



City of Pittsburgh

510 City-County Building
414 Grant Street
Pittsburgh, PA 15219

Text File

Introduced: 4/24/2018

Bill No: 2018-0413, **Version:** 1

Committee: Committee on Finance and Law

Status: Passed Finally

Ordinance amending and supplementing the Pittsburgh Code, Title One, Administrative; Article IX, Boards, Commissions and Authorities; Chapter 177A, Equal Opportunity Review Commission; Section 177A.01, Purpose, Authority and Definitions; Section 177A.05, Proposal Requirements; Section 177A.06, Proposal Review Process; and adding a new Section, Section 177A.06A, Waivers.

WHEREAS, the City of Pittsburgh has a stated commitment to the ideal of providing all citizens an equal opportunity to participate in City and its Authorities contracting opportunities; and,

WHEREAS, in order to ensure opportunities for historically disadvantaged minority groups and women to participate on contracts that are put out to bid by the City and its Authorities, the Equal Opportunity Review Commission was created to review contracts to include an evaluation of a developer/contractor's employment of minority groups and women; and,

WHEREAS, the City has a stated goal of 18% minority participation and 7% women participation on City and Authority contracts that are put out to bid; and,

WHEREAS, despite the participation goals, the percentage targets for minority and women participation are not being met; and,

WHEREAS, often times resolutions and ordinances subject to EORC review are submitted to Council prior to any EORC review or recommendation, thereby disincentivizing City and Authority contract awardees from adhering to minority and women participation goals; and,

WHEREAS, in order to close this loophole, resolutions and ordinances subject to EORC review must receive EORC review and recommendation prior to submission to Council for final approval; therefore,

Be it resolved by the Council of the City of Pittsburgh as follows:

Section 1. The Pittsburgh Code, Title One, Administrative; Article IX, Boards, Commissions and Authorities; Chapter 177A, Equal Opportunity Review Commission; Section 177A.01, Purpose, Authority and Definitions, is hereby amended to read as follows:

§ 177A.01 - PURPOSE, AUTHORITY AND DEFINITIONS.

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~~This Chapter shall not apply to those services which are contracted out in accordance with the Act 47 Plan.~~

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

"EORC" or **"Commission"** - Equal Opportunity Review Commission.

"MBE" - Minority Owned Business.

"WBE" - Women-Owned Business.

"IFB" - Invitation for Bid.

"RFP" - Request for Proposal.

"RFQ" - Request for Qualifications.

"Prime" or **"Primary"** - Primary Contractor.

"Sub" - Subcontractor.

Section 2. The Pittsburgh Code, Title One, Administrative; Article IX, Boards, Commissions and Authorities; Chapter 177A, Equal Opportunity Review Commission; Section 177A.05, Proposal Requirements, is hereby amended to read as follows:

§ 177A.05 - PROPOSAL REQUIREMENTS.

All City Departments, agencies and Authorities to which the ~~EEO~~ **MBE/WBE participation** goals of the City apply shall implement the following process:

- a. All IFBs/RFPs/RFQs shall include a section explaining the MBE/WBE participation goals.
- b. All IFBs/RFPs/RFQs shall include a sample MBE/WBE Commitment Letter which contains a signature line for both primary contractor and the subcontractor to sign.
- c. Pre-submission meetings are held for all IFB/RFP/RFQ's. During these meetings MBE/WBE participation and documentation requirements are reviewed. Bidders/Proposers are reminded to submit copies of the commitment letters, proof of outreach, and their current M/WBE certification and/or current M/WBE certification for their M/WBE partners/subcontractors.

Section 3. The Pittsburgh Code, Title One, Administrative; Article IX, Boards, Commissions and Authorities; Chapter 177A, Equal Opportunity Review Commission; Section 177A.06, Proposal Review Process, is hereby amended to read as follows

§ 177A.06 - PROPOSAL REVIEW PROCESS.

- a. Once bid/proposals are received, a responsive determination is conducted which includes a review of the bidder's/proposer's M/WBE participation plan.
- b. If a bidder/proposer failed to submit a plan, their bid/proposal shall be deemed non-responsive.
- c. If a bidder/proposer failed to submit any of the required information (such as certifications), or if clarification is needed, a written request is sent to the bidder/proposer requesting the additional information or clarification. A due date shall be stated in the request.
- d. Professional services contracts over ~~twenty-five~~ **fifty** thousand dollars (\$~~2550,000.00~~) and construction contracts over two hundred fifty thousand dollars (\$250,000.00) require Department of Neighborhood Empowerment and Equal Opportunity/EORC review. **Contracts above these amounts may be exempted from full EORC review (i.e., "e" through "m" of this section, immediately below) if they are confirmed by the Bureau of Neighborhood Empowerment to be in a category eligible for waiver under §177A.06A.**
- e. Once a proposal is selected, if it meets the criteria for submission to the EORC, a representative shall complete the necessary EORC forms using information included as part of the bid or proposal and submits to the EORC no later than five (5) calendar days in advance of the monthly meeting.
- f. At the EORC meeting, a representative shall present the proposed M/WBE Plan to the Commission. Presentation includes an overview of the project, review of the documentation previously submitted and an open discussion/question and answer session regarding the proposed M/WBE plan. The prospective awardee and M/WBE subcontractor must be present at the meeting, **including by telephone or voice internet connection**, in order to participate in the presentation. **This meeting must take place prior to submission to City Council of a resolution authorizing an agreement with the prospective awardee.**
- g. Only payments to a certified M/WBE primary or subcontractor are accepted toward the M/WBE goals. Labor hours are counted or tracked for the purpose of meeting the EORC goals.
- h. Current certification and signed commitment letters must accompany all plans submitted to the EORC.
- i. The Director of Neighborhood Empowerment and Equal Opportunity, **or his/her designee**, shall present to the Commission, prior to a vote by the Commission, a staff recommendation explaining the reasons for a positive or negative recommendation.
- j. The EORC Board may vote to approve the proposed plan or may table the vote and request additional information. If approved, the agency(ies) may move forward with the award process. If additional information is requested, **agency(ies) must** provide a timely response. **A proposed plan may be tabled for one month in total.**
- k. If a proposed plan is rejected, the Director of Neighborhood Empowerment and Equal Opportunity shall work with the bidder/proposer to incorporate additional opportunities for M/WBE participation and present a revised plan at the next Commission meeting for consideration. **A revised plan may be re-presented up to two times in total.**
- l. The EORC shall send a follow-up letter listing the plans that were presented, the date presented, name(s) of

presenter(s) and their recommendation as how to proceed with the contract.

- m. Every resolution or ordinance concerning an agreement subject to EORC review must include a synopsis and recommendation from the EORC at the time the legislation is submitted to the City Clerk for inclusion on City Council's regular meeting agenda.**

Section 4. The Pittsburgh Code, Title One, Administrative; Article IX, Boards, Commissions and Authorities; Chapter 177A, Equal Opportunity Review Commission; is hereby supplemented as follows:

§ 177A.06A - WAIVERS.

- a. The following categories of contracts, which must be confirmed in writing by the Bureau of Neighborhood Empowerment, may be waived from participation in the full EORC review process:**
- 1. Emergency services: services necessary to protect the public health and safety, necessary to relieve the immediate necessity of residents due to calamity, or required because of unforeseen damage to public property.**
 - 2. Sole source services: services documented to fall within one of four categories: (i) available from only one source (in which case accompanying waiver request must clearly define the scope in which it is unique); (ii) for which only one prospective contractor is willing to enter into a contract with the City; (iii) where an item required for the service has design and/or performance features that are essential to the department, including due to compatibility with services or goods currently in use, and no other source satisfies the City's requirements; or (iv) licensed or patented services.**
 - 3. Legally required contracts: Contracts requiring compliance with terms and conditions of a court order, government grant, or governmental order, or for expert witnesses, consultants associated with anticipated or pending litigation, or other agreements required for the administration of the Law Department.**
 - 4. Grants: When procurement involves the expenditure of outside governmental (e.g., federal or state) funds, purchasing shall be conducted in accordance with any applicable federal or state laws or regulations.**
 - 5. Intergovernmental Agreements: Agreements with other governmental or quasi-governmental bodies.**
- b. A waiver shall not be granted unless the contractor has provided documented Good Faith Efforts ("GFE"). GFE are the actions all contractors must demonstrate via appropriate documentation**

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(as determined by the Bureau of Neighborhood Empowerment) to certify they have performed their due diligence to solicit MBE/WBE participation in support of the City's MBE/WBE goals.