

OFFICE OF THE INSPECTOR GENERAL
City of Chicago



REPORT OF THE INSPECTOR GENERAL'S OFFICE:

***REVIEW OF MINORITY AND WOMEN-OWNED BUSINESS
ENTERPRISE PARTICIPATION ON PUBLIC BUILDING
COMMISSION PROJECTS COMPLETED IN 2009***

JUNE 2011

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June 15, 2011

To the Mayor, Members of the City Council, the City Clerk, the City Treasurer, and the residents of the City of Chicago:

For the past several years, IGO investigations and policy reviews of the City's Minority and Women-owned Business Enterprise (MWBE) program have uncovered systemic problems in the program's administration and numerous instances of outright fraud. As part of our analysis of the program, the IGO undertook a review of 15 PBC projects that were completed in 2009 in order to calculate the actual MWBE utilization and compare it with the MWBE participation statistics reported by the PBC. The results of that review are contained in the accompanying report.

By calculating the amounts actually paid to legitimate MWBE subcontractors, primarily based on project lien waivers, the IGO found that *actual* MBE participation on these 15 projects was 39 percent less and WBE participation was 3 percent less than what the PBC *reported* publicly.

Based on these findings, the report calls on the PBC to more diligently monitor MWBE participation on the construction projects it manages. More specifically, the PBC should scrutinize underlying documentation to determine how much money is actually paid to MWBEs. Doing so will better ensure reporting accuracy and program accountability in achieving the objective of fostering economic opportunity for historically disadvantaged minority and women-owned businesses in Chicago.

Additionally, in conducting this review, the PBC only partially complied with the IGO's requests for information. The PBC denied the IGO full access to documents regarding five school construction projects that were funded, in part, with TIF dollars. However, the IGO has jurisdiction over every City program and because TIF funds were used in the construction of these five schools and TIFs are a program of the City, our jurisdiction includes these projects.

The PBC is managed by an Executive Director and an 11-member Board of Commissioners, currently chaired by the Mayor of Chicago. Because the City of Chicago adopted the original resolution to create the PBC, by state law, the Mayor of Chicago appoints a majority, (six members), of the members of the PBC board. Additionally, the Chicago Public Schools (CPS) and the Chicago Park District (Park District), whose leadership also is determined by the Mayor, each appoint one board member. Finally, Cook County, the Forest Preserve District of Cook County Forest Preserve, and the Metropolitan Water Reclamation District of Greater Chicago each appoint one board member. As a result, the PBC is predominantly a creature of the City of Chicago operating under the auspices of the Mayor. Therefore, the disagreement over the IGO's

jurisdiction requires resolution which the Mayor, in his capacity as Chairman of the PBC Board of Commissioners, should provide. If a project receives City tax revenue, the IGO has the right to scrutinize that project. The Mayor should direct the PBC to cooperate with the IGO in any audit, review, or investigation into PBC activities involving any City funds.

As always, I welcome ideas your ideas comments, suggestions, questions, and criticisms.

Respectfully,

A handwritten signature in black ink, appearing to be 'J. Ferguson', written in a cursive style.

Joseph M. Ferguson
Inspector General
City of Chicago

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Executive Summary

A. Background

For the past several years, IGO investigations and policy reviews of the City's Minority and Women-owned Business Enterprise (MWBE) program have uncovered systemic problems in the program's administration and numerous instances of outright fraud.¹ Since 2005, the IGO has recommended that more than 20 companies be decertified and more than 65 companies or individuals be debarred for issues related to the MWBE program.

The proliferation of instances of fraud and abuse uncovered in numerous investigations prompted the IGO to examine compliance with the MWBE program on contracts that did not go through direct City procurement, but nevertheless received City funds and were therefore obligated to meet the City's requirements. Examples have included, for instance, Redevelopment Agreements (RDAs) between the City and developers receiving some form of City assistance, whether in the form of land purchased from the City or Tax Increment Financing (TIF) benefits. Those developers are obligated through the RDAs to meet the City's MWBE utilization requirements, just as they would be through a direct City construction contract. For these contracts the Department of Housing and Economic Development (DHED) is responsible for monitoring MWBE compliance.

Another area where the City commits substantial funds, but relies on outside oversight to ensure the City's MWBE requirements are met is construction projects that are completed by the Public Building Commission (PBC). Acting as a project manager for government construction projects, the PBC oversees millions of dollars in construction projects for the City each year. However, the IGO was unaware of any City department assessing how well the PBC monitored MWBE utilization on public projects.

Consequently, the IGO undertook a review of 15 PBC projects that were completed or substantially completed in 2009 in order to calculate the actual MWBE utilization and compare it with the statistics reported by the PBC in its compliance reports. Of the 15 projects in question, 10 received some form of City funding, meaning either the City contracted with the PBC on the project or TIF funds, which the City administers, were used on the project.

B. Summary of Findings

The IGO conducted an analysis of these 15 projects to review the actual payments that MWBEs received. In order to do this, we attempted to obtain lien waivers for each project. Lien waivers are documents that contractors, subcontractors, suppliers and other businesses involved in a construction project submit to acknowledge payment for services rendered, thereby waiving the right to place a lien on the project. Ultimately, the documents the IGO obtained for nine of the projects were complete, which allowed for a full analysis, and the documents obtained on the remaining projects still allowed the IGO to make some conclusions regarding the manner in which the PBC monitors MWBE compliance.

¹ For more information on IGO investigations involving the MWBE program, a detailed review of the program that was published in May 2010, and a follow up report issued in June 2011 visit [our website](#).

The following summarizes the results of that analysis:

1) *PBC Grossly Overstated MWBE Utilization in 2009*

For the 15 projects completed in 2009, the PBC's Compliance Reports show actual MBE participation as \$89 million and WBE participation as \$16.2 million. On nine projects the IGO received full documentation and on six projects received only partial documentation. Thus, the IGO broke the participation into three categories: the participation on nine projects for which it received complete documentation, the participation that was partially documented on six projects, and the participation for which no documentation was obtained on those same six projects.

By calculating the amounts actually paid to legitimate MWBE subcontractors, primarily based on project lien waivers, the IGO found that *actual* participation was far less than what was *reported* in the PBC's Compliance Reports. The table on the following page shows what the PBC reported for MBE and WBE participation for each of the three categories and what the IGO determined participation to be based on a review of lien waivers. Even conservatively assuming that 100 percent of the participation for which no documentation was obtained actually occurred, MBE participation on these 15 projects was *43 percent less* and WBE participation was *10 percent less* than what was reported in the PBC's Compliance Reports.

In its financial statements and in a January 2010 press release, the PBC reported that it achieved \$82.3 million in MBE participation and \$15.1 million in WBE participation on the 15 projects.² The participation reported in the PBC Compliance Reports is higher because it appears to reflect more complete data after final payments were made to MWBEs. Using the smaller figures reported publicly by the PBC, and again conservatively assuming that 100 percent of the participation for which no documentation was obtained actually occurred, **MBE participation on these 15 projects was still 39 percent less and WBE participation was 3 percent less than what the PBC publicly reported.**

The PBC reported 33.82 percent MBE participation and 6.2 percent WBE participation on these projects.³ Based on the IGO's review of actual participation, these percentages were actually 20.7 percent for MBEs and 6.02 percent for WBEs.

² Public Building Commission. "Public Building Commission Celebrates a 2009 of Success With 15 Projects Completed." January 12, 2010.

³ This was based on a reported total contract value of these 15 projects of \$243.3 million.

MBE Percentage Calculation: 82.3 million/243.3 million = 33.82 percent

WBE Percentage Calculation: 15.1 million/243.3 million = 6.2 percent

Table #1 – MWBE Participation on 15 PBC Projects Completed in 2009^{4,5}

	Participation according to PBC Compliance Reports	Participation based on IGO review of Lien waivers	Dollar Value Variance between PBC Compliance Reports and IGO review	Percent Variance between PBC Compliance Reports and IGO review
MBE Participation				
Nine Projects- Complete Documentation	\$26,618,589	\$12,060,720	-\$14,557,869	-54.69%
Six Projects- Partial Documentation	\$45,746,202	\$21,680,512	-\$24,065,690	-52.61%
Six Projects- No Documentation*	\$16,609,860	\$16,609,860	\$0	0.00%
Total	\$88,974,650	\$50,351,092	-\$38,623,559	-43.41%
WBE Participation				
Nine Projects- Complete Documentation	\$3,535,196	\$5,151,863	\$1,616,667	45.73%
Six Projects- Partial Documentation	\$9,900,773	\$6,738,696	-\$3,162,076	-31.94%
Six Projects- No Documentation*	\$2,753,024	\$2,753,024	\$0	0.00%
Total	\$16,188,992	\$14,643,583	-\$1,545,409	-9.55%
Grand Total	\$105,163,643	\$64,994,674	-\$40,168,968	-38.20%
*Assumes that the actual participation the IGO was unable to verify but reported in the PBC's Compliance Reports for these six projects is accurate				

2) *PBC Did Not Provide IGO with All Requested Documents*

The PBC only partially complied with the IGO's request for documents related to the 15 projects, claiming the IGO's ordinance does not extend to the 10 projects that were developed on behalf of the Chicago Public Schools (CPS) and the Park District. There was no disagreement with the PBC over the IGO's right to documents related to the projects in which the City was the client. Additionally, the IGO agrees that it does not have jurisdiction to investigate projects involving no City money.^{6,7} However, on the five school construction projects which received City tax dollars, the PBC and the IGO disagree about whether the use of City tax dollars brings these projects within the IGO's jurisdiction.

The IGO has a right to the documents regarding the five school construction projects because it has jurisdiction over any project that the PBC develops if the project involves City funds. The IGO has jurisdiction over every City program and because TIF funds were used in the

⁴ For the comparison presented in this table, we compared the participation we derived from the lien waivers to the numbers recorded in the PBC's Compliance Reports because the Compliance Reports detail participation at the firm level (how much went to each individual MWBE), while the publicly reported figures only detail participation at the project level (how much total MBE and WBE participation was achieved on the whole project, without detail on payments to individual MWBEs).

⁵ In the tables presented in this report, the totals may not sum due to rounding.

⁶ The five that did not involve the City in some way – three Park District and two minor CPS stairwell renovation projects – were included in the request simply because the IGO decided to look at all projects completed or substantially completed in 2009, and these minor projects were among them.

⁷ While the IGO may not have jurisdiction to investigate projects that do not involve City funding, City ordinance undoubtedly vests authority with the IGO to subpoena documents and information regarding non-City funded projects so long as it is relevant to an investigation of a matter within the jurisdiction of the IGO.

construction of these five schools and TIFs are a program of the City,⁸ the IGO's jurisdiction includes these projects. Additionally, the PBC's own rules and regulations direct any contractors on City-funded projects to cooperate with the IGO.

Thus, the PBC's argument that these were CPS projects and the IGO had no right to request documents is incorrect, because each of these projects received City funding, regardless of which entity entered into the contract with the PBC. Consequently, the IGO believes the PBC disregarded its responsibilities under the Municipal Code and its own policies by denying the IGO's document request.

C. Recommendations

Based on the aforementioned findings, we make two recommendations to ensure that when the PBC accepts City money it is held to the same standards regarding MWBE compliance as those who enter into direct contracts with the City. When it comes to City funds – whether through TIF or direct contracting – the PBC should rigorously pursue compliance with the City's regulations, and demand no less from its contractors. Similarly, the City should hold the PBC to the same expectations and requirements as any other entity that delivers a service funded by the City. Therefore, we make the following recommendations:

1) The PBC Should Comply With IGO Requests on City-funded Projects

The PBC has an obligation to comply with City rules and regulations on City-funded projects. The Chicago Municipal Code gives the IGO jurisdiction over every City program and any PBC project funded in whole or in part with City funds falls within that jurisdiction. Additionally, the PBC's own regulations regarding projects receiving City funds state that the IGO has jurisdiction over those projects. However, the IGO and the PBC clearly have different views regarding jurisdiction when it comes to projects that receive City funds, but where the City was not the client. This is an issue that requires resolution which the Mayor, in his capacity as Chairman of the PBC Board of Commissioners, should provide. If a project receives City tax revenue, the IGO has the right to scrutinize that project. The Mayor should direct the PBC to cooperate with the IGO in any audit, review or investigation into PBC activities involving any City funds, including those in which the City is not the client.

2) PBC Must More Diligently Monitor MWBE Compliance

It is clear that the PBC has significant shortcomings in its monitoring and reporting of MWBE participation on PBC projects. The PBC's posted MWBE participation statistics portray to its clients and the public a picture of a program that is exceeding its MWBE goals, when actual MWBE participation is grossly overstated.

The City should require that the PBC make it a practice to ensure all lien waivers are in place, and then scrutinize them for expenditures to lower-tier subcontractors. This will result in far

⁸ "Tax Increment Financing (TIF) is a special funding tool used by the City of Chicago to promote public and private investment across the city."

<http://www.cityofchicago.org/city/en/depts/dcd/provdrs/tif.html>

more accurate reporting and program accountability than merely accepting the amounts prime contractors report as going to 1st tier MWBE subcontractors, which frequently are lower than the actual payments made to MWBEs.

I. Background on the PBC

In 1955, the Illinois General Assembly authorized the Public Building Commission Act of the State of Illinois⁹, enabling government entities to form public building commissions for the purpose of “constructing, acquiring, enlarging, improving, repairing or replacing a specific public improvement, building or facility or a special type or class of public improvements, buildings or facilities.”¹⁰ On March 18, 1956, then-Chicago Mayor Richard J. Daley and the City Council created the PBC to oversee the construction and renovation of public buildings.

The PBC is managed by an Executive Director and an 11-member Board of Commissioners, currently chaired by the Mayor of Chicago. Because the City of Chicago adopted the original resolution to create the PBC, by state law, the Mayor of Chicago appoints a majority (six members), of the members of the PBC’s board.¹¹ Additionally, CPS and the Park District, whose leadership is determined by the Mayor, each appoint one board member. Finally, Cook County, the Forest Preserve District of Cook County, and the Metropolitan Water Reclamation District of Greater Chicago each appoint one board member.

In addition to its involvement in land acquisition and project planning, the PBC acts as a project manager on construction projects such as libraries, schools, park facilities, and police and fire stations.¹² Current PBC clients include the City of Chicago, Cook County, CPS, the Park District, Metropolitan Water Reclamation District of Greater Chicago, and City Colleges of Chicago.

The PBC is permitted to borrow money, and issue and sell revenue bonds. In addition, the PBC can receive a commission for its services, listed in some Intergovernmental Agreements (IGAs) with the City as up to 3 percent of a project’s construction costs.

II. Regulations Regarding Construction Projects

The City requires contractors receiving City funds for construction projects to adhere to certain rules, among them the City’s MWBE regulations.

A. City Regulations for Evaluating MWBE Participation

City regulations dictate that in order to be credited with MWBE participation, a firm must provide a commercially useful function in the work it is contracted to provide.¹³ “A MBE or WBE does not perform a commercially useful function if its role is limited to that of an extra

⁹ 50 ILCS. 20. Public Building Commission Act.

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=683&ChapterID=11>

¹⁰ *Id.*, Section 4a

¹¹ *Id.*, Section 5

¹² Governments engage the PBC through Intergovernmental Agreements (IGAs).

¹³ City of Chicago. “Special conditions Regarding Minority Business Enterprise Commitment and Women business Enterprise Commitment in Construction Contracts.” Section IV-G.

participant in a transaction, contract, or project, through which funds are passed in order to obtain the appearance of MBE or WBE participation.”¹⁴ The regulations also state:

If a MBE or WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumptively not performing a commercially useful function.¹⁵

For firms that do not provide a commercially useful function, no MWBE participation should be awarded. For firms that do provide a commercially useful function, the actual MWBE participation still must be calculated. MWBEs frequently enter into business relationships with non-MWBE firms. In some cases, non-MWBEs act as subcontractors when the MWBE is the prime contractor. In other instances, when the MWBE is a subcontractor, the non-MWBE acts as a 2nd tier (or further) subcontractor. These relationships must be scrutinized to determine the amount of work that is actually being performed by an MWBE.

Ultimately, the goal of the regulations is to ensure that only the work actually performed by a certified firm’s own forces is counted toward MWBE participation, and funds passed through from MWBEs to non-certified firms are not counted as MWBE utilization. Specifically, the regulations state:

When a MBE or WBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the contract specific goals **only if** the MBE’s or WBE’s subcontractor is itself a MBE or WBE. Work that a MBE or WBE subcontracts to a non-MBE or WBE **does not** count towards the contract specific goals. [emphasis added]¹⁶

B. PBC Regulations Regarding MWBE

In order to be counted toward MWBE participation on a PBC project, a firm must be certified by an agency recognized by the PBC. In addition to the City, the PBC accepts certifications from Cook County, CPS, the Chicago Transit Authority, the Metropolitan Water Reclamation District of Greater Chicago, the Chicago Minority Business Development Council, Central Management Service of the State of Illinois, METRA, and the Women’s Business Development Center.¹⁷

The “PBC’s *minimum* goals for participation by certified firms on its projects are 24 percent for MBE firms and 4 percent for WBE firms.”¹⁸ [emphasis added].

¹⁴ City of Chicago. “Special conditions Regarding Minority Business Enterprise Commitment and Women business Enterprise Commitment in Construction Contracts.” Section IV-G-2.

¹⁵ *Id.*, Section IV-G-3.

¹⁶ *Id.*, Section IV-C.

¹⁷ From the PBC website section titled, “Terms & Definitions,” under the “Working With the PBC” section.

¹⁸ From the PBC website section titled, “Commitments,” under the “Working With The PBC” section.

The PBC has its own MWBE construction requirements that, in many ways, mirror the City's regulations and dictate how MWBE participation is calculated. The qualifications for MWBE participation are outlined in the PBC's "Standard Terms and Conditions for Construction Contracts," which includes MBE/WBE Special Conditions¹⁹ that state, in part, the following:

- A Contractor may count toward its MBE or WBE goal the portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the MBE or WBE partner in the joint venture. ... A joint venture satisfies the eligibility standards of this program if the certified MBE or WBE participant of the joint venture: (1) Shares in the ownership, control, management responsibilities, risks and profits of the joint venture; and (2) is responsible for a clearly defined portion of work to be performed in proportion to the MBE or WBE ownership percentage.²⁰
- A Contractor may count toward its MBE and WBE goals only expenditures to firms that perform a commercially-useful function in the work of a contract. A firm is considered to perform a commercially-useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved.²¹
- Consistent with normal industry practices, a MBE or WBE firm may enter into subcontracts. If a MBE or WBE contractor subcontracts a significantly greater portion of the work of a contract than would be expected on the basis of normal industry practices, the MBE or WBE will be rebuttably presumed not to be performing a commercially-useful function.²²

The PBC allows contractors to count toward their MWBE goals all expenditures to MBE or WBE suppliers provided that the suppliers perform a commercially useful function in the supply process. This differs from both the City's regulations on construction contracts and the federal Disadvantaged Business Enterprise regulations, both of which allow contractors to claim 60 percent of the cost of materials or supplies purchased from an MWBE supplier to be counted toward MWBE goals.²³

The PBC's Special Conditions stipulate that a contractor's failure to meet the MWBE contractual requirements "constitutes a material breach of contract" and may lead to the PBC terminating the contract, withholding payments until the issue is corrected, and barring a contractor from future PBC contracts.

¹⁹ Article 23 of the PBC "Standard Terms and Conditions for Construction Contracts."

http://www.pbcchicago.com/pdf/forms/Book_2_March_2011_Standard_Terms_and_Conditions_for_Construction_Contracts.pdf

²⁰ *Id.*, Section 23.01(4)(c).

²¹ *Id.* at (4)(d).

²² *Id.* at (4)(e).

²³ City of Chicago. "Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment in Construction Contracts." Section IV- D.

III. Analysis of MWBE Participation on 15 Projects Finished in 2009

The IGO requested documentation from the PBC to detail the MWBE participation on each of the 15 projects in the table below. Citing jurisdictional issues that are discussed in the following section, the PBC did not provide the IGO with complete documentation on every project, taking the position that the IGO had no jurisdiction over projects built on behalf of other entities, regardless of whether City funds were used.

Table #2 –15 PBC Projects Completed in 2009²⁴

Type	Project Name	Address
City	Western Blvd. Vehicle Maintenance Facility	5201 S. Western Avenue
City	Beverly Branch Library	1962 W. 95th Street
City	Bontemps School Campus Park	1241 W. 58th Street
City	7th District Police Station	1438 W. 63rd Street
City	Norwood Park Senior Center	5801 N. Natoma
TIF-funded	Dr. Jorge Prieto Math and Science Academy	2231 N. Central Avenue
TIF-funded	Irene C. Hernandez Middle School for the Advancement of the Sciences	3510 W. 55th Street
TIF-funded	Langston Hughes Elementary School	240 W. 104th Street
TIF-funded	Mark T. Skinner West Elementary School	1260 W. Adams
TIF-funded	Westinghouse High School	3223 W. Franklin Boulevard
Non-City	Jesse Owens Park Fieldhouse	8800 S. Clyde Avenue
Non-City	Taylor-Lauridsen Park Fieldhouse	704 W. 42nd Street
Non-City	Broman Park Playlot	5400 N. Broadway
Non-City	Richard J. Daley Elementary School Stairwell Renovation	5024 S. Wolcott Avenue
Non-City	Ella Flagg Young Elementary School Stairwell Renovation	1434 N. Parkside

For each project, the PBC maintains an MWBE Compliance Report to track MWBE participation. The reports list the total contract value (including adjustments), all MWBE subcontractors, the amount of each contract and how much each MWBE was paid. The information on the Compliance Reports appears to be based either on a prime contractor's sworn statement and affidavits that detail what subcontractors have been paid²⁵ or on lien waivers submitted by contractors.

For the PBC's construction projects, as for any construction project in Illinois, contractors and laborers who work on the project are entitled to place a mechanic's lien on a project in order to ensure payment for their work. Once contractors and laborers are paid, they give lien waivers as a receipt documenting that they have been paid and waive their right to place a lien on the project. These lien waivers establish a paper trail of actual monies received by each firm on a construction project.

²⁴ Tables 2, 4, 5, 7, 8, and 9 include a Type column which details whether projects were City, TIF-funded, or a Non-City project. City project means the City was the client. TIF-funded means the project was funded, at least in part, by TIF dollars. Non-city means the City was not the client and no City tax dollars were used to fund the project.

²⁵ Importantly, the sworn statement and affidavits do not detail what 2nd tier (or lower tier) subcontractors have been paid.

By examining the underlying documentation, the IGO arrived at a significantly smaller figure for MWBE participation than what was reported by the PBC.

A. MWBE Utilization for Nine Fully-Documented Projects

For nine projects, the IGO obtained a complete set of lien waivers that allowed it to determine which firms received each dollar that was spent on each contract. The IGO review of lien waivers for these projects determined that actual utilization of MBEs was significantly less than the amounts recorded in the PBC's Compliance Reports. By calculating the amounts actually paid to legitimate MWBE subcontractors, the IGO determined the PBC over-reported its MBE payments by \$14.6 million and under-reported its WBE payments by \$1.6 million. As shown in the chart below, for MWBE participation as whole, the review of lien waivers found actual participation to be 43 percent less than the totals reported in the PBC's Compliance Reports.

Table #3 – Summary of MWBE Participation on 9 Projects with Complete Documentation

	Participation according to PBC Compliance Reports	Participation based on IGO review of lien waivers	Dollar Value Variance between PBC Compliance Reports and IGO review	Percent Variance between PBC Compliance Reports and IGO review
MBE	\$26,618,589	\$12,060,720	-\$14,557,869	-54.69%
WBE	\$3,535,196	\$5,151,863	\$1,616,667	45.73%
Total	\$30,153,785	\$17,212,583	-\$12,941,202	-42.92%

On the nine fully-documented projects, the PBC's Compliance Reports list payments of \$26.6 million to MBEs and \$3.5 million to WBEs. Based on project lien waivers, MBE utilization was only \$12.1 million, meaning the PBC over-reported MBE utilization on these nine projects by \$14.6 million. The table below details the MBE participation as reported by the PBC and as calculated by the IGO on each of the nine projects.

Table #4 – MBE Participation on 9 Projects with Complete Documentation

Type	Project Name	MBE Participation according to PBC Compliance Reports	MBE Participation based on IGO review of lien waivers
City	7th District Police Station	\$8,634,606	\$3,271,937
TIF-funded	Belmont Cragin Area Elem. School	\$10,378,922	\$4,901,170
City	Beverly Branch Library	\$1,767,595	\$1,724,975
City	Bontemps Campus Park	\$112,057	\$112,057
Non-City	Broman Park Playlot	\$22,000	\$22,000
Non-City	Ella Flagg Young Elementary School Stairwell Renovation	\$73,655	\$84,703
City	Norwood Park Senior Satellite Cnt.	\$2,094,502	\$599,993
Non-City	Richard J. Daley Elementary School Stairwell Renovation	\$122,210	\$122,210
City	Western Blvd. Vehicle Maintenance Facility	\$3,413,041	\$1,221,674
	Total	\$26,618,589	\$12,060,720

For WBEs, the IGO determined that participation, according to the lien waivers, was \$5.2 million, \$1.6 million more than reported by the PBC. The table below details the WBE participation as reported by the PBC and as calculated by the IGO on each of the nine projects.

Table #5 – WBE Participation on 9 Projects with Complete Documentation

Type	Project Name	WBE Participation according to PBC Compliance Reports	WBE Participation based on IGO review of lien waivers
City	7th District Police Station	\$687,839	\$118,043
TIF-funded	Belmont Cragin Area Elem. School	\$1,445,724	\$1,477,783
City	Beverly Branch Library	\$387,798	\$948,320
City	Bontemps Campus Park	\$85,971	\$85,971
Non-City	Broman Park Playlot	\$56,105	\$56,105
Non-City	Ella Flagg Young Elementary School Stairwell Renovation	\$56,211	\$56,211
City	Norwood Park Senior Satellite Cnt.	\$87,171	\$120,350
Non-City	Richard J. Daley Elementary School Stairwell Renovation	\$86,820	\$86,820
City	Western Blvd. Vehicle Maintenance Facility	\$641,558	\$2,202,260
	Total	\$3,535,196	\$5,151,863

B. MWBE Utilization on Six Partially-documented Projects

The PBC provided an incomplete set of lien waivers on six projects. On two of those projects, Skinner Elementary and Southwest Area Middle School, the documents were significantly deficient. On the remaining four projects – Langston Hughes, Westinghouse High School, Jesse Owens Park Fieldhouse and Taylor-Lauridsen Park Fieldhouse – the IGO obtained a substantial number of documents, but there were enough missing lien waivers that exact calculations were impossible.

An analysis was still possible for the six projects where the IGO obtained incomplete documentation. However, to make an accurate comparison, it was necessary to remove MWBE participation figures listed in PBC Compliance Reports for which the IGO was provided no underlying documentation.

For example, in the case of the Skinner Elementary School project, the PBC Compliance Report lists total MBE utilization at \$8,912,374. The PBC only provided lien waivers for two MBE subcontractors. The Compliance Report lists those two businesses as receiving \$3,489,848. For the purposes of this part of the review, the IGO used the MWBE Compliance Report total for these two businesses as the project total (\$3,489,848 rather than \$8,912,374) and compared it to the amount actually paid to these subcontractors based on the underlying lien waivers. The other \$5,422,527 in MBE participation listed in the PBC Compliance Report for the Skinner Elementary school project is addressed in the following section.

For the MWBE participation that was supported by lien waivers on these six projects, the PBC Compliance Reports list \$45.7 million in MBE payments and \$9.9 million in WBE payments. Again, these totals only include the MWBE participation for MWBEs for which lien waivers

were also provided. The IGO's review of lien waivers for these projects determined that actual MBE participation was over \$24 million less than the PBC reported, and WBE participation was \$3.2 million less. As shown in the chart below, for MWBE participation as whole, the review of lien waivers found actual participation to be 49 percent less than what was reported in the PBC's Compliance Reports.

Table #6 - Summary of MWBE Participation on 6 Projects with Incomplete Documentation

	Participation according to PBC Compliance Reports*	Participation based on IGO review of lien waivers	Dollar Value Variance between PBC Compliance Reports and IGO review	Percent Variance between PBC Compliance Reports and IGO review
MBE	\$45,746,202	\$21,680,512	-\$24,065,690	-52.61%
WBE	\$9,900,773	\$6,738,696	-\$3,162,076	-31.94%
Total	\$55,646,975	\$28,419,209	-\$27,227,766	-48.93%

*These totals only include the MWBE participation for MWBEs for which lien waivers were also provided. The MWBE participation recorded in the Compliance Reports for MWBEs for which no lien waivers were provided to the IGO is discussed in the next section.

Based on calculations of verified documents for these projects, the MBE utilization was \$24 million less than what was reported on the PBC Compliance Reports. The table below details the MBE participation, for MBEs for which lien waivers were provided, on each project as reported by the PBC and as determined by the IGO's review of lien waivers.

Table #7 - MBE Participation on 6 Projects with Incomplete Documentation

Type	Project Name	MBE Participation according to PBC Compliance Reports*	MBE Participation based on IGO review of lien waivers
Non-City	Jesse Owens Park Fieldhouse	\$1,891,714	\$1,986,061
TIF-funded	Langston Hughes Elementary	\$12,063,511	\$7,485,932
TIF-funded	Skinner Elementary School	\$3,489,848	\$3,345,530
TIF-funded	Southwest Area Middle School	\$601,400	\$601,400
Non-City	Taylor-Lauridsen Park Fieldhouse	\$1,984,038	\$2,063,160
TIF-funded	Westinghouse High School	\$25,715,692	\$6,198,429
Total		\$45,746,202	\$21,680,512

*These totals only include the MWBE participation for MWBEs for which lien waivers were also provided. The MWBE participation recorded in the Compliance Reports for MWBEs for which no lien waivers were provided to the IGO is discussed in the next section.

For WBE participation, the review of lien waivers revealed that \$3.2 million less than was reported on the Compliance Reports actually went to WBEs. The table below details the WBE participation, for WBEs for which lien waivers were provided, on each project as reported by the PBC and as determined by the IGO's review of lien waivers.

Table #8 - WBE Participation on 6 Projects with Incomplete Documentation

Type	Project Name	WBE Participation according to PBC Compliance Reports*	WBE Participation based on IGO review of lien waivers
Non-City	Jesse Owens Park Fieldhouse	\$93,903	\$96,807
TIF-funded	Langston Hughes Elementary	\$5,660,807	\$5,667,192
TIF-funded	Skinner Elementary School	\$0	\$0
TIF-funded	Southwest Area Middle School	\$472,352	\$482,190
Non-City	Taylor-Lauridsen Park Fieldhouse	\$283,841	\$289,357
TIF-funded	Westinghouse High School	\$3,389,870	\$203,150
Total		\$9,900,773	\$6,738,696
*These totals only include the MWBE participation for MWBEs for which lien waivers were also provided. The MWBE participation recorded in the Compliance Reports for MWBEs for which no lien waivers were provided to the IGO is discussed in the next section.			

C. Unverified MWBE Utilization on Partially-Documented Projects

For the above six projects, the PBC claimed more utilization than the IGO was able to verify because lien waivers documenting this participation were not provided. As described earlier, to provide the most accurate analysis of MWBE utilization on those projects required looking only at the firms listed on the PBC Compliance Reports for which the IGO obtained lien waivers.

However, it warrants noting the amount listed on the Compliance Reports that did not figure into the calculations because there was no underlying documentation. The following chart represents the MBE and WBE participation the PBC listed on Compliance Reports on the six projects that were not accompanied by supporting documentation:

Table #9 - Unverifiable MWBE Participation on 6 Projects with Incomplete Documentation

Type	Project Name	MBE Participation according to PBC Compliance Reports*	WBE Participation according to PBC Compliance Reports*
Non-City	Jesse Owens Park Fieldhouse	\$88,715	\$292,117
TIF-funded	Langston Hughes Elementary	\$508,279	\$0
TIF-funded	Skinner Elementary School	\$5,422,527	\$1,499,403
TIF-funded	Southwest Area Middle School	\$6,985,051	\$772,060
Non-City	Taylor-Lauridsen Park Fieldhouse	\$131,219	\$189,443
TIF-funded	Westinghouse High School	\$3,474,069	\$0
	Total	\$16,609,860	\$2,753,024
*These totals only include the MWBE participation for MWBEs for which lien waivers were not provided.			

D. MWBE Participation on the 15 Projects as a Whole

For the 15 projects completed in 2009, the PBC's compliance reports show actual MBE participation as \$89 million and WBE participation as \$16.2 million. On nine projects the IGO received full documentation and on six projects only received partial documentation. Thus, the IGO broke the participation into three categories: the participation on nine projects for which it

received complete documentation, the participation that was partially documented on six projects, and the participation that was not documented on those same six projects.

The IGO review of lien waivers for these projects showed that actual participation was far less than what was reported in the PBC's Compliance Reports. The table below shows what the PBC reported for MBE and WBE participation for each of the three categories and what the IGO determined participation to be based on a review of lien waivers. For the unverifiable MWBE participation, we assumed that the actual MWBE participation matched the participation reported in the PBC's Compliance Reports. This is despite the fact that for the MWBE participation that we did obtain underlying documentation, there was a large gap between the MWBE participation reported in the PBC Compliance Reports and the actual participation according to underlying documentation. Even conservatively assuming that 100 percent of the participation for which no documentation was obtained actually occurred, MBE participation on these 15 projects was 43 percent less and WBE participation was 10 percent less than what the PBC reported in its Compliance Reports.

Table #10 – MWBE Participation on 15 PBC Projects Completed in 2009

	Participation according to PBC Compliance Reports	Participation based on IGO review of Lien waivers	Dollar Value Variance between PBC Compliance Reports and IGO review	Percent Variance between PBC Compliance Reports and IGO review
MBE Participation				
Nine Projects- Complete Documentation	\$26,618,589	\$12,060,720	-\$14,557,869	-54.69%
Six Projects- Partial Documentation	\$45,746,202	\$21,680,512	-\$24,065,690	-52.61%
Six Projects- No Documentation*	\$16,609,860	\$16,609,860	\$0	0.00%
Total	\$88,974,650	\$50,351,092	-\$38,623,559	-43.41%
WBE Participation				
Nine Projects- Complete Documentation	\$3,535,196	\$5,151,863	\$1,616,667	45.73%
Six Projects- Partial Documentation	\$9,900,773	\$6,738,696	-\$3,162,076	-31.94%
Six Projects- No Documentation*	\$2,753,024	\$2,753,024	\$0	0.00%
Total	\$16,188,992	\$14,643,583	-\$1,545,409	-9.55%
Grand Total	\$105,163,643	\$64,994,674	-\$40,168,968	-38.20%
*Assumes that the actual participation the IGO was unable to verify but reported in the PBC's Compliance Reports for these six projects is accurate				

E. Reasons for Differences in MWBE Participation Calculations

The IGO's calculations of MWBE participation differed from those reported by the PBC for two reasons. First, the PBC apparently did not scrutinize the lien waivers provided by contractors in order to determine how much an MWBE subcontractor earned, and how much was paid to non-MWBEs to perform some – or in certain cases most – of the work. Second, firms were credited with MWBE participation that should not have been certified at the time their participation was credited by the PBC. This is not the fault of the PBC because it is not a certifying agency, but instead was the result of mistakes or shortcomings in the certification process.

1) *MWBEs Subcontracting to non-MWBE firms*

In many instances, MWBE subcontractors utilize 2nd tier contractors that end up earning significant amounts of the money for which the MWBE is contracted. Unless those 2nd tier subcontractors are also MWBE certified, the amount that is passed-through to those businesses does not count toward MWBE utilization. Thus, the IGO calculated MWBE utilization on the projects by examining the lien waivers submitted to the PBC indicating how much money the certified MWBEs actually earned.

As an example, on one project, the prime contractor was a joint venture involving a non-MWBE certified company and an MWBE company. The PBC credited the MWBE portion of the joint venture with \$1,430,219. However, the lien waivers show that company paid \$914,372 to non-MWBE 2nd tier subcontractors, meaning only \$515,847 should have counted toward MWBE participation.

In another instance, the prime contractor retained an MWBE subcontractor for two separate tasks, to provide “vehicle service piping” and HVAC work. For both projects combined, PBC Compliance Reports list the subcontractor as being paid \$2,288,408, all of which is applied to MWBE participation.

However, when the underlying documents are examined they show that the MWBE subcontractor performed no work on the contracts other than to keep a 3.5 percent “fee” and funnel the remainder to 2nd tier subcontractors that actually performed the work. One of the 2nd tier subcontractors was itself a MWBE firm, meaning the \$1,432,864 that subcontractor earned should be applied to MWBE participation. The other was not certified and, according to the last lien waiver provided by the PBC, earned \$775,982 of the \$803,160 that had been paid up until that point.²⁶

First, because the only function of the MWBE subcontractor was to pass funds through to actual service providers in exchange for a fee, the subcontractor provided no commercially useful function, and nothing paid to the firm should count toward MWBE participation.

Second, nothing paid to the non-MWBE subcontractor should count as MWBE utilization and the PBC apparently erred in this regard. Only the amount paid the 2nd tier MWBE firm -- \$1,432,864 of the reported \$2,288,408 – should apply to MWBE credit.

2) *Firms That Should Not Have Been Certified Were Credited with MWBE Participation*

The PBC credited three firms with more than \$18.7 million in MWBE participation, when none of those firms should have been certified at the time. As a result, the IGO did not count money spent on these firms as participation.²⁷

²⁶ These figures are the amounts actually paid, based on the latest lien waivers provided by the PBC.

²⁷ Alternatively, the IGO did credit participation for a number of MWBEs, including 2nd tier subcontractors, which did not appear on the PBC’s Compliance Reports.

The largest beneficiary of the three was credited for work on two CPS projects: Westinghouse High School in the amount of \$11,442,905 and Belmont Cragin Elementary School in the amount of \$3,489,610. The Westinghouse project was awarded in March of 2007 and Belmont Cragin was awarded in June 2008.

The IGO determined that, at the time of the Westinghouse award, the subcontractor had been certified in error by the City because it far exceeded the gross receipts qualifications set forth in the federal Small Business Administration (SBA) size standards.²⁸ According to the City's regulations, a construction firm that exceeds \$14 million in annual gross receipts averaged over five years is considered an "established business." Once a certified construction firm becomes an established business, it is graduated from the MWBE program and no longer qualifies for certification.

The above-mentioned subcontractor received a letter from the City in December 2007 stating it had graduated from the MWBE program because its five-year average gross receipts exceeded \$20.3 million. The IGO determined that the subcontractor should have graduated from the program in 2006 or earlier based on gross receipts. An error on the City's part extended the vendor's time as a certified MWBE.

The PBC credited another vendor working on the Belmont Cragin project with \$456,624 in MWBE participation. That vendor, however, was denied certification by the City in March of 2008, before the PBC awarded the project, and therefore should not have been utilized for MWBE purposes.

The third vendor, credited with \$3,389,870 on the Westinghouse project, was informed by the City in October of 2006 that its average gross receipts from 2001 through 2005 made it ineligible for certification and the City therefore proposed graduating the company from the program. The City did not recertify the company, and when the Westinghouse project was awarded in 2007, the company provided a City certification letter that expired in December 2006.

The company also submitted a Cook County certification letter that expired in October 2007. However, we determined that letter should not have been authorized either because, at the time of the letter, Cook County was operating under the same MWBE construction regulations as the City, therefore making the company also ineligible for County certification based on average gross receipts.

The IGO on many occasions has pointed out the shortcomings regarding the manner in which the City's MWBE program is administered and monitored. The scenarios addressed in this section are simply additional examples of programmatic problems. While the PBC was not responsible for the fact that these companies were certified, it does not change the point of this analysis, which is to examine the effectiveness of the MWBE program on City-funded contracts administered by an outside agency. To that end, the IGO did not count money reportedly paid to these subcontractors when calculating the actual MWBE utilization on PBC projects.

²⁸ 13 CFR 121.

IV. PBC Did Not Provide IGO with All Requested Documents

The IGO was unable to make a complete determination on actual MWBE participation on the 15 projects because the PBC did not provide full documentation for all the projects.

The IGO requested lien waivers for all 15 projects completed by the PBC in 2009. Of the projects in question, five were projects in which the City was the client. Five additional projects, which received some funding directly from City tax dollars (TIF dollars), were school construction projects administered on behalf of CPS, and the last five projects received no City money.

Ultimately, the PBC only partially complied with the IGO request, contending that the IGO's ordinance does not extend to the 10 projects that were developed on behalf of CPS and the Park District. There was no disagreement with the PBC over the IGO's right to documents related to the projects in which the City was the client. Additionally, the IGO agrees that it does not have jurisdiction to investigate projects involving no City money. While the IGO may not have jurisdiction to investigate projects that do not involve City funding, City ordinance undoubtedly vests authority with the IGO to subpoena documents and information regarding non-City funded projects so long as it is relevant to an investigation of a matter within the jurisdiction of the IGO.

However, on the five school construction projects which received City tax dollars, the PBC and the IGO disagree about whether the use of City tax dollars brings these projects within the IGO's jurisdiction. The PBC wrote to the IGO that "regarding your request for documents in connection with projects administered by the PBC on behalf of the Board of Education and the Chicago Park District, it is our understanding that your office does not have jurisdiction over those two separate municipal corporations."²⁹

The IGO has a right to the documents regarding the five school construction projects because it has jurisdiction over any project that the PBC develops if the project involves City funds. The IGO has jurisdiction "[t]o investigate the performance of governmental officers, employees, functions and **programs** ...in order to detect and prevent misconduct, inefficiency and waste within the **programs and operations of the city government** [emphasis added]." Because TIF funds were used in the construction of these five schools and TIFs are a program of the City,³⁰ the IGO's jurisdiction includes these projects because they are a component of a City program.

Additionally, this position is reinforced by the PBC's own rules and regulations. As stated in the PBC's Standard Terms and Conditions state that (1) "[I]t is the duty of any bidder, proposer, Contractor, all subcontractors and all officers, directors, agents, partners and employees of any such entities on **City-funded** [emphasis added] contracts to cooperate with the Inspector General of the City in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Chicago Municipal Code."

²⁹ Public Building Commission. "Response to an October 18, 2010 letter from the IGO to the PBC." October 21, 2010.

³⁰ "Tax Increment Financing (TIF) is a special funding tool used by the City of Chicago to promote public and private investment across the city."

<http://www.cityofchicago.org/city/en/depts/dcd/provdrs/tif.html>

Thus, the PBC's argument that these were CPS projects and the IGO had no right to request documents is incorrect, because each of these projects received City funding, regardless of which entity entered into the contract with the PBC. Consequently, the IGO believes the PBC disregarded its responsibilities under the Municipal Code and its own policies by denying the IGO's document request.

V. Recommendations

Based on the aforementioned findings, we make two recommendations to ensure that when the PBC accepts City money it is held to the same standards regarding MWBE compliance as those who enter into direct contracts with the City. When it comes to City funds – whether through TIF or direct contracting – the PBC should rigorously enforce compliance with the City's regulations, and demand no less from its contractors. Similarly, the City should hold the PBC to the same expectations and requirements as any other contractor doing business with the City. Therefore, we make the following recommendations:

A. The PBC Should Comply with IGO Requests on City-funded Projects

The PBC has an obligation to comply with City rules and regulations on City-funded projects. The Chicago Municipal Code gives the IGO jurisdiction over every City program and any PBC project funded in whole or in part with City funds falls within that jurisdiction. Additionally, the PBC's own regulations regarding projects receiving City funds state that the IGO has jurisdiction over those projects. However, the IGO and the PBC clearly have different views regarding jurisdiction when it comes to projects that receive City funds, but where the City was not the client. This is an issue that requires resolution which, the Mayor, in his capacity as Chairman of the PBC Board of Commissioners should provide.³¹ If a project receives City tax revenue, the IGO has the right to scrutinize that project. The Mayor should direct the PBC to cooperate with the IGO in any audit, review or investigation into PBC activities involving any City funds, including those in which the City is not the client.

B. PBC Must More Diligently Monitor MWBE Compliance

It is clear that the PBC has significant shortcomings in its monitoring and reporting of MWBE participation on PBC projects. The PBC's posted MWBE participation statistics portray to its clients and the public a picture of a program that is exceeding its MWBE goals, when actual MWBE participation is grossly overstated.

The City should require that the PBC make it a practice to ensure all lien waivers are in place, and then scrutinize them for expenditures to lower-tier subcontractors. This will result in far more accurate reporting and program accountability than merely accepting the amounts prime contractors report as going to 1st tier MWBE subcontractors, which frequently are lower than the actual payments made to MWBEs.

³¹ Because the Mayor controls a majority of the appointments to the PBC's board, it is believed that the Mayor exerts full control over the PBC, much as the Mayor similarly is assumed to exert full control over the other sister agencies (CPS, CTA, CHA, etc.)