA goals set for these projects were 10% minority and 10% women business enterprise utilization.
- a - Only proposed utilization plan available for OPI review. ODTA Contractor Quarterly Compliance Report not available for review.
- b - Waiver granted by NYS.
- c - Supporting documentation not available for OPI review. Percentage based upon summary report prepared by department.

We noted the following observations in the departments that administered NYS contracts/grants:

- Of the seven NYS contracts/grants examined, two received a waiver of the M/WBE utilization goals or an exemption and four did not meet their respective NYS goals in their entirety.

- OPI noted a lack of communication and standardized process between departments administering contracts/grants and the Bureau of Purchasing. During the course of interviews with various City department personnel responsible for administering NYS grants with M/WBE components, OPI noted some departments had not communicated with the City's M/WBE Officer throughout administering their contracts/grants.

For example, the Rochester Police Department's (RPD's) representative was under the impression that the Bureau of Purchasing was responsible for ensuring any RPD procurement with M/WBE goals is being achieved, which is not the case. Additionally, RPD did not complete and submit NYS forms to report actual M/WBE participation, for the non-exempt grant OPI examined, and was under the impression the Bureau of Purchasing might have done so on their behalf, which the Bureau of Purchasing did not do.

- The M/WBE Officer applied for a waiver, on behalf of DRYS, for the FY 2014-15 SOOP grant a year after program expenditures were incurred. Even though the City realized the M/WBE requirements would not be achieved for this grant prior to administering it, the City did not request the waiver until June 2016. This waiver was subsequently approved July 2016.

According to the City's M/WBE Officer, NYS granted a waiver for the prior year's FY2013-14 SOOP grant based upon criteria that newly hired personnel administering the grant were unaware of the M/WBE requirements until NYS requested M/WBE documentation at the end of the grant. The City's M/WBE Officer indicated on this waiver request that going forward, the City would solicit and secure M/WBE firms for the 2014-15 contract year. As noted above, a subsequent M/WBE waiver was requested for the 2014-15 SOOP grant due to a lack of M/WBE firms available for the project.

- For two of the four NBD contracts, non-certified M/WBE companies were included in the M/WBE utilization plan and/or on an *Affirmation of Income Payment to MBE/WBE* form which is provided to verify actual expenditures paid. Inclusion of these non-certified M/WBE companies would give the appearance of higher utilization.
- For the contract examined with Office of Temporary and Disability Assistance (ODTA) funds, OPI noted copies of the ODTA *Contractor Quarterly Compliance Report* form was not on file with the City. ODTA requires quarterly progress compliance reports to be submitted by the prime contractor. NBD was not aware of this

requirement for this project nor verified whether the prime contractor completed the required forms.

- OPI noted one contract administered by NBD lacked sufficient M/WBE supporting documentation. This contract was listed on a departmental summary report indicating a 5% M/WBE participation, however, there was no documentation to support any M/WBE utilization amounts expended for this project. At the time of our review, NYS required 20% M/WBE participation.

◆ Recommendation

City administration should remind all departments administering NYS contracts/grants with M/WBE goal requirements to comply with NYS M/WBE specifications and reporting requirements. Contracts/Grants should be monitored by each department administering the contract/grant for M/WBE utilization fulfillment and communicate the progress toward the M/WBE utilization goal to the City's M/WBE Officer. The City's M/WBE Officer should maintain records of all NYS contracts/grants with M/WBE components to verify compliance with NYS requirements. The Bureau of Purchasing should prepare a summary report of NYS M/WBE compliance and submit to City administration on an annual basis.

In addition, the City should verify that any NYS required forms related to administering of the grants, whether required to be completed by the City or the prime contractor, are submitted to NYS and copies maintained in department project files as well as filed with the City's M/WBE Officer. Unless otherwise noted in State requirements, only certified M/WBE companies should be included in the reporting of participation.

Each department administering a contract/grant with NYS M/WBE utilization goals should maintain a summary report of each project/contract including all applicable goals, target and actual utilization, and the subgroup classification of each vendor utilized that has been verified as a certified M/WBE. In addition, each department should maintain supporting documentation to verify M/WBE expenditures.

Any department administering a NYS grant that foresees circumstances in which M/WBE goals cannot be met should seek a waiver of M/WBE participation goals in a timely manner. Waivers should be requested prior to the administration of the contract if no qualifying M/WBE firm can be secured.

I. The City Does Not Consistently or Accurately Utilize MUNIS Functions for M/WBE Purposes

Two of the programs within the City's MUNIS system, each with numerous fields, are capable of assisting the City with tracking and monitoring of M/WBE activity as well as producing summary reports to aide in the verification of M/WBE utilization goals. The City does not currently have any other software designated to specifically track M/WBE data in a central location.

The MUNIS vendor/inquiry program allows the user to search vendor files and has the capabilities to isolate whether a company is an M/WBE firm through the use of the following fields:

- Minority Vendor Type
- Minority Business Information
- Minority Classification

If used properly, the City could generate reports capturing all certified M/WBE vendors by sub-group.

The contract entry program has the capabilities to capture vendor names, contract amounts, utilization plans, change orders, the capability to attach supporting documentation related to the project, identify if a contract has an M/WBE and/or DBE (Disadvantaged Business Enterprise) component for federal contracts, as well as other data. This program also has the capability to capture all sub-contractor participation and their supporting documentation. When paired with the vendor/inquiry program, the user can compare M/WBE participation to the project goals for a particular contract or identify whether a particular vendor was affiliated with other contracts.

OPI noted the following observations:

- There were numerous clerical errors in the MUNIS information programs for M/WBE reporting. Either the MUNIS fields are inaccurate or not consistently utilized. As a result, obtaining M/WBE data from the system is unreliable and cannot be utilized to assist in tracking, reporting, or monitoring of M/WBE participation or compliance with the M/WBE program objectives.
 - Of the 246 DES contracts examined for utilization of the M/WBE checkbox field in MUNIS, we noted 83 instances where, when compared with attached documentation, the field was inconsistently marked and, 49 instances where the field was not used at all. This is an error rate of 54%.

- During the course of our sampling selection process the M/WBE checkbox field was improperly used on seven DRYS contracts and one IT contract selected for testing.
 - While reviewing a MUNIS generated report of M/WBE coded vendors, OPI noted three instances in which a vendor with the exact same business name, had more than one vendor number. In addition, we noted at least three vendors listed more than once on MUNIS with their vendor names slightly varying in spelling or title of company. This duplication of vendor records further diminishes the accuracy of the data available and may cause records to be unintentionally divided.
 - The fields available on the MUNIS system to identify a vendor as an M/WBE firm are not being utilized consistently and accurately making it impossible to determine the number of certified M/WBE vendors on MUNIS. In addition, some of the data is outdated and does not reflect current certified M/WBE vendors.
 - City department's administering contracts/grants are not utilizing the sub-contractor field within MUNIS. This field has the capabilities of containing sub-contractor information relating to the project to aide in tracking M/WBE participation. Additionally, they are not fully utilizing the ability within the contract entry program in MUNIS to attach sub-contractor M/WBE information such as invoices, Form F, payroll records, canceled checks, etc.
- The City's vendor input forms, to add/modify vendor records on MUNIS, do not distinguish between certified and non-certified M/WBE vendors. As a result, both certified and non-certified M/WBE vendors are inputted into MUNIS in accordance to the input form and captured together under the same field.
 - The M/WBE progress form (Form F) completed by the prime contractor throughout the phases of each public works contract and submitted to the City are retained in the Bureau of Purchasing's Wage and Compliance area. These forms are not attached to the individual contract on MUNIS nor are they used to reconcile or to verify goals achieved or actual payments made to sub-contractors.
 - M/WBE data that is collected for a given contract is not centralized in a single, easily accessible location, such as MUNIS. Rather, the data is fragmented amongst various departments/bureaus.

Recommendation

If the City chooses to utilize MUNIS to track M/WBE data, City departments should receive additional guidance on how to properly use the MWBE/DBE checkbox feature within the contract entry program of MUNIS. It should be clearly communicated that this field should be properly completed for all contracts entered into MUNIS indicating whether or not the City, State, or Federal funding requires an M/WBE or DBE plan.

The MUNIS sub-contractor tab has experienced recent upgrades and these upgrades have allowed for additional enhancements to be included within this field. OPI recommends City personnel utilize this feature for sub-contractor information and attach all sub-contractor supporting documentation (Form F, copies of cancelled checks, invoices for materials/supplies, sub-contractor invoices to the prime contractor, certified payroll sheets, etc..) to the contract entry program.

The City's vendor input forms used to add/modify vendor records on MUNIS should be revised to distinguish certified and non-certified M/WBE vendors. City personnel inputting new/modified vendor data should reference the NYS certified M/WBE directory prior to inputting the vendor information into MUNIS and verify whether they are a certified M/WBE or a non-certified M/WBE company. Any duplication of vendor records should be identified and combined under one vendor number.

Required documentation, such as the preconstruction forms, progress completion reports, revised utilization plans and waivers should be reviewed and analyzed for accuracy and completeness. In addition to placing this content on MUNIS or other software designated specifically to track M/WBE data, effective communication should be enhanced between the various parties involved (i.e. project manager, prime contractors and sub-contractors, Wage and Compliance personnel, the M/WBE Officer, and additional members of the Bureau of Purchasing), so that each member is aware of any changes, shortfalls, or discrepancies that may arise.

The M/WBE Officer should be able to locate all of the necessary data and supporting documentation for the M/WBE fiscal year report on MUNIS or other software designated specifically to track M/WBE data. This supporting documentation, including Form F, should be available to substantiate M/WBE participation and expenses and used to aide in the verification that M/WBE goals have been achieved.

IV. CONCLUSION

While sound data reporting will help the program better accomplish its goals, the City should also improve the administration of the program. City administration should strengthen enforcement of the program's rules and regulations to ensure that participants act in good faith to meet the program's objectives. There should be a renewed commitment from all parts of City government to the program's goals. By doing so, the City will ensure that the program is run effectively and efficiently and that M/WBE participants are receiving all the benefits of the program to which they are entitled. Specifically, the City should:

- Consider pursuit of an updated M/WBE ordinance.
- Track and report actual payments to certified MWBE's.
- Increase cooperation and communication between City departments/bureaus to properly administer the M/WBE program.
- Require more detailed documentation of payments to MWBE's.
- Utilize the City's MUNIS system or other software designated specifically to track and centralize M/WBE data.
- Increase the M/WBE Officer's oversight of City-wide M/WBE contracts/grants to allow greater tracking and monitoring of the City's achievement of M/WBE goals.
- Clearly define and consistently apply MWBE regulations.
- Provide City administration with analysis of actual M/WBE participation results.

V. DEPARTMENTAL RESPONSES

The response of the Departments of Finance and Environmental Services to findings in this report begins on the next page.



FINANCE COMPREHENSIVE DEPARTMENT RESPONSE

The responses provided herein were prepared by the Department of Finance, based on our experience with and understanding of the MWBE goals set by the City, as well as state and federal agency requirements over the last twenty-five years. Unless noted otherwise, our response does not address specific findings, observations and/or recommendations directed to other departments in this audit.

SECTION 1. SUMMARY

This audit identified a number of areas for improving the administration of MWBE program processes and procedures, based upon a review of MWBE program activity for the two years prior to July 1, 2015. Many of the findings, observations and recommendations are valid. However, we have identified a number of areas where the available data supports different or alternative observations and recommendations than proposed by OPI in the audit. Since the audit was designed as a narrowly focused compliance audit, it does not provide the context of a comprehensive performance audit. In particular, we believe that the audit should have been expanded in order to present a complete and balanced presentation of how the MWBE program for public works was managed during the audit years and improvements that have been made since that time.

Our department responses are provided in two ways:

- First, a general comprehensive response is presented in Sections 2 through 6 below. Our comprehensive response is intended to offer factual data, other resources and informed opinion based upon our experience to explain how we have reached different conclusions than those presented in the audit. Section 6 provides the department's recommendations for actions that can be taken to address the audit findings and improve the City's ability to administer the achievement of authorized MWBE goals.
- Second, shorter more direct department responses to specific findings or recommendations can be found in Appendix A. Appendix A provides the audit reference language and page, and the associated department response.

SECTION 2. FINDINGS WITH WHICH WE CONCUR

We concur that the following audit findings should be addressed:

1. The City needs to update the MWBE goals policy,
 - The 1992 – 1994 era goals for certain ethnic categories cannot be achieved because the MWBE ethnicity data required to make awards by ethnicity is no longer available from New York State Empire State Development (ESD) MWBE Certification data,
 - New York State only certifies businesses as Minority and/or Women Owned Businesses, where Minorities are any of the following ethnic categories: Asian-

Indian subcontinent Americans, Asian-Pacific Americans, Black Americans, Hispanic Americans, Native Americans or Alaskan Native Americans,

- The number and type of MWBE companies in greater Rochester is substantially different than in 1992. For example, in 1992, the total number of companies in the City's MWBE Directory was 51. There were 225 companies in 2013, 359 in 2014, and 396 in 2016. In the latest MWBE directory, which is currently being finalized, the number of companies is going to exceed 425. The greatest change has been in the number of WBE companies. The 1992 Directory did not list any WBE's. In the 2016 Directory there were 260 WBE's and 136 MBE's. The City's goals, when updated, should allow for the dynamic changes occurring in the marketplace while recognizing the City's interest in directing business to the universe of M/WBE's in greater Rochester where possible.
2. Administrative policies for determining how well goals are being met can be updated to address issues identified in the audit. During and since the time period covered by the audit, the City has followed administrative procedures for City MWBE goals consistent with the procedures first put in place when the 1992-94 ordinances were implemented. Periodic adjustments have been made to administrative procedures to reflect current market conditions and available information about MWBE contractors. Updated and re-issued administrative policies would create a better framework for measuring how MWBE goals are being met for both public works and professional service agreements (PSA's). Suggested updates include:
- Clarification and emphasis on what is allowed to be counted towards achieving goals regarding use of non-MWBE second tier subcontractors, what can be counted for supplies and equipment versus labor/installation, and the strict exclusion of pass-throughs. New York State has clarified what the state will allow for being counted towards MWBE goals for suppliers and brokers. The City should consider adopting the state's rules so that MWBE's follow a consistent set of rules.
 - The current MWBE plan approval process for public works projects is well established and is consistent with the process used by the state. The MWBE Officer approves public works MWBE Plans. Clear guidelines based upon the public works process can be established for departments to use for approving MWBE plans associated with PSA's and for reporting goal achievement through the MWBE Officer.
 - Overall aggregate annual MWBE goals should be set as a percentage of aggregate annual contract authorizations, in addition to setting individual contract goals (which is consistent with the approach taken in setting the 1992 goals). This will allow for the fact that individual contract goals may vary based on waivers granted by the MWBE Officer to reflect specialized work or high cost equipment, but that in other contracts goals may be exceeded. Contracts awarded to MWBE prime contractors should be counted towards meeting the annual aggregate contract authorization goals.

- Achievement of annual goals should be based on contracts awarded and MWBE plans approved for those contracts during a fiscal year. Reporting on achievement of goals on a per-contract basis, taking into account actual contract payments over the course of the contract, should be reported separately, and not as part of the annual goal reporting, because many contracts span multiple years, with MWBE participation occurring at any time over those years. Reporting on actual contract expenditures creates longitudinal measurements of success (i.e. goes across multiple years) versus vertical (i.e. one year) annual reports of success. Both are measures of success, however, they should be separate and distinct.
3. Administrative requirements to verify payments to MWBE subcontractors should be improved.
- For public works contracts, the City has a well-established process whereby prime contractors must submit a signed final Form F stating how much was paid to MWBE subcontractors. The audit determined that in some cases, actual amounts paid differed from what was reported by the contractor on the Form F. The City currently does not require, or have access to, actual payments made to MWBE subcontractors.

Three possible management options to address this issue are:

1. continue to have OPI do periodic audits of actual payments to subcontractors to identify any discrepancies, or
2. develop a 100% compliance review process which would require the prime to submit copies of invoices and amounts paid along with the Form F (as recommended in the audit), or
3. require prime contractors to submit a new payment verification form, co-signed by the subcontractor, verifying payments made to that subcontractor for work done on a particular payment application.

Option 2, a 100% compliance audit, would provide the greatest assurance that prime contractors and MWBE subcontractors met the requirements of the MWBE program. However, this will add increased costs to the City to hire more staff and/or utilize outside compliance firms because of the substantial additional work involved.

Option 3 would be a cost effective alternative to implementing a full scale compliance audit. The new verification form would provide proof that the prime has paid the sub and the sub acknowledges that they have been paid that amount for the work specified. This type of form would be similar to what NYSDOT requires for its contracts. Tracking this new form could be done as an increment to the work of existing staff.

- For PSA's, there currently is no Form F equivalent for departments who manage their PSA's to collect. This procedure should be put in place, along with developing a standardized administrative process for managing PSA's and reporting MWBE utilization numbers. Note – for those PSA's that are funded by State or other grants that have MWBE requirements, the State reporting forms provide that information. However, it is not currently collected on a systematic basis for all other PSA's.
4. Vendor file information in MUNIS needs to be updated and made consistent. In order to accurately track activity with MWBE vendors in MUNIS who are prime contractors with the City, the vendor file information should be updated. Many of the problems with mis-identified MWBE designations are a result of carrying over 22,000 vendors from the previous financial information system (FIS) during the conversion to MUNIS. FIS information carried over to MUNIS has not been updated or corrected except on an as-needed basis. Going forward, all existing MWBE identifiers can be purged and correct ESD certified information will be re-entered so that only state certified MWBE's are flagged in MUNIS. However, it should be noted that because the data is not available from the state, MWBE ethnicity fields will not be used in MUNIS.
 5. A central MWBE goals reporting process that collects goals and achievements for public works, PSA's, grants and NBD housing and development projects should be developed. Currently, reporting is decentralized and does not follow consistent formats for identifying goals and verifying achievement of goals.

SECTION 3. KEY AREAS WHERE WE HAVE A DIFFERENT PERSPECTIVE

The audit presents many findings, observations and recommendations by OPI. However, based on our review of the audit findings, we have identified a number of areas where the available data supports different or alternative observations and recommendations than proposed by OPI. In a few cases, we identify areas where we believe that the findings need to be adjusted to reflect that available data. We offer a number of observations and recommendations that differ from the audit because we believe that the audit observations and recommendations are based on an incomplete understanding of the full context within which such observations and recommendations should be made.

Department responses to specific audit findings, observations and recommendations are presented in Appendix A, which provides the specific audit language and the department response where we have a different perspective to specific statements in the audit.

In addition, we provide more high level responses below and offer additional information and perspective in order to provide a more accurate and complete understanding of how much City business is being directed to MWBE's, the current programs and procedures being followed, changes that have been made over time to improve programs and procedures, and areas that have been identified where additional improvements could or should be made.

1. Different Perspective #1 – There is No One “Citywide MWBE Program”

Although the audit refers to “the program” as if there was a single, integrated program, in fact, there is no monolithic citywide MWBE program. What has evolved within the City over time is a set of distinct channels to direct spending to MWBE’s. Each channel has its own set of goals, objectives, rules, compliance and reporting requirements and authorizing agencies. The distinct and separate channels are:

- City public works projects MWBE program. This program, including specific minority group goals, was established by city ordinance in 1992, which expired in 1997. Since that time, the City has continued to strive to achieve the goals set by the 1992 ordinance. However, over time, the ability to meet specific minority group goals has changed, first as the number and type of MWBE firms in the Rochester area has changed, and second, as the state has changed its minority certification reporting. The City’s MWBE Officer’s primary responsibility and a large majority of time is focused on meeting the public works MWBE program goals.
- City professional service agreements (PSA) MWBE requirements. In 2012 City Council authorized the use of goals set in 1994 for three minority groups for PSA’s, and, in addition, provided a 10% incentive for MWBE companies in the PSA evaluation process. Because PSA’s are administered by individual departments, tracking whether or not the MWBE goals for the three minority groups are achieved is decentralized across departments. City Council does know, however, the number of MWBE firms solicited for RFP’s, and the number of MWBE firms awarded PSA’s, based upon the information required to be filed for each PSA authorization.
- State grants and DOT funding. State program grants have for years required 20% MWBE goals, and have recently required 30% MWBE goals, but with the goals split – half to certified MBE’s (without reference to a particular minority group) and half to certified WBE’s. Special state grants, however, can have higher MWBE goals – for example, the state had a 50% MWBE goal for the \$2 million grant for the Public Market renovation project. State DOT funding, which is typically a flow through of Federal funds, requires different DBE (Disadvantaged Business Enterprise) goals, anywhere in the 0% to 8% range. DBE’s may be, but are not necessarily MWBE’s. Tracking goal compliance is done within the City by the department that is the recipient of the program grants and reported through the MWBE Officer, and tracking of DOT funded or other public works grant projects is done through the public works tracking process.
- Federal CDBG program requirements. Various CDBG programs have different MWBE reporting and tracking requirements. Tracking and reporting of expenditures by NBD with MWBE companies is done by NBD and reported to HUD in quarterly and annual federal reports. The audit did not mention the amount of expenditures made to MWBE contractors through CDBG programs, which amounts to millions of dollars as reported by NBD in the CAPER Form HUD-40107 and by separate Form HUD-2516.
- Large project development grants. NBD, often in conjunction with the Rochester Economic Development Corporation (REDCO), provides funding for major economic

development projects that run into the millions or tens of millions of dollars. Each development project has its own MWBE goals, depending on the sources of funding. State development grants and/or loans typically have 20% or 25% MWBE goal requirements. The City goals have in recent years been set at 20% for the City funded portion of the total funding package. Tracking of state development grants is done through NBD based upon reports from the developer.

In summary, funds are spent with MWBE's through each of these five channels for which MWBE goals have been set. A sixth channel, City purchases of goods and services through the formal and informal bidding process, does not currently have MWBE goals.

To determine how much the City has awarded to or spent with MWBE companies in any given year, what percentage of total expenditures that represents, and whether or not stated goals were achieved, requires analyzing in detail the specifics of each distinct program, each distinct set of goals, and how goals and actual expenditures are tracked and reported. This audit did not get into the level of detail required to present both the big picture for the City as a whole and the complete picture for what is happening in each channel where public funds are spent with MWBE's.

2. Different Perspective #2 – The Public Works MWBE Program Actually Exceeded the City's Goals.

The MWBE program with the highest ongoing visibility for the last twenty years is the public works program. The 1992 ordinance clearly focused on public works as the driver of the City's MWBE program. The MWBE Officer in the Bureau of Purchasing has been responsible for administering the public works MWBE program since its inception, since the Purchasing Agent is responsible for bidding and contracting for public works projects.

We have a substantially different assessment about the City's success in achieving the City's MWBE goals than is presented by the audit. There are five reasons why our view is so substantially different:

- The timeframe selected for the audit and the requirement that projects had to be completed in order to be included in the audit limited the ability to review a representative cross section of public works projects. Specifically, the audit selected eight projects, which were awarded during a ten month period in FY 2013-14, from August, 2013 to May, 2014. All of the eight projects selected were for building renovation projects. The sum of the awards for these projects totaled \$1,035,210. However, a total of 65 public works projects were awarded in FY 2013-14, for a total sum of \$42,931,603. These projects fell into three major categories: City building/general projects (with 19.2% individual project MWBE goals); City street/sidewalk/bridge projects (with 9.9% individual project MWBE goals); and Other, which includes state or combination city and state funded projects and one specialty conduit project (with individual project goals that ranged from 0% to 20% aggregate goals.) Thus the audit did not take into account two major categories of projects (Streets/Sidewalks/Bridges and Other), only looked at 8 out of 65 projects (12.3% of all projects), and less than 3%

of the total amount awarded for all projects during the one fiscal year covered by the audit of public works projects.

- The narrow focus of the audit as summarized in the audit table “Public Works Contracts Reviewed” could lead the reader to conclude that the City consistently failed to meet the MWBE goals for the sample fiscal year. This conclusion is flawed because of the constraints of the methodology used to conduct the audit as described in the previous bullet. A complete analysis of all projects awarded provides a completely different conclusion.

TABLE 1 A provides a summary of all public works projects awarded during FY 2013-14. This shows the total project awards in the three type categories, the calculated MWBE dollar goals based upon the 1992 ordinance percentages (Columns A and B) and the actual MWBE dollar goals and in the approved subcontractor utilization plans for each project (column C) and percentages (column D). In addition to the approved goal for the use of subcontractors, TABLE 1 A provides the net additional amount awarded to MWBE’s who were prime contractors (column F), the sum of awards to MWBE subcontractors and primes (column G) and comparative percentages.

TABLE 1 A shows the aggregate total for all MWBE subcontractors in FY 2013-14. Actual awards to MWBE’s for Building/General contracts totaled \$2.53 million. Adding MWBE awards in the Streets and Other categories resulted in total awards to MWBE subcontractors of \$6.69 million, which represented a composite award of 15.6% of total contracts awarded. Column D shows that the aggregate MWBE awards for Buildings came to 19.7% and awards for Streets came to 12.0%.

It is important to understand that Ordinance 92-326, Section 4, shows that City Council set separate annual aggregate goals for Building/General and Street project categories. Adjusting for the additional goal for WBE’s set by Ordinance 94-213, the target annual aggregate goals were set at 17.5% for Buildings/General, and 9.0% for Street projects (Column E). As shown in TABLE 1 A, Column D, the aggregate annual goals for both Buildings and Streets were exceeded in FY 2013-14 for MWBE subcontractors.

It is also important to factor in, as described in more detail below, that while Ordinance 92-326 set annual aggregate goals for the two minority sub-groups, the new state data does not make it possible to break down minorities by sub-group. Therefore, the annual goals need to be considered as simply M and W. However, since the minority sub-group data were available for that time period, TABLE 1 A shows the aggregate annual goals for the two sub-groups for FY 2013-14, which were not met for African American and Hispanic subcontractors for Buildings, but were exceeded for Streets. Overall, annual aggregate goals for MWBE’s were exceeded for the combination of M and W subcontractors.

In addition, Ordinance 92-326, as amended by Ordinance 94-213, does not limit the City’s public works MWBE goals to only the use of subcontractors. Section 4 of Ordinance 92-326 reads “The following percentages of all dollars to be spent by the City through contracts for the procurement of public works are hereby established as goals

for the amount of such work to be performed by MWBE's for each fiscal year of the Program..." Since the ordinance stated that "all dollars" were to be counted, awards to MWBE prime contractors should also be counted in measuring whether or not the City met its MWBE goals. In fact, as shown in Column F, MWBE prime contractors were awarded net contract work in the amount of an additional \$2.62 million for Buildings and an additional \$2.70 million for Street projects, in addition to the amount of \$3.78 million awarded to MWBE subcontractors in those categories. As shown in Columns G and H, adding the prime contractor awards results in total MWBE aggregate annual awards of over \$5.15 million for Buildings, or 40.0% of all awards for Buildings, and over \$3.95 million for Streets, or 38.0% of all awards for Streets. In total, MWBE sub and prime contractors received awards of over \$12.01 million, which represented 28.5% of all public works awards in FY 2013-14.

TABLE 1 B provides the same information as shown in TABLE 1 A, but for all public works awarded during FY 2014-15. TABLE 1 B shows that, in total, MWBE sub and prime contractors received awards of over \$13.75 million, which represented 25.7% of all public works awards in FY 2014-15.

- The narrow focus of the audit misses the impact of projects for which other MWBE and/or DBE goals were set by outside funding agencies, identified as "Other" contracts in TABLE 1 A. "Other" contracts totaled \$18,950,967, or 44% of the total amount of contracts awarded in FY 2013-14. "Other" project MWBE/DBE goals ranged from 0% to 20%. All except one of these projects (a Water conduit project) required state funding approval of the MWBE and/or DBE goals and approved MWBE/DBE utilization plans. The state funding agency also approves payment to the City based upon achieving the MWBE. Goals. Thus, the state program goals are met or exceeded, or waivers are granted by the state, outside of the City's MWBE program requirements

TABLE 1A

SUMMARY - M/WBE GOALS FOR PUBLIC WORKS BASED ON AWARD OF CONTRACTS FY 2013-14

	Gross Total	Net Total	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
		Includes Waivers								
Total All Public Works Projects Awarded FY 2013-14	65	65								
Number of Contracts										
Total \$ of Awards	\$ 42,913,602.85	\$ 42,162,818.42								
			1992 Ordinance M/WBE Sum as % of Award of Individual Project Goals	1992 Ordinance M/WBE Calculated \$ Amount Based on % Goals	Actual \$ Amount Awarded to M/WBE Subcontractors	Actual Composite % of Awards	1992 Ordinance Annual Composite Goal	Awards to M/WBE Prime Contractors	Awards to All M/WBE's Subs plus Primes	Actual Composite % of Awards to All M/WBE's Subs plus Primes
	41	41								
City Buildings/General Number										
City Buildings/General \$ of Awards	\$ 13,112,097.80	\$ 12,865,767.72	19.2%	\$ 2,470,227	\$ 2,531,437.80	19.7%	17.50%	\$ 2,618,356.96	\$ 5,149,794.76	40.0%
City Buildings/General \$ of Awards to African American Subcontractors			14.5%	\$ 1,865,536.32	\$ 1,603,760.85	12.5%		\$ -	\$ 1,603,760.85	12.5%
City Buildings/General \$ of Awards to Hispanic Subcontractors			2.5%	\$ 321,644.19	\$ 282,973.25	2.2%		\$ -	\$ 282,973.25	2.2%
City Buildings/General \$ of Awards to Women Subcontractors			2.2%	\$ 283,046.89	\$ 644,703.70	5.0%		\$ 2,618,356.96	\$ 3,263,060.66	25.4%
City Streets/Sidewalks/Bridges Number	15	15								
City Streets/Sidewalks/Bridges \$ of Awards	\$ 10,850,538.24	\$ 10,411,373.72	9.9%	\$ 1,030,726	\$ 1,253,243.94	12.0%	9.00%	\$ 2,700,709.74	\$ 3,953,953.68	38.0%
City Streets/Sidewalks/Bridges \$ of Awards to African American Subcontractors			6.7%	\$ 697,562	\$ 762,991.07	7.3%		\$ -	\$ 762,991.07	7.3%
City Streets/Sidewalks/Bridges \$ of Awards to Hispanic Subcontractors			2.2%	\$ 229,050	\$ 267,952.45	2.6%		\$ -	\$ 267,952.45	2.6%
City Streets/Sidewalks/Bridges \$ of Awards to Women Subcontractors			1.0%	\$ 104,114	\$ 222,300.42	2.1%		\$ 2,700,709.74	\$ 2,923,010.16	28.1%
Other (with non-standard M/W/DBE goals) Number	9	9								
Other (with non-standard M/W/DBE goals) \$ of Awards	\$ 18,950,966.81	\$ 18,885,676.98	NA-Set by Funder		\$ 2,906,909.00	15.4%	NA	\$ -	\$ 2,906,909.00	15.4%
Other (with non-standard M/W/DBE goals) \$ of Awards to African American Subcontractors					\$ 986,923.00	5.2%		\$ -	\$ 986,923.00	5.2%
Other (with non-standard M/W/DBE goals) \$ of Awards to Hispanic Subcontractors					\$ 413,175.00	2.2%		\$ -	\$ 413,175.00	2.2%
Other (with non-standard M/W/DBE goals) \$ of Awards to Women Subcontractors					\$ 1,506,811.00	8.0%		\$ -	\$ 1,506,811.00	8.0%
TOTALS	\$ 42,913,602.85	\$ 42,162,818.42			\$ 6,691,590.74	15.6%		\$ 10,638,133.41	\$ 12,010,657.44	28.5%

NOTE: 1 The totals and percentages are based on the Net Total, i.e. full contract value after waivers were granted.

2 The totals shown are based on award and do not include change orders

**TABLE 1B
SUMMARY - M/WBE GOALS FOR PUBLIC WORKS BASED ON AWARD OF CONTRACTS FY 2014-15**

	Gross Total	Net Total	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H
		Includes Waivers								
Total All Public Works Projects Awarded FY 2014-15	41									
Number of Contracts	41									
Total \$ of Awards	\$ 57,689,110.99	\$ 53,527,744.19								
			1992 Ordinance M/WBE Sum as % of Award of Individual Project Goals	1992 Ordinance M/WBE Calculated \$ Amount Based on % Goals	Actual \$ Amount Awarded to M/WBE Subcontractors	Actual Composite % of Awards	1991 Ordinance Annual Composite Goal	Awards to M/WBE Prime Contractor	Awards to All M/WBE's Subs plus Primes	Actual Composite % of Awards to All M/WBE's Subs plus Primes
Awards by Category										
City Buildings/General Number	22	22								
City Buildings/General \$ of Awards	\$ 8,274,438.80	\$ 5,572,242.00	19.2%	\$ 1,069,870	\$ 1,756,167.00	31.5%	17.50%	\$ 509,865.00	\$ 2,266,032.00	40.7%
City Buildings/General \$ of Awards to African American Subcontractors			14.5%	\$ 807,975.09	\$ 1,188,745.53	21.3%		\$ -	\$ 1,188,745.53	21.3%
City Buildings/General \$ of Awards to Hispanic Subcontractors			2.5%	\$ 139,306.05	\$ 117,906.00	2.1%		\$ -	\$ 117,906.00	1.1%
City Buildings/General \$ of Awards to Women Subcontractors			2.2%	\$ 122,589.32	\$ 449,515.47	8.1%		\$ 509,865.00	\$ 959,380.47	17.2%
City Streets/Sidewalks/Bridges Number	14									
City Streets/Sidewalks/Bridges \$ of Awards	\$ 15,241,802.83	\$ 15,241,802.83	9.9%	\$ 1,508,998	\$ 1,827,317.93	12.0%	9.00%	\$ 1,228,783.88	\$ 3,056,101.81	20.1%
City Streets/Sidewalks/Bridges \$ of Awards to African American Subcontractors			6.7%	\$ 1,021,201	\$ 950,687.18	6.2%		\$ -	\$ 950,687.18	6.2%
City Streets/Sidewalks/Bridges \$ of Awards to Hispanic Subcontractors			2.2%	\$ 335,320	\$ 270,132.55	1.8%		\$ -	\$ 270,132.55	1.8%
City Streets/Sidewalks/Bridges \$ of Awards to Women Subcontractors			1.0%	\$ 152,418	\$ 606,498.20	4.0%		\$ 1,228,783.88	\$ 1,835,282.08	12.0%
Other (with non-standard M/W/DBE goals) Number	5									
Other (with non-standard M/W/DBE goals) \$ of Awards	\$ 34,172,869.36	\$ 32,713,699.36	NA-Set by Funder		\$ 3,093,054.92	9.5%	NA	\$ 5,337,088.00	\$ 8,430,142.92	25.8%
Other (with non-standard M/W/DBE goals) \$ of Awards to African American Subcontractors					\$ 708,226.83	2.2%		\$ -	\$ 708,226.83	2.2%
Other (with non-standard M/W/DBE goals) \$ of Awards to Hispanic Subcontractors					\$ 320,026.35	1.0%		\$ -	\$ 320,026.35	1.0%
Other (with non-standard M/W/DBE goals) \$ of Awards to Women Subcontractors					\$ 2,064,801.74	6.3%		\$ 5,337,088.00	\$ 7,401,889.74	23.6%
TOTALS	\$ 57,689,110.99	\$ 53,527,744.19								

NOTE: 1 The totals and percentages are based on the Net Total, i.e. full contract value after waivers were granted.

2 The totals shown are based on award and do not include change orders

- The audit analysis of public works shown in the audit table “Public Works Contracts Reviewed” does not fully represent how the MWBE goals are administered by the MWBE Officer. While the audit table shows some of the impact of the waivers approved by the MWBE Officer that reduce and or change the total dollar amount of the goal requirements for the contract as well as approve different MWBE sub-group goals, it fails to take into account all waivers, and does not show the impact that waivers create for meeting composite goals.

TABLE 2 provides the data for one contract analyzed in the audit to show the difference between how OPI measured achievement of goals and how the goals would have been measured based upon the approved utilization plan.

The actual approved plan goals for Contract 125977 were based on a total of \$94,880, not the original contract amount of \$169,880 used by OPI. The MWBE Officer approved meeting a total MWBE goal of 17.9% for the project through an African American company, given the inability to obtain Hispanic and Women Owned subcontractors for the work. OPI simply applied the Ordinance goals against the final total contract payments to derive dollar goals from which the reported shortfalls were calculated. Based on the derived goals OPI reported shortfalls for all three ethnic categories which resulted in a total shortfall of \$14,323. However, the actual approved plan accepted known shortfalls for Hispanic and Women companies, which were partially offset by increased participation of the African American company. Thus, the approved dollar goal was \$17,000. OPI reported that the actual amount paid to that MWBE subcontractor was \$19,942. Based upon comparing the amount paid to the amount of the approved goal, the goal was exceeded by \$2,942.

However, OPI noted in the audit that correctly reporting achievement of the MWBE goals should take into account change orders (with which we agree can be done when reporting on a multi-year longitudinal basis as noted in Section 2.2). Since the amount of the change orders added 5.1% to the original contract amount, a proportional increase in the MWBE goals would have required an addition to the aggregate goal. As shown in TABLE 2, the original goal of \$17,000 would have been increased to \$18,536 to reflect the change order. However, even accounting for that higher goal, the subcontractor was still paid \$1,405 more than the revised goal.

We interpret this data to show that, for Contract 125977, the MWBE goals were exceeded. OPI’s data make it appear that there was a shortfall.

TABLE 2

Contract 125977 - Blue Cross Arena Falls Protection - Comparing OPI Audit Findings to Department Response Findings

Reported by OPI in Table on Public Works Contracts Reviewed											
Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K	Column L
Awarded Contract Amount	Added Change Orders (5.01% Net Increase from Contract Award)	Contract Amount Used by OPI to Measure Goals Includes Change Orders	M/WBE Sub-Group (Per 1992 Ordinance)	% Goals Used by OPI - Per Ordinance	\$ Goals Derived by OPI Per Ordinance Against Final Contract Amount	Actual % Goals in the Approved MWBE Plan - Not Considered by OPI	Actual \$ Goals in the Approved MWBE Plan - Not Considered by OPI	Actual Amounts Paid to MWBEs per OPI	% Achieved per OPI (Expenditures/ Contract Amount)	Actual \$ Paid Is Under Goal As Reported by OPI - Includes Change Orders	% Under Reported per OPI - Includes Change Orders
\$ 169,880	\$ 8,585	\$ 178,465	AA	14.50%	\$ 25,877.43			\$ 19,942.00	11.2%	\$ (5,935.43)	-3.33%
			HI	2.50%	\$ 4,461.63			\$ -	0.0%	\$ (4,461.63)	-2.50%
			W	2.20%	\$ 3,926.23			\$ -	0.0%	\$ (3,926.23)	-2.20%
			Totals	19.20%	\$ 34,265.28			\$ 19,942.00	11.2%	\$ (14,323.28)	-8.03%

Department Findings Based on Actual APPROVED MWBE Plan

Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I	Column J	Column K	Column L
Awarded Contract Amount	Added Change Orders (5.01% Net Increase from Contract Award)	Actual APPROVED MWBE Plan Contract Amount After Waivers	M/WBE Sub-Group (Per 1992 Ordinance)	% Goals Per Ordinance	\$ Goals Per Ordinance on Approved Plan Amount	Actual % Goals in the APPROVED MWBE Plan	Actual \$ Goals in the APPROVED MWBE Plan adjusted for Change Orders	Actual Amounts Paid to MWBEs per OPI	Actual % Achieved per APPROVED Plan	Actual \$ Amount Paid Over Goal of APPROVED Plan - Includes Change Orders	Actual % Over Goal of APPROVED Plan
\$ 169,880	\$ 8,585	\$ 94,880	AA	14.50%	\$ 13,757.60	17.90%	\$ 18,536.72	\$ 19,942.00	21.0%	\$ 1,405.29	3.12%
			HI	2.50%	\$ 2,372.00	0%	\$ -	\$ -	0.0%	\$ -	0.00%
			W	2.20%	\$ 2,087.36	0%	\$ -	\$ -	0.0%	\$ -	0.00%
			Totals	19.20%	\$ 18,216.96	17.90%	\$ 18,536.72	\$ 19,942.00	21.0%	\$ 1,405.29	3.12%

3. Different Perspective #3 - Two Different Types of Reports are Needed to Compare Goals to Actuals

The audit recommends that actual expenditures of projects with MWBE's be used for reporting on whether or not MWBE goals are met. The problem with this approach is that project payments often stretch out over multiple years. Thus, there is no way to get an easy to understand snapshot in time about whether or not MWBE goals have been met for projects for any given fiscal year.

TABLE 3 provides the data for the 65 contracts awarded in FY 2013-14. As of the end of May, 2017, there were still 8 projects that had not been completed. While 12% of the contracts remain open, 22% of the contract amounts had yet to be paid. Further breakouts by type of contract show that contracts remain open in every category, even though the last of these contracts were awarded three years ago.

TABLE 3 also shows the actual payments made to MWBE's for contracts by category of project. For Street projects, total payments made to MWBE's already exceeds the original MWBE Plan awards. This reflects the fact that MWBE work is constantly being adjusted over the course of projects, to reflect the ongoing changes that occur over a multi-year time period. While achievement of MWBE goals can be and is measured over the life of a project, the only way to develop an easy to understand single point-in-time indicator of how well the City is meeting MWBE goals is to use contract awards and approved MWBE plans as the basis for reporting on a fiscal year basis.

A completely separate reporting process should be used to track and measure payments to MWBE's over the life of each project. Once a project has been completed and all payments made, a new metric can be reported which would be Amount Paid compared to Amount in the Plan (taking into account Plan changes to reflect contract change orders).

4. Different Perspective #4 - Ethnic Category Goals Cannot Be Used to Measure Success in Meeting M/WBE Goals

The audit emphasizes findings that the ethnic subcategory goals set in the 1992 through 1994 ordinances were consistently not met. However, static goals from the 1992 – 1994 period should not be used to determine the aggregate success or lack of success in meeting the City's MWBE objectives. The City's policy objective is to ensure that a significant portion of the city's expenditures are spent with MWBE contractors. The 1992 – 1994 ordinances identified what City leaders at that time defined as significant. The audit data shows that the City did not meet the specific minority group goals for African American and Hispanic goals set in the 1992 – 1994 era ordinances. However, analysis of approved MWBE goals on a project-by-project basis shows that specific minority group goals were waived or adjusted in recognition of the realities of the marketplace, which has changed significantly over the last twenty-five years. Further, as stated previously, the City no longer has access to the data required to identify ethnic minority subgroups. Without that data, the City will have to change its MWBE goals and how they are implemented without reference to specific ethnic categories.

TABLE 3

Public Works Projects Awarded in FY 2013-14 Closed Out as of May 22, 2017

Fiscal Year 2013/2014	Total Projects Awarded	Completed Projects and Amounts Paid	% of Awarded
Total Number of Public Works Contracts	65	57	88%
Total Value of Contracts Awarded	\$ 42,931,603	\$ 33,307,417	78%
Number of Buildings/General Projects	41	38	93%
\$ For Building Projects ¹	\$ 13,112,097	\$ 13,573,452	104%
Awarded to M/WBE Plan amount for Buildings, plus Primes	\$ 5,149,795		
M/WBE Amount Paid for Buildings Includes Primes		\$ 4,956,687	96%
Number Streets/Sidewalks/Bridges Completed	15	13	87%
\$ For Street Projects ¹	\$ 10,850,538	\$ 11,555,210	106%
Awarded to M/WBE Plan amount for Streets, plus Primes	\$ 3,953,954		
M/WBE Amount Paid for Street Includes Primes		\$ 4,130,118	104%
Number of Other Completed	9	6	67%
\$ For Other Projects ¹	\$ 18,950,966	\$ 8,178,753	43%
Awarded to M/WBE Plan amount for Other, plus Primes	\$ 2,906,909		
M/WBE Amount Paid for Other Includes Primes		\$ 701,308	24%
Total M/WBE Amount Awarded Includes Primes	\$ 12,010,657		
Total M/WBE Amount Paid Includes Primes	\$ -	\$ 9,788,112	81%

1. Amount paid can exceed contract award due to change orders

SECTION 4 - PROFESSIONAL SERVICES AGREEMENTS (PSA's)

The problems identified by the audit regarding meeting and administering MWBE goals for PSA's as reported in the audit Section F can be traced to the following causes:

- Decentralized responsibility. Responsibility for meeting PSA MWBE goals and reporting on achievement of the goals is decentralized, because Ordinance 2012-318 placed responsibility for meeting the PSA MWBE goals on each department.
- Lack of a common reporting, approval and documentation framework that each department should use.
- Reliance on goals based upon the 1992 - 1994 ordinances that no longer reflect the marketplace and set ethnicity goals that cannot be achieved because the data is no longer provided.

Ordinance 2012-318 sets forth administrative requirements for PSA's that departments are to follow. This ordinance addresses the City's MWBE policy in two ways: a) MWBE prime bidders receive a 10% weighting preference in the proposal evaluation process, b) MWBE utilization goals are set for certain types of PSA's. The administrative form that is part of the required submission for authorization requires identification of any MWBE's solicited, any MWBE respondents, and whether or not the recommended consultant is an MWBE. For PSA's that have to be approved by City Council, this information is provided to Council. Therefore, the solicitation of and award to MWBE companies as prime contractors for PSA's is well documented and public.

The missing piece for PSA's is a procedure for requiring prime contractors for PSA's to provide a plan for utilization of MWBE subcontractors, and the corresponding reporting requirements. In order to replicate the MWBE process for public works contracts, which works well, departments would first be required to insert an MWBE goal statement into the RFP, so that potential consultants provide a plan within their proposal for meeting the MWBE goals. The proposed plan for meeting the MWBE goals should be a required weighting component. The request to approve a PSA should include information about whether or not the proposed consultant will meet the MWBE goals. Once the agreement is approved, the contractor should be required to submit, with their invoices, an MWBE payment form similar to the Form F submitted by public works prime contractors.

Tracking and reporting PSA contractors and how they meet the MWBE goals would remain with departments, but they should be provided with a standard tracking and reporting template.

We recommend that three changes should be considered in a revised PSA policy:

- First, specific project and annual city-wide aggregate goals need to be determined for selected categories of PSA's, based upon the types of consultants listed as state certified MWBE's.

- Second, it may be advisable to set a dollar threshold for when PSA's are expected to incorporate MWBE goals. The City has hundreds of small dollar amount PSA's with single person or small company consultants where it is not practical to require use of an MWBE subcontractor. However, larger PSA's could reasonably set MWBE goals.
- Third, the administrative form filed with the authorization to approve an agreement should include the MWBE goal plan to be incorporated into the agreement. The MWBE Officer should approve the plan prior to transmittal for authorization of the agreement. The contractor will be required to submit report forms to the departments to verify payments to MWBE subcontractors consistent with the approved plan.

With these three elements in place, departments will have the framework for reporting on how PSA MWBE goals are being met. The compilation of the individual department reports, whether that be by the MWBE Officer or some other designated central collection point, will provide the information needed to track the success in meeting MWBE goals for PSA's citywide.

SECTION 5 - USING TECHNOLOGY TO TRACK SUCCESS IN MEETING MWBE GOALS

The audit contains numerous references, including an entire section (J) with observations and recommendations for using MUNIS more effectively. We have a different perspective on whether or not MUNIS is necessarily the most cost effective way to track and provide all of the information that is needed to manage MWBE reporting requirements.

The audit notes the inconsistencies and inaccuracies caused by incorrect identification with MWBE coding. As stated in Section 2.4, we agree that the 28,000 record vendor file needs to be refreshed so that only state certified MWBE's are properly flagged.

The audit also recommends that all contract documentation including Form F's and related payment approval forms be scanned into the contract record, with which we agree. Nearly all MWBE documentation is already scanned into the MUNIS contract files. Scanning in all relevant contract documents, including Form F's will provide one central location from which these documents can be obtained. This is one of the benefits of having MUNIS as a central repository.

However, we do not think it is efficient to load more than basic contractor information into MUNIS for MWBE vendors. Any or all of the detailed information about a state certified vendor is already available on the state web site. Since that information cannot be downloaded by an automated process into MUNIS, it will require manual entry of whatever data we wish to put into MUNIS. Further, since that information is already available on the state web site, loading it into MUNIS would be an unnecessary duplication.

In addition, we have a more fundamental concern regarding how MUNIS should be used for tracking the accomplishment of MWBE goals. MUNIS is a finance information system, designed to allow for the input, tracking and recording of income and expenses. Payments to contractors are recorded in MUNIS as an expense. City contracts are made with and payments are made to only prime contractors. Per General Municipal Law §106-b, the City does not contract with,

nor is it permitted to make payments to subcontractors. Therefore, MUNIS core functions are not intended to be used to track payments to subcontractors. Since a substantial amount of MWBE goals are met through prime contractors using MWBE subcontractors, we do not believe that MUNIS is a cost effective way to track information about subcontractors to be used to evaluate if the City is meeting MWBE goals.

The department is currently evaluating software provided by a third party vendor that works as a cloud-based subscription service. The software is specifically designed to be used by a municipality to track the prime and all subcontractors for public contracts. This functionality would be available to all city departments responsible for tracking contracts (e.g. for use with PSA's), although it will be primarily used by Engineering, Compliance and the MWBE Officer for tracking public works. The software can also be used to track MWBE activity associated with state or other grants. This software is currently being used or under evaluation in many municipalities across New York, including Erie, Monroe and Onondaga counties.

In short, the department is evaluating an alternative to MUNIS that appears to be specifically designed for complete and accurate tracking of MWBE program requirements, and that does not have the performance and support issues that we have encountered with MUNIS.

SECTION 6 – MOVING FORWARD

In summary, the following are the key actions that we recommend as a result of the review of the issues and recommendations raised by the audit:

1. The City's MWBE policy goals for public works and PSA's should be updated to reflect current market and data considerations. Our recommendation is to have the City mirror the state's MWBE goals and administrative procedures,
2. An administrative Procedures Manual needs to be developed for distribution to all departments that sets forth the guidelines, forms and reporting requirements. This will ensure uniform procedures for obtaining MWBE plans with contractors for achieving the MWBE goals set by policy, tracking achievement of those goals, and reporting achievement of the goals. The administrative procedures may vary to allow for differences between City funded contracts, grant reporting requirements, and other programs (e.g. NBD housing rehab, commercial development and major development projects.)
3. Reporting requirements should be defined (e.g. annual, semi-annual) and standardized based upon information collected in the report forms developed for the Procedures Manual.

APPENDIX A

Direct Department Responses to Specific Sections in the Audit

Direct Department Response

I. EXECUTIVE SUMMARY

Audit Statement – Page 2:

In this review, the Office of Public Integrity (OPI) examined the City of Rochester's compliance with local and state Minority and Women-Owned Business Enterprise (M/WBE) requirements as well as the City's oversight of the program. We noted the following observations that require corrective action to improve program administration and strengthen relevant internal controls. This will ensure the M/WBE program is administered effectively and that participants receive its full benefit.

Department Response:

This summary should identify that the audit is based on MWBE contracts during the period from July 1, 2013 through June 30, 2015, and, in particular for public works project contracts entered into between August 2013 and May 2014. This old data was not compared to more recent data, thus, the audit does not provide the information to show where process improvements have already been made in the last two years. Therefore, the Department Responses that follow will provide updated information in response to a number of the findings, observations and recommendations.

General:

Audit Statement – Page 2:

- ◆ Even though some of the M/WBE ordinances have expired, the City has continued to administer the M/WBE program requirements in the ordinance for public works contracts and competitive bid contracts. Per the Law Department, the City can determine utilization goals for these types of contracts, however, the goals are voluntary and not mandatory.

Department Response:

This statement explains why, since 1997, the public works MWBE program has been based on project-by-project goals set by agreement between the MWBE Officer and the prime contractor as documented on the approved MWBE Schedule of Participation (Form A). Form A lists the approved utilization of subcontractors, including the contract total against which the MWBE goals will apply (i.e. after deducting waivable work), and the percentage and dollar goals for the two MBE ethnic sub-groups as well

Direct Department Response

as WBE's identified in the 1992 ordinances. As discussed in the Comprehensive Department Response, we believe that the appropriate approach should be to determine success in meeting MWBE goals based on the Approved Form A plan, not the fixed percentages identified in the 1992 ordinances, which was the approach used in the audit.

The current MWBE program for public works contracts has been updated over the last three years to address process deficiencies, to the extent that has been possible within the framework of the City's policy goals that are now 25 years old. To date, administrative procedure changes have been made consistent with MWBE procedures applied by the state for the state MWBE program authorized under Article 15-A of the Executive Law.

For example, regarding the distinction between costs for materials vs labor - the state recently updated its rules to allow for materials to be counted towards meeting MWBE goals, at up to 60% of the contract total. In FY 2014-15, the City clarified the contract requirements to allow for up to a 50/50 split of materials versus labor. This change allowed the City to maximize the use of MWBE subcontractors given the increasing specialization of our contracts. Many MWBE's have been certified as suppliers or manufacturing reps (by the state) in order to increase opportunities to utilize MWBE's.

Although the City currently allows up to a 50/50 split for materials, in 2016 the state modified its rules to allow MWBE's to be material suppliers, manufacturing reps and brokers. The City has not as yet changed its administrative rules to match the new state rules. The state permits materials suppliers to provide materials and the cost of the materials cannot exceed 60% toward the goal. This was done to allow MWBE's to put a supply markup and make a profit on the cost of materials when a smaller or no labor portion is being counted. Primes are permitted to count 60% of the cost of materials towards the MWBE Plan. Manufacturing Reps are also now allowed by the state in order to recognize the specialized markets MWBE's are entering. Brokers can also be counted toward MWBE goals, but only for the amount that they would charge to accept and deliver the supplies. The state has made these changes to increase opportunities to utilize MWBE's to meet the higher state MWBE goals.

The myriad of issues stated throughout the audit report are symptoms of the City having outdated MWBE policy goals and trying to mesh together a hybrid program based on the City's overall objective of ensuring that MWBE companies obtain an equitable share of the City's business within the realities of the current marketplace. The state recognizes the changing marketplace by continuously updating its MWBE goals and

Direct Department Response

policies. The City should consider updating its goals and policies and corresponding administrative procedures to reflect changes being made by the state.

Public Works Contracts:

Audit Statement – Page 2:

OPI's review examined a sample of contracts for compliance with M/WBE goals on a per contract basis and did not expand the testing to examine the M/WBE program for the City on an annual basis. The original ordinance included both per contract and annual goals.

Department Response:

The Comprehensive Department Response Section 3.2 describes why a complete and accurate audit of the MWBE program should have included testing for meeting annual goals. As shown in the Section 3.2, the City's annual MWBE goals were exceeded. This provides an important context within which to understand how any one individual contract might not meet the contract goals (which OPI reported), but in aggregate, City annual goals were in fact met and exceeded by project type (which OPI did not report).

Audit Statement – Page 2:

- ◆ A City contractor evaded the M/WBE participation requirements by using an M/WBE sub-contractor as a "pass-through". Payments were routed through the M/WBE sub-contractor to achieve the appearance of M/WBE participation.

Department Response:

Concur with the finding. The MWBE Officer had independently heard about this issue during the review of the contract at that time, and this, along with other issues associated with Journee (as documented below), caused the MWBE Officer to remove Journee from the City's list of approved MWBE's in 2015.

Audit Statement – Page 2:

- ◆ The Bureau of Purchasing inadvertently approved the initial plan to authorize materials alone to count toward the M/WBE utilization goals. This is in violation of the M/WBE requirements. Furthermore, the Bureau

Direct Department Response

of Purchasing erroneously included additional unallowable expenses to count toward the utilization goals.

Department Response:

Concur with the finding. The plan should only have approved a 50% material utilization towards meeting the goal..

Audit Statement – Page 2:

- ◆ An M/WBE sub-contractor contracted 100% of their work to a non-M/WBE firm resulting in a utilization shortfall.

Department Response:

Concur with the finding. The MWBE Officer had independently heard about this issue during the review of the contract at that time, and had informed the subcontractor (MGM Insulation) that further instances would result in removal of this subcontractor from the City's list of approved MWBE's.

Audit Statement – Page 2:

- ◆ OPI noted some contracts in which the M/WBE sub-contractor performed a small amount of labor on the contract but purchased large amounts of materials/supplies from a non-M/WBE sub-contractor.

Department Response:

Concur with the finding. The examples identified in the audit involve a small number of MWBE subcontractors who, at the time the issues were discovered, were notified by the MWBE Officer that labor had to constitute at least 50% of the value of the MWBE subcontract in order to be counted towards meeting goals. Prime contractors were also notified of this requirement so that they could understand that purchase of materials totaling more than 50% of the MWBE subcontract total do not count towards meeting the goal requirements.

Audit Statement – Page 2:

OPI noted some of the contracts examined did not meet the M/WBE utilization sub-group goals even though the City's M/WBE Officer granted a waiver or a reduction in the utilization goals for these contracts.

Direct Department Response

Department Response:

The audit was based on a strict comparison of the sub-group goals as stated in the 1992 ordinance to amounts paid on a contract-by-contract basis. The department believes that a more appropriate approach should have been to review the Form A Schedule of Participation approved by the MWBE Officer, and then put that in context of reporting on annual composite goals with the further context that minority sub-groups can no longer be counted since the data is no longer available. A more complete department response that incorporates these concerns is provided in the Comprehensive Department Response Section 3.2.

Audit Statement – Page 3:

- ◆ OPI noted the majority of contracts examined increased in value due to change orders, however, their M/WBE utilization amounts did not proportionately increase.

Department Response:

The MWBE program requires prime contractors to submit a revised Form A and related documents for approval by the City if the cumulative amount of the contract award changes by 5% or more based upon the net of all change orders. Of the eight public works contracts reviewed in detail for this audit, three contracts had change orders with a net contract change of 5% or more. During the time period covered by the audit, the MWBE Officer did not have a systematic way of knowing when change orders required a contractor to file a revised Form A. Starting in 2015, Purchasing began tracking change orders approved in MUNIS and has been putting them into a comprehensive contract/MWBE tracking Excel spreadsheet. The MWBE Officer is using this data to notify contractors to submit an updated Form A, which is then reviewed and approved by the MWBE Officer along with revisions to the MWBE dollar goals.

It is not correct to simply assume that increases in change orders will necessarily result in proportional increases to MWBE utilization amounts. MWBE utilization can increase, stay the same, or decrease after review and approval by the MWBE Officer – it completely depends on the nature of the work required by the change order.

Direct Department Response

Audit Statement – Page 3:

- ◆ OPI noted revised “Schedule of M/WBE Participation” forms for contracts incurring a change of 5% or more were either missing or decreased the utilization amount instead of increasing them in proportion to the increase in the contract value.

Department Response:

For the three contracts reviewed by the audit where contract change orders resulted in a net increase of 5% or more, one did not have a revised Form A (it should be noted that the contract amount increased by 5.1%, but the prime contractor actually exceeded the goal requirement even after accounting for the 5.1% contract increase). This is described more fully in Section 3.2 of the Comprehensive Department Response. As noted previously, the MWBE Officer now has a process for identifying when change orders cumulate to 5% or more of the base contract amount. Also as noted above, there is nothing unusual about the MWBE Officer actually approving a decreased MWBE utilization plan if that reflects the nature of the change order, which is what happened in the revised Form A for the two other projects.

Audit Statement – Page 3:

- ◆ The City is unable to verify whether M/WBE participation expenses are valid because the City relies upon the prime contractor’s word for the amount expended by M/WBE sub-contractors without obtaining supporting documentation to substantiate the M/WBE participation.

Department Response:

The audit finding is correct. The City does not currently require submittal of invoice, payment, and other detailed documentation to verify transactions between MWBE's and prime contractors. To put a 100% audit and review function in place for the MWBE program will require additional resources. A more complete response is provided in the Comprehensive Department Response Section 2.3.

Direct Department Response

Audit Statement – Page 3:

- ◆ OPI noted several instances where supporting documentation that OPI obtained directly from the prime contractors and/or the M/WBE sub-contractors differed from the amount the prime contractors reported on the final progress reports at the completion of the project.

Department Response:

The City does not currently require submittal of invoice, payment, and other detailed documentation to verify transactions between MWBE's and prime contractors. A more complete department response is provided in the Comprehensive Department Response Section 2.3

Audit Statement – Page 3:

- ◆ OPI some preconstruction forms were missing from City records.

Department Response:

It is standard process for the MWBE Officer to require all forms before approving an MWBE Plan for a specific contract. Any missing forms must have been misfiled.

Audit Statement – Page 3:

- ◆ The M/WBE utilization plans are too vague and do not provide a detailed description of services that the M/WBE's will perform.

Department Response:

The description of the work on Form A should match the description of work as shown on the approved state MWBE registration for the contractor. The state uses NAICS or NIGP commodity codes to register a contractor for approved types of work. The descriptions are generally three words or less. An example of a state MWBE registration form is provided in Appendix B.

The MWBE Officer follows up with the MWBE and/or the prime if there are any questions about the type of work to be performed, or if the work will include materials as well as labor. A more complete description of the

Direct Department Response

work would be found on Form B if needed to confirm more details about the work.

Audit Statement – Page 3:

- ◆ The Bureau of Purchasing's MWBE summary reports do not accurately capture whether MWBE utilization goals have been achieved. The report includes composite proposed contract amounts prior to the work being performed compared to the MWBE goals instead of capturing actual MWBE expenditures paid for all City department contracts to determine whether MWBE goals were actually achieved.

Department Response:

The Bureau of Purchasing prepared comprehensive MWBE summary reports for the Mayor's Office for FY 2011-12 and FY 2012-13. Purchasing has not prepared summary reports since that time. The data available for those reports incorporated the best available data at that time.

Whether or not to prepare MWBE summary reports on the basis of goals achieved based upon awards of contracts, or goals achieved based upon actual payments to MWBE's, or both, is discussed in more detail in the Comprehensive Department Response section 3.3.

Professional Service Agreements (PSA's):

Department Response:

The administration of PSA's has been and continues to be decentralized. Individual City departments are responsible for administering the MWBE goals for PSA's. The comprehensive response to the audit findings and observations regarding PSA's is found in the Comprehensive Department Response, Sections 1 and 4.

Audit Statement – Page 4:

- ◆ The City's MWBE Officer primarily oversees the Department of Environmental Services (DES) public works contracts for compliance with MWBE participation goals and acts as a consultant for other City departments that administers contracts and PSA's.

Direct Department Response

Department Response:

The MWBE Officer does not monitor PSA contracts, except to the extent that they are specifically tied to state funded grants, for which the MWBE Officer signs the MWBE reports as the authorized City MWBE official. The MWBE Officer does however assist departments with establishing a list of qualified firms to solicit and also works as a consultant to other departments having contracts with MWBE goals (i.e.; DRYS, NBD, etc.). The audit is correct that the MWBE Officer's primary responsibilities have to date been to work with DES on Public Work contracts.

NYS Contracts:

Department Response:

The audit findings reflect the lack of centralized coordination of grants city wide during the time period of the audit. In the last two years, there have been three changes that address issues raised by the audit. These are:

- grant applications have been coordinated centrally through the Mayor's Office,*
- departments have requested assistance from the MWBE Officer to develop proposed MWBE plans to meet the state grant requirements (typically 20% or 30% MWBE goals),*
- The state funding agencies are requiring that the MWBE Officer sign grant MWBE Compliance reports, which become the basis for the state either approving grant payments based upon accomplishing state approved MWBE goals, or withholding payments based upon failure to meet the MWBE goals for the grant.*

Funding of the grant based upon the submitted MWBE plan including waivers represents tacit approval by the state as to what goals will be met. Once the state approves all payments for a grant, the state goals for that grant ipso facto have been met. OPI's finding that the NYS goals were not met in multiple state contracts would only be meaningful if the state had not reimbursed the City for those contracts.

Direct Department Response

MUNIS:

Department Response:

The comprehensive response to the audit findings and observations regarding MUNIS is found in the Comprehensive Department Response, Section 5.

Audit Statement – Page 5:

- ◆ The M/WBE progress forms completed by the prime contractor throughout the phases of each public works contract are not included on MUNIS nor are they used to reconcile or to verify goals achieved or actual payments made to sub-contractors.

Department Response:

Progress forms (Form F) are in fact collected from the prime contractor as appropriate to match current payment applications.

The interim Form F's are used to identify MWBE payment tracking issues during the course of the work. Once a Form F is received the compliance unit notifies the MWBE Officer of any discrepancies (i.e., change order increases, no payrolls received or behind on MWBE billing, etc.) The MWBE Officer then follows-up with the prime to get revised MWBE Plans if needed, explanation of subcontractor status, etc. Any updated MWBE plans are then placed on the Purchasing G drive for reference and are also uploaded into MUNIS contract file.

Final payments for all contracts are not made until the final Form F is reviewed and compared to goals, and any differences are reconciled and any plan revisions approved by the MWBE Officer prior to release of the final payment. The only audit finding that is not addressed by current procedures is that actual payments to subcontractors are not verified. This issue is discussed in detail in the Comprehensive Department Response, Section 2.3.

Audit Statement – Page 5:

- ◆ M/WBE data that is collected for a given contract is not centralized in a single, easily accessible location, such as MUNIS. Rather, the data is fragmented amongst various departments/bureaus.

Direct Department Response

Department Response:

Files for all public works contracts are housed in Purchasing. Compliance maintains their own files and so does the MWBE Officer. All applicable data like the plans, insurance, change orders are scanned into MUNIS. The final official contract, which is the executed agreement between the City and the contractor, is filed in Accounting.

Purchasing staff have found through experience that having different information split between the MWBE Officer and compliance unit is much more efficient for doing the specialized work of each unit. Compliance needs to maintain anything on wages, payrolls and payments while the MWBE Officer needs to maintain any communications with primes, subs, engineering, etc., and plans and copies of change orders. The MWBE Officer references this information whenever needing to have the history of each project to ensure the ability to make timely decisions and follow through. Further, much of this information is not required to carry out financial transactions within MUNIS, therefore it is not scanned in separately. Some of the information that is scanned into MUNIS regarding contract administration, such as contract change orders, is scanned in by Engineering as part of their transaction process procedures. Re-scanning this in at the MWBE process stage would be duplicative.

II. BACKGROUND, OBJECTIVES AND SCOPE

B. Background

Audit Statement – Page 15:

For each eligible public works procurement awarded, City M/WBE policy requires the prime contractor to submit a utilization plan identifying the M/WBE sub-contractors they plan to utilize on the project. City policy also requires each prime contractor to submit M/WBE progress reports detailing payments they have made to NYS Certified M/WBE sub-contractors that participated on the project. The City can grant a waiver of goal requirements in partial or in total upon submission of a waiver request by a contractor or the managing architect assigned to the project. Such request requires documentation of good faith efforts by the contractor to meet the goal requirements of the contract.

Direct Department Response

Department Response:

The MWBE Officer is responsible for reviewing and approving the MWBE Utilization Plan, Form A, which becomes the contractual obligation with the prime contractor and establishes the percentage and dollar goals. There are two primary categories of waivers that the MWBE Officer reviews prior to approving the Form A.

For some projects, where specialized work is a substantial part of the overall cost of the project, the MWBE Officer, after consulting with City Engineer staff, identifies an MWBE Target Goal, which may be less than the original contract total. MWBE percentage goals are then applied against the MWBE Target Goal.

The MWBE Officer also grants waivers when the marketplace of MWBE firms is tight or for other reasons sub-group goals cannot be achieved (note – the approval of sub-group goals based upon ethnicity cannot be continued for reasons described elsewhere in the department responses). The most common occurrence over the last five years has been to grant waivers for meeting the Hispanic goals, because of the lack of certified Hispanic MWBE's in the area. When specific sub-group goal waivers are granted, the MWBE Officer typically requires the prime contractor to fulfill the shortage with other MWBE firm, as reflected in the approved Form A.

Audit Statement – Page 15:

The City of Rochester's M/WBE Officer reports to the Director of Purchasing and according to the job description, this person is responsible for the development, implementation, and monitoring of the M/WBE projects and programs. The job description also states, the M/WBE Officer reviews and analyzes M/WBE utilization plans (e.g. construction, goods and services) in conjunction with Contract Manuals and/Requests For Proposals (RFP) to ensure compliance with M/WBE utilization goals for City, state, and federal programs.

Department Response:

The MWBE Officer does not review RFP's unless asked by a department to assist in solicitation efforts and to review contract wording. City Ordinance 212-318 states that it is the responsibility of individual departments to take the steps to meet the MWBE goals set in the ordinance. The MWBE Officer only provides assistance as requested.

Direct Department Response

C. Objectives and Scope - Pages 16 - 18

Department Response:

The comprehensive response to the audit scope is found in the Comprehensive Department Response, Section 3.1.

III. RESULTS OF REVIEW

A. No Current Ordinance to Support Mandatory M/WBE Goals for Public Works Contracts and Competitive Bid Contracts

Audit Statement – Page 19:

♦ Recommendation

If the City desires to have a M/WBE Program with mandatory utilization goals for public works contracts and competitive bid contracts, City management should consider pursuit of an updated M/WBE ordinance. This would most likely require an updated disparity study.

Department Response

The Corporation Counsel will need to be involved in any recommendation how to proceed with updating the City's MWBE goal policies.

B. City Contractor Used M/WBE Sub-Contractor as a “Pass-Through”

Audit Statement - Page 20:

OPI interviewed Mr. Orville Dixon, owner of Journee Construction, who stated that his company was hired by Thurston Dudek, LLC to solely provide materials and not labor for the project. Even though the M/WBE's company name was on the invoices from the supplier of the materials, Mr. Dixon indicated to OPI that his company never ordered the materials nor were they aware of what materials were ordered. In addition, Mr. Dixon provided OPI with emails sent to him from Thurston Dudek, LLC requesting “to run materials through your company for the (Genesee Valley Park Pool & Ice Rink) project” and “to use your company as a minority contractor purchasing materials”.

Direct Department Response

The M/WBE sub-contractor was not actively involved in ordering products or making significant decisions. The M/WBE sub-contractor did not take delivery of any products and the supplier shipped all materials directly to the prime contractor, at the job site. The M/WBE was merely used as a conduit to pass payments from the prime contractor to a non-certified supplier.

Department Response:

In 2015 Journee Construction was counseled by the MWBE Officer after finding evidence that they participated in pass throughs and falsified information. As a result, the MWBE Officer removed Journee from the City's MWBE Directory for multiple incidents of failing to follow MWBE requirements.

Audit Statement - Page 21:

DES should monitor and report on M/WBE participation as contracts are performed. Because of their day-to-day management of City public works contracts and their knowledge of the project, DES project managers are best suited to fulfill this role. DES project managers should certify that, to the best of their knowledge, the documents that contractors submit to the City detailing M/WBE participation accurately reflects the work each certified M/WBE sub-contractor performed. This requirement will help establish that the user department is partly responsible for the program's administration.

The Bureau of Purchasing should scrutinize utilization plans more closely to ensure prime contractors are complying with the requirements of the M/WBE program before approving the plans and not permit materials/supplies only to fulfill M/WBE goals.

The Bureau of Purchasing should also consider revising the M/WBE utilization requirements to specify a maximum percentage allowable for materials/supplies paid to the M/WBE sub-contractor which can be applied towards meeting the M/WBE goals. This would prevent a prime contractor from running mostly materials/supplies through an M/WBE sub-contractor who provides minimal labor on the project and counting the total amount paid to that sub-contractor toward meeting the M/WBE goals.

Direct Department Response

Department Response:

The response to these recommendations is provided previously in the Executive Summary and the Comprehensive Departmental Response.

C. M/WBE Sub-Contractor Contracted 100% of Their Work to a Non-M/WBE Contractor

Audit Statement - Page 21

An M/WBE sub-contractor contracted 100% of their work out to a non-M/WBE firm resulting in a utilization shortfall of 100% of the sub-contract value.

As previously noted above, the City selected Thurston Dudek, LLC to perform renovations to the Genesee Valley Park Pool & Ice Rink Building. In order to partially fulfill the African-American utilization requirements on this contract, Thurston Dudek, LLC listed MGM Insulation, Inc., as an M/WBE sub-contractor to be utilized on the project to provide insulation services estimated in the amount of \$3,260.

MGM Insulation, Inc. did not perform any of the work on the project. According to Thurston Dudek, LLC, MGM Insulation, Inc. contracted out 100% of the work they were hired to perform to LJ Insulation Services, Inc., a non-M/WBE company. In accordance with the M/WBE utilization requirements, it is the prime contractor's responsibility to monitor the progress of the M/WBE participation on the project.

Department Response:

MGM Insulation was counseled by MWBE Officer and after this occurrence and the ones including Journee Construction the MWBE Officer changed the process to the following:

- If an MWBE firm states that they are unable to do a job and will need to sub out more than 30% to a non MWBE firm, they are warned this is not permitted. In most cases they propose an acceptable alternate plan, otherwise, they are not accepted as an approved MWBE subcontractor for the project.*
- If a firm does sub out more than 30% without knowledge of the prime contractor and the City, as soon as it is discovered the prime*

Direct Department Response

is contacted to let them know that the costs cannot be included in their plan and why. The MWBE firm is counseled on MWBE rules and regulations and warned that if it occurs again they will be taken off the City directory and reported to ESD.

- If an MWBE firm does provide the labor or prep work, that cost will be credited to the prime for meeting the goal, and that portion of the job that is subcontracted out that is not allowed is removed from the Plan. The prime is expected to fulfill the goal by working out a Plan change with the MWBE Officer, which is the approach taken absent the City's ability to impose financial or other penalties.*

Audit Statement - Page 22:

◆ Recommendation

A provision should be added to the M/WBE Form C Affidavit stating that M/WBE sub-contractors will not contract out more than 30% of the work they are hired to perform without first consulting with the prime contractor and the City's M/WBE officer.

Department Response:

The existing Form C covered this requirement, however, Form C will be revised to highlight this requirement.

D. Large Materials/Supplies Purchases Routed Through M/WBE's

Audit Statement - Page 24:

◆ Recommendation

The Bureau of Purchasing should consider revising the M/WBE utilization requirements and the City's *Standard Construction Contract Manual* to specify a maximum percentage allowable for materials/supplies paid to the M/WBE sub-contractor which can be applied towards meeting the M/WBE goals. This would clearly define the intent of the utilization goal requirements instead of stating "if an M/WBE sub-contract becomes primarily a materials and/or supplies contract".

In addition, specifying a maximum percentage allowable would also prevent a prime contractor from running mostly materials/supplies through an M/WBE sub-contractor, who provides minimal labor on the project, and

Direct Department Response

counting the total amount paid to that sub-contractor toward meeting the MWBE goals.

Department Response:

Department responses for this recommendation are provided in the Comprehensive Department Response. Additional background material is provided below.

Many MWBE's have been certified by the state as suppliers, manufacturing reps and brokers. This was done to increase business opportunities for MWBE's.

The state permits materials suppliers to provide materials and the cost of the materials cannot exceed 60%. This was done to allow MWBE's to put a supply markup and make a profit on the cost of materials when a smaller or no labor portion is being counted. Primes are permitted to count 60% of the cost of materials towards the MWBE Plan. Manufacturing Reps are also now allowed by the state in order to recognize the specialized markets MWBE's are entering. Brokers can also be counted toward MWBE goals, but only for the amount that they would charge to accept and deliver the supplies.

Prior to permitting the requested commodity codes to be considered, the state certification agency (ESD) investigates, tracks and confirms that an MWBE firm has the working background for the requested commodity codes. More recently, ESD has changed from the use of CIS and ESD Codes to NAICS and NIGP Codes to expand the scope of work definitions.

The MWBE Officer does not approve MWBE's for work they are not certified to do by ESD as shown on the ESD Vendor Profile. An example of a Vendor Profile from the NYS Directory is attached as Appendix B, for Decca Paving Inc. Decca is a certified trucking, paving specialist but they are also certified to do piping and plumbing type work. They are a certified DBE firm and as such can be called upon to do other work in their commodity code areas. This increases the type of work they can do as an MWBE.

Direct Department Response

E. Desired M/WBE Utilization Goals Not Met For Public Works Contracts

Audit Statement – Page 25:

The City's M/WBE utilization requirements state "if the change order increases the contract amount, the M/WBE goals will increase in proportion to the contract dollar amount. The prime contractor may seek a waiver or amendment of the M/WBE goals due to increases in the change order amount for any of the following reasons:

1. If the change order increase is for materials/supplies only.
2. If the change order is outside the scope of the work for the M/WBE sub-contractors currently utilized on the project but is the same type of work currently being done by the prime or other sub-contractor on the project.
3. If the M/WBE sub-contractors are not capable or available to do the work authorized in the change order."

Section 4.4 of the City's *Standard Construction Contract Manual*, provided to each prime contractor, states that "if the total cumulative amount of the contract with the City changes the initial contract award amount by 5% or more based upon the net of all change orders approved by the City during the performance of the contract, the contractor must submit a revised Form A (*Schedule of M/WBE Participation*), and related Forms B and C (*Intent to Perform as a Sub-Contractor* and the *M/WBE Affidavit*) and have these approved by the City, in order to ensure that the cumulative total of M/WBE sub-contracts meets the M/WBE goal requirements of this contract."

Department Response:

The Comprehensive Department Response addresses the observations and recommendations in this section. A few additional responses are provided below.

As discussed previously, the MWBE Officer has been systematically tracking change orders since 2015, with the objective of being able to proactively notify primes that revised Form A's are required because the 5% threshold was reached. This data is maintained in the comprehensive contract tracking spreadsheet maintained in Purchasing using contract award and MUNIS information.

Direct Department Response

However, the 5% threshold is not an absolute indicator that an MWBE Plan must be revised. Many times the increase in change orders does not constitute an MWBE increase/decrease. For example, quantity overruns/underruns and or price changes can move the contract price up or down but are not considered by the MWBE Officer as a reason to increase the approved MWBE Plan, since these may not have any impact on the work being done. Another example would be a large amount of specialized work like elevators, bridge work, etc. These jobs add major expenditures but they may only provide minor increases to the MWBE expenditures. The MWBE Officer usually works with the primes in these cases to increase the amount of non-specialized work given to MWBE's. Typically as a "good faith gesture" the primes comply with the requests to increase MWBE participation elsewhere in the contract.

Audit Statement - Page 26:

- One of the three contracts that incurred a change of 5% or more of the initial contract award value did not have a revised M/WBE "Schedule of M/WBE Participation" form, as required by the City. The other two contracts had revised forms, however, the forms decreased the level of M/WBE participation instead of increasing it in proportion to the increase in the contract value.

Department Response:

A previous department response addressed the issue of change orders, but to review, the MWBE Officer has to take into account changes during the course of the project and determine whether or not to adjust the original Form A utilization plan. The MWBE Officer has the authority to exercise discretion and waive goal requirements and/or adjust them to the various MWBE subcontractors based upon the specifics of the work of the project. In both instances cited in the audit, the MWBE Officer approved Form A revisions that reduced the goal requirements, for reasons stated on the revised plans.

Audit Statements - Page 27:

- OPI noted two instances where required preconstruction forms (Forms A, B, and C) were missing from City records.

Direct Department Response

Department Response:

A review of the documentation for the eight contracts audited shows that Forms A, B and C were readily available in MUNIS and the Original Contract Agreement. Contracts are not approved and signed by the Purchasing Agent unless the complete required documentation has been provided.

OPI indicated that the missing documents referenced in the audit were for Form A revisions. The MWBE Officer's standard practice is to require Form A revisions and related Forms B and C before approving a change to the MWBE Plan. The two Form A revisions and related Forms B and C that cannot be located must be misfiled.

APPENDIX B

Sample Vendor Profile for a State Certified MWBE

Vendor Information

CLOSE WINDOW 

 HELP

Vendor Information

Business Name Decca Paving Inc
Owner Mr. Jason D. Gibbs
Address 1007 Chili Avenue
 > [Map This Address](#) Rochester, NY 14611
Phone 585-279-0948
Fax 585-424-3092
Email deccapaving@gmail.com
Website www.deccapaving.com

Certification Information

Certifying Agency New York State
Certification Type MBE - Minority Business Enterprise
Certified Business Paving - Driveways; Paving Construction; Trucking
Description Transportation Services

Commodity Codes

Code	Description
CSI 221	Plumbing Piping
CSI 321633	Driveways
ESD C-0474	PAVING CONSTRUCTION
ESD C-0595	PAVING - DRIVEWAYS
ESD E-0694	TRUCKING TRANSPORTATION SERVICES
NAICS 238990	Concrete paving, residential and commercial driveway and parking area
NAICS 481112	Scheduled Freight Air Transportation
NIGP 91347	Construction, Sidewalk and Driveway (Includes Pedestrian and Handicap Ramps)
NIGP 91394	Paving/Resurfacing, Alley and Parking Lot
NIGP 96286	Transportation of Goods, Shipping and Handling, and Other Freight Services

Additional Information

Work Districts/Regions NYC
 Western NY
 Mid-Hudson
 Finger Lakes
Industry Construction
Business Size \$1,000,000 - \$4,999,999
General Location Upstate New York
Location Finger Lakes



City of Rochester


Department of Environmental Services
City Hall Room 300B, 30 Church Street
Rochester, New York 14614-1290
www.cityofrochester.gov

Norman H. Jones
Commissioner



Inter-Departmental Correspondence

To: Timothy Weir, Director, O.P.I.

From: Norman H. Jones, Commissioner, D.E.S. 

Date: February 5, 2018

Subject: DES Response to OPI v.7/27/17 "Review of Citywide Women and Minority Business Enterprise (M/WBE) Program"

Director Weir,

The following is DES' response to the Review of the Citywide Women and Minority Business Enterprise ("M/WBE") Program. While we welcome the full review of the program, we strongly disagree with its methodology and subsequent findings. The report does not represent a sufficient sample size of public works contracts to provide an accurate assessment of the program. Further, the report attempts to assess the performance on the M/WBE program using outdated and/or expired legislative mandates.

With regard to the failure of the City to achieve M/WBE utilization goals in the areas of public works contracts and Professional Services Agreements:

The audit report does not accurately represent M/WBE utilization in public works contracts and architecture/engineering PSAs for two reasons: the agreements selected for the report are too few in number and too low in value compared to the total value of agreements authorized, and the invoice payment total at project close-out is not the best indicator of success in achieving the goal set forth in legislation, which is to increase the value of contract awards to M/WBE firms.

Program success depends upon the availability of NYS-qualified M/WBE firms (the marketplace) and the City's efforts at soliciting proposals from these firms. The marketplace changes continually as businesses move in to or out of the Rochester Metropolitan Statistical Area (RMSA), and are added or removed from the New York State M/WBE Directory of qualified firms. Data collected at the time of award best represents the marketplace at the time of the RFP and agreement, and should include point-in-time availability of certified local M/WBE firms, number of M/WBE firms solicited for proposals and number of responses, and the number and value of agreements awarded to M/WBE firms as prime contractors or included as sub-contract firms.

Analysis of point-in-time data aligns with Ordinance No. 2012-318, which established a policy requiring solicitation of proposals from M/WBE firms and allows additional weighting to be applied to proposals from M/WBE firms, and is currently in force pertaining to PSAs.



The audit report discusses the effects of contract change orders, specifically stating that M/WBE utilization goals must be scaled proportional to changes in contract cost. In practice, each change order may or may not impact utilization goals depending on whether the change effects work assigned to an M/WBE firm. Departmental project managers and the Bureau of Purchasing both have the responsibility to understand and track change orders and potential impact to utilization goals, however, the success of the M/WBE utilization program cannot be measured by the value of change orders, which are unforeseen circumstances that arise during the course of a project.

With regard to the lack of management controls sufficient to ensure prime and sub-contractors adhere to agreement-specific M/WBE utilization plans:

The audit report acknowledges that legislation establishing mandatory M/WBE utilization goals for public works contracts is outdated or expired and should be reintroduced for review and adoption by City Council.

In the absence of local mandatory goals, language such as “voluntary” and “intends” has been used in RFPs for City-funded projects. In order to enforce M/WBE utilization goals, mandates must be in place authorizing such enforcement.

Ordinance No. 80-83, established a Minority Business Enterprise Participation Program in the City. Additionally, resolution No. 89-17, continued the inclusion of voluntary MBE utilization goals and objectives in City-funded public works contracts, continued enforcement of mandatory goals and objectives for federal- and state-funded construction contracts, and ordered a disparity study. Both pieces of legislation remain in force.

Additionally, Ordinance No. 92-326, added WBE to the program goals and established mandatory goals for public works contracts. Ordinance No. 94-213, which increased goals for public works contracts based on a May 1994 update to the disparity study and added goals for Professional Services Agreements in three categories, including architectural/engineering services, both expired June 30, 1997.

Analysis of actual payments to M/WBE firms, as is presented in the report, is a useful indicator of contractors’ adherence to their agreements with the City and should be considered when evaluating a firm’s performance.

Further, the audit report recommends an updated disparity study. The latest disparity study performed in the RMSA was submitted to City Council in May 1994. Ordinance No. 92-326, Section 8 provided relevant guidance as it required annual review of goals based on updated statistics and practical experience from the preceding year. A new disparity study and scheduled updates must be completed to inform the City’s goals and the use of waivers.

A study of M/WBE utilization programs in municipalities of similar demographics to the City of Rochester should also be performed to ensure that we are modeling best practices of successful programs.

Project award data, as well as detailed tracking of progress, close-out and reimbursement is available from both the Department of Environmental Services Bureau of Architecture & Engineering and the Department of Finance Bureau of Purchasing.