



PROFESSIONAL WOMEN IN CONSTRUCTION
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October 4, 2012.

TO: COMMITTEE ON CONTRACTS
New York City Council
RE: Int. No. 911

My name is Lenore Janis. I am President of Professional Women in Construction (PWC), a non-profit organization established in 1980 to assist and advance business and professional women in construction and allied industries,,,,,.....,and believe me, we needed a lot of help then in an industry that discouraged women

Today, PWC has over 1,000 members (women & men....you see we do not discriminate) and six chapters in NY, NJ, CT, DC, PA, South FL.

Of the dozen women who originally founded PWC 33 years ago, many of us were treading on ground that never saw a woman's footstep.

Our thanks to President Jimmy Carter, who started the ball rolling with his Executive Order to assist minorities to get into and stay in business. At that time women, the largest of the minority populations, were excluded from the world of business, finance and, of course, the construction industry. To compound the injury, certain schools specializing in Architecture & Engineering had a quota system or were closed to women. By 1983 Governor Mario Cuomo of New York State hit on a 5% goal to make sure that woman-owned businesses would participate on public projects.

At the time, I was the sole owner of a steel erection firm, known as Era Steel and I was one busy woman building bridges for the DOT and train & subway stations for the MTA. Thanks to Locals 40 & 351, I had the very best ironworkers. Fortunately the unions did not see me as a woman but as a

Good Contacts Lead to Contracts

person who could bring in contracts to keep their men busy during a downturn in the industry. Era Steel had a reputation for bringing a job in "on time and within budget."

But Strange things happened:

One happy contractor wanted to make me his "house woman;" another one suggested I sign his contracts, but stay far away from the actual job; others tried stiffing me on payments.

To grow the business I went to the bank for a business loan – they refused to give me anything over \$10,000 unless a man would sign for the loan....perhaps a father (dead), brother (in CA), husband (non-existent). I discovered that loans were being made by the U.S. Small Business Administration (SBA): male minority loan up to \$150,000 and the women's *mini-loan*: up to \$25,000. Of course, as a female person, I was eligible only for the women's mini-loan – I took it and asked no questions.

Interest rate at that time: 12%. And I paid it all back. I often wonder if the SBA's loan service still continues its discriminatory loans.

So I can speak to you not only as a PWC official engaged in making this a better place for women to seek careers and grow in an Industry owned and dominated by men, but as someone who "was in the life" – so to speak. I have also seen it all – from the phoney baloneys to the industrious, hard-working women, to the men in the industry who value our brains & brawn and the moms and dads who want their daughters to become professionals and business owners.

Right Now is a critical moment for City of New York – you must hasten to include **ALL** women in the goals system. No, this is not a perfect law – **but it must pass**. Revisions to the law can always be made, but the need to correct the terrible damage inflicted by the City on women-owned businesses since 2005 is paramount. Hey, my tax money is involved! May I suggest that you take a good look at the City's M/WBE Certification process – there in lies the problem.

Quenia Abreu
New York Women's Chamber of Commerce
212-491-9640, Ext. 2

Testimony
Local Law 129, Int 911
October 4, 2012

Good morning everyone. Thank you for allowing me to testify today. I am here representing the New York Women's Chamber of Commerce.

As always I come here today to give voice to women entrepreneurs and to other disadvantaged business groups. I am very pleased to see all the proposed positive changes to Local Law 129 and that you have included many of the suggestions made by the New York Women's Chamber of Commerce as well as other organizations that work and advocate for the MWBE community.

The members, however, have several concerns that I will be sharing with you today:

We are pleased that we finally have goals for women; however it will be discriminatory to support legislation that has goals for only one group of women. In this bill the goals are only for Caucasian women, and do not include Latino, Black or Asian women. We ask for that to be changed. And to expand on the subject of women, we also ask that the certification process identify not just Caucasian women as women, but also Latino, Black and Asian women. It is important for the city to track them by both gender and ethnicity so we can have a better picture of how all women, not just Caucasian women are doing when it comes to procurement contracting opportunities.

The bill proposes lower goals for Latinos in almost every category, we see a drastic decrease in contracting goals for Latino businesses in the construction industry (from 9.06% to 4%), which is a tremendous concern for our Latino Community. We don't understand how this is possible when Latino owned businesses are not only the fastest growing but also the largest business group in the City. We would like to know and examine the rationale behind all the numbers.

The amendment includes Emerging Business Enterprises (EBE) in the legislation. Some of our questions: Was there a disparity study conducted to determine the 6% goals shown in every category? What was the methodology used? Is that methodology different than the one used for the MWBE goals? And if it is, can that same methodology be used to determine the goals of Latinos in construction?

There is no provision in the bill for disciplinary actions to be taken against those agencies that do not meet their goals. The bill calls for explanations and plans to increase the goals but no

sanctions or punishments are mentioned. This leaves it open for the agencies to give excuses for not meeting their goals. We ask for this to be re-evaluated.

This legislation was not perfect six years ago, and it is not perfect today, even with the proposed changes , and as we work to improve it, we must make sure there is transparency in the process, and integrity in the methodologies used before we amend this Law. In the case of the new disparity study conducted to amend Local Law 129, we are left concerned and puzzled as to why that disparity study was never released to the public.

Again, thank you for this opportunity. As always, I am available to work with you for the benefit our small business community.

Quenia Abreu

Good afternoon,

My name is Florence Chilton; I am the owner and CEO of Florence Construction Corporation working in the construction industry since 1998.

I would like to thank the board for inviting me to testify here today at this historic event; and praise them for correcting a wrong, for implementing this law, standing up for the rights of all, regardless of gender, race, or ethnicity.

I started my career in 1988 as an apprentice operating engineer working in the field, making the most of the opportunity before me. I endured against discrimination then.

1. I was considered the token female.
2. I was harassed by my co-workers and supervisors.
3. Told I should be home cooking and that I am taking a man's job.
4. I was forced to carry a screw driver in my pocket, to protect myself, to be ready when the verbal attacks would turn too aggressions.

I did not allow those abusive attacks to sway me from achieving my goals. Others did, I know women who have since given up, they couldn't take the abuse and they have suffered from it. I thank god that I was able to withstand the abuse; I can operate any piece of heavy equipment out there and I have my NYS crane license. I am thankful to the women before me.

Nothing comes easy; starting my business as a WBE; was not a Golden egg, and it did not produce a Golden goose'

Contractors do not want you there, they are tolerating you; you are a piece of the project or a fine, good faith effort, a waiver. Not an entrepreneur willing to work as hard as it takes to get the jobs done, not treating you in the spirit of the M/WBE/EBE program to assist that we succeed;

1. They go for the cheaper sub contractor regardless if M/WBE/EBE or not
2. Whether they are complying with local ordinance prevailing wage labor laws or not.
3. Regardless that they have submitted you, as the M/WBE and then retract a 4 million dollar contract. Who vet's the sub that replaces you?
4. M/WBE's can't afford to fight they rely on the agency to stand up for them and still they lose the 4 million dollar contract. How does that happen, who vets them?

I am here today to continue to stand up for future generations. So that they to, will not be discriminated against. They too, will have the opportunity to have a fair playing field. Being treated the same, equally, fairly, without discrimination, to have an opportunity, as a contractor or subcontractor. To bid on any project, without discrimination.

Please do not misunderstand me. The MWBE/EBE program is not a golden egg. It is an opportunity to get your foot in the door.

There are still a lot of holes in the program such as the good faith effort; waivers, no respect for human life or suffering, a fair days wage for a fair days work.

Dishonesty, sources of scandalous behavior, cheats and cheating. They exist.

In closing, I applaud the board for righting this wrong by implementing this new law. However, that is not enough to assure integrity.

When a contractor is allowed to hire a cheaper firm MWBE/ EBE or not, any project that the agency doesn't vet three bids from subcontractors, as they do with the primes who are bidding.

It hurts; it damages honest M/WBE/EBE. It puts us out of business. We are entrepreneurs, socially and economically disadvantaged. We work long hours as many hours as it takes. We need assistance, financially, educationally but most of all, an advocate, with honesty, transparency, and integrity.

I have met wonderful honest and goodhearted people, companies and individuals along the way. I have also met mean dishonest, disgraceful, companies and individuals. Ask me!

Please continue to do the right thing, such as you are doing here today.

I am willing to speak with anyone, mentoring new companies or enlightening the agencies whom are performing the vetting. Thank you again and god bless you.

Sincerely

Florence Chilton, President

Florence Construction Corp.

www.floconstcorp.com

**Testimony of Gina Addeo, GMA Electrical Corp.,
before the New York City Council's Committee on Contracts
October 4, 2012**

Good afternoon, Chairperson Mealy and Members of the Committee on Contracts. My name is Gina Addeo, and I have been operating my business, GMA Electrical Corporation, for almost 20 years. Throughout that time, I have been a dedicated supporter and certified participant of the Minority and Women-Owned Business Enterprise programs at both the New York State and City levels.

I generally support the proposed changes to Local Law 129, however, there is one issue that I would like to bring to everyone's attention that has not been listed as one of the highlighted changes to the law, and that is the new definition of a "graduate M/WBE".

I am interpreting section 20 of page 8 (the new definition of "graduate M/WBE") to mean that if a firm's size exceeds the standards established for its industry by the US Small Business Administration for three years, **that firm will no longer be certified.**

In 1993, I was the first woman in NYC to obtain a master electrician's license. That is the professional credential that is necessary to open an electrical contracting business. After the one year waiting period, GMA was certified as a WBE in 1994. That was eighteen years ago.

Today, as you consider Intro. 911, I fear that GMA Electrical Corp. is in **jeopardy of losing that certification.** Being a woman owned business has been part of my firm's identity. A NYC WBE certification has lent legitimacy to me as a woman in business and has also been a way to tell the private sector that NYC has thoroughly investigated my business and it has gotten a stamp of approval.

Please see attached pages of the current US small business size standards. Pages 4 and 5 address the construction industry. All specialty trade contractors on page 5 have a limit of \$14 Million in average annual revenue or better known as gross sales. That limit is way too small for subcontractors in NYC. I think we must remember that in NYC all of our costs, especially our construction costs, are higher than the federal average. If this is enacted, many of the firms that are currently certified that are both qualified and have the capacity will be **graduated out of the M/WBE program.** There is always discussion in the M/WBE community regarding firms not having enough bonding, capacity or funding. Honestly, subcontractors in NYC that are at or above the \$14 Million size **are** the ones that can handle those issues. Please don't eliminate them from the M/WBE program. I do not believe there should be any size limit imposed on a firm to be considered an M/WBE especially if we are trying to help firms and encourage growth and capacity.

Attachment B is a partial list of other firms that I have spoken to and support my position, some of whom are here today. Some of these firms are also in jeopardy of losing their certification and some simply want to grow.

I am keeping my comments brief today to give others an opportunity to speak, however, I welcome the opportunity to work with this Committee and its staff as it tweaks and updates the M/WBE program with Intro. 911. I would be honored to provide any assistance to ensure that this program remains a way to encourage and assist M/WBEs in an otherwise difficult marketplace. I am happy to answer questions that you may have at this time.



U. S. Small Business Administration

Table of Small Business Size Standards

Matched to

North American Industry Classification System Codes

This table lists small business size standards matched to industries described in the North American Industry Classification System (NAICS), as modified by the Office of Management and Budget effective January 1, 2012. The latest NAICS codes are referred to as NAICS 2012.

The size standards are for the most part expressed in either millions of dollars (those preceded by "\$") or number of employees (those without the "\$"). A size standard is the largest that a concern can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the average annual receipts or the average employment of a firm. How to calculate average annual receipts and average employment of a firm can be found in 13 CFR § 121.104 and 13 CFR § 121.106, respectively.

SBA also includes the table of size standards in the Small Business Size Regulations, 13 CFR 121.201. This table includes size standards that have changed since the last publication of 13 CFR 121.

For more information on these size standards, please visit <http://www.sba.gov/size>.

If you have any other questions concerning size standards, contact a Size Specialist at your nearest SBA Government Contracting Area Office (list at the end of the table), or contact the Office of Size Standards by email at sizestandards@sba.gov or by phone at (202) 205-6618.

Effective October 1, 2012

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
213114	Support Activities for Metal Mining	\$7.0	
213115	Support Activities for Nonmetallic Minerals (except Fuels)	\$7.0	
Sector 22 – Utilities			
Subsector 221 – Utilities			
221111	Hydroelectric Power Generation	See Footnote 1	
221112	Fossil Fuel Electric Power Generation	See Footnote 1	
221113	Nuclear Electric Power Generation	See Footnote 1	
221114	Solar Electric Power Generation	See Footnote 1	
221115	Wind Electric Power Generation	See Footnote 1	
221116	Geothermal Electric Power Generation	See Footnote 1	
221117	Biomass Electric Power Generation	See Footnote 1	
221118	Other Electric Power Generation	See Footnote 1	
221121	Electric Bulk Power Transmission and Control	See Footnote 1	
221122	Electric Power Distribution	See Footnote 1	
221210	Natural Gas Distribution		500
221310	Water Supply and Irrigation Systems	\$7.0	
221320	Sewage Treatment Facilities	\$7.0	
221330	Steam and Air-Conditioning Supply	\$12.5	
Sector 23 – Construction			
Subsector 236 – Construction of Buildings			
236115	New Single-family Housing Construction (Except For-Sale Builders)	\$33.5	
236116	New Multifamily Housing Construction (except For-Sale Builders)	\$33.5	
236117	New Housing For-Sale Builders	\$33.5	
236118	Residential Remodelers	\$33.5	
236210	Industrial Building Construction	\$33.5	
236220	Commercial and Institutional Building Construction	\$33.5	

NAICS Codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
Subsector 237 – Heavy and Civil Engineering Construction			
237110	Water and Sewer Line and Related Structures Construction	\$33.5	
237120	Oil and Gas Pipeline and Related Structures Construction	\$33.5	
237130	Power and Communication Line and Related Structures Construction	\$33.5	
237210	Land Subdivision	\$7.0	
237310	Highway, Street, and Bridge Construction	\$33.5	
237990	Other Heavy and Civil Engineering Construction	\$33.5	
<i>Except,</i>	Dredging and Surface Cleanup Activities ²	\$20.0 ²	
Subsector 238 – Specialty Trade Contractors			
238110	Poured Concrete Foundation and Structure Contractors	\$14.0	
238120	Structural Steel and Precast Concrete Contractors	\$14.0	
238130	Framing Contractors	\$14.0	
238140	Masonry Contractors	\$14.0	
238150	Glass and Glazing Contractors	\$14.0	
238160	Roofing Contractors	\$14.0	
238170	Siding Contractors	\$14.0	
238190	Other Foundation, Structure, and Building Exterior Contractors	\$14.0	
238210	Electrical Contractors and Other Wiring Installation Contractors	\$14.0	
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$14.0	
238290	Other Building Equipment Contractors	\$14.0	
238310	Drywall and Insulation Contractors	\$14.0	
238320	Painting and Wall Covering Contractors	\$14.0	
238330	Flooring Contractors	\$14.0	
238340	Tile and Terrazzo Contractors	\$14.0	
238350	Finish Carpentry Contractors	\$14.0	
238390	Other Building Finishing Contractors	\$14.0	
238910	Site Preparation Contractors	\$14.0	
238990	All Other Specialty Trade Contractors ¹³	\$14.0 ¹³	
Sector 31 – 33 – Manufacturing			
Subsector 311 – Food Manufacturing			
311111	Dog and Cat Food Manufacturing		500
311119	Other Animal Food Manufacturing		500

Attachment B

Partial List of M/WBE's that support Gina Addeo's position

ADCO Electrical Corp

Altus Marble and Metal

Angel Electric

Donaldson Traditional Interiors

Donnelly Mechanical

Egg Electric

GMA Electrical Corp

Kleinberg Electric

KND Electric

Meadows Office Furniture

Quantum Electric

Turtle & Hughes



Testimony of
Denise Richardson, Managing Director
General Contractors Association of New York
October 4, 2012
NY City Council Committee on Contracts Hearing
Intro 911

Re: Opportunities for minority and women owned business enterprises
and emerging business enterprises in city procurement

Thank you for the opportunity to testify on the proposed changes to the City's MWBE program. My name is Denise Richardson. I am the Managing Director of the General Contractors Association of New York, the trade association representing New York City's unionized heavy civil and public works general construction contractors. Our 225 members employ over 20,000 engineering, management, trades workers and other skilled professionals.

In the last 25 years, the city's business initiatives have had varying degrees of success in increasing the pool of firms bidding on city contracts. For the MWBE program to be successful, the law must provide a framework that allows both established firms and new entrants to build the lasting partnerships that assure the taxpayers that the goods, services and construction projects that are provided on their behalf are done so with a high quality of work in the most efficient and cost-effective manner.

We therefore offer the following recommendations:

1. Certification

The certification process is key to growing and expanding the pool of qualified firms. We recognize that this is a resource-driven effort, but if this program is to have a positive and lasting impact, new firms that are seeking certification, or existing firms that have demonstrated the capacity to expand to new market areas must have a process that, while rigorous and robust, is also flexible and timely.

At the same time, the certification process site visit must be sufficiently thorough to ensure that the firm has the background, skills and facilities to support its certification. Guidelines should be established for the site visit and we can provide industry best practices on this.

The MWBE program envisions accepting certification from other entities. We strongly recommend that SBS incorporate its own due diligence process to ensure that other certifying entities maintain similar standards of review. This is critical to ensuring that only bona fide emerging, minority and women owned businesses are certified to do business in New York City. A quality list will protect those legitimate businesses seeking prime and subcontracting opportunities and will help improve the outreach to those firms.

2. Goal Setting

Goals for individual procurements must be based on the availability of the certified firms in the SBS directory and the specific subcontracting opportunities available within the procurement's scope of work. It will be incumbent upon the contracting agencies to establish specific goals for each contract. The agencies must carefully evaluate their procurements, balancing proprietary or name brand specifications, project schedule, contractor risk and guarantee requirements and how those issues may impact subcontracting opportunities.

Similarly, requirements that all contractors, primes as well as subs, maintain experience modification ratings below 1.0, and requirements that all subcontractors adhere to the contract's insurance requirements will be factors in determining if a subcontractor is available to work on a particular project.

Criteria and standards on how to set contract specific goals must be included in the legislation. The prime contractors must bid on the procurements as per the specifications and do not have the ability to alter project schedules, deliverables, or qualification requirements and the subcontractors must adhere to those same specifications. It is therefore essential that City agencies set contract specific goals based on the availability of qualified firms in the SBS directory.

3. Information to Bidders

To help firms identify bidding opportunities, each city agency should be required to provide with the bid documents, information on how the MWBE goals were determined and where the city views potential opportunities for MWBE subcontracting. The state of Florida uses this model with great success. This approach will also help interested firms identify subcontracting opportunities during the pre-bid stage.

With most small businesses having limited staff available for marketing, business development, and estimating, identifying subcontracting opportunities upfront will help the MWBE firms minimize their administrative overhead and target their resources and marketing efforts to the projects in their core business areas.

This will also assist prime contractors in providing substantive targeted outreach and business opportunities to MWBE firms earlier in the bidding process. Currently, with an average of 6 weeks for bid, and with a typical bidders' conference occurring early in the solicitation process, it is very difficult for subcontractors to identify areas of work they may seek to perform on a particular project. Moreover, for the prime contractors, they must first review the solicitation to identify schedule and scope issues that must be mitigated, gain their own understanding of the scope of work and decide what areas should be targeted to MWBE firms. This necessary process takes valuable time that could otherwise be devoted to creating a detailed scope of work and reviewing estimates with the prospective subcontractors. We urge the city to adopt the Florida model.

4. Government Processes

While not part of the legislation, the city and the council must look at the very real factors that impact the ability of any new or small firm to succeed in the public contracting marketplace and address these roadblocks. Working with city government is hard, full of risk, and requires extensive administrative overhead. Here are just a few of the many hurdles minority and women owned businesses must overcome to be successful working on city projects.

- Overhead percentage for change order and time and material work does not cover skyrocketing insurance costs, yet the company's insurance premium includes the value of that work.
- Contract-mandated liability insurance coverage requirements that far exceed the \$1 million coverage commonly carried by many small businesses.
- Contract provisions that prohibit contractors from including the time spent by project managers, superintendents and office engineers on change order work, even though that change order requires the contractor to do additional work and may extend the duration of the contract.
- Payment approval processes require contractors to have at least two to three months of cash flow available as they must meet payroll and vendor costs as they are incurred and while they wait for payment from the city.

- Change order approval processes are slow requiring contractors to work at risk in some cases for over 1 year prior to getting paid, and it is not uncommon for agencies to direct the contractor to perform the work, leaving the contractor with no recourse other than filing a claim. This creates severe cash flow difficulties.
- The city does not pay for increased costs resulting from contract delays caused by the actions of the city.
- Notice provisions for changed conditions and claims are confusing and are strictly enforced. If notice is not given in a timely manner, the right to make the claim is forfeited.
- Diesel powered construction equipment must be retrofitted with the latest environmental technology to reduce particulates and nitrous oxides. Most small firms use older equipment or buy used equipment forcing them to incur substantial costs to meet the city's retrofit standards. This is a significant barrier to entry for firms seeking to work in the heavy construction industry.
- Noise code compliance is an increasing cost that often cannot be adequately determined at the time of bid, as mitigation measures must be changed in response to community complaints.

While these issues address valid concerns by the city, they present risks that cannot be quantified at the time of bid. These issues can turn a project that would have made money into a loss. Their impact on small businesses can be particularly severe and have been among the reasons why both prime and subcontractors have left the market.

To help MWBE firms plan for and mitigate these risks, the GCA has implemented a four-day construction management course in partnership with Manhattan College's School of Engineering. This course focuses on developing capacity for the skill sets heavy construction firms need to improve their efficiency and help grow their business. Taught by industry leaders, the course covers essential areas such as estimating, contract law, bonding and insurance, prevailing wage and certified payroll, construction finance and profitability, and understanding the rules governing federal, state and city procurements. We continue to seek opportunities to provide technical assistance to firms seeking to expand their presence in the unionized heavy construction industry.

As contractors who self-perform much of our work, we are providing employment opportunities for a diverse workforce that will be the next generation of industry leaders. Over 40% of our workforce is minorities and women, and this percentage is continuing to increase with over 75% of our union apprentices representing members of minority groups and our new hires from engineering schools are equally diverse.

In conclusion, the GCA has been actively working to increase opportunities for minority and women owned firms working in the heavy construction industry. Our networking forums bring together all of the state and city agencies and public authorities responsible for New York's infrastructure with the prime and subcontractors who specialize in this work. We anticipate that participation in these events will help the city's certified firms identify new opportunities for business.

Thank you.

FTR

Good afternoon Speaker Quinn, Chairperson Mealy, Members of the Contracts Committee, and Council Members. My name is Marcia R. Fox, and I am the CEO of Fox Management Consulting. I am here to share my personal testimony about how the City's M/WBE program has been an asset in my being able to grow my firm. I have been fortunate in that because of the help I received, I have been able to compete for and win a five-year prime contract in my field with New York City. Here is my story.

Fox Management Consulting is a boutique-training firm that I founded in 1997 upon leaving my executive position in the Fortune 500 world. I let the business lapse for several years and then, largely as a result of boredom, I decided to retire from retirement and in 2009, I rejoined the entrepreneurial world.

What does my firm do? Well, briefly, we design and deliver completely customized management training programs for our clients in such areas as leadership, oral presentation skills, career management, interviewing and so on. Our typical target audiences for these programs are professionals and senior executives. Recently I have focused more of my efforts on developing proposals to provide underutilized populations-- such as M/WBEs-- with specific skill training in interviewing.

I have had many challenges in re-establishing and growing my business, but I do not believe these are at all unique. I would say that understanding and utilizing the right social media has been difficult, but I was fortunate that I was matched up with a brilliant “volunteer” coach by the City’s SBS Business Services. Secondly, the whole process of becoming M/WBE certified (April 2011) also helped me to refine my business vision and thinking because I attended such pragmatic and free classes as “Selling to the Government” and “How to Become Certified as an M/WBE”.

Earlier, in 2010, even before my certification was finalized, I had come across a very suitable RFP document in my specific field, and I decided to apply. As a novice in wading through such a document, I had some serious difficulty with the specific version of the English language that the government so often uses. I had to read it about five times before I was certain of what I needed to do. I also lacked confidence because it seemed so formidable to comply with the requirements of a 45-page document. This can be particularly difficult for non-English speaking immigrants. I have seen how many of them struggle with the English language, and I ask myself if they can win those contracts when a bid must be written in lucid standard English. However I was lucky. I speak with utter candor when I tell you that the encouragement and skilled advice I got from the three different one-on-one coaching sessions I had with a New York

City technical assistance expert, made a critical difference. So here is another instance where I feel that the individual coaching services offered by the City have been invaluable. Since becoming certified I have been eligible to attend a wide variety of training programs targeted specifically to M/WBEs.

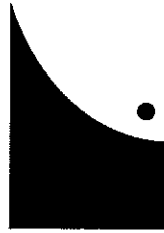
Looking to the future, I know that I could grow my business further if there is support given by the Council for this proposed bill. I have several suggestions. First, the City needs to simplify the processes that we use to get registered as vendors with city agencies. The City should adopt a common application. Words cannot describe the Kafka-like reality of the present scenario. Secondly, because it is so important for M/WBEs to show sufficient “organizational capacity” when they bid on RFPs, the City naturally urges us to find partners and team up when we write our proposals. There is strength in numbers. I think there should be matchmaking events where we could meet with those MWBE peers in our own specific fields and thus begin to make the practice of teaming a concrete reality. Third, I am, as you might have guessed, a believer in the value of individual coaching, but at present the only people who get this are in those few elite programs where the revenue criteria are set very high. I believe the City could fill this coaching vacuum not just by hiring more professional staff, but also by developing an innovative peer coaching service. This service would be easier to set up and run than it might sound. And it could be a valuable add-on to what is

currently available. Finally, I would like to see the expansion of e-learning approaches. I know I would profit if the City supported a new private MWBE Internet site just for the 3,000 of us. Surely in our "digital city" someone can figure out how to create a virtual support group where we could discuss issues, exchange pertinent information, and advertise for teammates when an RFP of interest comes up.

My testimony today is finished. Thank you for your time and your attention. I would like to add that it is for these reasons that I support the proposed bill.

Marcia R. Fox

October 4th, 2012



WOMEN BUILDERS COUNCIL, INC.
OPENING NEW DOORS

F.T.R.

REMARKS FROM CHERYL MCKISSACK, PRESIDENT, WOMEN BUILDERS COUNCIL

Speaker Quinn and Members of the City Council:

On behalf of the Women Builders Council, I want to thank you for the opportunity of presenting our comments on the proposed Local Law 129 bill.

Now, for almost seven years, WBC has worked hard to bring to light the challenges confronting NYC's women builders. When we met, you recognized the challenges that we faced as a result of flawed 2005 disparity study that yielded a zero percent goal for WBEs in our male-dominated construction industry. **Now, you have taken positive steps to create a level playing field for all women in our industry through many of the provisions in the proposed bill. We applaud those efforts.**

However, not all of the proposed provisions create a level-playing field for WBEs who comprise a very small fraction of the City's total construction industry. Respectfully, we recommend the following two changes to the proposed bill:

- **First, the City Council should revise the definition of women to include all women, regardless of race or ethnic origin, and therefore, promote equal status for women in NYC's construction industry.**

To our point, women should be defined by their gender, not by their race. Women, regardless of their race, have been victims of economic sex discrimination. A common, race neutral definition of a woman-owned business enterprise will serve to remedy this historical abuse. Both New York State and the Federal Government define women as race neutral. New York City does not.

Women are a minority in the historically, male dominated construction industry in NYC and throughout the country. They are also a minority within the collective of minority, male-owned NYC certified construction industry firms.

Today, women represent only 37 percent of all NYC certified construction firms or a total of 368 WBEs. Of that total 37% or 136, are minority and 63%, or 217, are Caucasian. The proposed Local Law 129, with its current race specific goals, further divides women into two unequal groups and promotes discrimination within our market sector.

- **Second, the City Council should not randomly apply Federal Size Standards that do not consider the high cost of construction and the impact of inflation on our industry. To do so will inevitably push many firms out of a program designed to help them grow.**

According to a recent New York Building Congress review of multiple cost indices, construction costs in New York City continue to rise, and may be approaching the inflationary rate experienced during the height of last decade's building boom.

With higher construction costs and higher contracts costs usual to NYC building, WBEs who do succeed in receiving multiple contracts will soon be deemed ineligible and be graduated out of the MWBE program.

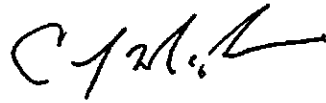
NYC's construction industry continues to suffer from a rising numbers of older companies who are either merging with larger ones or retiring from the marketplace.

Women-owned businesses represent a new generation of leadership for our City in the non-traditional construction industry. But they are fragile and they need your support with a bill that considers their current minority position within the industry.

We know that the recommendations we have presented are modifications to the proposed bill, but we consider them vital to ensuring that all women play a significant role in building New York.

We hope you agree. We look forward to working with you and other members of the Council and City Hall to address our recommendations and make the needed changes to ensure that Local Law 129 is viable and productive for all women, regardless of race or ethnic origin, in New York for years to come.

Respectfully Submitted by:

A handwritten signature in black ink, appearing to read "Cheryl McKissack". The signature is fluid and cursive, with a long horizontal stroke at the end.

Cheryl McKissack, President, Women Builders Council

For the Record

Good afternoon Speaker Quinn, Chairperson Mealy,
Members of the Contracts Committee, and Council
Members.

My name is Jesus Amaya and I am the President of
Prestige Industry Corp. and I am here to share my
personal testimony on how the City's M/WBE program
has been an asset in growing my firm.

First of all, I came from Ecuador in 1989 and I am a
naturalized American citizen since 2004. I began my
business in Long Island City, Queens in 2005 and
received my license to operate a waste removal business
from the NYC Business Integrity Commission in 2006.

Prestige Industry Corp. is an on-call waste removal
company, which services the five boroughs. Our past
and current clients include the City of New York,
construction firms, management companies and real
estate developers. In the past we have won micro-bids

with the FDNY and we are currently a subcontractor providing container service at City Hall for its renovation.

Currently, my business is certified as a Minority Business Enterprise. We are actively searching for new business opportunities. The MBE certification is an added value for our current and potential clients. Presently, city construction projects have an MBE requirement, which we fulfill, but it is a challenge to get prime contractors and city agencies to utilize our services. Since waste is a large aspect of every construction project one would think that there would be many opportunities for us to bid on, but prime contractors do not understand that. For example, a prime contractor called up and said he did not know that hauling and/or trucking went towards the MBE requirement. I do not think that many primes understand the M/WBE program, specifically: how solicit certain M/WBEs (like my company) for bids, advertise opportunities to encompass a variety of work (specifically

construction support services) and network with M/WBE's. This bill would improve the procurement opportunities for M/WBE's by increasing the requirement and holding primes and city agencies accountable for fulfilling the MBE requirement. As a result this would level the playing field for all M/WBE's.

Since Prestige Industry Corp. became certified, Small Business Services has provided me with various resources and assistance that helped me grow my business. I was very fortunate to participate and be in the first graduating class of the ***Strategic Steps for Growth*** in 2011. It helped me to create short-term and long-term: leadership, financial, sales/marketing and human resources goals for my business. Since then, I improved my processes and procedures, upgraded my equipment, improved my service and increased sales. It also gave me the opportunity to network with other M/WBE owners, city agencies and prime contractors. As a result, I established a great relationship with a fellow

MBE business, which increased my productivity,
experience and sales.

That is what the MBE program is all about - giving those
of us who would not have an opportunity to do business
with the city - a level playing field. It exists so that
M/WBE's can do great work and grow and hopefully one
day will not be hired because of a requirement, but
because of the professional work we do.

That is why I support the current proposed bill.

Thank you.

**Statement of Gregorio Mayers, Senior Policy Advisor
Before the New York City Council
Committee on Contracts
Re: Intro. No. 911**

(October 4, 2012)

Good afternoon Speaker Quinn, Chairperson Mealy, and to the members of the Contracts Committee and Council members. My name is Gregorio Mayers, and I am a Senior Policy Advisor in the Mayor's Office under Deputy Mayor Cas Holloway. In my current capacity, I am responsible for assisting in implementation of the Mayor's Office strategic vision and policy on improving opportunities for M/WBEs, as well as serving as the Mayor's Office Chief Liaison to the M/WBE companies and advocacy organizations.

Thank you for the opportunity to testify this afternoon about Intro 911 and the initiatives that the Administration has embarked upon to assist small businesses and M/WBEs grow their firms by providing them with the necessary tools to compete successfully in the market place. Small businesses are the backbone of the City's economy and we want them to succeed. In my remarks, I would like to share our success in getting more firms certified to do business with the City, our efforts to help M/WBEs and small businesses build capacity and grow their firms, and our outreach and engagement with M/WBE firms. All of these efforts will help to ensure that if and when Intro 911 becomes law more firms will have the ability to bid and win City work.

Certification: Expanding the Base of Certified Firms

The first step for these businesses to successfully win City work is to certify with the Department of Small Business Services as an M/WBE. Since 2005, when we passed Local Law 129, the number of firms certified to do business with the City has grown from 700 to more than 3,500 today. And those firms have received more than \$3 billion in City contracts and subcontracts. Deputy Mayor Holloway shared some other indicators of our progress.

SBS has worked diligently to simplify certification without compromising review standards. In FY12, SBS certified 579 new M/WBEs and recertified 443 M/WBEs, bringing the number of City-certified companies to 3,526. One way we have accomplished this is by working closely with the State of New York to make it easier for firms to certify by reducing the paperwork associated with dual submissions. Last year, the City launched a "one-stop" application that allows qualified applicants to submit supporting documents just once to either certifying entity, which would then be forwarded electronically to the State for consideration or vice-versa. We are working with the School Construction Authority and the Port Authority to establish the same program.

We also work through the M/WBE Leadership Association, a network of community-based organizations that receives funding from the City Council, and the SBS Business Solutions Centers to reach M/WBE firms about the benefits of certification. These community partners help support the business growth of M/WBEs with marketing workshops, networking events, and business development services. In FY 2012, member organizations sponsored 122 events and hosted 1,092 one-on-one technical assistance sessions. In FY12 SBS also collaborated with local

development corporations, trade associations, industry membership organizations and local chambers of commerce on more than 100 events to spread the word about certification and the range of capacity building services available citywide to help businesses grow.

Compete to Win and Other Capacity Building Programs

After a firm is certified, it has the opportunity to participate in the competitive procurement process. Our numbers show that although many M/WBEs are bidding on City work, they simply aren't submitting the winning bids. One reason is because many of these firms lack some essential information in their proposal or the financial capability to properly bid and successfully compete with larger firms.

SBS offers a series of programs available to all City vendors, reaching more than 370 companies in FY12 alone, to help navigate the City's procurement system and provide the tools companies need to compete and perform on contracting opportunities. In FY12, two regularly scheduled workshops, *Selling to Government*, and *I'm Certified, Now What?* helped 162 businesses. The first is a monthly workshop open to the public that provides firms with the basic concepts of government contracting. The second is offered quarterly and exclusively to newly-certified firms covering topics on finding, winning, and managing City contracts. Agency buyers participate in these workshops and offer insight into the contracting process as well as the products and service their agencies purchase during sector-specific breakout sessions.

This year, to help more small businesses succeed, our Administration launched a set of five new initiatives called Compete to Win designed to address some of the biggest challenges small businesses face. Leaders from the M/WBE community helped us create these programs to meet this community's most critical needs, which is especially important as we continue to expand procurement opportunities for small businesses and M/WBE firms through programs and legislation such as the proposed revision of LL 129. For example, we know that access to capital and bonding are significant challenges that prevent or discourage many small businesses and M/WBEs firms from competing for City contracts.

We are confident that the initiatives we launched earlier this year will provide small businesses and M/WBE firms with the necessary tools to better compete for and win more City contracts if and when Intro 911 is passed. I will now describe the individual Compete to Win initiatives.

Upfront Capital

Many small businesses have trouble accessing capital, so earlier this year we launched Upfront Capital Loan. The program will provide M/WBE firms with up to \$5 million a year in short-term loans at competitive rates to construction businesses from the New York Business Development Corporation and BOC Capital, as well as packaging assistance and pre-approval for funds up to 30% of the contract value up to \$150,000. The loans will fund startup expenses such as labor, insurance, and equipment for small businesses awarded City contracts. In August 2012, we expanded the program from five City agencies to more than twenty. To date, seven businesses have been pre-approved for nearly \$1 million in mobilization loans, and \$208,800 of that has been disbursed against awarded contracts.

NYC Teaming

The second Compete to Win initiative is NYC Teaming in partnership with American Express OPEN, which launched in February of this year and helps firms partner, thereby allowing them to pursue new and larger contracting opportunities. The program includes a series of workshops focused on joint venturing, marketing to partners, and presenting teamed firms to buyers, followed by a business matching event that helps businesses network to create successful partnerships. To date, 325 businesses have attended workshops and matchmaking events and at least three participating companies have won contracts as part of a team. NYC Teaming will become even more important if Intro. 911 lifts the \$1 million cap on contracts subject to M/WBE goals.

Technical Assistance

The third Compete to Win initiative is Technical Assistance, launched in spring 2012 for the construction, goods, manufacturing, standard services, and professional sectors. Over the last year, we have heard from many M/WBE firms that responding to solicitations can be daunting, and that many have either bid unsuccessfully or have decided not to respond. Technical Assistance offers workshops and one-on-one assistance that provide an in-depth understanding of specific industry requirements and standards for the submission of bids and proposals. Through this program, SBS also meets with unsuccessful bidders to give them guidance on how to improve future submissions. To date, SBS has met with 125 businesses as part of Technical Assistance.

Bond Readiness

The fourth initiative, the Bond Readiness service, helps small businesses, including M/WBEs, secure surety bonds for City construction projects. Services available through this program include workshops on accounting and financial management, insurance requirements, safety management, and credit repair. One-on-one financing assistance is also available to help with bookkeeping, application packaging, and referral to appropriate surety companies. Sixty-three certified firms have received one-on-one guidance so far and the first group of companies to attend classroom instruction will meet in October.

NYC Construction Mentorship

The fifth initiative, NYC Construction Mentorship, provides certified construction firms with greater access to City construction opportunities, a customized growth plan developed with a construction management firm, management classes, and on-the-job training services for contract winners. Businesses can currently pre-qualify for contracts with the Department of Housing Preservation & Development (HPD) and the Department of Parks & Recreation. Fifty-nine businesses have applied for this service and in October the first group of companies will begin classroom instruction. HPD began awarding contracts through this service in May and 12 M/WBEs have won contracts to date.

We know that the mentorship program will meet the needs of M/WBE firms in the construction industry because we asked the experts. In July 2012, Deputy Mayor Holloway and Department of Small Business Services Commissioner Robert Walsh welcomed members of the newly created NYC Construction Mentorships Advisory Panel to City Hall for a kickoff meeting to guide the program. The Panel's members include private developers, minority and women-owned businesses, M/WBE advocates, and government officials who have committed to sharing

their expertise and using their extensive networks and connections to help the City promote contracting opportunities and capacity building programs.

Panel members include: Walter Edwards of Full Spectrum, a real estate development company; Rev, Jacques DeGraff of 100 Black Men and the Minority Leadership Council; Elizabeth Velez, the Panel Vice-Chair, President and Chief Contracting Administrator of the Velez Organization, a construction firm; Timothy Marshall, President and CEO of Jamaica Business Resource Center; Jeffrey Lam, CEO of Lam Generations, a real estate development company; Gloria Kemper, President of Recon Construction Corporation; and representatives from New York City Council, including Councilmembers Diana Reyna and Eric Dilan.

Beyond Compete to Win, the Administration has created several other partnerships with the private sector and educational institutions to broaden opportunities for small and M/WBE businesses.

Corporate Alliance Program

The first is the Corporate Alliance Program (CAP), which launched in February 2011 in partnership with 12 corporate partners to help minority and women-owned firms grow by connecting certified M/WBEs with contracting and capacity-building opportunities in the private sector. Individual programs include the CAP/Columbia University Construction Mentorship Program, a Corporate Coaching Program, and Navigating the Corporate Supply Chain. CAP offers workshops, one-on-one coaching with a senior executive from participating corporations, networking opportunities, and opportunities to compete for exclusive contracts with large corporations, which adds credibility and stability to a small business while increasing revenue. Participating organizations include Accenture, American Express, AXA Equitable, BNY Mellon, Citi, Colgate-Palmolive, Columbia University, Con Edison, Credit Suisse, Goldman Sachs, IBM and National Grid. To date, 58 graduates have won \$60 million in City and Columbia University contracts.

Strategic Steps for Growth

Another program is Strategic Steps for Growth, a nine-month executive education program, designed for M/WBEs offered by SBS and the NYU Leonard N. Stern School of Business Berkley Center for Entrepreneurship & Innovation. The program provides certified firms with a new professional network, including business experts, university professors, and other business owners, and offers support for every aspect of business operations as well as a focus on capacity-building for City and government contract opportunities. Participants learn the strategic skills needed to run a growing company and create custom three-year growth plans. Since the program began in 2010, 41 M/WBE graduates have collectively secured \$1.9 million in new financing, created 240 new jobs, and won more than \$64 million in government contract awards through December 2011.

Marketing and Outreach Efforts

The success of these programs hinges on our ability to inform M/WBEs about the extensive support available to help them become City vendors. That is why we developed a comprehensive multimedia outreach plan targeting various segments of the minority community, community

based-organizations, chambers of commerce, and faith-based organizations to engage, educate, and to inform key stakeholders. Our efforts have included:

- More than 100 outreach engagement meetings with community-based organizations and chambers of commerce;
- The strategic placement of bus shelter ads in neighborhoods where M/WBEs are registered;
- More than one dozen meetings with members of the City Council and Deputy Mayor Holloway discussing Compete to Win;
- Participation in the Black, Latino and Asian Annual Legislative Caucus in Albany last February;
- The placement of ads in the Amsterdam News, *El Diario*, Korea Times, Our Times Press, Chinese World Journal and other community and ethnic newspapers over a two-month period;
- Deputy Mayor Holloway's appearance on WABC's *Tiempo*, a weekly program for Hispanic viewers;
- An ad on a popular WWRL morning radio show to reach a wide African American audience;
- A number of stakeholder briefings at City Hall with representatives from unions, trade organizations, prime construction contractors, M/WBE advocacy groups, women's advocacy organizations, and chamber of commerce leaders; and
- An annual procurement fair, organized by SBS and MOCS, that connects approximately 500 M/WBEs with 300 buyers from more than 71 City and State agencies, authorities, and private contractors and corporations.

Conclusion

Since the implementation of Local Law 129 in 2005, SBS and MOCS have continuously worked to improve the City's M/WBE goals program and the services we offer to strengthen small businesses. We strive to provide the highest standard of customer service to certified firms, prime contractors, as well as agency and corporate buyers, and have increased accountability and transparency by publishing agency progress reports detailing performance and efforts to increase M/WBE utilization.

Thank you again for the opportunity to testify and I hope you will join us in your support of Intro. 911. Deputy Mayor Holloway and I will be happy to answer your questions.



October 3, 2012

City Council Hearing

Testimony of William S. Parrish, Jr.- President & CEO of NobleStrategy NY Inc.

“Good afternoon Speaker Quinn, Chairperson Mealy, Members of the Contracts Committee, and Council Members. My name is William S. Parrish, Jr and I am the President & CEO of NobleStrategy NY Inc. and I am here to share my personal testimony on how the City’s M/WBE program has been an asset in growing my firm.

I have been in front of members of the city council earlier this year in support of various opportunities to increase M/WBE utilization and participation on city contracts and have offered a few white papers on strategies that could be considered, in addition to the strengthened legislation in Local Law 129. I am very pleased to support this new legislation.

Being a NYC construction industry veteran of over 25 years, a LEED accredited professional since 2004 and an adjunct professor at New York University since 2007, I have had the pleasure of seeing firsthand how city contracts and local legislation can support growth in business sectors. I have long advocated for the awareness and enforcement of current legislation and am very pleased to see this body supporting even greater changes with this bill that will increase competition and create new opportunities for M/WBE’s across the city.

Firm Profile

NobleStrategy, is a certified M/S/DBE professional construction resource, focused on delivering professional construction management services consisting of estimating, safety analysis, scheduling, sustainable design/building practices and project management to public and private entities in the commercial, education (K-12 and higher education), and government sectors. The company serves the metropolitan NY/NJ area and is currently located at 2601 Frederick Douglass Blvd., New York, NY 10030 in the heart of Harlem.

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WWW.NOBLESTRATEGY.COM

CONSTRUCTION MANAGEMENT • CONSULTING • BUSINESS STRATEGY
A CERTIFIED MBE/SBE/DBE ENTERPRISE



NobleStrategy, through its construction management & consulting operations employs licensed professionals in construction safety and project management, as well as trained business managers in strategy and solutions required in the delivery of large-scale construction projects. The firm consists of 21 employees and seasonally employs consultants for specialty projects. Based on existing contracts, the firm is expected to achieve gross sales/professional services of approx. \$3 million dollars for FY '12.

Originally conceived in 1999 as an independent consulting firm, this Limited Liability Company was formed in 2002 and incorporated in 2010 and seeks to further develop business opportunities throughout the tri-state area. Over the last 7 years, we have worked extensively with various city agencies and have supported the development and growth of several other M/WBE firms through our technical solutions and mentoring services.

Services We Have Received

Being a city certified firm has assisted our firms' growth in numerous ways and we have benefited tremendously as part of the legislation that creates, supports and enforces opportunities for M/WBE firms.

- We have gained access to key city agencies and further understood their procurement processes in order to respond to RFP's for new work.
- We have won contracts with several city agencies where we were not doing business before.
- We have increased our profile and built a solid brand with the assistance of the Mayor's office of Small Business Services and their support of our firm.
- We have also received relocation assistance in the form of an energy efficient heating grant on our current lease in Harlem upon move in.



Challenges We have Overcome

Our firm has had the challenge of getting started during the worst recession since 1931 but we have struggled past several issues that affect firms' growth by Making Bold Moves! We are still faced each day with shrinking financing options, higher required credit profiles and increased competition at all contracting levels. At one point large firms only competed against large firms but during this recession we have had to adjust to the challenge of large firms competing for work in small to mid size categories just because it was the only work available.

We have also had to overcome the various contract rules that sometimes prevent firms from competing on an equal level with other firms larger and having more time in the marketplace than emerging and local M/WBE businesses. Some of those rules involve:

- Prequalification
- Bonding thresholds
- Financial limit filters
- Subjective scoring criteria on selection committees for RFP's
- Agencies not using common data or bidding rules

Local Law 129 Amendment Will Assist Our Growth

- Increased opportunities over \$1Million
- Highlighted exposure of new provisions to gain agency compliance
- Recognition of M/WBE emerging firms in consideration for opportunities where discretion is utilized
- Opportunities for new M/WBE firms to break the circle of familiarity that often exists
- Inclusion in the diversity discussion when project opportunities arise

Times are especially tough for M/WBE's seeking to do business with city agencies, as the achievement of participation goals has been woeful. However, as bad as the current economy is for businesses, the issue of building capacity for M/WBE's is being significantly hampered by some institutional practices of municipal governments and public construction agencies. The new proposed bill to amend Local Law 129 directly addresses those challenges and provides a substantial base for others to view best practices put in place by the City of New York... **and that is why I support the current proposed bill!**

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DISPARITY DATA ANALYSIS: AVAILABILITY & UTILIZATION OF MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES

INTRODUCTION AND LEGAL FRAMEWORK

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Local Law 129 of 2005 (LL 129), codified at § 6-129 of the Administrative Code of the City of New York, established a program, administered by the Department of Small Business Services (SBS), to enhance participation by minority- and women-owned business enterprises (M/WBEs) in City procurement. Local Law 12 of 2006 amended §6-129 to add provisions for Emerging Business Enterprises.

Both the development of the City's current MWBE program and the preparation of this data analysis and accompanying recommendations have been guided by principles announced by the United States Supreme Court in Equal-Protection-Clause cases challenging government's use of race and gender classifications. To survive judicial scrutiny, any governmental program that employs race-based classifications must be narrowly tailored and further a compelling interest, City of Richmond v. J.A. Croson Co. (hereafter "Croson"), 488 U.S. 469 (1989). A government program that employs gender classifications must be substantially related to the achievement of an important governmental objective. Government's justification for such a program must be "exceedingly persuasive." United States v. Virginia, 518 U.S. 515, 533 (1996).

Croson provides guidance specific to the development of an affirmative action program for government procurement. With respect to identifying a "compelling interest," Croson states that when the government finds that it has become a "passive participant" in a system of racial discrimination practiced within an industry, it may take "affirmative steps" to dismantle that system. Croson at 492. The desire to remedy societal discrimination is not sufficient; a local government must have a "strong basis in evidence for its conclusion that remedial action is necessary." Id. at 499-500; 505. A "significant statistical disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged" by local government gives rise to an inference of discriminatory exclusion. With respect to "narrow tailoring," Croson indicates that "rigid numerical quotas" are difficult to justify. Croson at 508. Court rulings subsequent to Croson have looked favorably on programs that establish goals and allow for waivers when goals are not achieved despite good faith efforts. Croson also made clear that the size of any goal must be determined in relation to the availability of qualified firms in the relevant market, not overall population demographics.

Based on Croson and the line of cases interpreting that precedent, M/WBE programs across the country have been crafted to address the results of "disparity studies." To draft and enact LL 129, the City relied upon a 2005 disparity study documenting the fact that the share of City contracts awarded to M/WBEs fell significantly below the share to be expected based upon their availability in the market. Recognizing that case law required ongoing tracking of data to ensure that the City's goals remained consistent with empirical evidence of disparity, LL 129 established detailed tracking and analysis requirements.

Pursuant to §6-129(d)(4), the Commissioner of SBS and the City Chief Procurement Officer (CCPO) were directed to “review and compare the availability rates of firms owned by minorities and women to the utilization rates of such firms in agency contracts and subcontracts, and ... on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals.”

The purpose of this report is to set forth analysis of relevant data compiled pursuant to the requirements of LL 129. It forms the basis for a revised statutory framework that will enable the City to significantly increase the participation of M/WBE firms in City procurements as part of a continuing effort to expand business opportunity generally, and reduce barriers to participation that the data suggests M/WBE firms continue to face with respect to City contracts for a wide range of goods and services. In addition to the analysis presented here, testimony will be presented to the City Council by the SBS Commissioner and the CCPO; by City agencies that have implemented the Local Law 129 program; by certified M/WBE firms and other New York City vendors that have competed for contracts under that program; and by other advocates and stakeholders knowledgeable about the capabilities and aspirations of the City’s M/WBEs. Based on the data reflected in this report, the proposed amendments to the City’s M/WBE program would result in an estimated three-fold increase in the amount of total projected business value of the M/WBE participation goals.

This report sets forth the analysis of procurement disparity, over the course of the two year period of Fiscal Years 2009-2010, conducted by the Mayor’s Office of Contract Services (MOCS).¹ This report incorporates by reference the data contained in the MOCS Annual Procurement Indicators Reports for Fiscal Years 2007-2010. See http://www.nyc.gov/html/mocs/html/research/indicator_reports.shtml. On the basis of this report, the Commissioner of SBS and the CCPO hereby jointly recommend that the City’s M/WBE program be updated, and that the M/WBE program created by LL 129 be amended as reflected in the draft legislation attached hereto as Appendix A.

CONCLUSIONS

- Although the City has awarded almost \$2 billion in contract value to M/WBEs in the four years that LL 129 has been in effect, disparities still exist between the availability of M/WBE firms and the extent to which they are performing City contract work.
- The current LL 129 is based on the 2005 disparity study, which found statistically significant disparities for only certain combinations of the four ethnic and gender groups (African-Americans, Asian-Americans, Hispanic-Americans and Caucasian Women) among four industry groups (Construction, Goods, Professional Services and Standardized Services) defined in the law, and for contract amounts only up to \$1 million. The goals established in Local Law 129 reflect these findings. The data analysis in this report (hereinafter “the 2011 report”) supports establishing participation goals across a significantly broader portion of the City’s procurement portfolio than is currently covered by LL 129.

¹ Under LL 129, the SBS Commissioner and the CCPO (i.e., the Director of MOCS), were directed to commence such reviews by the spring of 2007, and to re-review the matter of procurement disparity at two year intervals thereafter. Review and analysis of procurement disparity has been conducted by SBS and MOCS on an ongoing basis, beginning in the fall of 2006. Various data sets were reviewed in 2007 and 2009, resulting in determinations by the Commissioner, in consultation with the CCPO, to retain the existing LL 129 goals. At the outset of Fiscal Year 2010, upon completion of the three-year “ramp up” period under § 6-129(l)(2), SBS and MOCS broadened the scope of the review and initiated the 2011 report.

- The current law sets goals separately for prime contracts and subcontracts. The 2011 report supports redesigning the program to apply a single goal to the total amount of business generated by each procurement, thereby both increasing the available goals universe and greatly simplifying program administration.

SUMMARY OF METHODOLOGY

To evaluate disparity, MOCS compared the availability of M/WBE firms in the market area defined in LL 129 to their utilization in the award of City prime contracts and subcontracts. For the 2011 report, availability was determined by identifying M/WBE firms certified by various government entities, as described below, and supplementing this total by a projection of the number of non-certified firms that are in fact minority- or woman-owned, as determined by a survey. Utilization was determined by examining all relevant prime and subcontracts awarded by the City during the time period analyzed, which included July 1, 2008 through June 30, 2010. In this context, “disparity” is defined as the ratio of utilization to availability. A ratio of less than .8 has generally been accepted by courts reviewing M/WBE goals programs as indicative of a statistically significant disparity.

MARKET AREA

LL 129 defines the market area for the purposes of the City’s M/WBE program to be the 13-county area of Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester counties in New York; and Bergen, Hudson and Passaic counties in New Jersey. This area was selected in 2005, based on the fact that the firms located in these counties accounted for more than 75% of the value of the City’s total purchases at that time. An examination of contracts during the two fiscal years covered by the 2011 report shows that the City’s purchases within the 13-county area continue to meet or closely approximate the 75% benchmark, except for goods purchases.

Total Contract Value by Industry and Area

Industry	Total Value	Value in 13-County Area	
Construction	\$7,884,931,517	\$5,925,896,711	75%
Goods	\$2,072,214,687	\$922,841,712	45%
Professional Services	\$2,226,890,041	\$1,647,900,744	74%
Standardized Services	\$6,137,372,759	\$5,264,628,619	86%
Total	\$18,321,409,004	\$13,761,267,785	75%

With respect to goods purchases² the 13-county market area captures a significant majority of the City’s small purchases, but less than half of the goods purchases above the \$100,000 mark.

Total Goods Contract Value by Value Range and Area

Goods Value Range	Total Value	Value in 13-County Area	
Goods <=\$5,000	\$60,808,904	\$41,084,761	68%
Goods >\$5,000 and <=\$100,000	\$166,712,920	\$103,078,867	62%
Goods >\$100,000	\$1,844,692,863	\$778,678,084	42%

Accordingly, SBS and MOCS have not recommended a participation goal for goods valued at above \$100,000 and have not incorporated any participation goals for goods in the draft legislation, other than for purchases valued at or below \$100,000.

² Procurement Policy Board Rule 1-01(e) defines goods as all personal property, including but not limited to equipment, materials, printing, and insurance, excluding land or a permanent interest in land.

AVAILABILITY

To calculate M/WBE availability, the 2011 report sought to identify all firms, both M/WBE and non-M/WBE, that had expressed a positive interest in doing business with New York City during the two year period to be analyzed, relying upon three main data sources to build the list of available firms:

1. **Winners of City contracts and subcontracts:** MOCS keeps detailed records of all contracts and subcontracts for all Mayoral agencies governed by Chapter 13 of the New York City Charter and the Procurement Policy Board (PPB) Rules. For the purposes of the 2011 report, the list of awardees included all prime contracts procured by such agencies and registered by the Comptroller during the two year period analyzed. It also included all subcontracts on those prime contracts.
2. **Bidders:** MOCS incorporated two databases of firms actively seeking to do business with the City, including with City-affiliated entities not governed by Chapter 13 and the PPB Rules, during the two year period analyzed.
 - a. Doing Business Database: Local Law 34 of 2007 (LL 34) established a Doing Business Database (DBDB) of all firms that do or seek to do business with City agencies, City-affiliated public authorities and similar entities.³ Transactions covered by LL 34 include most contracts greater than \$5,000, other than competitive sealed bids.
 - b. Agency Bid Tabulations: Because the DBDB does not contain information on competitive sealed bids, a list of all such bids awarded during the two year period analyzed was sent to each agency. Agencies then provided information on firms that bid (successfully or unsuccessfully) on these awards.
3. **Vendor Enrollment Center enrollees:** The City's Vendor Enrollment Center (VEC), a division of MOCS, maintains lists of firms that have enrolled with the City to receive invitations for relevant contract opportunities. Although not all of these firms may have bid on procurements during the two year period analyzed, they have all taken affirmative steps to enroll to do business and thus may fairly be considered "available."

Source of Available Firms

Source	Count
Award recipients	19,015
Bidders	13,500
Enrolled firms	56,429
Total unique firms	70,067

Using Taxpayer Identification Numbers (TINs) to match against various City databases, firms were then categorized in a number of ways:

³ In addition to City agencies, LL 34 covers "the city school district of the city of New York and any public authority, public benefit corporation or not for profit corporation, the majority of whose board members are officials of the city of new York or are appointed by such officials." NYC Admin Code §3-702(18)(a). More than 40 such governmental entities are covered, including the School Construction Authority, Health and Hospitals Corporation, NYC Housing Authority, Economic Development Corporation and Department of Education.

1. **Geography:** Firms were matched to various address sources. Any firm that had at least one business address within the 13-county area was considered to be available. Firms without any address in the area, or for which no address was obtainable, were excluded from the analysis.
2. **Industry classification:** Firms that had been awarded or bid on contracts were assigned industry classifications based on the classification of the underlying contracts. Firms that had enrolled were classified by the National Institute of Governmental Purchasing (NIGP) codes selected at enrollment. Firms that had done or sought to do business in more than one industry were counted as available in each relevant industry. For those firms for which no industry could be identified, key words matches were done on the firms' name, e.g., "Architect" or "Construction." The small percentage of firms that still could not be assigned to any category were excluded from the analysis.
3. **Ethnicity and gender:** Firms were matched to M/WBE certification lists provided by a number of government entities: SBS, Port Authority of New York and New Jersey, New York City School Construction Authority and the New York City Housing Authority.
4. **Nonprofit and government firms:** Any firm classified either in the City's Financial Management System (FMS) or on the DBDB as either a nonprofit or government entity was excluded from the analysis. Additional manual review was done to eliminate vendors obviously falling within these categories.⁴

As shown in the table below, after all exclusions and matching were performed, the set of "available" firms for analysis purposes consisted of 41,004 firms, of which 3,368 were known to be M/WBEs.

Unadjusted Availability Using All Certified Firms

Industry	Asian		Black		Hispanic		Women		All M/WBE		Not Classified	Total
	#	%	#	%	#	%	#	%	#	%		
Construction	373	4%	407	4%	279	3%	299	3%	1,358	15%	7,977	9,335
Goods	300	2%	382	2%	207	1%	361	2%	1,250	7%	17,795	19,045
Professional Services	448	3%	551	4%	280	2%	686	4%	1,965	13%	13,296	15,261
Standardized Services	439	2%	684	3%	362	2%	554	3%	2,039	10%	18,353	20,392
Total*	727	2%	1,066	3%	606	1%	969	2%	3,368	8%	37,636	41,004

*Firms may be counted as available in more than one industry, so total row is smaller than sum of rows.

OWNERSHIP SURVEY

As shown in the table above, matching against lists of government certified firms initially identified 8% of the available firms in the geographic market as M/WBE firms. However, based on the expertise of both SBS and MOCS and their experience with the relevant market, it was assumed that this percentage does not reflect the actual presence of M/WBE firms in the marketplace, as many firms that would qualify as M/WBEs are not, in fact, currently certified by the City or through any other certifying governmental entity.

⁴ Nonprofits and governmental entities do not have owners. M/WBEs do not typically compete for the types of procurements that are awarded to nonprofits or governmental entities.

To test this assumption and identify potential additional M/WBE firms in the marketplace, MOCS conducted a telephone survey of the M/WBE ownership status of firms not classified as M/WBEs.⁵ One thousand firms were randomly selected from the unclassified firms, 250 per industry. Attempts were made to reach all firms over a two-week period. 395 firms were successfully contacted and 298 (75%) complete surveys were conducted, resulting in the following distribution. See also Appendix B.

Ownership Survey Results

Industry	Asian	Black	Hispanic	Women	All M/WBE	Non-M/WBE	Publicly Traded	Nonprofit	Total
Construction	4	4	1	15	24	59	2	1	86
Goods	5	4	3	17	29	39	2	3	73
Professional Services	3	6	4	9	22	36	4	0	62
Standard Services	1	7	3	6	17	55	2	3	77
Total	13	21	11	47	92	189	10	7	298

Based on the responses to the survey, a statistical projection was made for the actual availability of M/WBE firms in the marketplace, as follows:⁶

For $i \in \{\text{"CS"}, \text{"GO"}, \text{"PS"}, \text{"SS"}\}$

and $j \in \{\text{"Asian"}, \text{"Black"}, \text{"Hispanic"}, \text{"Women"}, \text{"Non-M/WBE"}, \text{"Nonprofit"}, \text{"Unclassified"}\}$;

Let C_{ij} = Initial count of firms

R_{ij} = Count of firms responding to survey

N_{ij} = Final calculated count of available firms

$$N_{ij} = C_{ij} + \left(\frac{R_{ij} * C_{ij=Unclassified}}{\sum R_i} \right)$$

$$Availability_{ij} = \frac{N_{ij}}{\sum N_i - N_{ij=NFP}}$$

Additional M/WBE Firms Based on Survey Results

Industry	Asian	Black	Hispanic	Women	All M/WBE	Nonprofit
Construction	371	371	93	1,391	2,226	93
Goods	1,219	975	731	4,144	7,069	731
Professional Services	643	1,287	858	1,930	4,718	0
Standardized Services	238	1,668	715	1,430	4,052	715
Total*	1,642	2,652	1,389	5,936	11,619	884

*Firms may be counted as available in more than one industry, so total row is smaller than sum of rows.

⁵ MOCS also tested the issue of whether a firm's appearance on a list of certified M/WBE firms was, in fact, a reliable indicator of such status. When an M/WBE is certified, substantial background research is done to establish its credentials. Firms are generally certified for a limited time period, reducing the risk that a change in circumstances at the firm invalidates the M/WBE status. To check the assumption that the certified M/WBE lists contained only qualified M/WBEs, MOCS also conducted a small survey of 24 randomly selected certified M/WBEs. 100% of all firms contacted provided information to confirm their M/WBE status, thus substantiating the conclusion that their M/WBE status was current, valid and accurate. Therefore, MOCS concluded that no additional statistical sampling of certified M/WBE firms was required.

⁶ As noted above, nonprofit organizations were removed from the pool of available firms. Publicly traded companies were treated as available non-minority firms. The final count of unclassified firms is defined as zero.

Adding these adjusted values to the unadjusted availability results in the adjusted total availability:

Adjusted Total Availability

Industry	Asian		Black		Hispanic		Women		All M/WBE		Non-M/WBE	Total
	Count	%	Count	%	Count	%	Count	%	Count	%		
Construction	744	8.1%	778	8.4%	372	4.0%	1,690	18.3%	3,584	38.8%	5,658	9,242
Goods	1,519	8.3%	1,357	7.4%	938	5.1%	4,505	24.6%	8,319	45.4%	9,994	18,314
Professional Services	1,091	7.2%	1,838	12.0%	1,138	7.5%	2,616	17.1%	6,683	43.8%	8,578	15,261
Standard Service	677	3.4%	2,352	12.0%	1,077	5.5%	1,984	10.1%	6,091	31.0%	13,586	19,677
Total*	2,369	5.9%	3,718	9.3%	1,995	5.0%	6,905	17.2%	14,987	37.4%	25,133	40,120

*Firms may be counted as available in more than one industry, so total row is smaller than sum of rows.

UTILIZATION

The determination of disparity requires comparing the availability of M/WBE firms in the marketplace to the utilization of those firms in the award of contracts. The determination of the proportion of City business awarded to M/WBE firms is straightforward. A file was prepared of all prime contracts and subcontracts recorded in FMS for the two year period. Excluded from this file were contracts awarded to nonprofits, government entities and firms located outside the 13 country area. Also excluded were human service contracts,⁷ contract modifications such as change orders amendments, as well as non-procurement transactions. Contract continuations, such as renewals, were traced back to determine the industry of the original award, and each contract was assigned an industry.

Prime contracts were assigned a “pure prime” value by subtracting the value of any subcontracts, with the remainder representing the value of the contract that was retained by the prime contractor. Each contract was compared to the list of M/WBE firms, as described in the Availability section above, and coded by ethnicity and gender. The resulting utilization, based on pure prime value for prime contracts and awarded value for subcontracts, is summarized below. See also Appendix C.

Contract Value: Pure Prime plus Subcontracts

Industry	Asian	Black	Hispanic	Women	All M/WBE	Total Contracts
Construction	\$161,898,237	\$80,144,298	\$105,845,526	\$128,704,464	\$476,592,525	\$5,641,721,505
Goods	\$8,117,848	\$4,872,632	\$7,235,966	\$18,289,526	\$38,515,972	\$144,163,627
Professional Services	\$102,223,978	\$11,441,047	\$9,658,768	\$48,208,483	\$171,532,276	\$1,621,384,567
Standardized Services	\$47,121,610	\$36,881,298	\$9,048,098	\$15,926,539	\$108,977,545	\$5,245,978,957
Total					\$795,618,318	\$12,653,248,656

Percent of Total Contract Value

Industry	Asian	Black	Hispanic	Women	All M/WBE
Construction	3%	1%	2%	2%	8%
Goods	6%	3%	5%	13%	27%
Professional Services	6%	1%	1%	3%	11%
Standardized Services	1%	1%	0.2%	0.3%	2%
Total					6%

⁷ Over 95% of human services contracts are awarded to nonprofits. Since relatively few awards are made to privately-owned firms, it is not possible to draw any statistically valid conclusions regarding M/WBE utilization.

These tables show that of the \$12.7 billion in contracts falling within the scope of LL 129 awarded during the two year period, \$796 million, or more than 6%, was awarded to firms known to be M/WBEs.

The disparity ratio for each category was determined as follows, and shows the relationship between the utilization of M/WBE firms and their availability in the marketplace. The lower the number, the greater the disparity. For each industry *i* and ethnicity or gender category *j*:

$$Disparity_{ij} = \frac{Utilization_{ij}}{Availability_{ij}}$$

Disparity by Industry and M/WBE Classification

Industry	Asian	Black	Hispanic	Women	All M/WBE	Non-M/WBE
Construction	.36	.17	.47	.12	.22	1.50
Goods	.60	.07	.16	.19	.24	1.63
Professional Services	.88	.06	.08	.17	.24	1.59
Standardized Services	.26	.06	.03	.03	.07	1.42

In this calculation, values greater than 1.0 represent overutilization, while values less than 1.0 represent underutilization of that ethnicity or gender category. For purposes of the 2011 report, significant underutilization was defined to occur when the ratio between utilization and available firms falls below .80. As shown above, all ethnicity and gender groups were underutilized and non-M/WBE firms were overutilized in every industry during the two year period analyzed. Disparity at a statistically significant level was identified for all categories except Asian firms in Professional Services. Accordingly, SBS and MOCS will not recommend a participation goal in this category, and have not incorporated any such a participation goal in the draft legislation.

Because this calculation of disparity rests on an adjustment to availability based on survey data, the 2011 report also considered whether the statistical margin of error of the survey results would impact the analysis. For comparison, availability rates and disparity ratios were recalculated using the low end of the 95% confidence interval. All of the service industries (Construction, Professional and Standardized) continue to show significant underutilization even under this highly conservative analysis.

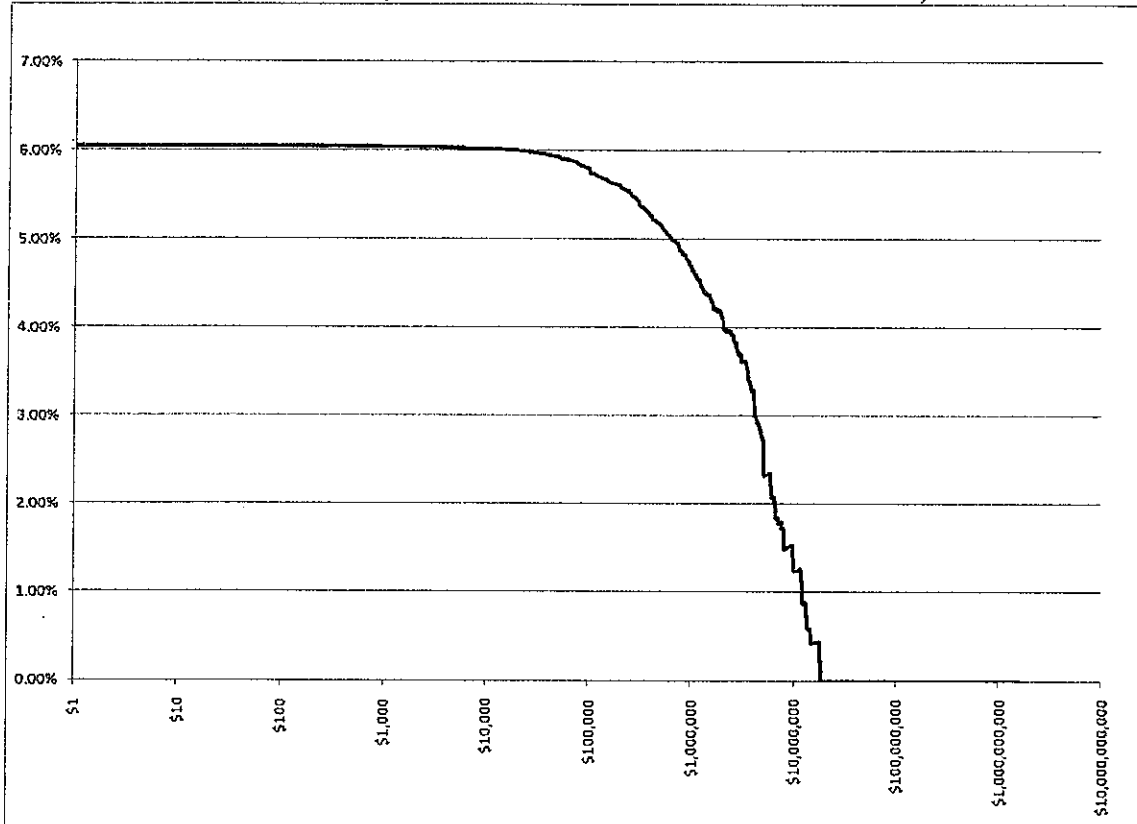
As with services, for goods all categories show significant underutilization at the midpoint of statistical estimates of availability (shown in table above). At the low end of the 95% confidence interval, all categories continue to show underutilization but (unlike for services) not all categories of goods show significant underutilization, as defined for purposes of this analysis. However, the goods analysis only covers small and micro purchases, procurement methods in which agencies have considerable discretion to achieve their M/WBE goals. As a result, a finding of disparity at a lower confidence level is not at all surprising, and neither the 2011 report nor the track record of the existing program supports the elimination of goals in this category.

CAPACITY

Utilization data for the two year period analyzed show that statistically significant numbers of M/WBE firms were successful at winning contracts and subcontracts below \$1 million, the threshold used in LL 129, although statistically significant disparities between availability and utilization persist. More importantly, however, the evidence shows that statistically significant numbers of firms also continue to be successful, albeit at a lower rate, at much higher contract values, with fairly robust success rates up to

\$5 million.. Overall, the rate of M/WBE utilization fell off significantly between \$1 million and \$10 million, falling to half the overall utilization rate at contract values just over \$4 million and above.

**M/WBE Utilization for all Contracts Above Value
(Construction, Professional Services and Standardized Services)**



A more rigorous analysis of the data supports this understanding, to the effect that the small number of contracts procured at the highest dollar values suggests that the relative success of M/WBEs or lack thereof could be due to chance. The descriptive statistics of the utilization data suggest that the mean is inflated by a few extremely large values, or outliers.⁸ By converting real values into standardized Z scores, these univariate outliers can be detected.⁹ In an approximate normal distribution, about 99% of the scores should lie within three standard deviations of the mean. Thus, any z value > 3 indicates a value

⁸ As shown below, the distribution of contracts is highly and positively skewed. If a distribution of the data is symmetrical the value of the skewness will equal zero. The skewness for all industries is 24.5, much larger than the standard error of .02 (typically, a skewness larger than two standard errors indicates a significantly skewed distribution). All positive values for Kurtosis also confirm that the data are concentrated in the peak.

Descriptive Statistics of Contract Values

Industry	N	Minimum	Maximum	Mean	Standard Deviation	Skewness / Std Error	Kurtosis / Std Error
Construction	1,281	0	179,44,917	371,871.60	1,333,653.58	7.34 / .07	65.83 / .14
Professional Services	403	1	10,000,000	425,638.40	1,130,151.87	4.42 / .12	23.41 / .24
Standard Services	4,559	0	18,500,000	23,903.67	363,887.33	35.56 / .04	1,597.19 / .07
Total	6,243	0	18,500,000	121,236.05	754,633.88	12.92 / .03	217.44 / .06

⁹ $Z_i = \frac{x_i - \bar{x}}{s_i}$

very unlikely to occur and the z value can be extended to 4 if the population is greater than 100. At a contract value of just under \$5 million, $z = 6$.¹⁰ Above this value there are not enough contracts to draw firm conclusions about the utilization of M/WBEs. For a contract value just over \$4 million, $z = 5$.

The above analysis does not support a conclusion that the M/WBEs available in the City's marketplace entirely lack the capacity to handle large contracts. Within the two year period analyzed the largest contract won by an M/WBE was almost \$32 million and the largest subcontract was \$14.5 million. The evidence indicates that there are available M/WBEs that have demonstrated some capacity to handle large volumes of work in each of the basic industries that the City procures. While the City does procure some very large contracts, e.g., those valued at over \$25 million, such large-scale purchases amount to only a small fraction (under 2%) of the approximately 5,000 contract actions that City agencies undertake for goods, services and construction valued above the small purchase limits. Awards in the \$3 million range represent more typical-sized contracts awarded by the City. Indeed, about 20% of the City's contracts fall in the range between one and three million dollars, and another 14% between three million dollars and \$25 million. (All of the rest of the City's contract awards are valued below one million dollars.) Because the data analysis shows M/WBE steadily increasing their success at winning awards well above the three million dollar threshold, that evidence suggests that for the vast majority of the City's procurements, M/WBE capacity exists in the marketplace. It is therefore appropriate for the goals program to address the capacity issue for those few very large-scale procurements where capacity is more questionable, on a case-by-case basis, tailoring the goals for those contracts to their specific facts.

¹⁰ $z = 6$ at \$4,720,460.

APPENDIX A: DRAFT LEGISLATION

Int. No. 911

By The Speaker (Council Member Quinn), and Council Members Sanders, Comrie, Dickens, Reyna, Jackson, Mark-Viverito, Mealy, Williams, Arroyo, Brewer, Chin, Crowley, Dromm, Eugene, Foster, Gentile, Gonzalez, James, Koo, Koppell, Koslowitz, Lander, Mendez, Palma, Recchia, Vann and Halloran

A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to opportunities for minority and women owned business enterprises and emerging business enterprises in city procurement.

Be it enacted by the Council as follows:

Section 1. Subdivision e of section 1304 of the New York city charter, as amended by local law number 12 for the year 2006, is amended to read as follows:

e. The commissioner shall have the following powers and duties to implement the purposes of this section:

1. to direct and assist agencies in their efforts to increase participation by minority and women owned business enterprises and emerging business enterprises as contractors and subcontractors in city procurement;
2. to develop standardized forms and reporting documents;
3. to conduct, coordinate and facilitate technical assistance and educational programs;
4. to periodically review the compliance of city agencies with the provisions of local law for the identification, recruitment, certification and participation in city procurement of minority and women owned business enterprises and emerging business enterprises;
5. to annually report to the mayor and the council, as required by such local law, on the activities of the division and efforts by agencies to comply with the provisions of such local law;

6. a. to establish and operate, on behalf of the city, a centralized program for the certification of minority owned business enterprises, women owned business enterprises and emerging business enterprises for the purposes of establishing the eligibility of such businesses for participation in the programs and processes established pursuant to local law to ensure their meaningful participation in city procurement.

b. For the purposes of such certification, "minority owned business enterprise" and "women owned business enterprise" shall mean business enterprises authorized to do business in this state, including sole proprietorships, partnerships and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens who are either minority group members or women, (ii) the ownership interest of such [persons] individuals is real, substantial and continuing, and (iii) such [persons] individuals have and exercise the authority to control independently the day to day business decisions of the enterprise;

c. For the purposes of such certification, "emerging business enterprise" shall mean a business enterprise authorized to do business in this state, including sole proprietorships, partnerships and corporations, in which (i) at least fifty-one percent of the ownership interest is held by United States citizens or permanent resident aliens; (ii) the ownership interest of such [persons] individuals is real, substantial and continuing, (iii) such [persons] individuals have and exercise the authority to control independently the day to day business decisions of the enterprise; and (iv) such [persons] individuals have demonstrated, in accordance with regulations promulgated by the commissioner, that they are socially and economically disadvantaged. [A person] An individual who is "socially and economically disadvantaged" shall mean [a person] an individual who has experienced social disadvantage in American society as a result of causes not common to [persons] individuals who are not socially disadvantaged, and whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. [A

person's] An individual's race, national origin, or gender by itself, shall not qualify the [person] individual as "socially disadvantaged." In drafting such regulations, the commissioner shall consider criteria developed for federal programs established to promote opportunities for businesses owned by [persons] individuals who are socially and economically disadvantaged, including criteria for determining initial and continued eligibility in relation to the net worth of [persons] individuals claiming to be economically disadvantaged, provided that the net worth of [a person] an individual claiming disadvantage pursuant to this section must be less than one million dollars. In determining such net worth, the department shall exclude the ownership interest in the business enterprise and the equity in the primary personal residence.

d. To be eligible for certification, a business enterprise shall have a real and substantial business presence in the market for the city of New York, as defined by the commissioner pursuant to local law.

e. The commissioner of small business services may provide by rule criteria and procedures for firms certified as minority owned businesses and women owned businesses by other governmental entities to be recognized as certified business enterprises by the city of New York.

7. to conduct site visits at business enterprises prior to certification, the basis for which shall be provided by rule, to verify that such business enterprises are eligible to participate in programs established pursuant to local law;

[7]8. to audit such business enterprises and periodically review and in appropriate cases recertify their eligibility for participation in programs established pursuant to local law;

[8]9. to direct and assist city agencies in their efforts to increase participation by minority owned business enterprises, women owned business enterprises and emerging business enterprises in any city-operated financial, technical, and management assistance program;

[9]10. to assist all business enterprises certified pursuant to this section in becoming prequalified

for all categories of procurement for which they may be eligible and for which contracting agencies utilize prequalification in the procurement process;

[10]11. to prepare, [and] periodically update, and post online the website of the division a directory of such city certified business enterprises for use by city agencies and contractors, which shall include information for each such business enterprise, as applicable, including but not limited to: (i) identification of the market sector in which the business enterprise operates; (ii) the bonding capacity of the business enterprise; (iii) the contract price and specific tasks performed by the business enterprise for its last three contracts; (iv) the union affiliation, if any, of the city certified business enterprise; and (v) the renewal date for certification; [and]

12. to develop a clearinghouse of information on programs and services available to such business enterprises; and

[11]13. to provide such assistance to business enterprises interested in being certified as is needed to ensure that such businesses benefit from city technical, managerial, and financial assistance, and other business development programs.

§2. Section 6-129 of the administrative code of the city of New York, as amended by local law number 6 for the year 2006, is amended to read as follows:

§ 6-129. Participation by minority-owned and women-owned business enterprises and emerging business enterprises in city procurement.

a. Programs established. There are hereby established a program, to be administered by the department of small business services in accordance with the provisions of this section, designed to enhance participation by minority-owned and women-owned business enterprises in city procurement and a program, also to be administered by such department in accordance with the provisions of this section,

designed to enhance participation by emerging business enterprises in city procurement.

b. Policy. It is the policy of the city to seek to ensure fair participation in city procurement; and in furtherance of such policy to fully and vigorously enforce all laws prohibiting discrimination, and to promote equal opportunity in city procurement by vigorously enforcing the city's contractual rights and pursuing its contractual remedies. The program established pursuant to this section is intended to address the impact of discrimination on the city's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for city business, and lowering contract costs.

c. Definitions. For purposes of this section, the following terms shall have the following meaning:

(1) "Agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(2) "Agency chief contracting officer" means the [person] individual to whom an agency head has delegated authority to organize and supervise the agency's procurement activity.

(3) "Availability rate" means the percentage of business enterprises within an industry classification that are owned by minorities, women or [persons] individuals who are socially and economically disadvantaged willing and able to perform agency contracts.

(4) "Bidder" means any person submitting a bid or proposal in response to a solicitation for such bid or proposal from an agency.

(5) "Bidders list" or "proposers list" means a list maintained by an agency that includes persons from whom bids or proposals can be solicited.

(6) "City" means the city of New York.

(7) "City chief procurement officer" means the [person] individual to whom the mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agency staff, including the agency chief contracting officers and any offices that have oversight responsibility for procurement.

(8) "Commercially useful function" means a real and actual service that is a distinct and verifiable element of the work called for in a contract. In determining whether an MBE, WBE or EBE is performing a commercially useful function, factors including but not limited to the following shall be considered:

[(i)](a) whether it has the skill and expertise to perform the work for which it is being utilized, and possesses all necessary licenses;

[(ii)](b) whether it is in the business of performing, managing or supervising the work for which it has been certified and is being utilized; and

[(iii)](c) whether it purchases goods and/or services from another business and whether its participation in the contract would have the principal effect of allowing it to act as a middle person or broker in which case it may not be considered to be performing a commercially useful function for purposes of this section.

(9) "Commissioner" shall mean the commissioner of small business services.

(10) "Construction [contract]" means [any agreement with an agency for or in connection with the] construction, reconstruction, demolition, excavation, renovation, alteration, improvement, rehabilitation, or repair of any building, facility, physical structure of any kind.

(11) "Contract" means any agreement, purchase order or other instrument whereby the city is committed to expend or does expend funds in return for goods, professional services, standard services,

[architectural and engineering services,] or construction.

(12) "Contractor" means a person who has been awarded a contract by a city agency.

(13) "Direct subcontractor" means a person who has entered into an agreement with a contractor to provide services or perform work that is required pursuant to a contract with a city agency.

(14) "Director" means an individual designated by the mayor who reports directly to the mayor.

[(13)](15) "Directory" means a list prepared by the division of firms certified pursuant to section 1304 of the charter.

[(14)](16) "Division" shall mean the division of economic and financial opportunity within the department of small business services.

(17) "EBE" means an emerging business enterprise certified in accordance with section 1304 of the charter.

[(17)](18) "Geographic market of the city" means the following counties: Bronx, Kings, New York, Queens, Richmond, Nassau, Putnam, Rockland, Suffolk and Westchester within the State of New York; and Bergen, Hudson, and Passaic within the state of New Jersey.

[(16)](19) "Goal" means a numerical target.

[(17)](20) "Graduate MBE," "graduate WBE" or "graduate EBE" means an MBE, WBE or EBE [which shall have been awarded prime contracts by one or more agencies within the past three years where the total city funding from the expense and capital budgets for such contracts was equal to or greater than fifteen million dollars] whose size has exceeded the size standards established for its industry by the United States small business administration for three years.

(21) "Human services" means services provided to third parties, including social services such as day care, foster care, home care, homeless assistance, housing and shelter assistance, preventive services, youth services, and senior centers; health or medical services including those provided by health maintenance organizations; legal services; employment assistance services, vocational and educational programs; and recreation programs.

(22) "Indirect subcontractor" means a person who has entered into an agreement with a direct subcontractor to provide services or perform work that is required pursuant to the direct subcontractor's contract with a contractor.

~~[(18)]~~(23) "Industry classification" means one of the following classifications:

~~[(i)]~~(a) construction [services];

~~[(ii)]~~(b) professional services;

~~[(iii)]~~(c) standard services; and

~~[(iv)]~~(d) goods.

~~[(19)]~~(24) "Joint venture" means an association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits and losses of the venture in reasonable proportion to the economic value of its contribution.

~~[(20)]~~(25) "MBE" means a minority-owned business enterprise certified in accordance with section 1304 of the charter.

~~[(21)]~~(26) "Minority group" means Black Americans; Asian Americans, and Hispanic

Americans, provided that the commissioner shall be authorized to add additional groups to this definition upon a finding that there is statistically significant disparity between the availability of firms owned by [persons] individuals in such a group and the utilization of such firms in city procurement.

(27) "Non-certified firm" means a business enterprise that has not been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter.

[(22)](28) "Person" means any business, individual, partnership, corporation, firm, company, or other form of doing business.

[(23)](29) "Professional services" means services that require specialized skills and the exercise of judgment, including but not limited to accountants, lawyers, doctors, computer programmers and consultants, architectural and engineering services, and construction management services.

[(24)](30) "Qualified joint venture agreement" means a joint venture between one or more MBEs, WBEs, and/or EBEs and another person, in which the percentage of profit or loss to which the certified firm or firms is entitled or exposed to for participation in the contract, as set forth in the joint venture agreement, is at least 25% of the total profit or loss.

[(25)](31) "Scope of work" means specific tasks required in a contract and/or services or goods that must be provided to perform specific tasks required in a contract.

[(26)](32) "Standard services" means services other than professional services and human services.

[(27)] "Subcontractor" means a person who has entered into an agreement with a contractor to provide something that is required pursuant to a contract.]

[(28)](33) "Utilization rate" means the percentage of total contract expenditures expended on contracts or subcontracts with firms that are owned by women, minorities, or [persons] individuals who

are socially and economically disadvantaged, respectively, in one or more industry classifications.

[(29)](34) "WBE" means a women-owned business enterprise certified in accordance with section 1304 of the charter.

[(30) "EBE" means an emerging business enterprise certified in accordance with section 1304 of the charter.]

d. Citywide goals. (1) The citywide contracting participation goals for MBEs, WBEs and EBEs, which may be met through awards of prime contracts or subcontracts as described in subdivision j of this section, shall be as follows:

For construction contracts [under one million dollars]:

Category:	Participation goal:
Black Americans	[12.63%]8% of total annual agency expenditures on such contracts
<u>Asian Americans</u>	<u>8% of total annual agency expenditures on such contracts</u>
Hispanic Americans	[9.06%]4% of total annual agency expenditures on such contracts
<u>Caucasian females</u>	<u>18% of total annual agency expenditures on such contracts</u>
Emerging	6% of total annual agency expenditures on such contracts

For professional services contracts [under one million dollars]:

[Race/gender group] Category:	Participation goal:
Black Americans	[9%] 12% of total annual agency expenditures on such contracts
Hispanic Americans	[5%] 8% of total annual agency expenditures on

	such contracts
Caucasian females	[16.5%] <u>37%</u> of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For standard services contracts [under one million dollars]:

[Race/gender group] <u>Category</u> : Participation goal:	
Black Americans	[9.23%] <u>12%</u> of total annual agency expenditures on such contracts
<u>Asian Americans</u>	<u>3%</u> of total annual agency expenditures on such contracts
Hispanic Americans	[5.14%] <u>6%</u> of total annual agency expenditures on such contracts
Caucasian females	[10.45%] <u>10%</u> of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

For goods contracts under one [million] hundred thousand dollars:

[Race/gender group] <u>Category</u> : Participation goal:	
Black Americans	[7.47%] <u>7%</u> of total annual agency expenditures on such contracts
Asian Americans	[5.19%] <u>8%</u> of total annual agency expenditures on such contracts
Hispanic Americans	[4.99%] <u>5%</u> of total annual agency expenditures on such contracts

Caucasian females	[17.87%] <u>25%</u> of total annual agency expenditures on such contracts
Emerging	6% of total annual agency expenditures on such contracts

[For construction subcontracts under one million dollars:

Race/gender group: Participation goal:	
Black Americans	12.63% of total annual agency expenditures on such subcontracts
Asian Americans	9.47% of total annual agency expenditures on such subcontracts
Hispanic Americans	9.06% of total annual agency expenditures on such subcontracts
Emerging	6% of total annual agency expenditures on such subcontracts

For professional services subcontracts under one million dollars:

Race/gender group:	Participation goal:
Black Americans	9% of total annual agency expenditures on such subcontracts
Hispanic Americans	5% of total annual agency expenditures on such subcontracts
Caucasian females	16.5% of total annual agency expenditures on such subcontracts
Emerging	6% of total annual agency expenditures on such subcontracts

]

- (2) (a) The division and the city chief procurement officer shall develop a citywide utilization

plan for procurements of goods.

(b) Agencies shall develop agency utilization plans pursuant to subdivision g of this section. The citywide goals shall not be summarily adopted as goals for all annual agency utilization plans; rather, goals for such plans may be set at levels higher, lower, or the same as the citywide goals, subject to the approval of the commissioner as described in paragraph three of subdivision g of this section. When setting its goals, each agency shall consider the citywide goals, the size and nature of its own procurement portfolio, and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements during the year. Agencies shall seek to ensure substantial progress toward the attainment of each of these goals in as short a time as practicable.

(3) The citywide goals shall not be summarily adopted as goals for individual procurements; rather, as set forth in subdivision i of this section, goals for such procurements may be set at levels higher, lower, or the same as the citywide goals. In setting such goals, each agency shall take into account the citywide goals and the agency's annual utilization plan, the size and nature of the procurement, and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work involved in its procurements.

(4) [(A)](a) No later than 2015, [Beginning twelve months after the effective date of the local law that added this section and every two years thereafter,] the commissioner, in consultation with the city chief procurement officer, shall, for each industry classification and each minority group, review and compare the availability rates of firms owned by minorities and women to the utilization rates of such firms in agency contracts and direct subcontracts, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. In making such revision, the commissioner shall consider the extent to which discrimination

continues to have an impact on the ability of minorities and women to compete for city contracts and subcontracts. The commissioner shall submit the results of such review and any proposed revisions to the participation goals to the speaker of the council at least sixty days prior to publishing a proposed rule that would revise participation goals. Such review shall thereafter be conducted at least once every two years.

[(B)](b) No later than 2015. [Beginning twelve months after the effective date of the local law that added this section and every two years thereafter,] the commissioner shall review information collected by the department to determine the availability and utilization of EBEs, and shall on the basis of such review and any other relevant information, where appropriate, revise by rule the citywide participation goals set forth in this subdivision. Such revised goals shall be set at a level intended to assist in overcoming the impact of discrimination on such businesses. Such review shall be conducted in 2015 and at least once every two years thereafter.

e. Responsibilities of the division.

(1) The division shall create and maintain and periodically update directories by industry classification of MBEs, WBEs, and EBEs which it shall supply to all agencies, post on its website and on other relevant city websites and make available for dissemination and/or public inspection at its offices and other locations within each borough.

(2) The division shall make its resources available to assist agencies and contractors in (i) determining the availability of MBEs, WBEs, and EBEs to participate in their contracts as prime contractors and/or subcontractors; and (ii) identifying opportunities appropriate for participation by MBEs, WBEs, and EBEs in contracts.

(3) The division shall develop and maintain relationships with organizations representing contractors, including MBEs, WBEs, and EBEs, and solicit their support and assistance in efforts to increase participation of MBEs, WBEs, and EBEs in city procurement.

(4) The division shall coordinate with city and state entities that maintain databases of MBEs, WBEs, and EBEs and work to enhance city availability data and directories.

(5) The division shall keep agency M/WBE [and EBE] officers informed of conferences, contractor fairs, and other services that are available to assist them in pursuing the objectives of this section.

(6) The division shall conduct, coordinate and facilitate technical assistance and educational programs for MBEs, WBEs, and EBEs and other contractors designed to enhance participation of MBEs, WBEs, and EBEs in city procurement. The division shall further develop a clearinghouse of information on programs and services available to MBEs, WBEs, and EBEs. The division shall conduct meetings with MBEs, WBEs and EBEs to discuss what agencies look for in evaluating bids and proposals. The division shall also educate prime contractors on opportunities to partner or subcontract with certified MBEs, WBEs and EBEs.

(7) The division shall develop standardized forms and reporting documents for agencies and contractors to facilitate the reporting requirements of this section.

(8) The division shall direct and assist agencies in their efforts to increase participation by MBEs, WBEs, and EBEs in any city-operated financial, technical, and management assistance program.

(9) The division shall study and recommend to the commissioner methods to streamline the M/WBE and EBE certification process.

(10) Each fiscal year the division, in consultation with the city chief procurement officer, shall audit at least 5% of all open contracts for which contractor utilization plans [are] have been established in accordance with subdivision i of this section and 5% of all contracts awarded to MBEs, WBEs, and EBEs to assess compliance with this section. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential audit.

(11) The division shall assist agencies in identifying and seeking ways to reduce or eliminate practices such as bonding requirements or delays in payment by prime contractors that may present barriers to competition by MBEs, WBEs, and EBEs.

(12) The division shall encourage prime contractors to enter joint venture agreements with MBEs, WBEs and EBEs.

(13) (a) The division shall, upon reviewing applications for certification and recertification, determine whether a firm qualifies as a graduate MBE, WBE or EBE.

(b) The division shall promulgate regulations establishing a process by which a certified MBE, WBE or EBE may challenge a determination that it qualifies as a graduate MBE, WBE or EBE.

(c) At any time more than two years after the division has determined that a firm qualifies as a graduate MBE, WBE or EBE, the firm may apply to have such designation lifted. The division shall lift the designation if the firm demonstrates that it has been below the size standards established by the United States small business administration for its industry for a period of two years or more.

f. Responsibilities of agency M/WBE officers. Each agency head shall designate a deputy commissioner or other executive officer to act as the agency M/WBE officer who shall be directly accountable to the agency head concerning the activities of the agency in carrying out its responsibilities pursuant to this section, including the responsibilities relating to EBE participation. The duties of the M/WBE officer shall include, but not be limited to:

[(i)](1) creating the agency's utilization plan in accordance with subdivision g of this section;

[(ii)](2) acting as the agency's liaison with the division;

[(iii)](3) acting as a liaison with organizations and/or associations of MBEs, WBEs, and EBEs,

informing such organizations and/or associations of the agency's procurement procedures, and advising them of future procurement opportunities;

[(iv)](4) ensuring that agency bid solicitations and requests for proposals are sent to MBEs, WBEs, and EBEs in a timely manner, consistent with this section and rules of the procurement policy board;

[(v)](5) referring MBEs, WBEs, and EBEs to technical assistance services available from agencies and other organizations;

[(vi)](6) reviewing requests for waivers [of target subcontracting percentages] and/or modifications of participation goals and contractor utilization plans in accordance with paragraphs 11 and/or 12 of subdivision i of this section;

[(vii)](7) working with the division and city chief procurement officer in creating directories as required pursuant to subdivision k of this section. In fulfilling this duty, the agency M/WBE officer shall track and record each contractor that is an MBE, WBE or EBE and each subcontractor hired pursuant to such officer's agency contracts that is an MBE, WBE or EBE, and shall share such information with the commissioner, [and] the city chief procurement officer, and the director;

[(viii)](8) for contracts for which contractor utilization [goals] plans have been established pursuant to subdivision i of this section, monitoring each contractor's compliance with its utilization plan by appropriate means, which shall include, but need not be limited to, job site inspections, contacting MBEs, WBEs and EBEs identified in the plan to confirm their participation, and auditing the contractor's books and records;

[(ix)](9) monitoring the agency's procurement activities to ensure compliance with its agency utilization plan and progress towards the participation goals as established in such plan; [and]

[(x)](10) providing to the city chief procurement officer information for the reports required in

subdivision l of this section and providing any other plans and/or reports required pursuant to this section or requested by the city chief procurement officer and/or the director[.]; and

(11) participating in meetings required pursuant to subdivision m of this section.

g. Agency utilization plans.

(1) Beginning May 15, 2006, and on April 1 of each year thereafter, each agency which, during the fiscal year which ended on June 30 of the preceding year, has made procurements in excess of five million dollars[during the fiscal year which ended on June 30 of the preceding calendar year], without counting procurements that are exempt pursuant to paragraph two of subdivision q of this section, shall submit an agency utilization plan for the fiscal year commencing in July of the year when such plan is to be submitted to the commissioner. Upon approval by the commissioner such plan shall be submitted to the speaker of the council. Each such plan shall, at a minimum, include the following:

[(i)](a) the agency's participation goals for MBEs, WBEs and EBEs for the year, provided however, that when setting its goals, each agency shall consider the citywide goals, the size and nature of its own procurement portfolio (excluding contracts described in paragraph two of subdivision q of this section), and the availability of MBEs, WBEs and EBEs with the capacity to perform the specific types and scale of work for which the agency anticipates it will solicit procurements during the year;

[(ii)](b) an explanation for any agency goal that is different than the participation goal for the relevant group and industry classification as determined pursuant to subdivision d of this section;

[(iii)](c) a list of the names and titles of agency personnel responsible for implementation of the agency utilization plan;

[(iv)](d) methods and relevant activities proposed for achieving the agency's participation goals;

and

[(v)](e) any other information which the agency or the commissioner deems relevant or necessary.

(2) An agency utilization plan shall set forth specific participation goals for MBEs, WBEs and/or EBEs for purchases of professional services, standard services, construction and goods valued at or below twenty thousand dollars, and for purchases of professional services, standard services, construction and goods valued at or below one hundred thousand dollars. When setting its goals for such purchases, in addition to the factors set forth in paragraph (1) of this subdivision, each agency shall specifically consider the potential for such purchases to provide opportunities for MBEs, WBEs and EBEs to develop greater capacity, thereby increasing competition for city procurements.

[(2)](3) An agency utilization plan may be amended from time to time to reflect changes in the agency's projected expenditures or other relevant circumstances and resulting changes in such agency's participation goals. Such amendments shall be submitted to the commissioner, the city chief procurement officer and the speaker of the council at least thirty days prior to implementation.

(4) Prior to approving individual agency utilization plans, the commissioner, in consultation with the city chief procurement officer, shall consider whether such plans viewed in the aggregate establish any goals exceeding the corresponding citywide goals set forth in subdivision d of this section. If any aggregated goals are found to exceed the corresponding citywide goal, the commissioner shall require agencies to adjust their goals so that plans, viewed in the aggregate, do not establish goals exceeding the citywide goals. Nothing in this paragraph shall be construed to limit the awards of contracts and subcontracts that may be made to MBEs, WBEs and EBEs without using goals.

(5) The commissioner, in consultation with the city chief procurement officer, shall, no later than July 31 of each year, publish on the division's website a plan and schedule for each agency detailing the anticipated contracting actions for the upcoming fiscal year that form the basis for the agency utilization plan of each such agency. The plan and schedule shall include information specific to each

prospective invitation for bids, request for proposal, or other solicitation, including, but not limited to, the specific type and scale of the services and/or goods to be procured, the term of the proposed contract, the method of solicitation the agency intends to utilize, and the anticipated fiscal year quarter of the planned solicitation.

h. Achieving agency participation goals.

(1) Each agency head shall be directly accountable for the goals set forth in his or her agency's utilization plan.

(2) Each agency shall make all reasonable efforts to meet the participation goals established in its agency utilization plan. Agencies shall, at a minimum, use the following methods to achieve participation goals:

[(i)](a) Agencies shall engage in outreach activities to encourage MBEs, WBEs and EBEs to compete for all facets of their procurement activities, including contracts awarded by negotiated acquisition, emergency and sole source contracts, and each agency shall seek to utilize MBEs, WBEs and/or EBEs for all types of goods, services and construction they procure.

[(ii)](b) Agencies shall encourage eligible businesses to apply for certification as MBEs, WBEs and EBEs and inclusion in the directories of MBEs, WBEs and EBEs. Agencies shall also encourage MBEs, WBEs and EBEs to have their names included on their bidders lists, seek pre-qualification where applicable, and compete for city business as contractors and subcontractors. Agencies are encouraged to advertise procurement opportunities in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations, and send written notice of specific procurement opportunities to minority and women's business organizations.

[(iii)](c) All agency solicitations for bids or proposals shall include information referring potential bidders or proposers to the directories of MBEs, WBEs and EBEs prepared by the division.

[(iv)](d) In planning procurements, agencies shall consider the effect of the scope, specifications and size of a contract on opportunities for participation by MBEs, WBEs and EBEs.

[(v)] For construction contracts, agencies shall consider whether to enter into separate prime contracts for construction support services including, but not limited to, trucking, landscaping, demolition, site clearing, surveying and site security.]

[(vi)](e) Prior to soliciting bids or proposals for contracts valued at over ten million dollars, other than contracts for capital projects valued at over twenty-five million dollars and contracts that are exempt pursuant to paragraph two of subdivision q of this section, an agency shall submit the bid or proposal to the city chief procurement officer for a determination whether it is practicable to divide the proposed contract into smaller contracts and whether doing so will enhance competition for such contracts among MBEs, WBEs and EBEs and other potential bidders or proposers. If the city chief procurement officer determines that it is both practicable and advantageous in light of cost and other relevant factors to divide such contracts into smaller contracts, then he or she shall direct the agency to do so.

[(vii)](f) Agencies shall examine their internal procurement policies, procedures and practices and, where practicable, address those elements, if any, that may negatively affect participation of MBEs, WBEs and EBEs in city procurement.

[(viii)] Agency M/WBE officers shall, in accordance with guidelines established by the city chief procurement officer, establish a process for quarterly meetings with MBEs, WBEs and EBEs to discuss what the agency looks for in evaluating bids and proposals.

(ix) Agencies shall encourage prime contractors to enter joint venture agreements with MBEs,

WBEs and EBEs.]

i. Participation goals for [construction and professional services] contracts for construction and professional and standard services.

(1) Prior to issuing the solicitation of bids or proposals for individual [construction and professional services] contracts, agencies shall establish [a target subcontracting percentage for the contract and] participation goals for MBEs, WBEs and/or EBEs. [The "target subcontracting percentage" for the contract shall represent the percentage of the total contract which the agency anticipates a typical prime contractor in the relevant industry would in the normal course of business award to one or more subcontractors for amounts under one million dollars. The participation goals established for a contract shall represent a percentage of the total dollar value of all subcontracts for amounts under one million dollars pursuant to the award]. Such goals may be greater than, less than or the same as the relevant citywide goal or goals established pursuant to subdivision d of this section. Taking into account the factors listed in this subdivision, an agency may establish a goal for a procurement that may be achieved by a combination of prime contract and subcontract dollars, a combination of construction and services performed pursuant to the contract, and/or a combination of MBEs, WBEs and/or EBEs. Alternatively, an agency may establish specific goals for particular types of services, and/or goals for particular types of certified firms. In determining the participation goals for a particular contract, an agency shall consider the following factors:

[(i)](a) the scope of work;

[(ii)](b) the availability of MBEs, WBEs and EBEs able to perform the particular tasks required in the contract;

[(iii)](c) the extent to which the type and scale of work involved in the contract [presents] present prime contracting and subcontracting opportunities for amounts [under one million dollars] within the

capacity of MBEs, WBEs and EBEs;

[(iv)](d) the agency's progress to date toward meeting its annual participation goals through race-neutral, gender-neutral and other means, and the agency's expectations as to the effect such methods will have on participation of MBEs, WBEs and EBEs in the agency's future contracts; and

[(v)](e) any other factors the contracting agency deems relevant.

(2) A contracting agency shall not be required to establish participation goals for

(i) procurements described in subdivision q of this section; or

(ii) when the agency has already attained the relevant goal in its annual utilization plan, or expects that it will attain such goal without the use of such participation goals.

(3) For each contract in which a contracting agency has established participation goals, such agency shall state in the solicitation for such contract that bidders and/or proposers shall be required to agree as a material term of the contract that[, with respect to the total amount of the contract to be awarded to one or more subcontractors pursuant to subcontracts for amounts under one million dollars,] the contractor shall [be subject to] meet the participation goals unless such goals are waived or modified by the agency in accordance with this section. A contractor that is an MBE, WBE or EBE shall be permitted to count its own participation toward fulfillment of the relevant participation goal, provided that the value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors. A contractor that is a qualified joint venture shall be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goal. The value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to

determine the amount to which an MBE, WBE or EBE is entitled pursuant to the joint venture agreement;

(4) For each contract in which participation goals are established, the agency shall include in its solicitation and/or bidding materials a referral to the directories prepared by the division pursuant to this section.

(5) For each contract for which participation goals are established, the contractor shall be required to submit with its bid or proposal[,] a contractor utilization plan indicating:

(a) whether the contractor is an MBE, WBE, EBE, or a qualified joint venture; [the percentage of the work it intends to subcontract, and]

(b) the percentage of work it intends to award to direct subcontractors; [for amounts under one million dollars, and,] and

(c) in cases where the contractor intends to award direct subcontracts, [for amounts under one million dollars,] a description of the type and dollar value of work designated for participation by MBEs, WBEs and/or EBEs, and the time frames in which such work is scheduled to begin and end.

When the contractor utilization plan indicates that the bidder or proposer does not intend to [award the target subcontracting percentage] meet the participation goals, the bid or proposal shall not be deemed responsive unless the agency has granted a pre-award [waiver] request for change pursuant to paragraph 11 of this subdivision.

(6) (a) For each contract for which a contractor utilization plan has been submitted, the contracting agency shall require that within thirty days of the issuance of notice to proceed, and at least once per year thereafter, the contractor submit a list of persons to which it intends to award subcontracts within the next twelve months. In the event that a contracting agency disapproves a contractor's selection of a subcontractor or subcontractors, the contracting agency shall allow such contractor a reasonable time

to propose alternate subcontractors.

(b) The contracting agency may also require the contractor to report periodically about the contracts awarded by its direct subcontractors to indirect subcontractors.

(7) For each contract for which a contractor utilization plan has been submitted, the contractor shall, with each voucher for payment, and/or periodically as the agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount the contractor paid to its direct subcontractors, and the total amount direct subcontractors paid to indirect subcontractors, [(including subcontractors that are not MBEs, WBEs or EBEs)]; the names, addresses and contact numbers of each MBE, WBE or EBE hired as a subcontractor [pursuant to such plan] by the contractor or any of the contractor's direct subcontractors, as well as the dates and amounts paid to each MBE, WBE or EBE. The contractor shall also submit, along with its voucher for final payment, the total amount it paid to subcontractors, and the total amount its direct subcontractors paid directly to their indirect subcontractors [(including subcontractors that are not MBEs, WBEs or EBEs)]; and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE, WBE or EBE [hired pursuant to such plan], the work performed by, and the dates and amounts paid to each.

(8) If payments made to, or work performed by, MBEs, WBEs or EBEs are less than the amount specified in the contractor's utilization plan, the agency shall take appropriate action in accordance with subdivision o of this section, unless the contractor has obtained a modification of its utilization plan pursuant to paragraph 12 of this subdivision.

(9) When advertising a solicitation for bids or proposals for a contract for which a participation goal has been established, agencies shall include in the advertisement a general statement that the contract will be subject to participation goals for MBEs, WBEs and/or EBEs.

(10) In the event that a contractor with a contract that includes a contractor utilization plan submits a request for a change order the value of which exceeds the greater of ten percent of such contract or \$500,000, the agency shall [establish participation goals as if for a new contract for the work to be performed pursuant to such change order] review the scope of work for the contract, and the scale and types of work involved in the change order, and determine whether the participation goals should be modified.

(11) [Pre-award waiver]Requests from bidders or proposers for changes in participation goals.

(a) A bidder or proposer may request that an agency change the participation goal or goals established for the procurement on the grounds that goals are unreasonable in light of the availability of certified firms to perform the services required, or by demonstrating that it has legitimate business reasons for proposing a lower level of subcontracting in its utilization plan.

(b) If the contracting agency determines that the participation goals established for the procurement are unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids and proposals.

[(i)](c) Subject to subparagraph [(ii)]d) of this paragraph, the contracting agency may grant a full or partial waiver of the [target subcontracting percentage] participation goals to a bidder or proposer who demonstrates that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. The contracting agency shall make its determination in light of factors [which] that shall include, but not be limited to, whether the bidder or proposer has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts [for under one million dollars] represented by the [target subcontracting percentage] participation goals. In making such determination, the agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, whether the

bidder or proposer has made efforts to form a joint venture with a certified firm, and whether the bidder or proposer has made good faith efforts to identify portions of the contract that it intends to subcontract. Within thirty days of the registration of a contract, the city chief contracting officer shall notify the council of any such waiver granted with respect to the contract.

[(ii)](d) The agency M/WBE officer shall provide written notice of requests for a full or partial waiver of the [target subcontracting percentage] participation goals to the division and the city chief procurement officer and shall not approve any such request without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer shall notify the speaker of the council in writing within thirty days of the registration of a contract for which a request for a full or partial waiver of a [target subcontracting percentage] participation goal was granted, provided that where an agency has been authorized to grant waivers without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original [target subcontracting percentage] participation goal, the waiver request, including all documentation, and an explanation for the approval of such request.

(12) Modification of utilization plans at contractor's request or agency's initiative. [(i)](a) A contractor may request modification of its utilization plan after the award of a contract. Subject to subparagraph [(ii)](b) of this paragraph, an agency may grant such request if it determines that such contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by the agency for the contract. In making such determination, the agency shall consider evidence of the following efforts, as applicable, along with any other relevant

factors:

[(A)](i) The contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

[(B)](ii) The contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;

[(C)](iii) The contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs, WBEs or EBEs that their interest in the contract was solicited;

[(D)](iv) The contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs, WBEs and/or EBEs in the contractor utilization plan, and for which the contractor claims an inability to retain MBEs, WBEs or EBEs;

[(E)](v) The contractor held meetings with MBEs, WBEs and/or EBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

[(F)](vi) The contractor made efforts to negotiate with MBEs, WBEs and/or EBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

[(G)](vii) Timely written requests for assistance made by the contractor to the agency M/WBE liaison officer and to the division; and

[(H)](viii) Description of how recommendations made by the division and the contracting agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs, WBEs and/or EBEs.

[(ii)](b) The agency M/WBE officer shall provide written notice of requests for such modifications to the division and the city chief procurement officer and shall not approve any such request for modification without the approval of the city chief procurement officer, provided that the city chief procurement officer, upon adequate assurances of an agency's ability to administer its utilization plan in accordance with the provisions of this section, may determine that further approval from the city chief procurement officer is not required with respect to such requests for an agency's contracts or particular categories of an agency's contracts. The city chief procurement officer, shall notify the speaker of the council in writing within seven days of the approval of a request for modification of a utilization plan, provided that where an agency has been authorized to grant modifications without approval of the chief procurement officer, such notice shall be provided to the speaker of the council by the agency. Such notification shall include, but not be limited to, the name of the contractor, the original utilization plan, the modification request, including all documentation, and an explanation for the approval of such request.

[(iii)](c) An agency may modify the participation goals established for a procurement when the scope of the work has been changed by the agency in a manner that affects the scale and types of work that the contractor indicated in its contractor utilization plan would be awarded to subcontractors.

[(iv)](d) The agency M/WBE officer shall provide written notice to the contractor of its determination that shall include the reasons for such determination.

(13) For each contract in which a contracting agency has established participation goals, the agency shall evaluate and assess the contractor's performance in meeting each such goal. Such evaluation and assessment shall be a part of the contractor's overall contract performance evaluation required pursuant to section 333 of the charter.

j. Determining credit for MBE, WBE and EBE participation.

(1) An agency's achievement of its annual goals shall be calculated as follows:

[(i)](a) The [total] dollar amount that an agency has paid or is obligated to pay to a prime contractor that is an MBE, WBE or EBE, reduced by the dollar amount the contractor has paid or is obligated to pay its direct subcontractors upon their completion of work, [may] shall be credited toward the relevant goal.

[(ii)](b) The total dollar amount that a prime contractor of an agency has paid or is obligated to pay to a direct subcontractor that is an MBE, WBE or EBE [may], reduced by the dollar amount the direct subcontractor has paid or is obligated to pay its indirect subcontractors upon their completion of work, shall be credited toward the relevant goal.

(c) The total dollar amount that a direct subcontractor of the prime contractor has paid or is obligated to pay to an indirect subcontractor that is an MBE, WBE or EBE shall be credited toward the relevant goal.

[(iii)](d) For requirements contracts, credit [may] shall be given for the actual dollar amount paid under the contract.

[(iv)](e) Where one or more MBEs, WBEs or EBEs is participating in a qualified joint venture, the amounts that the joint venture is required to pay its direct subcontractors shall be subtracted as provided in subparagraph a, and then a percentage of the remaining dollar amount of the contract equal to the percentage of total profit to which MBEs, WBEs or EBEs are entitled pursuant to the joint venture agreement shall be credited toward the relevant goal.

[(v)](f) No credit shall be given for participation in a contract by an MBE, WBE or EBE that does not perform a commercially useful function.

[(vi)](g) No credit shall be given for the participation in a contract by any company that has not

been certified as an MBE, WBE or EBE in accordance with section 1304 of the charter.

[(vii)](h) In the case of a contract for which the contractor is paid on a commission basis, the dollar amount of the contract may be determined on the basis of the commission earned or reasonably anticipated to be earned under the contract.

[(viii)](i) No credit shall be given to a contractor for participation in a contract by a graduate MBE, WBE or EBE.

[(ix)](i) The participation of a certified company shall not be credited toward more than one participation goal.

(2) A contractor's achievement of [each goal] its participation goals established in its utilization plan shall be calculated [in the same manner as described for calculating the achievement of agency utilization goals as described in paragraph (1) of this subdivision; provided that no] as follows:

[(i)](a) A contractor's use of direct subcontractors and their indirect subcontractors toward achievement of each goal established in its utilization plan shall be calculated in the same manner as described for calculating the achievement of agency utilization goals as described in paragraph (1) of this subdivision;

[(ii)](b) A contractor that is an MBE, WBE or EBE shall be permitted to count its own participation toward fulfillment of the relevant participation goal, provided that the value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors;

[(iii)](c) No credit shall be given to the contractor for the participation of a company that is not certified in accordance with section 1304 of the charter before the date that [the agency approves] the subcontractor completes the work under the subcontract.

[(iv)](d) A contractor that is a qualified joint venture shall be permitted to count a percentage of its own participation toward fulfillment of the relevant participation goal. The value of such a contractor's participation shall be determined by subtracting from the total value of the contract any amounts that the contractor pays to direct subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE, WBE or EBE is entitled pursuant to the joint venture agreement:

k. Small purchases.

[(1) Each agency shall, consistent with the participation goals established in subdivision d of this section and such agency's utilization plan, establish goals for purchases valued at or below five thousand dollars which shall be made from MBEs, WBEs and/or EBEs.

(2)] Whenever an agency solicits bids or proposals for small purchases pursuant to section three hundred fourteen of the charter, the agency shall maintain records identifying the MBEs, WBEs and EBEs it solicited, which shall become part of the contract file.

l. Compliance reporting.

(1) The city chief procurement officer, in consultation with the division, shall prepare and submit [semiannual]quarterly reports to the speaker of the council as described in this section. [A p]Preliminary reports containing information for the fiscal year in progress shall be submitted to the speaker of the council by January first, April first, and July first of each year[April 1, 2007, and annually thereafter], and a final report containing information for the preceding fiscal year shall be submitted to the speaker of the council by October first of each year[October 1, 2007 and annually thereafter]. The reports, which shall also be posted on the division's website, shall contain the following information, disaggregated by agency:

[(i)](a) the number and total dollar value of contracts awarded, disaggregated by industry

classification and size of contract, including but not limited to, contracts valued at or below twenty thousand dollars, contracts valued above twenty thousand dollars and at or below one hundred thousand dollars, contracts valued above one hundred thousand dollars and at or below one million dollars, contracts valued above one million dollars and at or below five million dollars, contracts valued above five million dollars and at or below twenty five million dollars, and contracts valued above twenty five million dollars; [, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(ii) The number and total dollar value of contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification, provided that contracts for amounts under five thousand dollars need not be disaggregated by industry;

(iii) the total number and total dollar value of contracts awarded valued at less than five thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group;

(iv) the total number and total dollar value of contracts awarded valued at between five thousand and one hundred thousand dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(v) the total number and total dollar value of contracts awarded valued at between one hundred thousand dollars and one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vi) the total number and total dollar value of contracts awarded valued at over one million dollars and the total number and total dollar value of such contracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group and industry classification;

(vii)(b) for those contracts for which an agency set participation goals in accordance with subdivision i of this section:

[(A)](i) The number and total dollar amount of such contracts disaggregated by industry classification, size of contract and status as MBE, WBE, EBE, or non-certified firm, and further disaggregated by minority and gender group;

[(B)](ii) the number and total dollar value of such contracts that were awarded to qualified joint ventures and the total dollar amount attributed to the MBE, WBE or EBE joint venture partners, disaggregated by minority and gender group, size of contract and industry classification;

[(C)](iii) The number and total dollar value of subcontracts approved during the reporting period that were entered into pursuant to [such] contracts for which participation requirements under this section have been established (including both contracts awarded during the current reporting period and those awarded in earlier reporting periods that remain open during the current reporting period), and the number and total dollar amount of such subcontracts awarded to MBEs, WBEs and EBEs, disaggregated by minority and gender group, size of subcontract and industry classification; [and]

[(D)](iv) a list of the requests for full or partial waivers of [target subcontracting percentages granted] participation requirements for such contracts made pursuant to paragraph 11 [12] of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such waivers were granted, disaggregated by industry classification; and

[(E)](v) a list of the requests for modification of participation requirements for such contracts made pursuant to paragraph 12 of subdivision i of this section and the determinations made with respect to such requests, and the number and dollar amount of those contracts for which such modifications were granted, disaggregated by industry classification;

[(viii)](c) a detailed list of each complaint received pursuant to paragraph 1 of subdivision o of this section which shall, at a minimum, include the nature of each complaint and the action taken in investigating and addressing such complaint including whether and in what manner the enforcement provisions of subdivision o of this section were invoked and the remedies applied;

[(ix)](d) a detailed list of all non-compliance findings made pursuant to paragraph 4 of subdivision o of this section and actions taken in response to such findings;

[(x)](e) the number of firms certified or recertified in accordance with section 1304 of the charter during the six months immediately preceding such report;

[(xi)](f) the number and percentage of contracts audited pursuant to section paragraph 10 of subdivision e of this section and a summary of the results of each audit.

[(xii)](g) a summary of efforts to reduce or eliminate barriers to competition as required pursuant to paragraph 11 of subdivision e of this section;

[(xiii)](h) a list of all solicitations submitted to the city chief procurement officer pursuant to subparagraph [vi]e of paragraph 2 of subdivision h of this section and a summary of the determination made regarding each such submission; and

[(xiv)](i) any other information as may be required by the commissioner and/or the director.

(2) The annual reports submitted in October shall, in addition, contain a determination made by the commissioner and the director, as to whether each agency has made substantial progress toward achieving its utilization goals and whether the city has made substantial progress toward achieving the citywide goals established pursuant to subdivision d of this section. [The first three annual reports shall also include detailed information about steps that agencies have taken to initiate and ramp up their efforts to comply with the requirements of this section.]

(3) If an agency fails to achieve its utilization goal, such agency shall prepare and submit to the commissioner, the city chief procurement officer, the director, and the speaker of the council by October first a performance improvement plan which shall describe in detail the efforts such agency intends to undertake to increase M/WBE participation.

[(3)](4) The data that provide the basis for the reports required by this subdivision shall be made available electronically to the council at the time the reports are submitted.

m. Agency compliance.

(1) [The]Each agency shall submit to the commissioner and the city chief procurement officer such information as is necessary for the city chief procurement officer to complete his or her reports as required in subdivision l of this section. The commissioner, [and] the city chief procurement officer, and the director shall review each agency's submissions. The director shall convene the agency M/WBE officers for those agencies that have established participation goals of greater than one million dollars for construction services, professional services, or standard services as often as the director deems necessary, but no less frequently than once per quarter, in order to have agency M/WBE officers (i) discuss the results of the reports required in subdivision l of this section; (ii) offer detailed information concerning their effectuation of their performance improvement plans and any additional efforts undertaken to meet goals established in agency utilization plans; (iii) share the practices that have yielded successes in increasing M/WBE participation; and (iv) devise strategic plans to improve the performance of those failing to meet goals established in agency utilization plans. [and w]Whenever it has been determined that an agency is not making adequate progress toward the goals established in its agency utilization plan, the commissioner, [and] the city chief procurement officer, and the director shall act to improve such agency's performance, and may take any of the following actions:

[(i)](a) require the agency to submit more frequent reports about its procurement activity;

[(ii)](b) require the agency to notify the commissioner, [and] the city chief procurement officer, and the director, prior to solicitation of bids or proposals for, and/or prior to award of, contracts in any category where the agency has not made adequate progress toward achieving its utilization goals;

[(iii)](c) reduce or rescind contract processing authority delegated by the mayor pursuant to sections 317 and 318 of the charter; and

[(iv)](d) any other action the commissioner, [and] the city chief procurement officer, or the director deem appropriate.

(2) Noncompliance. Whenever the city chief procurement officer, [or] the commissioner, or the director finds that an agency has failed to comply with its duties under this section, he or she shall attempt to resolve such noncompliance informally with the agency head. In the event that the agency fails to remedy its noncompliance after such informal efforts, the director and the city chief procurement officer shall submit such findings in writing to the mayor and the speaker of the council, and the mayor shall take appropriate measures to ensure compliance.

(3) Failure by an agency to submit information required by the division, [or] the city chief procurement officer, or the director, in accordance with this section, including but not limited to the utilization plan required pursuant to subdivision g of this section, shall be deemed noncompliance.

n. Pre-qualification. An agency establishing a list of pre-qualified bidders or proposers may deny pre-qualification to prospective contractors who fail to demonstrate in their application for pre-qualification that they have complied with applicable federal, state and local requirements for participation of MBEs, WBEs and EBEs in procurements. A denial of pre-qualification may be appealed pursuant to applicable procurement policy board rules.

o. Enforcement.

(1) Any person who believes that a violation of the requirements of this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section or such rules, including, but not limited to, any contractor utilization plan, has occurred may submit a complaint in writing to the division, the city chief procurement officer and the comptroller. [Such complaint shall be signed and dated.] The division shall promptly investigate such complaint and determine whether there has been a violation.

(2) Any complaint alleging fraud, corruption or other criminal behavior on, the part of a bidder, proposer, contractor, subcontractor or supplier shall be referred to the commissioner of the department of investigation.

(3) Contract award.

[(i)](a) When an agency receives a protest from a bidder or proposer regarding a contracting action that is related to this section, the agency shall send copies of the protest and any appeal thereof, and any decisions made on the protest or such appeal, to the division and the comptroller.

[(ii)](b) Whenever a contracting agency has determined that a bidder or proposer has violated this section, or rules promulgated pursuant to its provisions, the agency may disqualify such bidder or proposer from competing for such contract and the agency may revoke such bidder's or proposer's prequalification status.

(4) Contract administration.

(a) For each contract for which participation requirements have been established under this section, at least once annually during the term of such contract, the contracting agency shall review the contractor's progress toward attainment of its utilization plan, including but not limited to, by reviewing the percentage of work the contractor has actually awarded to MBE, WBE and/or EBE subcontractors and

the payments the contractor has made to such subcontractors.

[(i)](b) Whenever an agency believes that a contractor or a subcontractor is not in compliance with this section, rules promulgated pursuant to its provisions or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the agency shall send a written notice to the city chief procurement officer, the division and the contractor describing the alleged noncompliance and offering the contractor an opportunity to be heard. The agency shall then conduct an investigation to determine whether such contractor or subcontractor is in compliance.

[(ii)](c) In the event that a contractor has been found to have violated this section, rules promulgated pursuant to its provisions, or any provision of a contract that implements this section, including, but not limited to any contractor utilization plan, the contracting agency shall, after consulting with the city chief procurement officer and the division, determine whether any of the following actions should be taken:

[(A)](i) enter an agreement with the contractor allowing the contractor to cure the violation;

[(B)](ii) revoke the contractor's pre-qualification to bid or make proposals for future contracts;

[(C)](iii) make a finding that the contractor is in default of the contract;

[(D)](iv) terminate the contract;

[(E)](v) declare the contractor to be in breach of contract;

[(F)](vi) withhold payment or reimbursement;

[(G)](vii) determine not to renew the contract;

[(H)](viii) assess actual and consequential damages;

[(I)](ix) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by this section, or in meeting the purposes of the contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the contract;

[(J)](x) exercise rights under the contract to procure goods, services or construction from another contractor and charge the cost of such contract to the contractor that has been found to be in noncompliance; or

[(K)](xi) take any other appropriate remedy.

(5) To the extent available pursuant to rules of the procurement policy board, a contractor may seek resolution of a dispute regarding a contract related to this section. The contracting agency shall submit a copy of such submission to the division.

(6) Whenever an agency has reason to believe that an MBE, WBE or EBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function, or has violated any provision of this section, the agency shall notify the commissioner who shall determine whether the certification of such business enterprise should be revoked.

(7) Statements made in any instrument submitted to a contracting agency pursuant to these rules shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE, WBE or EBE in any instrument submitted pursuant to these rules shall, in addition, be grounds for revocation of its certification.

(8) A contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

p. Procurements by elected officials and the council.

(1) In the case of procurements by independently elected city officials other than the mayor, where these rules provide for any action to be taken by the director or the city chief procurement officer, such action shall instead be taken by such elected officials.

(2) In the case of procurements by the council, where these rules provide for any action to be taken by the director or the city chief procurement officer, such action shall instead be taken by the speaker of the council.

q. Applicability. Agencies shall not be required to apply participation requirements to the following types of contracts:

[(i)](1) those subject to federal or state funding requirements which preclude the city from imposing the requirements of this subdivision;

[(ii)](2) those subject to federal or state law participation requirements for MBEs, WBEs, disadvantaged business enterprises, and/or EBEs;

[(iii)](3) contracts between agencies;

[(iv)](4) procurements made through the [united states] United States general services administration or another federal agency, or through the New York state office of general services or another state agency, or any other governmental agency.

[(v)](5) emergency procurements pursuant to section three hundred fifteen of the charter;

[(vi)](6) sole source procurements pursuant to section three hundred twenty-one of the charter;

[(vii)](7) [small purchases as defined pursuant to section three hundred fourteen of the charter;]

contracts for human services; and

[(viii)](8) contracts awarded to not-for-profit organizations.

r. Comptroller. The comptroller shall randomly examine contracts for which contractor utilization plans are established to assess compliance with such plans. All solicitations for contracts for which contractor utilization plans are to be established shall include notice of potential comptroller examinations.

§3. Severability. If any section, subsection, paragraph, sentence, clause, phrase or

other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§4. Effective date. This local law shall take effect 120 days after it shall have become law, provided that the department of small business services may take actions necessary, including rulemaking, to implement the requirements of this local law prior to its effective date.

8/16/12

APPENDIX B: OWNERSHIP SURVEY

Trained MOCS staff conducted calls from January 26-February 9, 2011, using phone numbers obtained from City databases. All firms were attempted at least once. If phone numbers provided were not in service, new numbers were obtained if available. Callers were not made aware of the survey's purpose.

Hello, this is {full name} calling from the City of NY. We're doing a brief survey to find out more information about companies that might be available to do business with the City. Would you mind answering a few questions? It will only take a few minutes.

IF NO: When would be a better time? (Record in notes)

IF YES: Thank you. Some of these questions will relate to the ownership of your company. Can I confirm that I am speaking with someone who will be able to address this?

IF NO: Can you connect me with someone who can, such as a principal owner or senior manager?

IF NO: When would be a better time? (Record in notes)

1. Is your company actively seeking business opportunities, including possible contracts with the City of NY? (Record Yes/No)

2. Have you ever done business with the City? (Record Yes/No)

3. Is your company a publicly traded corporation? (Record Yes/No) IF YES: Go to EXIT

4. Is your company a non-profit organization? (Record Yes/No) IF YES: Go to EXIT

5. Is your company minority or women-owned?

IF YES: What is the best description of that ownership: African American, Hispanic American, Asian American, Caucasian Woman? (Record answer in Q5)

6a. Are you interested in certifying as a [Minority / Women] Owned Business with the City?

IF YES: (Record contact info in Q6a)

6b. Are you interested in learning more about procurement opportunities with the City of NY?

(Record contact info in Q6b)

Go To EXIT

IF NO: (Record Non-Minority for Q5) Go to EXIT

EXIT: Thank you for taking the time to speak with me today. Your answers will be used only for research purposes and will not affect your ability to do business with the City. (Record Made Contact Date).

Ownership Survey Call Completion

Industry	Firms Responding	Refused to Answer	No Contact, Left Message, etc.	Total
Construction	86	24	140	250
Goods	73	30	147	250
Professional Services	62	29	159	250
Standardized Services	77	14	159	250
Total	298	97	605	1,000

APPENDIX C: PURE PRIME CALCULATION

To illustrate the concept of “pure prime” value, take the example of a \$5.5 million contract for the construction of traffic calming features in downtown Brooklyn awarded by the Department of Design and Construction (DDC) in September 2008. The prime contractor subsequently entered into 19 subcontracts for various tasks on the project, with a total value of \$2.4 million, leaving a pure prime value of \$3.1 million retained by the prime contractor. Most of the subcontracts were for construction work like paving and excavation, four subcontracts were for standardized services like soil sampling and pest control and one subcontract was for an arborist consultant, considered a professional service. The calculation of pure prime and final distribution of dollars is shown below.

	Construction		Professional Services		Standardized Services		Total
	\$	#	\$	#	\$	#	
Prime	\$5,485,339	1	\$0	n/a	\$0	n/a	\$5,485,339
Subcontracts	\$2,235,700	14	\$30,000	1	\$102,600	4	\$2,368,300
Pure Prime	\$3,117,039	1	\$0	n/a	\$0	n/a	\$3,117,039
Pure Prime + Sub	\$5,352,739	15	\$30,000	1	\$102,600	4	\$5,485,339

To further illustrate how the pure prime concept relates to M/WBE utilization, take the example of a \$4.6 million contract for the reconstruction of the bathrooms and playground at Sara D. Roosevelt Park awarded by the Department of Parks and Recreation (DPR) in April 2009. In this case, the prime contractor was a certified Hispanic-owned firm. The prime contractor subsequently entered into 14 subcontracts for various tasks on the project, such as plumbing, electrical work and tree planting, all of which are considered to be construction. The total value of all subcontract work was \$600,000, leaving a pure prime value of \$4 million retained by the prime contractor. Several of the subcontractors were themselves M/WBE firms and the calculation of pure prime and final distribution of dollars among the ethnicity and gender categories is shown below.

	Asian		Black		Hispanic		All M/WBE		Not M/WBE		Total
	\$	%	\$	%	\$	%	\$	%	\$	%	
Prime	\$0	0%	\$0	0%	\$4,581,997	100%	\$4,581,997	100%	\$0	0%	\$4,581,997
Subcontracts	\$203,908	33%	\$368,563	60%	\$0	0%	\$572,471	94%	\$37,500	6%	\$609,971
Pure Prime	\$0	0%	\$0	0%	\$3,972,026	100%	\$3,972,026	100%	\$0	0%	\$3,972,026
Pure Prime + Sub	\$203,908	4%	\$368,563	8%	\$3,972,026	87%	\$4,544,497	99%	\$37,500	1%	\$4,581,997

My name is Lina Gottesman. I am the owner of The Gottesman Organization, Inc. known as Altus Metal, Marble & Wood. I am a woman owned business and have been doing business in New York City for 23 years.

I thank the City Council for the opportunity to speak with you regarding Local Law 129.

It has been very difficult for Caucasian women in the construction industry to get city work in the last 7 years. The 2005 Disparity Study, as we know, was flawed.

I believe it has taken a long time for the City to even start to discuss the major inequity for Caucasian women in construction.

I am happy to see that the goals for Caucasian women have been included in the updated proposal. I am also glad to see that you have removed the million dollar limitations.

No matter if you make a million dollars or fifty million you are still a woman own business and legislation should reflect it.



152 Madison Avenue, 20th Floor, New York, NY 10016
Phone: 347-668-7614

Here are some talking points for you to consider.

1. Any changes to the existing NYC MWBE Local Law 129 must be backed by a Disparity Study.
2. The Mayor's Office has not released the latest Disparity Study to support any changes to Local Law 129. If a Disparity Study exists, they should hand it over for all to see.
3. If a new Disparity Study currently exists, any changes to current law cannot be made until the study is widely disseminated, and organizations and businesses affected by the changes have had a chance to review the findings and to weigh in on any proposed changes. As you know, whether you supported or did not support the Mason Tillman study that paved the way for Local Law 129, at least everyone had the opportunity to review it ahead of time and to weigh in on the findings.
4. Any changes to the current Law Local 129 must be able to pass the requirements of Croson vs. The City of Richmond Supreme Court case. If not, any changes to existing law will be subject to a court challenge.
5. Why are these changes being done in a vacuum and without the full participation of the MWBE community? The record on the City's implementation of Local Law 129 has been abysmal.
6. Why in the waning days of this administration are they trying to boost the participation of one segment of MWBE participation that do not have a construction percentage goal under the current law at the expense of all the other MWBE segments.
7. The city has not met its obligations of allocating construction contract and services for Hispanics under its current law of procurement. According to the report of the State Comptroller John Liu, Hispanics have received less support and business opportunity than any other minorities.



Louis J. Coletti
President & CEO

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**TESTIMONY TO
THE NEW YORK CITY COUNCIL
COMMITTEE IN CONTRACTS**

**RE: INTRO. 911 – IN RELATION TO OPPORTUNITIES
FOR MINORITY AND WOMEN OWNED BUSINESS AND
EMERGING BUSINESS ENTERPRISES IN CITY
PROCUREMENT**

October 4, 2012
City Council Chambers
City Hall

**Presented By
Louis J, Coletti
President & CEO
Building Trades Employers' Association**



GOOD AFTERNOON CHAIRPERSON MEALY AND MEMBERS OF THE COMMITTEE ON CITY CONTRACTS. THANK YOU FOR THE OPPORTUNITY TO ADDRESS YOU REGARDING INTRO. 911 TODAY.

MY NAME IS LOUIS COLETTI AND I AM PRESIDENT OF THE BUILDING TRADES EMPLOYERS' ASSOCIATION, AN ORGANIZATION REPRESENTING SOME 1,800 UNION CONSTRUCTION MANAGERS, GENERAL CONTRACTORS AND SPECIALTY TRADE CONTRACTORS BUILDING IN NEW YORK CITY.

THE BTEA IS SUPPORTIVE OF THE LEGISLATION BUT RECOMMENDS SEVERAL AMENDMENTS IN ORDER TO EVEN FURTHER STRENGTHEN THE BILL.

THE BTEA HAS HISTORICALLY BEEN SUPPORTIVE OF GROWING THE CAPACITY OF MWBE CONTRACTORS. OVER 8 YEARS AGO IT ISSUED A REPORT WITH SPECIFIC STEPS WE BELIEVED WERE ESSENTIAL TO GROWING MWBE CONSTRUCTION FIRMS AND THAT COMMITMENT REMAINS JUST AS STRONG TODAY.

THE RECOMMENDATIONS I WILL OUTLINE ARE ABSOLUTELY ESSENTIAL IF WE ARE TO ACHIEVE OUR MUTUAL THE GOAL OF PROVIDING CONTRACT OPPORTUNITIES TO MWDDBE'S PROVIDING A COMMERCIALY USEFUL FUNCTION.

BEFORE OUTLNING THE SPECIFIC PROPOSALS, LET ME SHAREWITH YOU WHY WE BELIEVE THESE AMENDMENTS ARE SO IMPORTANT.

OVER THE PAST TWO DAYS, THE BTEA SPONSORED A CONFERENCE ON COMPLIANCE AND INTEGRITY IN THE CONSTRUCTION INDUSTRY. AT THAT CONFERENCE, WE HEARD FROM THE U.S ATTORNEY FROM THE EASTERN DISTRICT, THE MANHATTAN DISTRICT ATTORNEY AND THE CITY'S COMMISSIONER OF THE DEPARTMENT OF INVESTIGATION ON A NUMBER OF INDUSTRY COMPLIANCE ISSUES—INCLUDING MINIMUM STANDARDS FOR PRIME CONTRACTORS IN THE AWARDING OF CONTRACTS TO MWDDBE COMPANIES.

THEIR MESSAGE WAS CRYSTAL CLEAR: AWARDING CONTRACTS TO MWDDBE FIRMS WHO DO NOT PROVIDE A COMMERCIALY USEFUL FUNCTION COULD LEAD TO POSSIBLE CRIMINAL AND/OR CIVIL INVESTIGATIONS OF THE PRIME CONTRACTOR.

WE BELIEVE GOVERNMENT AND THE CONTRACTING COMMUNITY HAVE A SHARED RESPONSIBILITY.

IT IS THE RESPONSIBILITY OF GOVERNMENT TO ESTABLISH AND MAINTAIN A DATA BASE OF MWBE CONTRACTORS WHO PROVIDE A COMMERCIALY USEFUL FUNCTION AS THE SOURCE FOR PRIME CONTRACTORS TO USE SINCE IT IS ONLY CERTIFIED CONTRACTORS WHICH CAN BE COUNTED TOWARDS ACHIEVING THE PROJECT MWDDBE GOAL.

IT IS THE RESPONSIBILITY OF THE PRIVATE SECTOR TO PROVIDE THOSE CERTIFIED M/WBE CONTRACTORS WITH THE CONTRACT OPPORTUNITIES TO GROW THEIR BUSINESSES.

THE CERTIFICATION PROCESS IS THE LIFEblood FOR PRIME CONTRACTORS IN IDENTIFYING MWDBE COMPANIES THAT PROVIDE A COMMERICALLY USEFUL FUNCTION. IT ACCOMPLISHES TWO OBJECTIVES:

- 1) IT FOSTERS AND FACILITATES PARTICIPATION FOR THOSE CERTIFIED M/WDBE CONTRACTORS ; AND**
- 2) IT PRESERVES THE INTEGRITY OF THE PROGRAM AS A FIRST LINE OF DEFENSE AGAINST FRAUD AND ABUSE.**

OUR FIRST TWO RECOMMENDATIONS RELATE TO THE CERTIFICATION PROCESS: FIRST, AMEND PAGE 3 BY :

- INCLUDING LANGUAGE THAT WOULD REQUIRE THE CITY'S SMALL BUSINESS SERVICES COMMISSIONER TO INCLUDE MWDBE'S ON THE CITY'S CERTIFIED LIST FROM OTHER PUBLIC AGENCIES ONLY IF THEY CONDUCT A CERTIFICATION PROCESS WITH THE SAME DUE DILIGENCE AS THE LEGISLATION BEFORE YOU AND INCLUDING THE RECOMMENDATIONS WE SUBMIT FOR YOUR CONSIDERATION TODAY.**

THE SECOND RECOMMENDATION IS ON PAGE 4 PARAGRAPH 7:

- EXPAND THE LANGUAGE WHICH REQUIRES A SITE VISIT BY ESTABLISHING A BASELINE OF WHAT INFORMATION SHOULD BE REVIEWED IN GRANTING CERTIFICATION-- SUCH AS IS DONE IN THE FEDERAL DBE PROGRAM: INTERVIEWING THE PRINCIPALS OF THE FIRM, ITS KEY EMPLOYEES, A REVIEW OF THE FIRMS' SARTICLES OF INCORPORATION, BANK SIGNATURE CARDS, PAYROLL RECORDS AND OTHER FINANCIAL INFORMATION.**

OUR THIRD AND FINAL RECOMMENDATION IS TO ADD LANGUAGE ON PAGES 23-24:

- **THAT STATES IF A PRIME CONTRACTOR, AT THE TIME OF BID SUBMISSION, CERTIFIES IT HAS MET THE BEST EFFORT REQUIREMENTS OUTLINED IN THIS LEGISLATION AND CANNOT IDENTIFY MWDBE FIRMS PROVIDING A COMMERCIALY USEFUL FUNCTION TO MEET THE PROJECT GOAL—EITHER THE PROJECT GOAL BE MODIFIED OR A WAIVER AUTOMATICALLY GRANTED.**

CONSTRUCTION IS AN INDUSTRY FILLED WITH RISK AND CHALLENGES THAT DO NOT EXIST IN OTHER INDUSTRIES.

CHALLENGES IN SUCH AREAS AS BONDING, GENERAL LIABILITY INSURANCE, FINANCING, PAYMENT AND CASH FLOW ARE ISSUES EVERY CONSTRUCTION CONTRACTOR FACES EVERY DAY. FOR AN M/WDBE COMPANY---THOSE CHALLENGES ARE EVEN MORE PROFOUND.

THE LEGISLATION BEFORE YOU TODAY PROVIDES A SOLID FOUNDATION FROM WHICH TO BUILD. THAT FOUNDATION WILL BE STRONGER IF THE RECOMMENDATIONS WE ARE SUGGESTING ARE ADOPTED.

THESE RECOMMENDATIONS ALONE WILL NOT INCREASE CONTRACT OPPORTUNITIES FOR MWDBE CONTRACTORS. THEY ARE HOWEVER, A VITAL FIRST STEP. WE KNOW THERE IS MUCH MORE WORK TO BE DONE AND WE LOOK FORWARD TO THE OPPORTUNITY OF WORKING WITH YOU, THE ADMINISTRATION AND THE MWDBE COMMUNITY IN ACHIEVING SUCCESS. THANK YOU.

Testimony Before the Committee on Contracts, New York City Council

October 4, 2012

Good morning, distinguished members of the Committee on Contracts. I am Joanna Karageorgiou, and I am President of Earth Construction Corp. of Queens Village, New York.

Earth Construction Corp. was founded in 1994 and is a general contractor specializing in carpentry, masonry and painting. We belong to 13 different unions and many associations, including Local 79, Local 1, the District Council of Carpenters and the Painters' Union. We are members of the Women Builders' Council, Building Construction Association, the National Association of Women in Construction and Professional Women in Construction.

I support this legislation and its passage because it helps to level the playing field for Minority- and Women-owned Business Enterprises by providing the same certification for multiple agencies. I work with the Metropolitan Transportation Authority, the New York City School Construction Authority and the New York City Department of Design and Construction. Each agency requires its own certification. This is time consuming, to say the least, and repeats the same information. Under the proposed legislation, city agencies will be able to recognize M/WBE certification of other governmental entities. This saves time and money for city agencies and M/WBEs alike.

The elimination of the \$1 million cap on program-eligible contracts is extremely beneficial. As a union contractor I can tell you that carpentry and masonry contracts are often over \$1 million.

The proposed on-site precertification visits will also help the city weed out non-compliant contractors and ensure that city agencies are getting the best bang for their buck.

This legislation will also allow certified M/WBEs more time to pursue contracts, provide standardization of forms for all city agencies, and it will provide contractors such as myself a greater opportunity to grow their business.

I'd like to express my gratitude to Speaker Quinn, the City Council and Mayor Bloomberg for their support of M/WBEs.

I urge you to support and pass this legislation.

Thank you.

Lloyd Douglas Consultant Company _____ **165 West 127th Street Suite 2J**
New York, New York 10027
718/292.3113 x 7550
718/292.3115 Fax

THE COUNCIL OF THE CITY OF NEW YORK

**THE PROPOSED REVISED LEGISLATION ON MINORITY &
WOMEN OWNED BUSINESSES LOCAL LAW 129:2012**

October 4, 2012

My name is Lloyd Douglas, I am a Minority Business Consultant. I am the owner of a small Consulting Business in NYC.

The Lloyd Douglas Consultant Company Designs and Implements Effective Minority Business Development Programs. (LDCC) has strong Expertise and Experience in Designing and Implementing Programs that Identify, Recruit and Involve Qualified Minority Firms in Minority Business Development Projects and Programs.

We provide Consultant Services on New York State, New York City, Westchester and Long Island Based Projects and Programs that Create Increased Opportunities and Involvement for Local Minority and Women Owned Businesses.

Lloyd Douglas Consultant Company is a New York State, New York City and Port Authority Certified MBE Company, which has been in Business for over **Thirty-Years** that Addresses the Myriad of Issues Facing Minority Businesses and Designs and Implements Effective Programs to Solve them.

Like most of you here today, I love New York!

However, doing business in New York can be Challenging!

In my humble opinion, Two Major Elements are not present in sufficient amounts:

One, there is not enough of a Mechanism and a Process in place to Create the **OPPORTUNITIES!**

In addition, there has not been enough Effective, Highly Motivated, Committed and Dedicated **LEADERSHIP** over a Sufficient Period of Time to make a Significant Difference.

This legislation being proposed has the Potential to put a Better Mechanism in place within the City Government Agencies.

We must change the way some things are being done, change the Mindset - Inside and Outside of government! Oh Yes! Not only do we have to Change Practices, we have to Change **ATTITUDES**.

We will have to Educate a lot of Good People that Blacks Doing Business in New York City is OK! It's Normal! It's Expected! It's Required and it's a Necessity! It's Good Business! That Blacks and Hispanics and Asians and All Persons of Color - Male and Female, doing business in New York City is OK! It's Good for New York!

You have heard from and will hear from many MWBE Professionals and Experts in this field, who are well versed on these matters, who can assist you in Structuring the Programs.

In the interest of time, I will make a few **key recommendations** providing only the headlines. However, I am available to provide additional details upon request or at a future date, at your convenience.

1. THE GOALS SETTING PROCESS

It is very important that the Council Legislation set goals for participation. There should be **Specific Numerical Goals** for MBE'S and separate goals for WBES.

By having Numerical Goals there are a number of good things that can result, not the least of which is a Definite Measuring Mechanism.

We need to focus our remedy on the extent to which discrimination continues to have an impact on the ability of minorities to compete for and secure city contracts.

The projected achievement goals that have been set by the current administration need to be revised upwards for Black Businesses in NYC.

2. A Special Pilot Program

There needs to be a Special Pilot Program for the Enhancement of Rapid and Sustained Growth for Legitimate Black Owned Businesses. This Initiative Should Be Led by the Current Administration from inside of City Hall.

3. I Recommend that the New York City Program consider a Combined Goal of 25% M&WBE Participation For Black Owned Businesses.

4. The Training of the Agency Contracting & Compliance Officers (The ACCOS)

A Training Module should be Designed to Train and make Proficient the Current and Future ACCOS. ACCOS should be Trained and Rewarded for being **ADVOCATES** for the MWBE Community. Some of the Training to the ACOS and to Minority Businesses should be Provided by Local Minority & Women Business Organizations, Associations and Consultants.

5. Streamlining The Process

The Government Inclusion Process should be user friendly. The process and the paper work should be designed to make access easier not become another barrier in and of itself.

6. The Administration And Enforcement of the Inclusion Rules

The City needs a MWBE Ombudsman, a Deputy Mayor Level Position, in the Current and Future Administration.

An Independent Office for the Management, Monitoring, Investigating and Enforcement of the Rules Process and Programs of Inclusion.

7. The City Council MWBE Advisory Board

The Council of the City of New York need to Re-activate and Re-energize its **OWN MWBE Advisory Board** After the Law Enactment Process.

This Board will Continue to serve as a Means of Communication, Dialogue and Feedback to the Council.

We Welcome many of the Proposed to Local 129:2012, the NYC MWBE Program, Process and Procedures should be Designed and Administered as a Positive Means of Reducing Barriers while Increasing Growth and Productivity.

The Program should be viewed as another **Constructive Method for Growing the People and the Economy of New York City.**

An effective Minority & Women Business Inclusion Program in New York City will only Add to the Greatness of New York and its History.

Thank you for allowing me the time to share some of my thoughts with you at this hearing today.

Walter L. McCaffrey

Member, New York City Council, 1986-2001

Thank you Madame Chairperson and Committee Members.

Having served as a member of this body for sixteen years, I have a particular perspective regarding Intro 911.

The United States Supreme Court dealt crippling blows to programs to assist minority and women business enterprises in its Croson and Aarand decisions. The then city administration sought to dismantle the city's MWBE programs. That administration claimed that there was no legal basis for continued action.

The Council sought ways to continue MWBE programs that would sustain legal challenge.

It was clear that an empirical study needed to be conducted to prove the existence of inequity.

My then Council colleague Una Clarke and I focused on the importance of MWBEs during this time.

A fierce and determined woman active in the women and minority business enterprise community came to me and to Council Member Clarke for help in providing city funding for such a disparity study.

That woman was **Sandra Wilkin**. She went on to become a co-founder of the *Women Builders Council*. She pleaded, prodded, cajoled and advocated for us to convince our Council colleagues of this funding need. Joined by Council Member Mike Nelson and then Council Member Christine Quinn, we secured the money.

Following term limits, I served as the first policy advisor for Women Builders Council and served its Co-founders Maureen Fritch and Sandra Wilkin. I was there for the first disparity study and the subsequent passage of Local Law 129.

So I have long been involved as a MWBE supporter.

While flawed that first study gave a legal basis for the city MWBE programs.

Fortunately by then the Bloomberg administration was supportive. And it listened to the problems facing MWBEs.

As always, the City Council was a pro-active force on behalf of the community.

One of the critical flaws of the study was a million dollar cap on MWBE programs. This was both unrealistic and "growth-restrictive".

For a long time, the MWBE community fought for a better program. And with Intro 911 they have that superior product.

It is great that that million cap is gone! Now the instead of being limited to **\$433 million** in potential city work the amount zooms to **\$2.2 billion. Over five times the current amount.**

How could any responsible MWBE advocate not cheer this huge success?

I am personally pleased to see that there will now be new COMSTAT type system of accountability to see that MWBEs are receiving their fair share of city contracting dollars. Intro 911 also includes stricter reporting systems which are a key to success.

I am also pleased to note the tougher standard to weed out phony companies who mask as legitimate MWBE firms. Both the business and MWBE communities share this goal.

Let me express a deep caution.

These tremendous gains should not be jeopardized by those who ignore the outside pressures to undo MWBE programs. We see that fight going on around the nation. There are some would mask themselves as advocates for economic justice while pursuing their own agenda.

Strict legal measures must be used as our protection.

Those who chose to disregard this reality act in a reckless, risky, cavalier and inappropriate manner. No legislation can meet all of our aspirational wishes. Oh but that could be the case.

I would like to thank Speaker Christine Quinn for her solid guidance which has brought us to this point. She has never hedged or hesitated. She is the personification of a great leader.

And I want to thank the Council for its long tradition of advocacy for MWBEs. Your support has helped grow the community.

And I want to thank Mayor Michael Bloomberg and particularly Deputy Mayor Cas Holloway for their steadfast support.

And lastly I want to thank the members of the MWBE community who everyday meet the economic challenges to add to the strength and vitality of New York City.

I urge that you **vote "YES"** for Introduction 911.

For the Record

RE: Council hearing on LL129 Testimonial
October, 4th 2012



Good afternoon Speaker Quinn, Chairperson Mealy,

Members of the Contracts Committee, Council Members

and fellow M/WBEs. My name is Daniel Velez and I am the

Principal partner at SouVez Inc. SouVez, based here in NYC,

is a marketing agency, that has for the past decade rooted

itself in serving the communication needs of local

businesses, including healthcare organizations, nonprofits

and a growing ~~of~~ base of City agencies. SouVez is a Certified

Minority Enterprise with the City and State of New York.

I am here today to share my personal testimony with you on “how” the City’s M/WBE program has been an absolute asset to SouVez. But, more importantly, “why” it is so important that we strengthen and support the new proposed provisions—those that help to address the disparities that still exist among M/WBEs, such as myself, in procuring City Contract work.... And why it is vital to me, as it should be to all you, that supporting the current proposed bill before you, will help provide businesses such as mine... more access, more opportunities, and fair participation and competition...NOT FAVORITISM, in the procurement process of City Contracts.

You see having been in business for over 10 years, I've learned and seen first-hand that the procurement process isn't always so transparent. I've learned from experience which agencies to steer from. That the process isn't as fair it claims to be, and its more, at times, about appearing to be compliant. To add insult to injury, if you lose, it is rare that the courtesy of a reply is given, or it becomes a task in itself to be given an opportunity to review the comments and scoring, even when repeated request has been made. This is a real business challenge, not just for me but many others like me. It makes you skeptical about the RFP process and even start to realize that it's not a leveled playing field. So whenever possible I will always lend my time and voice on this matter to help make it better and winning City contracts on the merits, a more promising proposition.

Let me explain what I mean by giving you an example
...when there's an RFP from a City agency that we know
we are more than qualified and capable of servicing, we
go after it. What this means for me, is that we will go
through great lengths and sacrifices to submit a
competitive and hopefully a winning proposal.

What I mean by great lengths... is that to respond to an
RFP an M/WBE small business such myself, will almost
always stretch capacity and resources. To put it in
perspective, for me, it typically may mean having three
employees working on the proposal, over a period time...
four to five business days, usually placing overtime and
having several RFP all nighters! That's a huge sacrifice for

a small business like myself... based on those numbers, that's close to half my workforce...half not doing their job, or strained in servicing existing clients....half not looking at other promising opportunities... ... So you can imagine how frustrating and unfair it is to me, as it should be to any of us, that you put in the hard work and then realize that the proposal submitted never really had a real fighting chance, or worst, it wasn't even reviewed on its merit.

And, yet, I'm still willing!

Why do this to myself? Because I'm looking for opportunities to grow my business, and I firmly believe and also know first-hand that there are indeed City agencies that do want to do the right thing, and offer businesses such as mine an opportunity!

Also, as a certified firm, we have in our corner a vital advocate the Small Business Services whose sole interest is my success.

Aside, from being my advocate, Certification has given me opportunity of accessing value services. I've tapped into their legal services and when I needed to understand specific logistics on an RFP, such as factoring or some other assistance, I was able to get immediate attention. More importantly, I'll get that occasional email from an outside agency, because they found SouVez on their directory or had been referred. BTW, I can tell you that at least one of those referrals became a client. There's much more I can get into but I do want to be respectful of my time and allow others to testify.

You see with the proposed bill to amend and add provisions to the City's Local Law 129 program, it gives me the confidence of knowing that after putting in the work, and making such sacrifices, that my proposal will at least be judged fairly on its merits in the procurement process. The current proposal will help to level the playing field and make the procurement process a fair platform... and, of course, it's just simply good business because as a result we all win from a more equally competitive process, ~~and where a business like mine can still believe it's proposal is being reviewed on its merit and qualifications.~~

That's why I support the current proposed bill to amend and add provisions to the City's Local Law 129 program, also known as the M/WBE program.

STATEMENT OF THE

REV. JACQUES ANDRE DEGRAFF

THURSDAY, OCTOBER 4, 2012

TESTIMONY BEFORE THE NEW YORK CITY COUNCIL

Thank you Madam Chair

I am here today to speak on behalf of all New Yorkers who love freedom, justice and equality. For too long qualified minority firms have been denied access to full participation with the economic engine of this great city.

As a Co-Chair of the New Agenda, I come, along with others to call for a new, inclusive course for this city. In June Mayor Michael Bloomberg and the six mayoral aspirants spoke at a forum we sponsored to endorse our principles. We called for a revision of LL129. This is not a social program, no this legislation is good for business, because more competition brings lower costs to the City for goods and services.

Just ask the leaders of the New York City School Construction Authority who have witnessed bids coming in up to 30% below estimates as they pioneer historic new programs of inclusion.

Intro 911 contains the critical elements for progress; bold decisive steps intended to change the landscape. In too many parts of our City hope has vanished. This legislation provides opportunity combined with accountability which will produce utilization.

It is not perfect; no bill is. But the Civil Rights Movement, which transformed America, provides lessons for us. Do Something. Do Something Big. Do Something NOW.

We have worked with Deputy Mayor Cas Holloway, the public servant whose promises can be trusted, and the Speaker whose long, unwavering support has brought about this day. Some, whom I respect, have reservations about this bill. Others inside and outside this room have tried to distort, divide and delay for their personal and political ambitions.

Today you will hear from an honor roll of MWBE Leadership across our City and beyond. We don't always agree on many things, but we agree on this.

“More powerful than all the armies, is the power of an idea whose time has come. “ We already waited too long, and we call on you today to stand with us. History records some episodes as defining moments. With this country divided into red & blue states. With too much of Washington DC paralyzed by partisan gridlock, we ask you to stand with us. With unemployment and despair surrounding our neighborhoods and violent crime increasing we ask you to stand with us. We have come too far, sacrificed too much, worked too hard to be turned back now.

Tell the lady in the harbor who called for those, “yearning to breathe free”, that New York City still is a City of Dreams, that New York City still believes in full equality and participation, that New York City is open to all for business.

Stand with us today and Pass Intro 911

Statement by
Sandra Wilkin
Co-Chairperson, *New Agenda*
President-Emeritus and A Founder of the Women Builders Council
President, Bradford Construction

IN SUPPORT OF INTRODUCTION 911

October 4, 2012

Thank you for the opportunity to testify in strong support of Introduction 911.

I have been a certified woman business enterprise since 1995.

I have a long history of working with the City Council on ways to strengthen Minority and Women Business Enterprises.

In 2001, I came to the City Council and sought funding to conduct a disparity study to anchor MWBE programs in light of the Crosson and Adarand Supreme Court decisions.

The Council supported the request and supplied the financing for that first disparity study.

And I met with and testified before the Council about the creation of Local Law 129 along with my fellow WBC Co-Founder Maureen Fritch and other members. We pointed out the flaws in that legislation. We sat through meeting after meeting with the Office of Contracts pressing the point that the one million cap was harmful to MWBEs and the city economy.

A few months ago, Reverend DeGraff and I created the *New Agenda*, a coalition of minority and women business enterprises. Along with City and State Newspaper, we held the MWBE conference which united Mayor Bloomberg and Speaker Quinn and other prominent city leaders around the goal of changing Local Law 129 for the better.

Mayor Michael Bloomberg, Deputy Cas Holloway and Speaker Christine Quinn moved forcefully and decisively to propose the major changes embodied in Intro. 911.

Speaker Quinn has always been a champion of minority and women business enterprise. Her leadership has been unwavering. And I wish to thank her and the City Council for always being there for our community.

This bill is a vast improvement over the current law regarding Minority and Women Business Enterprises.

The current law prohibits economic growth for MWBEs. Local Law 129 unrealistically limits us to a cap of 1 million dollars on project eligible contracts.

This Intro *removes* that cap *totally*.

As a result, the amount of available project-eligible contracts will go from \$433 million to \$2.2 billion.

That is an outstanding 500% available to MWBEs.

The intro established a tough program of accountability by creating the COMSTAT type of approach to monitoring city agency performance along with better reporting protocols.

For all of us concerned about routing out firms who falsely claim to be MWBEs, new measures are proposed to address this issue.

We need this passed into law.

At the same time, we must continue to seek out ways to make Intro 911 even better. Rev. DeGraff and I have asked the administration and Council to address concerns which we and others have raised. We are pleased to see continued efforts to do that.

At the same time we must never allow a path to be taken which will cripple or even possibly destroy programs for MWBEs.

The Minority and Women Business Enterprise community is a key to the economic success of New York City. As we grow, the city grows.

The passage of Intro 911 will make our community even stronger.

I ask for your vote for Intro 911.



***Testimony of Elizabeth Velez, Chairperson of the Latino Builders Council
before the New York City Council Public hearing on Local Law 129***

October 4, 2012

In the spirit of Hispanic Heritage month and reflective of our testimony today, it is my privilege to share this quote with you from the great Civil Rights Leader Cesar Chavez -

"We cannot seek achievement for ourselves and forget about progress and prosperity for our community...Our ambitions must be broad enough to include the aspirations and needs of others, for their sakes and for our own."

My name is Elizabeth Velez and I am President of the Velez Organization – a construction services firm established in NYC over 40 years ago. More importantly, I am speaking to you today as Chairperson of the Latino Builders Council, represented here today by several of our founding members including Kirk Ortega and Sam Padilla. We appreciate the opportunity to offer our support for proposed revisions to Local Law 129. The Latino Builders Council, a coalition serving the Latino design, construction and real estate industry, has a combined over 100 years of experience and over \$1billion in completed work here in New York. Many of our members serve our community on diversity advisory boards for a myriad of New York State, New York City and private entities.

We believe that the proposed changes to LL129 will significantly change NYC agency procurement in several meaningful ways:

1. By removing the cap that had restricted procurement opportunities over \$1M, it essentially increases the pie by over five-fold, and for Latino construction firms, from current program goals of \$41.5M to new program goals of \$88M
2. By encouraging the creation of joint ventures in NYC procurement, it increases the capacity of the Latino construction and business community
3. The proposed revisions increase the accountability for those agencies that are not goal compliant.

New York City's leaders must lead the way in correcting far too many years of unbalanced procurement in New York City. Looking toward to the future, the Latino Builders Council - in unified leadership with many others in the minority community - will look to continued, ongoing progress and change in New York City procurement that is more reflective of the actual demographic composition of the communities of New York City. However we must take this first step now to begin to open the doors of opportunity for so many that have been effectively shut out.

Stating the above, we would be remiss to our Latino community and the minority community as a whole if we do not address LL129 for what this law is tragically lacking:

For instance, why are Caucasian woman now given a 20% goal to achieve? Why are Latina women, African and Asian woman not included in this 20%? How could Caucasian woman go from 0% in the 2005 Disparity study to 20% today? How will these goals be monitored for Caucasian woman to prevent "fronts" for Caucasian men? As distressful, how did Latino businesses as a whole drop from 9% in 2005 to 4% today, which obviously is not reflective of our community, where Latino's represent nearly 30% of the population?

These numbers are obviously discouraging and we need, offer and encourage the council members to invite the Latino Builders Council to the "table" to continue this dialogue, to

seek our perspective from the Latino Construction Community so that we together can mitigate this disparity to our community

Finally, the Latino Builders Council urges the City Council to act now on the proposed changes to Local Law 129 and implore you to include and continue the dialogue for meaningful participation of the Latino business community.

Contact: Elizabeth Velez
evelez@velezorg.com
(212) 684-5500 ext 226



TESTIMONY BY TIMOTHY MARSHALL, PRESIDENT

JAMAICA BUSINESS RESOURCE CENTER

AT

NEW YORK CITY COUNCIL LEGISLATIVE HEARING

OCTOBER 4, 2012 - 1:00 P.M.

Good Afternoon Madam Speaker, Honorable Members of the New York City Council, and all Distinguished Guests and Leaders of the MWBE Community.

My Name is Timothy Marshall, and I am wearing two hats today. First as President and CEO of the Jamaica business Resource Center which was established by former President Clinton and the White House Office of Management and Budget in 1994 to be a national model for small business capacity building and training. JBRC's model was replicated in 16 major markets throughout the United States, and since opening our doors in 1995, JBRC has provided a broad range of technical assistance and training to over 7,500 entrepreneurs and has secured over \$650 million in financing, surety bonding and contract procurement opportunities for small, minority and women-owned businesses throughout the New York metropolitan area.

I am also here as one of the Founders and an Executive Board Member of the Minority Business Leadership Council, a Coalition of 15 Leading Minority Business Trade Associations, Chambers of Commerce and other Advocacy organizations in downstate New York which represent literally thousands of minority and women business enterprises.

Both of these organizations have been leading advocates on behalf of the MWBE community and leading Consultants to this Administration and City Council on every major Legislative, Policy and Programmatic Initiative launched over the past 11 years and for many years prior.

In fact, at the beginning of his first term, the Mayor and City Council requested that we give the official Opening Address at Gracie Mansion on the State of Minority Business as well as to support his first Mayoral Executive Order on Minority Business.

From the beginning, our position was that Legislation was needed to codify MWBE participation in New York City procurement opportunities. Eventually, through all of our collective efforts, Local Law 129 was passed in 2005. While we applauded this development, we believed that our community was effectively bantustanized with a \$1million legislative ceiling on our access to business opportunities.

After several years of innumerable meetings and other advocacy initiatives, we believe that our being here today represents an important step forward in the long struggle towards economic justice in New York and throughout this nation.

At a time when joblessness is at an all time high and economic disparity prevails, the most important provision of this new legislation is to be heralded: and that is the elimination of the \$1 million cap in the legislation. This new measure alone will expand MWBE access to \$2.2 billion in new contract

opportunities. This is critically important given that MWBE firms are a major gateway to jobs in our community – therefore the residual economic benefit can be substantial.

We also believe the important new suite of Capacity Building Initiatives which have been introduced by the City will help to translate the intent of this legislation into actual contracts – including the Mentoring, Access to Capital and Bonding, Joint Venturing and Technical Assistance programs.

However, with all of these wonderful developments, we wish to call your attention to key concerns that have been raised throughout the MWBE Community in New York.

(A) The first is the Question of Methodology in goal setting for all ethnicities and women in all industry sectors. There are deep feelings about the inclusion of minority women; as well as the issue of the exclusion of Asian professional services in the 2011 Disparity findings. We wish to have future discussions with you in these areas.

(B) Second – The issue of needing to significantly increase the dollar volume and number of contracts being offered through the New suite of MWBE Programs by the City.

(C) Third, the elimination of the goals for contracts over \$100,000 in the area of goods and services. We believe this is unfair and unmerited based on the rationale that New York City is both a National and Global Market. We believe that having a local preference is merited precisely for these reasons given that many leading national and global companies have a physical presence in the New York metropolitan area, they would not be prohibited from competing.

But local businesses that pay taxes and employ people right here in New York should not lose out on important business opportunities for these reasons.

We believe it is critical that these measures have an additional review and input so as to produce the best and highest quality legislative remedy for the enormous economic disparity which has been experienced by minorities and women.

In closing, we wish to thank the Mayor's office, the Speaker and all sponsors of this Legislation for getting us to this point.

We believe we are close, and with a concerted and united effort, we can produce a Legislation in which all corridors of our community can take pride.

With that, I thank you for this opportunity to speak.

###

F.T.R.



New York State Federation Of Hispanic Chambers of Commerce

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New York, N.Y. 10025
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**NYSFHCC Submission in Support of Int. 911
Amending Local Law 129
Committee on Contracts Hearing
New York City Council
Thursday, October 4, 2012
Presentation by Alfred Placeres, Esq., NYSFHCC President**

My name is Alfred Placeres and I am the President of the New York State Federation of Hispanic Chambers of Commerce. Our Federation has been advocating for New York's Hispanic Businesses since 1983. We are composed of seventeen Hispanic Chambers and business associations. Our Chamber Members include the East Harlem Chamber of Commerce; the Brooklyn Hispanic Chamber of Commerce; Bronx Chamber of Commerce; Staten Island Hispanic Chamber of Commerce; the Dominican Chamber; the Colombian Chamber and the Mexican Chamber to name just a few.

I have served on New York City's Department of Small Business Advisory Committee since its inception. I served on Mayor Koch's and Mayor Dinkins Small Business Advisory

Committee. In 2010, I shared with Rev. Jacques DeGraff, of 100 Black Men, NYCDBS' MWBE Advocate Award. I also received the U.S Department of Commerce Minority Business Development Agency's "Minority Advocate of the Year Award" in 2004.

I mentioned these advocacy roles and awards to illustrate that we are not new to MWBE advocacy and that our association would not be supporting this legislation if we believed this bill would be detrimental to New York's Hispanic MWBE's. This is what a few Hispanic groups are alleging at this hearing and this is simply not the case.

Yes, the percentage goal for Latino Businesses will decrease from 8% to 4% but this decrease will in fact translate into an increase in Hispanic participation because the City's procurement pie is increasing substantially. The bottom line is that there will be **more** not less Hispanic MWBE participation with this legislation.

How is that? The new legislation lifts the Million dollar lid and creates more opportunities for all M/WBE's. For Hispanics, this change significantly increases the value from approximately \$28 million to over \$80 million. This is what you will be hearing today from our leading Hispanic MWBE's, who will also be testifying in support of the bill.

I will end by recommending that more work needs to be done to increase Hispanic participation in the City's MWBE programs which stands at 18% compared to Black participation at 30% and Asian participation at 23%. An aggressive outreach program needs to be implemented if the City Council is truly committed to increasing Hispanic MWBE participation.

For the Record

Walter Edwards

To: City Council
Cc: rsmith@hbany.org
Subject: Int. Number 911

From: Walter J. Edwards, Chairman
Harlem Business Alliance
Testimony on Int. Number 911

City Council, 4th of October, 2012

Respected City Council Members and Community Leaders,
I respect all of the well-meaning work that you all have done in trying to make Local Law 129 work for the so called minority community of the city of new York. I remember my family of former slaves being promised forty acres and a mule and we never received them. This was supposed to make up for the in- humane treatment of our people during slavery. Fast forward the Civil Rights verdicts in the USA Federal Courts, where the former slaves was to receive fair treatment in the economics of our country. There was appointed Affirmative Action Officers in Corporate America and Governmental Agencies to open the doors and level the playing field for the former slaves that had been on the side of injustices. Someone decided to place an impediment in the way of this federal-court decision and said that the affirmative action had to include others than the former slaves.

President Richard M. Nixon worked with some of the former slaves to develop The Black Entrepreneur Program and when that begin to make progress someone put another impediment in the way by saying that the President could not force financial institutions to make unsecured loans to the former slaves, hence force the formation of tat SBA and they added more people that had to be part of the program.

A few years ago Councilmember Robert Jackson proposed a bill that said that all contracts unto \$10,000.00 would go to minority men and women's. Some of the members of Minority Business Leadership Council meet with Councilmember Jackson and through those meeting were the beginning of the formation of Local Law 129, which even after a disparity study was performed by a minority firm from California, was never truly activated. This brings us to today's event which is being moved on without any evidence of a new disparity study. I suspect that some people who believe that they know more about what is good for the minorities than the minorities themselves. I come to this conclusion because I had the experience of having a member of this administration during the negotiations on the PLA tell me to my face that she and the other non-minority members knew more about what we needed than we did. I can tell you that she did not go far with those thoughts. The impediment to Intro. Number 911 is the White Women who has always from slavery had an advantage over the former slaves. I do not say this to be prejudice, just stated the facts along with my RACIAL PRIDE. I thank Rev. Jacque DeGraff and all those who have worked diligently on this measure, but unless we can level the playing field, I must respectfully decline to support this action.

Best regards,
Walter J. Edwards, Chairman
The Harlem Business Alliance

**Statement of Caswell F. Holloway, Deputy Mayor for Operations
Before the New York City Council
Committee on Contracts
Re: Intro. No. 911**

(October 4, 2012)

Good afternoon, Chairwoman Mealy and members of the Contracts Committee. I am Deputy Mayor for Operations Cas Holloway, and I am joined here today by Gregorio Mayers, a Senior Advisor and the member of my team who works closely with me on these issues. Also present are representatives of the Mayor's Office of Contract Services (MOCS) and the Department of Small Business Services (SBS). Thank you for this opportunity to testify in support of Intro. No. 911, an important piece of legislation that will significantly expand opportunity for minority and women-owned businesses in the five boroughs and surrounding area to do business with the City of New York. Equally important, this bill—and the programs Greg will describe in his testimony that we have designed to strengthen the capacity of MWBE firms—will increase the number of firms that bid on and win City work. That means better services at lower prices—and that's good for City taxpayers.

Introduction

Intro 911 sets goals for participation by minority, women, and emerging businesses in the City's procurement of goods and services. And there is a lot of potential business for MWBE firms to bid on and win. Each year, The City of New York purchases approximately \$10.5 billion of supplies, services, and construction through more than 46,000 contracts. As the Council knows, the City's first responsibility when it comes to procurement is to acquire these needed goods and services at the best value for the City's taxpayers—from businesses (or vendors, in procurement speak) that have the capacity and integrity to deliver on time, at the right price. While there are exceptions, in the overwhelming majority of cases, we meet these responsibilities through a competitive process that is governed by detailed rules to ensure that it is fair, open, and transparent. (The exceptions are also governed by rules to ensure that they are fair and transparent, but they do not always involve competition, or the same level of competition.)

The range of goods and services the City buys creates opportunities for businesses large and small—from international construction companies with the experience to manage multi-billion dollar projects (for example, the ultra-violet disinfection plant for our water supply that will soon go into service) to small quantities of office supplies. As a former DEP Commissioner with a large construction portfolio, I can tell you that even the largest contracts present opportunities for small, minority and women-owned businesses. In fact, in March 2011, DEP won the "Project of the Year" award from the Professional Women in Construction, a national nonprofit organization for the \$1.6 billion Ultraviolet Disinfection Facility currently under construction to serve water from the Catskill and Delaware watersheds. As part of this project, DEP had contracts for \$60 million of work with 40 women-owned and 37 minority-owned businesses.

The reason we have detailed rules governing the way the City buys goods and services is not only to ensure that the process is fair—but competitive. Because robust competition delivers the best services at the best price. The City has an obligation to foster that competition, by making

sure that as many companies as possible know about and have the opportunity to compete for the City's business. That's what Intro 911, and the law that it updates—Local Law 129 of 2005—is principally about.

Background and the Current M/WBE Program

First, some background. You will likely here a lot of testimony today about numbers, percentages, statistical calculations, and the concept of “disparity.” All of this data is critically important because there is a detailed legal framework that mandates how participation goals like the ones in Intro 911 are to be established. The Disparity Analysis submitted along with my testimony goes through the framework and the process the City has gone through to meet it; and an independent expert in this area—Miller3 Consulting—has validated our approach. So I am not going to go through the details now—but will be happy to take questions after Greg's testimony.

But I do want to explain what all of that analysis is designed to achieve. As many of the people who will testify today will tell you, there are thousands of minority and women-owned businesses in New York City and the surrounding area, in every line of work. Professional services, construction, goods and standard services. But what we learned leading up to Local Law 129—and what is still the case today with some changes—is that far fewer of them than one would expect given how many MWBE companies there are, are successfully bidding on and winning City work. This is the essence of what “disparity” means in this context. That's bad for the companies themselves—because they miss out on the work. But more importantly, it's bad for New York City and for City taxpayers—because when more viable companies compete for the City's business, we get better service at a lower price.

The City has done a lot to reach out to MWBE firms, strengthen their capacity, and make it easier for small businesses in particular to meet the many requirements that have to be satisfied to get City work. And Greg will testify about a recent set of initiatives that we call *Compete to Win* that will do even more. But the City can't do it alone. The participation goals established in Intro 911—and backed by extensive data collection and rigorous analysis—ensure that the companies that do get City businesses have an incentive to help us widen and deepen the competitive pool, and to increase the number and diversity of MWBE firms actually doing City work.

In the six years since Local Law 129 went into effect, we have made significant progress toward this goal—which shows that setting goals works:

- Since 2006, City agencies have awarded more than \$3 billion of work to certified M/WBE firms;
- In FY12, almost \$1.6 billion worth of the City's prime contracts were covered by M/WBE participation goals, including more than \$389 million covered by prime contract goals and about \$1.2 billion covered by subcontracting goals. In the same fiscal year, M/WBEs won more than \$529 million worth of City prime contracts and subcontracts.

- In FY12, M/WBEs won nearly 29% of the City's small purchases, which range from \$5,000 to \$100,000, up from 25% in Fiscal 2011.
- M/WBE certifications rose by 9%, to more than 3,526 certified firms at the end of Fiscal 2011.
- Agencies awarded 220 FY12 prime contracts that are subject to M/WBE subcontracting goals. The contracts will generate \$150 million in construction and professional services subcontracts, with about \$56 million slated for M/WBEs, i.e., about 38%.

State and federal goals programs that apply to approximately \$418 million worth of FY12 contracts will also yield \$96 million worth of subcontracts for M/WBEs and disadvantaged businesses (DBEs). EDC's subcontractor goals will yield nearly \$7.3 million (16%) in similar awards. All told, counting all subcontracts on all prime contracts, including those not covered by any goals program, certified M/WBEs won 31% of all subcontracts approved during Fiscal 2012, including 42% of the value of subcontracts below \$1 million.

The Need to Update Local Law 129

Although we have made significant progress, it is time to update and improve Local Law 129. The most important reason is because the marketplace has changed significantly since 2005, and the disparity analysis submitted with my testimony—and that is the basis for much of the substance of Intro 911—explains the changes in detail. Generally speaking, there is bad news and there is good news. The bad news is that minority and women businesses still aren't doing enough work. That means we still need Local Law 129. The good news is that based in part on the progress minority and women firms have made, many more firms have the capacity to take on bigger projects. And that means we can eliminate the \$1 million cap on contracts to which the law's participation goals will apply.

This change alone means that the overall contract value subject to participation goals will increase from \$430 million today to \$2.2 billion. That translates to up to half a billion dollars of work. As you likely know, goals for specific groups in specific contract types will also be adjusted under the bill—to reflect the new market realities discussed in the disparity analysis. Some targets go up, some go down, and new targets are established—for example, for women construction firms—that were not covered under the current Local Law 129. Despite the fact that some participation goals decrease—for example, the new goal for Hispanic-owned construction firms is 4% rather than the current 9%—because of the elimination of the \$1 million cap, the amount of work subject to the goals in Intro 911 will actually increase by approximately \$10 to \$20 million, which will drive more work to Hispanic firms despite a lower participation goal.

Intro 911 also streamlines administration of the program and increases transparency and accountability for City agencies to demonstrate that they have done everything possible to meet the participation goals. Under the proposed bill, agencies will be able to apply a single goal to the total business value of each contract or contract type, counting both prime and lower level subcontractor participation towards reaching the goal. This will provide more work for M/WBEs on larger projects and incentivizes M/WBE firms to create joint ventures. We anticipate that this change will especially benefit service companies outside of the construction arena.

With respect to accountability, Intro 911 also contains enhanced reporting requirements to track agency performance in meeting their goals and to increase transparency through the publication of an annual agency procurement plan. These plans will establish each agency's procurement schedules for contracts subject to M/WBE requirements both to help agencies plan in advance how they will meet their goals and to notify vendors about upcoming opportunities. Agencies that do not meet their goals will prepare performance improvement plans that describe, in detail, how they will increase M/WBE participation; quarterly meetings to discuss best practices will assist in this effort. Int. 911 also creates a new position to oversee agency compliance with M/WBE requirements. This individual will be appointed by the Mayor to ensure that agencies are doing the most they can to reach their M/WBE participation goals.

For vendors, Intro. 911 requires additional information to be published in the City's online M/WBE directory that more fully captures a certified firm's capacity to perform work, including bonding capacity and union affiliation. This directory is a valuable resource for prime contractors looking for qualified subcontractors and potential partners for a joint venture.

Another area addressed in the legislation is how we categorize firms owned by women of color. Currently, these firms are counted by their ethnic group rather than as women-owned businesses, which means that our goals for women-owned businesses are significantly less than their share of the marketplace. To make our goals more reflective of actual capacity in the marketplace, we reviewed the data and have determined that the City can count subcontracts with businesses owned by women of color towards either ethnic or gender-based participation goals.

Thank you again for the opportunity to testify about this important issue. If enacted, Intro. 911 will increase competition for City work, deliver high-quality goods and services to New Yorkers at a lower cost, and expand economic opportunity to businesses throughout the five boroughs. Greg Mayers will now testify about how M/WBE firms certify and Compete to Win, our new suite of capacity building programs.

HOW THE STUDY WAS CONDUCTED

During the course of this project, the Building Trades Employers' Association sought to engage a wide-range of industry participants in its efforts to address the issue of increasing minority and women-owned business participation in the construction industry.

We conducted a series of focus groups and individual interviews with over 20 minority and women-owned contractors. Some of these contractors were members of the BTEA and some were not. Several other industry leaders and executives of large construction companies were also interviewed for this report, including public agency officials responsible for operating their agency's M/WBE programs.

The project also included interviews with four economists and/or professors of business administration, including Dr. Timothy Bates, an author of several books and articles including Banking on Black Enterprise: The Potential of Emerging Firms for Revitalizing Urban Economies; Dr. Thomas Boston, a professor of Economics at the Georgia Institute of Technology; Dr. John Sibly Butler, a professor of Business at the University of Texas at Austin and Ken Simson, an economist with the National Association of Contractors.

In addition, results of studies and surveys conducted by the Wharton School of Business at the University of Pennsylvania (sponsored by the BTEA and General Contractors Association), the Regional Alliance for Small Contractors, the New York Building Congress and the law firm of Peckar & Abramson are used in this report.

When the first draft of this report was completed, an editorial team of minority and women-owned contractors as well as large general contractors and subcontractors reviewed the report and offered their viewpoints on the recommendations contained in the report. After this review, the report was presented to the Board of Governors of the Building Trades Employers' Association and unanimously adopted for release to the public.

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INTRODUCTION

New York City stands at the brink of an unprecedented era of economic growth—and when the Building Trades Employers' Association looks at the growing New York skyline and infrastructure—it sees more than just steel, concrete, glass and brick. We see new tax revenues, new jobs, an improved quality of life and new business opportunities that will lead to strengthening our City's middle class—job opportunities that provide an average salary of \$56,000 per year—with 80% of the employees covered by health benefits and pensions. 40% of the total workforce in the building trades are African-American, Latino and Asian, including 51% of its new apprentice workforce, who have an opportunity for a long-term career.

Plans for the rebuilding of Lower Manhattan are already underway and construction has begun on 7 World Trade Center, Freedom Tower, the new PATH Transportation Station, the Fulton Street Subway Station and the expansion of the Jacob Javits Convention Center. The Hudson Yards Redevelopment Plan and Jets Stadium are on the horizon.

Additional projects to be added in this unprecedented era of economic expansion include the Farley Post Office, Port Authority of New York & New Jersey and MTA Capital Programs, the Brooklyn Atlantic Yards and new housing, schools and the 2012 Olympics, among others. Collectively, these projects total some \$40 billion in economic growth over the next decade.

These projects, along with others, can provide the opportunity to accelerate the growth of jobs and business opportunities for small, minority and women-owned businesses in the construction industry. Such firms can and must play an integral part of a construction and economic renaissance in New York City and they must provide a standard of living, which will strengthen the middle-class of this City.

Historically, the construction industry has provided men and women with the training and jobs that have been critical to expanding New York's middle-class. When New York builds—the foundations of middle class families are created and the economy and quality of life are uplifted.

Several decades of public policy have resulted in limited successes in the growth of minority and women-owned contractor firms. The Building Trades Employers' Association issues this report in the hopes that it will initiate a realistic discussion on how to best achieve the goals we all share in strengthening New York City.

AN OVERVIEW OF THE CONSTRUCTION INDUSTRY

CONSTRUCTION AS A BUSINESS ENTERPRISE

- Construction companies have had the highest business failure rate of any sector in the economy since 1988.
- Over 90% of New York City construction companies employ less than twenty-five (25) employees.
- Large construction companies that employ 100 or more, employ 29% of all construction company employees.

A CENSUS OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES

National Statistics

- African-Americans owned 56,508 construction companies, generating \$7.7 billion in business revenues
- Hispanics owned 152,573 construction companies, generating \$21.9 billion in business revenues
- Women owned 157,173 construction companies, generating \$67.6 billion in business revenues
- Asians, Pacific Islanders, American Indians and Alaska Nationals owned 55,146 construction companies, generating \$12.9 billion in business revenues

New York City Statistics

- 2,830 or 21% of construction companies are owned by minorities and women
- Minority and women-owned construction companies generated \$2.7 billion or 12% of total construction sales or receipts
- Minority and women-owned construction companies generated \$537 million or 11% of the total construction payroll

CHARACTERISTICS OF SUCCESSFUL GROWING COMPANIES

- Owners of Successful Growing Companies Have The Following Common Characteristics:
 - 55% had a college or graduate degree and another 15% had some college experience
 - 52% had 11 or more years of experience in the industry
 - 51% of respondents had a professional license at the time of the founding of their firms
 - 48% had 11 or more years of construction experience in the same construction trade as the firm founded

• The Factors Ranked Almost Equally In The Selection Of Successful Subcontractors Are:

1. Evidence of work quality
2. Price
3. Previous experience with the general contractor or construction manager
4. Reputation in the industry
5. Referral from someone else

• Financially Successful Contractors In New York City Tend To Be Union Contractors.

EXECUTIVE SUMMARY

BARRIERS TO THE GROWTH OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES—FINDINGS AND RECOMMENDATIONS

1. The Certification and Qualification Processes

Findings:

While some strides have been made in recent years towards improving the M/WBE certification process among public agencies, duplicative and time consuming procedures still cause an obstacle.

RECOMMENDATIONS FOR ACTION:

- Establish a centralized data base for the certification of Disadvantaged Business Enterprises (DBE) as well as M/WBE firms within the Regional Alliance for Small Contractors. Public funding should be allocated for the purchase of the most modern technology, including both computer hardware and software in order to modernize this process.
- Include language in public contracts that provide for criminal and civil penalties when contracts awarded to minority and women owned firms are subcontracted to majority owned firms.

2. Financing

Findings:

Many small contractors including M/WBE's find that their ability to expand and grow is stymied by difficulties in obtaining funds to finance the early stages of work on projects. Without adequate working capital, they are constrained from bidding on more or larger projects.

RECOMMENDATIONS FOR ACTION:

- Establish a Targeted Growth Fund for companies awarded public sector or private sector projects using public funds. Financial institutions doing business with City or State agencies should be required to contribute a minimum of \$1 million per institution to the fund. The project contract could be used as collateral for the loans and used for working capital to provide short-term financing for contractors who have the ability to perform but do not meet conventional lending criteria.
- Expand technical assistance to small contractors in order to help them meet the requirements set by banks and other lenders.

- Develop tax incentives to encourage relationships between large contractors and minority firms. New York City should develop a tax policy that benefits large construction companies that help small minority firms grow.

3. Bonding

Findings:

The requirement to obtain performance and payment bonds in the current market has created a crisis for many contractors in the construction industry including M/WBE's. Many small contractors maintain that bonding requirements have the effect of denying contract opportunities to firms that are capable of performing work, but are unable to obtain bonds. For those firms that cannot obtain bonds at the required capacity, the chances for healthy growth are limited.

RECOMMENDATIONS FOR ACTION:

- A Summit meeting should be convened by the New York State Insurance Commissioner with representation of the construction industry, insurance industry and public agency officials to develop strategies to overcome this problem.
- Onerous construction language, such as the "no damage for delay" clause must be eliminated from public contracts.

4. Liability Insurance: The Scaffold Law, Article 240 and 241

Findings:

New York State is alone in the nation in retaining a century-old law (the Scaffold Law, Article 240 and 241) that imposes a standard of absolute liability on all building owners, contractors and subcontractors where a worker is injured by falling from any height during the construction process. As a result, costs throughout New York State and New York City are measurably higher by factors surpassing 1000% for some construction classes, to the extent that many insurance companies now refuse to write general liability policies in New York State. These insurance costs cause dramatic project cost increases—and for small minority companies, one litigation settlement can either bankrupt their company or make the cost of insurance unaffordable.

RECOMMENDATIONS FOR ACTION:

- The New York State Legislature should pass and the Governor should sign an amendment to or repeal of the Scaffold Law.
- The New York State Insurance Fund should establish its own insurance program to ensure the adequate availability of liability insurance.

5. Access to Contracting Opportunities

Findings:

The ability to bid on potential job opportunities is crucial to the growth and survival of small, minority and women owned construction firms. The collection and dissemination of information regarding the qualifications of the M/WBE's is critical to opening up these opportunities with public entities and private firms.

RECOMMENDATIONS FOR ACTION:

- Information about minority and women owned company experience by specific trade, project type and size must be included on public certification applications to increase contract opportunities, and must be included in all public agency certification requirements. This is another reason for establishing a technologically advanced centralized certification process.
- The Regional Alliance for Small Contractors should receive increased financial assistance from the public sector to increase levels of technical assistance and business opportunities for minority and women construction contractors and also serve as a link with the BTEA to implement M/WBE strategies and programs in the unionized construction industry.

6. Access to a Qualified Pool of Labor

Findings:

The need to identify and train the "right people" is critical to the growth and development of small minority and women owned firms as well as the construction industry in general. The recruitment of young people in the management of construction companies has been difficult over the years. The smaller a company is the more difficult and costly this process is. Without finding a way to identify, recruit and train management personnel, the growth of small minority and women owned companies will be limited as will that of the industry as a whole. In addition, if a firm cannot hire the qualified skilled trade labor necessary to build a construction project it has been awarded, the firm cannot build the project, its record of achievement or growth as a business entity.

RECOMMENDATIONS FOR ACTION:

The Building Trades Employers' Association should:

- Create a NYC Construction Council of Colleges. Forming this linkage with NYC's colleges and universities would provide an opportunity to establish internships and to identify students interested in working for construction companies. There should be an emphasis on recruiting minority graduates.
- Establish a program at the junior high school and high school level, showing students the wide variety of career opportunities that exist in construction.
- Create Professional Certification Programs with CUNY for positions that may not require 4 year degrees in the job categories identified by contractors that are currently in demand
- Establish industry programs that will assist M/WBE firms in making the transition to being union contractors.

7. Professional and Technical Development

Findings:

A serious hindrance to the development and growth of small, minority and women owned companies, is the need for professional and technical development and training. The small business owner may not have adequate exposure to one or more business skills such as strategic planning, business planning, financial analysis and planning, capital acquisition, marketing and sales plans, certifications and technical/cost proposal preparation. A lack of skills or experience in any of these areas could hinder the growth and development of these firms and in some instances spell the demise of what would otherwise have been viable businesses.

RECOMMENDATIONS FOR ACTION:

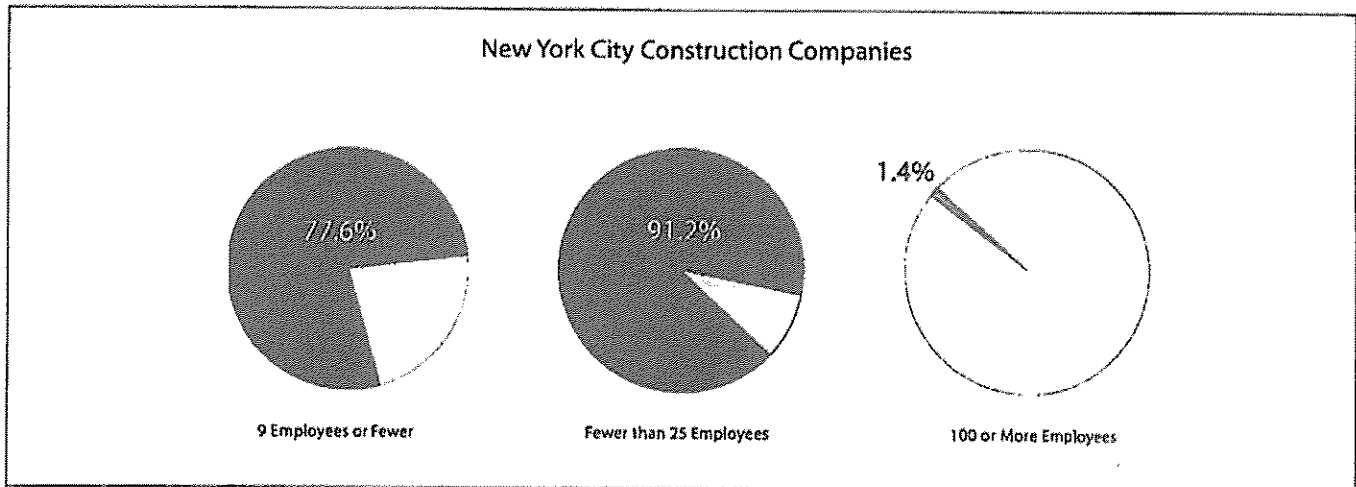
- Establish a consistent curriculum and involve principal prime contractors as instructors.
- Establish mentor programs at public agencies between prime contractors and minority and women owned businesses.

CONSTRUCTION AS A BUSINESS ENTERPRISE

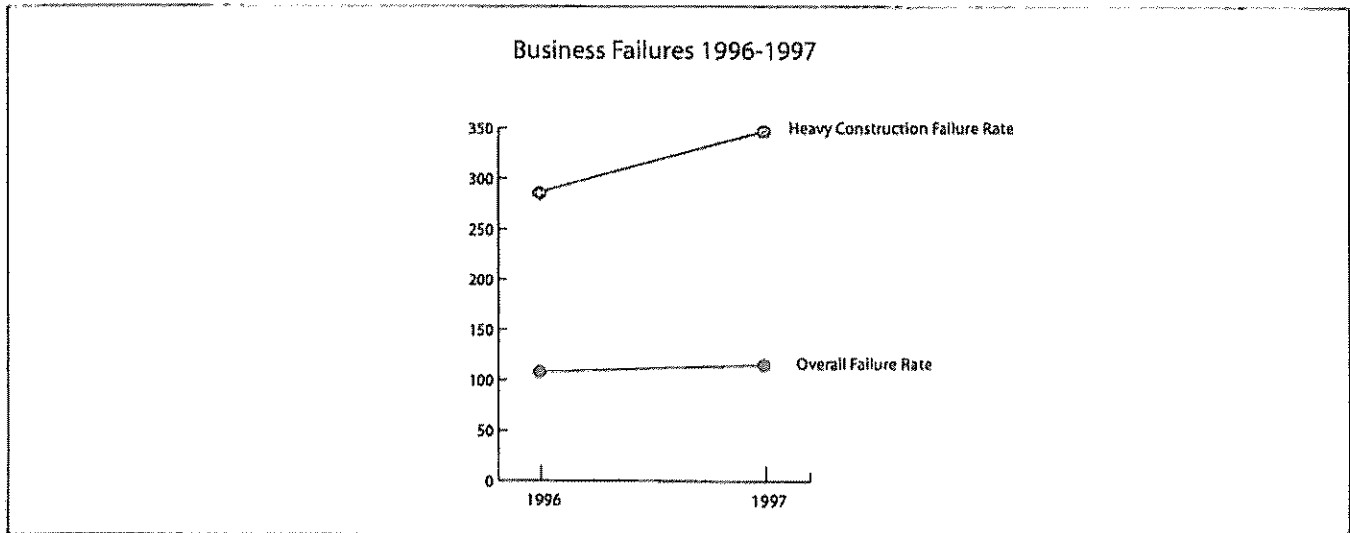
Entrepreneurial ventures are fraught with risk in any business regardless of size. More often than not, such businesses start up on a small scale. The construction industry does not vary from this norm. All construction companies, as well as minority and women business enterprises starting out in construction, face the significant possibility of failure whether it be in the short or long term.

In spite of a common perception that construction is "big business", the fact is that the overwhelming majority of construction firms are relatively small employing fewer than 25 workers. This fact is highlighted in a separate report commissioned by the Building Trades Employers' Association entitled Building Jobs: A Blueprint for the "New" New York.

Utilizing New York State Department of Labor data compiled in 2002, this report found that 77.6% of all New York City construction companies had 9 employees or fewer and 91.2% had fewer than 25 employees. Only 1.4% of all New York City construction firms employed 100 or more employees. However, these large construction firms employed 29% of all construction company employees. Clearly, the New York City construction industry is comprised primarily of small firms.



Data provided by Dun & Bradstreet indicate that on a national basis: **SINCE 1988, CONSTRUCTION BUSINESSES FAILED AT A HIGHER RATE THAN ANY OTHER BUSINESS ENTERPRISE IN ANY SECTOR OF THE ECONOMY.** The number of business failures in construction was 10,867 in 1997, and the overall failure rate increased from 112 to 118 per 10,000 companies compared to the preceding year. All three construction sectors reported increased business failures. The greatest increase in the number of failures was in heavy construction, where there were 289 failures in 1996 and 346 in 1997, a 19.7% increase. General contractors, however, have been failing at higher rates than the other two construction sectors since 1988 on average. This data indicates that older businesses were a larger proportion of business failures in 1997 than they were a decade earlier. Compared with general contracting and specialty trades, heavy construction had a larger increase in failure rates in 1996-1997.



No comparable statistics for New York City were available at the time of this report. Obviously, new businesses are most susceptible to failure. Dun & Bradstreet's Business Failure Record reports business failure counts monthly and annually and provides the most comprehensive data available on business failures. Dun & Bradstreet defines a business failure as a closure or interruption of business with a loss to creditors. This definition includes businesses that:

- Cease operations following assignment or bankruptcy;
- Cease operations with losses to creditors after such actions as foreclosure or attachment;
- Voluntarily withdraw, leaving unpaid debts; are involved in court actions such as receivership, reorganization or arrangement; and
- Voluntarily compromise with creditors.

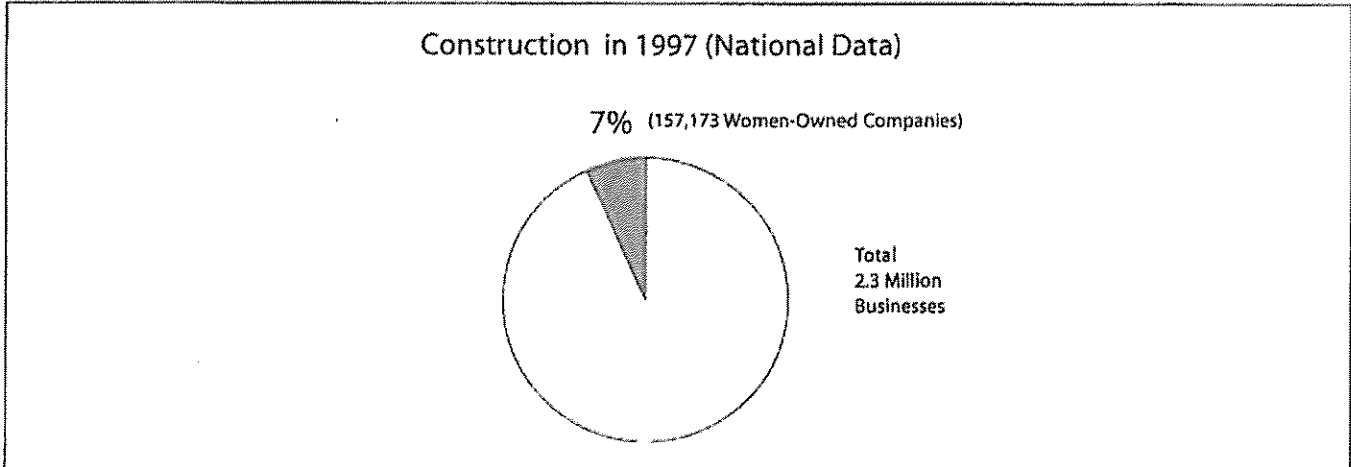
A business closing that leaves no liabilities as a result for instance, of lack of profit, death, or retirement, is not classified as a failure.

A CENSUS OF MINORITY AND WOMEN OWNED FIRMS

A NATIONAL OVERVIEW

There is little debate that the ownership of construction companies by women and minorities is well behind that of other industries in the United States. Ownership of construction companies by women and African-Americans lagged behind these groups' ownership of companies in 1997, but the proportion of Hispanic ownership in construction exceeded Hispanic ownership of businesses overall. These trends mirror the employment picture in the national construction industry; the proportion of the labor force who are women or members of racial minorities in construction is lower than in all industries and the share of Hispanic workers in construction is higher. There is some overlap in data showing women and African-Americans, Hispanics and other minorities insofar that an owner can belong to more than one of these groups.

In 1997, a total of 2.3 million construction companies produced \$944 billion in revenues. Overall, women owned 5.4 million companies in 1997, 26% of the total. In addition to the companies in which women held a majority ownership, women shared ownership equally with men in an additional 3.6 million businesses. In construction in 1997, women owned 157,173 companies, accounting for approximately 7% of the 2.3 million businesses, employing 518,142 employees, and generating \$67.6 billion in business revenues. Women also owned a 50% share of 345,161 other construction companies in the same year.



Source: 1997 Economic Census

Overall, businesses owned by minorities—including African Americans, Hispanics, Asians and Pacific Islanders, American Indians and Alaska Natives—totaled 3 million in 1997, accounting for 14.6% of the total nationally. Minority-owned construction companies totaled 264,227 in 1997, accounting for 11.5% of all construction companies.

African-Americans owned 56,508 construction companies, with \$7.7 billion in business revenues. This compares with 823,499 companies in all industries having \$71.2 billion in revenues overall.

Hispanics owned 152,573 construction companies with \$21.9 billion in business revenues, compared with 1.2 million companies producing \$186.3 billion in business revenues in all industries. The Economic Census provided data for businesses owned by Asians and Pacific Islanders and for businesses owned by American Indians and Alaska Natives in two separate publications for 1997. Members of these other minority groups owned 55,146 construction companies with \$12.9 billion in business revenues, and 1.1 million companies with \$341.3 billion in business revenues overall.

Construction Businesses Owned by Minorities in 1997 (National Data)

African-Americans	56,508 Construction Companies
Hispanics	152,573 Construction Companies
Asians, Pacific Islanders, American Indians and Alaska Native	55,146 Construction Companies

Total 3 Million In 1997 Accounting for 14.6% of Total Nationally

Source: 1997 Economic Census

In past compilations of the Economic Census, ownership was based on the race/ethnicity/gender of the largest number of owners, without regard to the percentage of interest owned in a firm. In the 1997 surveys, the definition of a business as minority or woman-owned was based on the race/ethnicity/gender of the person owning a majority interest in the business. In previous surveys, if the number of women or minority members was 50% or more of a company's owners, the company would be counted as a woman or minority-owned company. In the 1997 survey, only a company having 51% or more of its interest owned by women or members of minority groups was counted as a woman or minority-owned company. Businesses equally owned by male and female or minority and non minority owners, or having no single majority interest were excluded from the women business counts and tabulated separately.

NEW YORK CITY OVERVIEW

The 1997 Economic Census also provided a snapshot of the prevalence of minority and women owned businesses in the New York City construction industry. The table below illustrates this prevalence. According to this 1997 Economic Census, in the New York City Primary Metropolitan Statistical Area*, minority and women owned businesses accounted for 21% of all construction firms with paid employees. In addition, the M/WBE firms from this Census count accounted for 12% of all sales and receipts and 18% of employees of construction firms. At the same time, the payroll of M/WBE's constituted 11% of all construction firms.

**1997 ECONOMIC CENSUS
NEW YORK CITY PRIMARY STATISTICAL AREA
CONSTRUCTION FIRMS WITH PAID EMPLOYEES**

	Firms (#)	Sales & Receipts	Employees	Payroll
All	13,475	\$22.9 billion	119,598	\$4.9 billion
M/WBE	2,830	\$2.7 billion	18,308	\$537 million
Percentage	21%	12%	15%	11%

*In the 1997 Economic Census, this Primary Metropolitan Statistical Area consisted of the five boroughs of New York City as well as Putnam, Rockland and Westchester Counties.

CHARACTERISTICS OF SUCCESSFUL GROWING COMPANIES

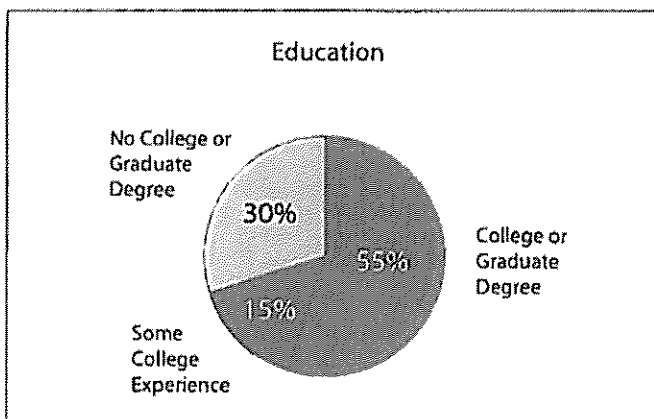
Critical to the development of M/WBE's in the New York construction industry is some understanding of the characteristics and attributes of successful contractors. Such an understanding will allow for the identification of those issues that will have to be addressed by anyone desiring to enter the construction industry as a contractor. An understanding of these characteristics will provide a basis for support and services to these contractors on a long term basis in order to maximize the probability of their survival and growth in the marketplace.

In 2003-2004, the Building Trades Employers' Association and General Contractors Association commissioned a study by the University of Pennsylvania's Wharton School of Business to identify characteristics of construction contractors that explain why some contractors grow significantly and others do not. In addition, the study focused on the growth/non-growth of contractors and the factors that lead to the success of these contractors as well as the impediments to success.

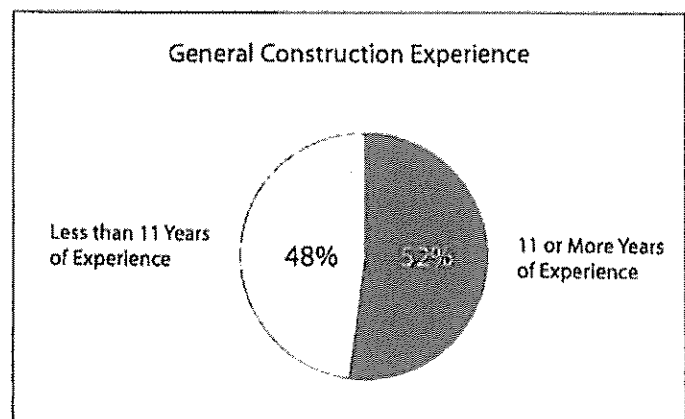
According to the Wharton Study, successful contractors in the New York City area were well educated, possessed a professional license and considerable experience in the construction industry. The study found the following characteristics of those surveyed:

- 55% had a college or graduate degree and another 15% had some college experience.
- 52% had 11 or more years of experience in the industry.
- At the time of the founding of their firms, 51% of the respondents had a professional license.
- 48% had 11 or more years of construction experience in the same construction trade as the firm founded.

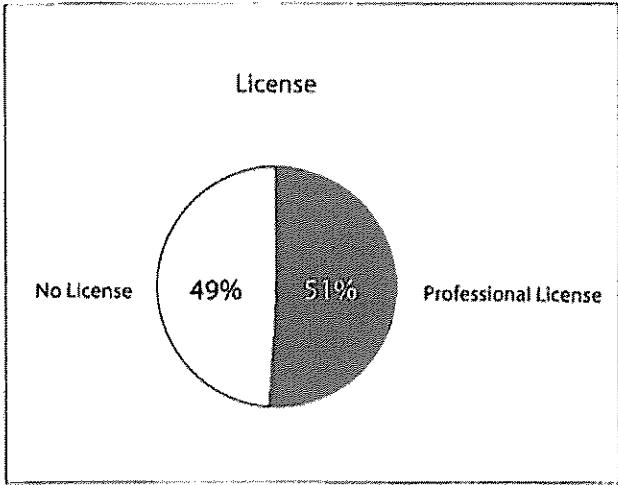
WHARTON STUDY FINDINGS/CHARACTERISTICS OF SUCCESSFUL CONTRACTORS



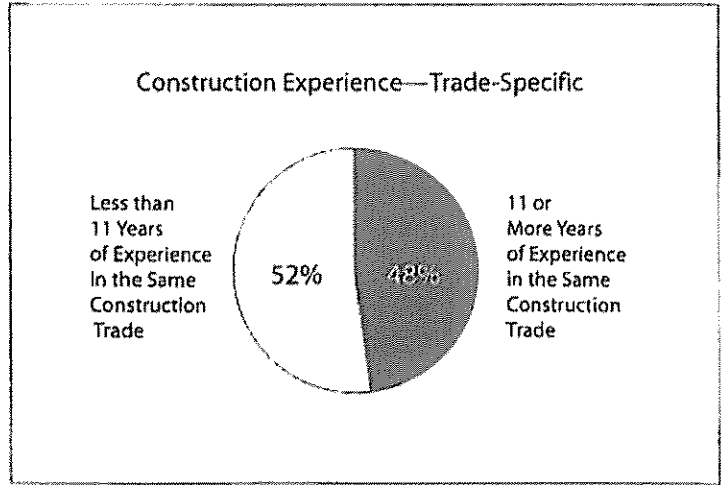
Source: BTEA/GCA Wharton Study



Source: BTEA/GCA Wharton Study



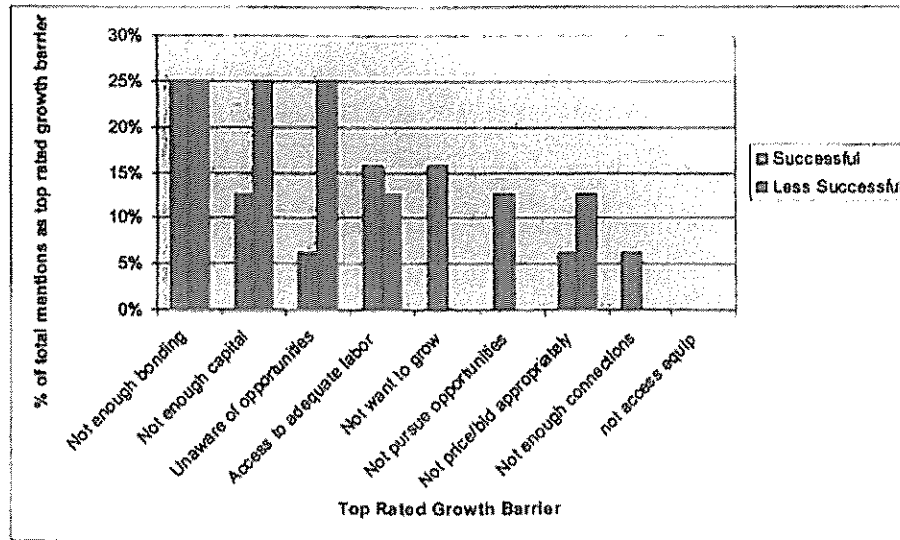
Source: BTEA/GCA Wharton Study



Source: BTEA/GCA Wharton Study

This study further found that the key barriers to growth for these contractors were the lack of capital, business relationships and access to labor. Asked to rate various barriers to the growth of their firms since their founding, the contractors rated "not enough bonding" and "not enough capital" as the most significant followed by "lack of business relationships" and "access to an adequate supply of labor." When asked to list the primary reason their firm did not reach primary financial goals, one third of the respondents cited a difficulty finding the right people to help the firm grow.

Lack of bonding and capital most often mentioned as top growth barrier



Source: Question 45 ("Rate the following in terms of how much each was a barrier to your firm growing more than it has since it was founded") in Survey Response Summary

A sense of self-determination was the chief reason that the contractor firms surveyed did not serve larger size contracts. Simply stated, the most important reason that the firms did not serve larger size contracts was because they did not want to serve larger contracts. The successful contractors surveyed also indicated that most of their business leads (at the time of the founding of their firm) were from "prior business relationships."

Among the survey respondents, there were five factors ranked almost equally in the selection of subcontractors. Those factors were:

1. Evidence of work quality
2. Price
3. Previous experience with the contractor
4. Reputation in the industry
5. Referral from someone else

Price and relationships played a major role in determining why firms were not awarded subcontracts in response to proposals. The highest factor in this regard was "price" followed by a lack of familiarity and a lack of a business relationship between the contractor and the customer/owner.

The survey also found that less successful firms spent far more time in the "field" and less time performing business development activities and other activities crucial to the creation of "new business." Specifically, the study found that the owners of the less successful firms spent approximately 45% of their time each week in the "field."

The affiliation of firms with the unionized construction industry seemed to play a part in the success of those firms surveyed. The survey found that successful construction contractor firms tend to be unionized. Almost 70% of these firms were affiliated with unions according to all respondents.

This reaffirms the findings of a report issued by the Regional Alliance for Small Contractors in 1993 entitled Creating Growth Opportunities for Minority and Women Owned Construction Firms. According to this report:

"It is universally acknowledged that in practice, all but the smallest public construction projects in New York are union jobs. Small, non-union firms that hope to grow larger by participating in public construction, therefore, must be prepared to sign collective-bargaining agreements and to establish good working relationships with the relevant building-trade unions."

The success of union affiliated construction firms in New York City is highlighted by a ranking of the New York area's Top 25 construction companies, as tabulated by Crain's New York Business in November 2004. BTEA contractor members generated 96% or \$10.5 billion of the \$11.6 billion in total construction revenues reported by the top 25 contractors in the New York Region.

BARRIERS TO THE GROWTH OF MINORITY AND WOMEN-OWNED BUSINESSES— FINDINGS & RECOMMENDATIONS

There are multiple factors that impact why minority and women owned construction firms find it difficult to gain access to construction work: and to turn that work into successful growth and development. Among these factors, which are also experienced by all small construction businesses, are thin capitalization, limited credit histories, limited access to market information and a heavy reliance on a few executives.

M/WBE contractors also must deal with a series of obstacles that are more specific to the construction industry. Some of these obstacles are a part of private sector business patterns and practices such as late payment of subcontractors and restrictive lending practices that result in the absence of short term financing to small contractors.

Other obstacles result from public policies and objectives that may inadvertently affect small, minority and women owned businesses. Examples of these types of barriers include the practice of breaking down projects into a few large contracts which limits the ability of small contractors to compete and performance bonding requirements that many small firms cannot meet. The remainder of this section will review in detail the various obstacles confronted by small, minority and women owned businesses.

1. The Certification and Qualification Processes

Public entities that endeavor to operate programs specifically aimed to increase minority and women owned contractor participation must establish a process to identify businesses in this category. In the case of public sector construction, this process is referred to as "certification." To be certified as such by the public entities, the principals in a firm generally must prove that ethnic minorities or women own at least 51 percent of the firm and exercise control of the daily operations.

There are several ways that companies can obtain such certification in New York.

- Under Article 15-A of the Executive Law, the Empire State Development Corporation's Division of Minority and Women's Business is authorized to certify firms. State agencies that are subject to 15-A accept the division's certification as valid for all state financed projects.
- Most state and city public authorities require their own individual certification processes.
- The New York City Department of Business Services certifies eligible firms under the city's Minority Business Program.

Federally funded projects have a different set of requirements. Federal law requires that agencies receiving highway, transit and airport capital funds ensure the involvement of "disadvantaged business enterprises" (DBE's). To qualify as a DBE a firm must, in addition to being owned and controlled by an ethnic minority or a woman, have gross annual revenues that fall below the threshold used by the U.S. Small Business Administration to

define small businesses. Procedural requirements for DBE certification also differ from state and local procedures. Federal regulations, for instance, require that agencies receiving funds from the U.S. Department of Transportation conduct a site inspection of the firm's business prior to certification.

There is no central certification process for DBE's. Each agency that receives federal transportation funds in New York, including the Department of Transportation, the Metropolitan Transportation Authority and the Port Authority, is responsible for determining whether firms qualify as DBE's.

While some strides have been made in improving the M/WBE certification process among local public agencies, duplicative and time consuming procedures still cause an obstacle to small contractors. While some public agencies do utilize a Uniform Certification Application, small contractors can still be required to submit different types of information to each depending on specific categories of contracts. It is not uncommon for different agencies to evaluate the same information differently. There have been situations in which a firm already certified by one or more agencies will have its application rejected by another.

In addition, M/WBE contractors have found that various agency employees responsible for certification are not familiar enough with the construction industry to manage the process efficiently. M/WBE contractors have also indicated that the certification process can be time consuming even when all instructions have been meticulously followed. It is not unusual for the certification process to take two months or more before rendering a decision on a completed application. Some M/WBE contractors have also found that public agency requirements for periodic recertification vary also. Some agencies require recertification annually, some biannually and others on a sporadic basis.

Many small contractors also find that simply being certified as a minority or women owned business or DBE does not guarantee access to opportunities. While some agencies notify all of their certified companies of upcoming contract opportunities, others provide such information only to companies that have been determined to be qualified to perform jobs of a given type or size.

Successfully navigating the certification process of a public agency will not necessarily mean that a minority or women owned firm will be deemed qualified to work in public construction. It is necessary that public agencies evaluate a firm's capabilities to work on jobs of various types and sizes.

The qualification process for small firms in New York varies widely. Agencies such as the Port Authority of New York and New Jersey, New York City School Construction Authority and the New York City Health and Hospitals Corporation require prime contractors to undergo a formal review of their qualifications. These reviews may typically include an examination of a firm's financial status and management capabilities.

The SCA and Port Authority often require prequalification of contractors and sometimes of major subcontractors. This process might include a review and approval of a firm's qualifications prior to permission for them to bid on jobs. New York City Health and Hospitals Corporation prequalifies primes but not "subs." Inconsistencies in the local prequalification process are further demonstrated by looking at a large agency such as the New York State Department of Transportation which has no formal process for qualifying contractors; instead they rely on evaluations conducted by firms that provide bid and performance bonds to verify companies' capabilities before awarding contracts.

Agency practices also vary widely where the dissemination of information on qualifications is concerned.

For example, the SCA provides prime contractors with a list of qualified subcontractors at the time bids are solicited; other agencies provide information only in response to specific requests from primes. By comparison, the NYS Health and Hospitals Corporation and the NYS Dormitory Authority only provide qualifications and information to other public agencies.

Agency review processes for contractor qualifications also vary. Some agencies require a formal review of qualifications every year. Other agencies do not require formal re-qualification provided that the firm has performed satisfactorily on agency projects within the past few years. Other agencies have no formal re-qualification process.

The above referenced inconsistency and fragmentation that characterize qualification procedures make it more difficult for small contractors to utilize success in working for one agency as an impetus to success in working with others. This also makes it more difficult for prime contractors and construction managers to widen the range of small firms with whom they are prepared to work.

Centralized Certification

There are other cities and regions around the country that appear to have made progress in making the certification process easier for all parties. One of the most notable examples is Milwaukee's Joint Certification Program. In this program, a centralized staff unit provides a common certification for the Milwaukee Area Technical College. This program also provides federal DBE certification as well as minority and women owned business certification for state and local projects. Firms are required to update their certification information on an annual basis.

Houston also has a centralized program. Its certification is accepted by several state and regional agencies, by major corporations, such as Southwestern Bell, and by federal agencies including the Department of Transportation, Department of Environmental Protection and the Resolution Trust Company.

Protection Against Fraud

While our working group and focus group participants concentrated primarily on the certification process, both representatives of large construction companies as well as small, minority and women owned construction companies also expressed concerns about "shams" or "fronts" and the inadequacy of penalties for misrepresenting the nature of a firm's ownership and/or when contracts are awarded to minority or women-firms and then again subcontracted to construction firms or suppliers owned by majority principals. As stated in the previously cited Regional Alliance report, "Let's face it—we all know there are still shams out there. There's one firm—I think we'd all know the name—that's probably certified by all of the agencies. But probably every minority contractor in the city would tell you the guy's a sham."

Recommendations for Action

There are several steps that can be taken to improve the certification process in such a way that it would reduce the burden it takes on small companies, expand its use for private sector construction projects and protect all parties against fraud and the loss of contract opportunities for certified minority and women owned firms:

- Establish a centralized data base for the certification of DBE as well as M/WBE Firms within the

Regional Alliance for Small Contractors. Public funding should be allocated for the purchase of the most modern technology, including both computer hardware and software in order to modernize this process.

- Include language in public contracts that provide for criminal and civil penalties when contracts awarded to minority and women owned firms are then subcontracted to majority owned firms.

2. Financing

Another problem that minority and women owned businesses can expect to encounter is the access to and availability of financial capital. This is an industry-wide problem especially critical for new enterprises. Many small contractors including M/WBE's find that their ability to expand and grow is stymied by difficulties in obtaining funds to finance the early stages of work on projects. Without adequate working capital, they are constrained from bidding on more or larger projects. It is a vicious cycle. Without more work they cannot earn the revenues they need to strengthen their finances.

Some of the problems encountered by M/WBE contractors stem from a lack of strong management practices and what is viewed by lending institutions as inadequate work histories. Other small firms with a good performance record have not developed the financial sophistication to obtain financing as quickly as the contracting process requires. These firms may not have attended to a minor credit problem or not have their financial statements fully in order.

The policies of public agencies and large construction companies may also work against the small contractors in this area. Many public agencies do not provide "mobilization money" to their contractors even on large projects that require a considerable amount of initial expenditures. Consequently, these contractors must rely on the lending institutions to provide the start up costs of these projects. The problem of financing is further exacerbated when small contractors have to endure delays in payment. This can obviously stretch the financial limits of a contractor and hinder their ability to go after other work.

Small contractors' need for short-term financing is often left unmet by the lending institutions. Both public and private loan programs operate according to criteria that may rule out borrowers who present a low risk. Many of these loan programs will not provide new contract financing to a firm whose working capital is severely depleted even if this is a temporary condition resulting from delays in payment. In addition, many of these institutions and programs will not lend to a contractor with a negative net worth, even if it has a strong performance record and positive current cash flows and its problems result from a single catastrophic event.

Tax incentives are another positive way to fertilize relationships between large companies and minority firms. At least two cities-Atlanta and Denver-have already experimented with using tax incentives to encourage relationships between large contractors and minority firms. Atlanta offers large firms a dollar for dollar maximum of \$100,000 in tax breaks for subcontracting with minority firms. Similarly, Denver allows \$50,000 in tax breaks.

Tax incentives also help to integrate the mission of developing minority construction firms into the realm of a city's economic development efforts. Generally, economic development agencies devise ways to promote small business growth and attract large corporations to stimulate a thriving economy for a given state or municipality. It is imperative that New York City expands the realm of its economic development focus to include the growth

of minority businesses given the growth of the minority population in New York City.

Tax incentives are a formidable way to increase involvement of large construction companies in building strong M/WBE firms through subcontracting and mentoring relationships. The State of Maine provides a strong example of how to use tax incentives to achieve the goal of strengthening the role of small business in the state's economy. State leaders decided a decade ago to put a greater emphasis on the development of small businesses in the state's economic development strategy and the results have shown promise with investments totaling more than \$5 billion and the creation of more than 75,000 new jobs since 1995. To help spur small business growth, Maine embarked on an aggressive tax rebate policy for small businesses that expanded in helpful ways to the state's economy. In fact, Maine creates its own empowerment zones through Municipal Tax Increment Financing (TIF). Under this program, municipalities can use Tax Increment Financing as an economic development incentive within their community. There are other ways the state offers companies tax breaks when they increase the number of employees or develop a site. New York City should develop a tax policy that benefits large construction companies that help small minority firms grow.

Recommendations for Action

It is recommended that the following steps be taken to make short-term financing more available to small contractors:

- Establish a Targeted Growth Fund for companies awarded public sector or private sector projects using public funds. Financial institutions doing business with City or State agencies should be required to contribute a minimum of \$1 million per institution to be available to firms awarded contracts on these projects. The project contract could be used as collateral for the loans and used for working capital to provide short-term financing for contractors who have the ability to perform but do not meet conventional lending criteria.
- Develop tax incentives to encourage relationships between large contractors that help small minority and women-owned firms grow.
- Expand technical assistance to small contractors in order to help them meet the requirements set by banks and other lenders.

3. Bonding

The requirement to obtain performance bonds in the current market has created a crisis for many contractors in the construction industry including M/WBE's. Consequently, it should come as no surprise that the requirement that contractors obtain performance bonds prior to being awarded contracts, and the inability or unwillingness of surety companies to provide such bonds, are among the problems that small, minority and women owned contractors cite most frequently as obstacles to their continued growth, development and ultimately survival.

Performance bonds are guarantees that the work for which a public agency or private owner has contracted will be completed. The performance bonds are like other types of guarantee, such as bank letters of credit, but have the added feature of ensuring completion of the job without regard to cost. Performance bonds are provided by surety insurance companies.

Sureties provide a firm with coverage up to an overall aggregate liability limit as well. As construction contractors demonstrate a technical and financial capacity to undertake larger projects, they can request increases in their coverage from the surety companies. It is often not an easy proposition to obtain these increases.

New York State statutes regarding the bonding of contractors on public contracts are somewhat vague. The New York State Finance Law permits state agencies to waive performance, bid and payment bond requirements on construction contracts of less than \$50,000. However, although it has long been so interpreted by state agencies, it is not clear that the law mandates the posting of such bonds on contracts larger than \$50,000. New York City, which is in this area subject to the same general requirements under the General Municipal Law, has as a matter of policy not required bonds on contracts of less than \$100,000. Federal requirements for bonding again vary from those at the state and local level. The Miller Act requires bonding, or some other form of security, on all contracts of more than \$25,000.

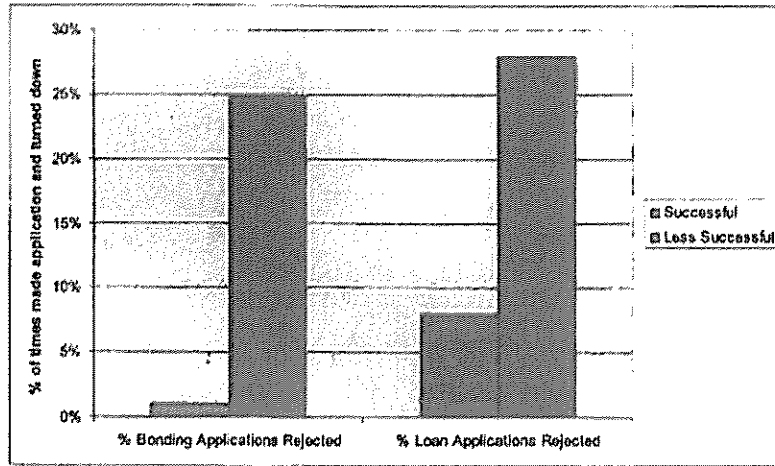
In most cases, public sector bonding applies to general contractors and not subcontractors. In some cases however, this requirement is extended by agencies to "major" subcontractors. General or prime contractors may require subcontractors to obtain performance bonds, in effect passing a share of their obligation to post a bond on to their subcontractors.

Many small contractors maintain that bonding requirements have the effect of denying contract opportunities to firms that are capable of performing work, but are unable to obtain bonds. These same contractors say that the public agencies should be able to make their own judgments about contractors' capabilities, based on their track records, without relying on their surety companies. Some contractors also argue that the surety companies give inadequate weight to their past performance when determining whether to write bonds, or to increase coverage for those that are already bonded, so that they can bid on larger projects. Construction contractors often find that inadequate cash flow and inadequate working capital are among the most common reasons for denying applications for bonds or for increases in coverage, and agencies' and prime contractors' payment practices contribute to these weaknesses.

All of the factors cited here reflect the effects that performance bonding requirements have on opportunities available to small, minority and women owned firms. For those firms that cannot obtain the bonds at the required capacity, the chances for healthy growth are limited. On the other hand, those firms that can obtain the bonds at the capacity and level required by the public agencies, will have a significantly better chance of further growing and developing their business. Bonding requirements might not always be necessary for an agency that conducts its own detailed evaluations of contractor capabilities; but agencies often use the surety company evaluations as a substitute for their own.

The previously cited BTEA/GCA Wharton Study also reinforced the notion that the ability to obtain bonding was crucial to the continued existence of successful construction contractors. The survey found that less successful firms had bonding applications rejected 25% of the time and loan applications rejected 27% of the time.

Less successful firms rejected more when applying for bonding and loans

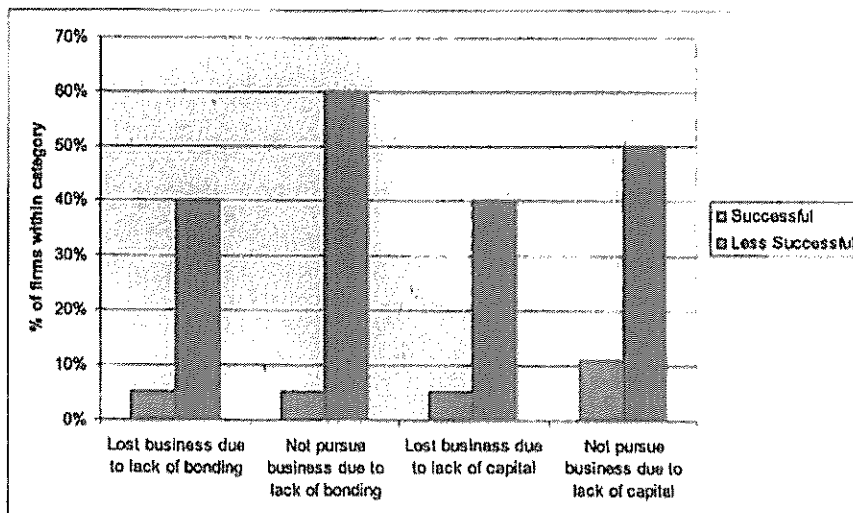


Source: Questions in Survey: "How many times has your firm applied for bonding?" "How many times was it rejected?"; likewise for loans

Source: BTEA/GCA Wharton Study

Less successful firms also lost more business or did not pursue business because of a lack of bonding and capital. A lack of bonding, capital and business relationships were most often mentioned as the top barrier to growth by these firms. Of the less successful firms, 40% lost business due to a lack of bonding, 60% did not pursue business due to a lack of bonding, 40% lost business due to a lack of capital and 50% did not pursue business due to a lack of capital.

Less successful firms lost more business/did not pursue business because of lack of bonding and capital



Source: Questions in Survey: "How many times has your firm lost business because of lack of bonding?"; and "How many times did you firm not pursue business because of lack of bonding?"; likewise for loans)

Surety industry representatives suggest that inadequate cash flow and inadequate working capital are among the most common reasons for denying applications for bond or for increases in coverage—and that agencies and prime contractors' payment practices contribute to these weaknesses. As one insurance agent bluntly stated:

"The single most important thing the public agencies could do to make it easier for small contractors to get bonds would be to pay them on time."

The Contraction of the Surety Industry and the Threat to Public Contracting

by Stephen M. Charney, Esq. and Charles E. Williams, III, Esq., the law firm of Peckar & Abramson

"The amount of capacity that the surety industry is willing to use to write performance and payment bonds for construction projects has declined dramatically. The sureties cite staggering losses in the construction surety lines of business and a marked reduction in the number of sureties writing such bonds. This problem has affected the bonding capacity of contractors throughout the nation. From the largest and most substantial, to the smallest contractors, this emerging crisis is expected to continue and affect the ability of contractors to provide bonds. Sureties are now picking and choosing when and to whom they will write bonds and are essentially rationing surety capacity. Sureties are thereby indirectly determining the pool of contractors, if any, that may be able to bid public work projects for which bonds are required.

Historically, once a surety decided to write bonds for a particular contractor, the surety would pay little or no attention to the risks of a particular project that a contractor may decide to pursue. Now, sureties are digging much deeper. Sureties are conducting their own independent analysis of the risks presented by a construction contract before deciding to issue a bond. Surety capacity is now also being rationed based upon the risks inherent in the projects being put out to bid. Consequently, the greater the risks that must be assumed by a contractor to construct a project, the greater the chance that the sureties will not provide a bond.

This problem can be expected to have particularly severe consequences in the State of New York due to two opposing factors. First, the Public Finance Law requires that public bodies receive full payment bonds from contractors on all public projects. Dispensing with the requirement of a bond is therefore not an option. Simultaneously, many public entities in New York utilize forms of construction contracts that contain clauses that are onerous and unfair to contractors, thereby placing risks upon the contractor that can neither be managed nor insured. The contractor is being asked to gamble with such risks or not bid, but the restrictions now being imposed by sureties preclude that gamble as sureties are balking at underwriting that risk. Sureties that may have freely issued bonds in the past are rejecting contracts that they previously accepted. Many contractors, in turn, will find that they cannot bid on public works projects that use such contracts and higher construction cost should be expected as a consequence.

A "no damage for delay" clause is an obvious example of such a contract provision, since it prevents a contractor from receiving a fair adjustment to the contract price in the event of delays that were not caused by the contractor. Another problematic provision grants to an employee of the public body that hired the contractor the authority to issue final and binding determinations should there be a dispute. The contractor is effectively denied meaningful judicial review. Even if the public employee's determination is entirely incorrect, the contractor has little or no recourse. These provisions typify the type of unmanageable and uninsurable risks that sureties are recognizing and unwilling to underwrite.

Certainly, this problem can be expected to have a significant impact on minority, women owned and small businesses. Limited capitalization of these businesses coupled with the concerns discussed above will likely render bonding unavailable to many of these enterprises."

Note: This report summarizes discussions that took place during a panel discussion held on October 7, 2004 at a symposiums conducted by the McGraw Hill publication, New York Construction, and Peckar & Abramson on the topic of the contraction of surety markets. The panel discussion included leading representatives of the surety, reinsurance, and private and public sector contracting industries, as well as public bodies and private sector owners.

Recommendations for Action

- The "no damage for delay" clause should be removed from all public construction contracts.
- The New York State Commissioner of Insurance should convene a summit with insurance and construction industry leaders to address the crisis.

4. Liability Insurance: The Scaffold Law, Article 240 & 241

In today's market place liability insurance costs threaten the economic viability and survival of all construction companies and none more so than small minority and women owned contractors.

New York State is alone in the nation in retaining a century old law called the Scaffold Act, familiarly known as articles 240 and 241. This law imposes a standard of absolute liability on all building owners, contractors and subcontractors where a worker is injured by falling from any height during the construction process.

The interpretation by the courts of this standard of absolute liability means there is no negligence standard imposed on the worker, and there is no defense admissible by the construction firm.

As a result, costs throughout New York State and New York City in particular are measurably higher by factors surpassing 1000% for some construction classes, to the extent that many insurance companies now refuse to write general liability policies in New York State.

Insurance premium costs cause dramatic project cost increases—and for small minority and women-owned companies—one litigation settlement can bankrupt their company. According to Gilbert Rivera, Building Restoration Association and AM & G Waterproofing, LLC:

"Articles 240 and 241 perhaps pose the most significant threat to the viability of M/WBE's in the New York City construction industry. The very livelihood of the minority or woman contractor is threatened in New York where a single case under this statute can make it impossible to obtain insurance and consequently face the very real possibility of bankruptcy."

A report by the New York Building Congress entitled, The Impact of the Current Insurance Industry Crisis on

New York City's Construction Industry, clearly articulated the seriousness of this statutory requirement. The sections of that report, found on pages 10-13, which specifically address the Scaffold Act Law, Articles 240 and 241 are contained below:

The Impact of the Current Insurance Industry Crisis on New York City's Construction Industry

Articles 240-241, or 'The Scaffold Act'

These two sections of New York State's labor laws, which date back to the late 1890s, are considered by all groups interviewed for this study to be the most "costly, controversial and explosive" insurance-related issue in New York State and thus in New York City. These laws, which have been frequently updated but never fundamentally amended, relate to the circumstance where any worker is injured on the job as a result of falling from a height, and "impose absolute liability upon all owners and contractors for a violation of the duties specified therein," according to a major study of the issue by Prof. Michael Hutter of the Government Law Center in Albany.¹

New York State is the only state in the United States that retains this legislation. What makes these sections of the law such a significant problem is that they impose a condition of absolute liability on the owner and/or contractor, "for injuries proximately caused, without regard to either negligence or comparative negligence and irrespective of any lack of control or direction of the work. No other state recognizes, either by legislation or under the common law, such a cause of action."²

The State of Illinois, effective in February 1995, repealed its 'Structural Work Act,' which was comparable to the New York State Section 240 statute.³

The Albany Law study goes on to note that supporters of the provisions claim that these have forced the construction industry in general to provide a safe work place, thus resulting in reduced deaths and injuries, as well as fairly compensating workers who have been injured on the job. The critics of these sections contend that these have not contributed to lower death/injury rates, but have imposed "unfair burdens upon owners and contractors, leading to excessively high insurance premium rates, and ruinous judgments."⁴

Added Costs Resulting from Labor Law 240 and 241

Available estimates made in recent years point strongly to the much higher costs of liability insurance in New York State and New York City than in other states in the U.S. as a result of 240 and 241.

In an open 'To Whom It May Concern' memo prepared by the Construction Division of the Zurich North American Insurance Company in April of 2003, it was made clear that costs estimates of the additional burden of 240-241 were publicly accessible, based on "1) each insurers' general liability insurance rates

¹ "Reforming Labor Law 240/241: Bringing New York State into the 21st Century," Prof. Michael J. Hutter, Government Law Center of Albany Law School, 1998.

² Ibid, page 5.

³ Ibid, page 36.

⁴ Ibid, page 7.

filed with (and approved by the Insurance Departments of each State), and 2) loss costs calculated by the independent insurance industry consultant, ISO, that accumulates data from all insurers...within the industry."⁵

Based on Zurich's own records, the costs based on filed rates for New York City exceeded rates for six comparable states by ranges of 300 percent to 1200 percent for a sample of six construction classes. Similarly, the loss cost rate averages compiled by the ISO ranged from 225 percent to 500 percent premium in New York City for two construction classes. Also it was clear that rates for Long Island and upstate New York, while not as high as for New York City, still ranged from double to quadruple the rates for Florida or Connecticut across the six construction classes. (See Appendix for detailed statistics presented in the Zurich memo).

Of particular note from the Zurich and the ISO data is the comparison of rates for New York City with those of Chicago, where the parallel 'Scaffold Law' had been repealed in 1995. For example:

	New York City	Chicago, Ill.	Percent Diff.
Scaffolding	73.7	14.5	480%
Bridge/Elev. Hwy. Concrete	801	106	655%
Carpentry	169	47.7	250%
Concrete Construction	420	56.3	650%
Exec. Supervisors	637	95.5	570%

The Zurich memo concludes, "What is clear is that New York's owners and contractors incur defense and indemnity costs in construction claims which are multiples of their counterparts in neighboring States. These loss costs translate into the highest general liability rates in the nation. The nexus between the Labor Law and these high insurance costs is unquestionable."⁶ And: "In sum, the inability to assert a defense based on a plaintiff's fault in gravity-related accidents under Labor Law 240 has led to a business climate [in New York State] that is hostile and unfair to owners of construction projects and their general contractors."⁷

The American Insurance Association (AIA), in a review conducted in late 2001 of data for the accident year 1999, concluded that "the Scaffold Act adds significant costs to general liability claim losses in New York, and that as much as one-third of the average difference between general liability loss costs in New York, for businesses with high exposure to Scaffold Act liabilities, and general liability loss costs for similar risks in other states, may be attributable to the Scaffold Act."⁸

⁵ Memorandum in Support of Labor Law 240 Reform, Zurich North America-Construction Division, April 29, 2003.

⁶ Ibid, page 6.

⁷ Ibid, page 2.

⁸ American Insurance Association, memo of November 6, 2001.

In the AIA report, lost cost data⁹ for some thirteen risk classes was analyzed from the Insurance Services Office, Inc. for New York City, the State outside city, and for seven other states. For all thirteen classes with high exposure to Scaffold Act provisions, the difference on average in loss costs between New York City and seven other states was 500 percent; and for the State outside New York City, the difference in loss costs on average was found to be 232 percent. Yet, similar comparisons for the loss cost average of three job classes not associated with high Scaffold Act hazards found differences of only 67 percent with the other seven states, and for New York State outside New York City, the average difference was 56 percent. These data clearly point to the fact that while claims costs on average were higher in New York City and New York State than in the seven comparison states, the loss pattern for Scaffold act related classes was substantially greater. (See Tables in Appendix).

An important part of the total cost picture of the burden of 240-241 is that liability costs of an injured worker's claim is an addition to the costs paid under workers' compensation. As noted in the Albany Law study, "the worker, even upon the receipt of compensation benefits, can sue the non-employer owner or contractor,...or other third parties...based upon negligence of products liability causes of action."¹⁰

Further evidence of the costs of Articles 240-241 is cited in the Albany Law Study, which found in a review of case history that settlements and judgments were generally "in substantial excess of \$1,000,000. A major reason, if not the prime reason, is the ease of establishing liability...coupled with the subjectivity of the claims of injuries."

The Albany Law Study observes that "These premiums impact upon the cost of doing business in New York, not only to companies in the private sector but also the State of New York itself," since the State is a major owner of property and initiator of construction contracts. The Study concluded that these "are creating a situation where insurance costs are high, if even available. Another insurance-type crisis is near, which must be addressed now before the situation worsens."¹¹

Ongoing efforts to reform Articles 240-241 have yet to be successful in New York State, unlike the success in Illinois in 1995. Bills have been introduced in both the State Senate and Assembly for the past several years, with the goal to amend the stature of absolute liability and introduce a 'contributory negligence rule' that would allow the contractor to provide evidence where a worker disobeyed safety directions, or worked under the influence of drugs or alcohol.

⁹ In the report, 'loss cost' is defined as "an actuarial estimate of the cost of claims and claims adjustment expenses, relative to the exposure base for each class.

¹⁰ Albany Law study, page 6.

¹¹ Ibid, page 40.

Recommendations for Action

- The New York State Legislature must pass and the Governor must sign an amendment to or repeal of the Scaffold Law. Although various amendments have been proposed for many years, every attempt to amend this onerous law has been defeated. During the last legislative session, a concerted effort by a unified construction community including strong leadership from the minority contracting community led to a serious discussion of this issue. We strongly urge the State legislature to pass, and the Governor to take action on, an amendment or repeal of the Scaffold Law.
- In addition, the New York State Insurance Department should establish its State insurance fund to ensure the adequate availability of liability insurance for construction companies.

5. Access to Contracting Opportunities

The ability to bid on potential job opportunities is fundamentally crucial to the growth and survival of small, minority and women owned construction firms. The opportunity to gain experience in managing a number of small jobs, and then gradually taking on responsibility for progressively larger and more complex projects is essential for the successful development and continued growth of small contractors. Knowing where the jobs are and getting an opportunity to bid or partner on projects is often a function of relationships and the business "network" that one creates. Fledgling minority and women owned construction firms are at a disadvantage in this regard.

Being certified as a bona fide minority or woman owned business does not necessarily mean that the public agencies, prime contractors and construction management companies will consider a small firm qualified to work on public or private construction projects. Public and private owners as well as construction managers must evaluate a firm's capabilities to undertake jobs of various types and sizes, whether as prime contractors or subcontractors.

A by-product of being new in an old industry is the inevitability of being an outsider to the familiar networks of those with traditions in the industry. Some agencies have established formal programs and vehicles to facilitate the networking opportunities of the minority and women owned businesses. For example, the New York City School Construction Authority (SCA) has created an annual spring networking forum to help open those networks to women and minorities by building relationships between larger firms and small minority companies. It has resulted in dozens of marriages between large firms and M/WBE companies. According to an official of the SCA, "we will invite forty of our largest general contractors who are working for us. They will set up tables. Then we will invite 800 of our certified minority subcontractors. Those subcontractors then have a chance to meet and greet and, hopefully, at a later date follow up with those general contractors. So it is kind of forcing both sides to talk to each other. The smaller subcontractors have an opportunity to meet and greet and find out who is doing the buying in that large company. Then it gives the buyer in a larger company more of an exposure to an assortment of our certified minority subcontractors."

The SCA program is guided and driven by a central idea: creating stronger minority subcontractors benefits the SCA and larger firms because it will ultimately create more competition at the subcontracting level. The competition makes the process of construction more economical and efficient. Those are obvious benefits for the SCA and the large companies. According to the SCA official, "it is in the larger general contractors' best

interest to help us develop and expose these contractors to the industry because in the long run you will be helping yourself by creating more subcontractors to bid on projects. Competition always reduces price. So, if you have more subcontractors bidding for your work, your number is going to go down, whereas if there is one or two subcontractors bidding for your work, those subcontractors are going to be picking and choosing their projects and their number is going to remain high."

Another vehicle to assist the minority and women-owned contractors in establishing a business network and place in the construction industry is the "joint venture." In recent years, several New York public agencies have promoted joint ventures between large, well established construction companies and smaller, minority or women owned firms as an effective way to increase minority and women's participation in public projects. Public agencies have come to recognize that joint ventures can be effective not only in raising the overall level of participation by minorities and women but, also, as a means for all contractors to gain experience in managing larger and more complex projects. The benefits that small firms get from participation in joint ventures cannot, however, be taken for granted.

For example, the minority or women-owned contractor may gain a higher level of experience in functions such as estimating and scheduling. In addition, the small contractor may through this business arrangement gain additional experience with a particular type of construction or build a good working relationship with a large, successful contractor.

Qualifications

Public agencies vary greatly in their practices with respect to the dissemination of information on qualifications. For instance, the New York City School Construction Authority requires pre-qualification prior to the bidding of their work for all construction companies. In addition, they provide lists of qualified subcontractors to prime contractors at the time bids are being solicited.

The Port Authority of New York and New Jersey also pre qualifies all of its contractors and takes the process for minority and women-owned contractors one important step further. It obtains information based on the specific trade business that contractor is in and the type and size of the projects it has experience in.

The type of information collected by the Port Authority model is vital to increasing contract opportunities for small minority and women owned businesses. Without such information, large prime contractors may solicit expressions of interest from a wide range of such firms, but the results may not be positive.

As one focus group participant commented:

"If the prime doesn't have information about qualifications, it can lead to a lot frustration on both sides. The minority firm owner says, "Hey, you asked me to submit on this project and I fill out all these forms and then you say I'm not qualified because the job's too big for me."

Facing the time constraints on submission of bids or the organization of project teams and without an easily accessible source of information about the qualifications of small contractors, large contractors and public agencies are more inclined to "play it safe" by choosing subcontractors they have used before and know.

Further confusing the qualification process is the fact that some public agencies pre-qualify or qualify only prime contractors and not subcontractors; some have no formal process at all; some retain the right to review to

approve subcontractors and some do not.

As a large contractor focus group participant commented:

“If I'm going to hire a firm as a sub, I need to know some background about the kinds of jobs they've done, the sizes of the jobs, their track records on completion and the quality of their work. I need that kind of information.”

Building Relationships in the Private Sector

The Wharton School of Business study done as part of this report identified several factors that determine why firms are not awarded construction contracts. While price and quality of work are the highest rated factors, the other factors identified included:

- The lack of previous experience with the prime contractor or owner
- The lack of business relationships with the prime contractor or owner

Price, quality of work, the ability to trust the people one is working with and past experience in working with a firm is the way business is conducted throughout the world. There is nothing insidious about it, nor purposefully exclusionary.

For the most part, in the construction industry today, the minority and women owned companies and the organizations that represent them and the traditional construction organizations representing the prime contractors and subcontractor companies doing business in New York City are like two ships passing in the night. The construction industry is more like a sector of economy rather than an industry. It has many parts whose problems and issues are unique to it. The umbrella organizations in which all the relevant construction principals are represented must establish a more formal relationship between them if sustained growth is the goal to benefit both as well as the future of New York City.

To provide business opportunities and technical assistance to women and minority construction contractors, it will be necessary for the minority contracting community to designate an organization to partner with the Building Trades Employers' Association to implement M/WBE strategies and programs. The Regional Alliance for Small Contractors is an organization that has a long history of involvement in the delivery of services to M/WBE's. However, in recent years, the Regional alliance has sustained significant budget cuts from public sources and consequently had to diminish the scope of its activities and the services that it provides. Various public entities should once again increase their level of financial assistance to the Regional Alliance to facilitate an ongoing involvement in the delivery of these services to M/WBE's in the construction industry while providing a link to the BTEA.

Recommendations For Action

- Information about minority and women owned company experience by specific trade; project type and size must be included on public certification applications in order to increase contract opportunities. This is another reason for establishing a technologically advanced centralized certification process.
- The Regional Alliance for Small Contractors should receive increased financial assistance from the public sector to increase levels of technical assistance and business opportunities for minority and

women construction contractors and also serve as a link with the BTEA to implement M/WBE strategies and programs in the unionized construction industry.

6. Access To a Qualified Workforce

Project Management and Administrative Personnel

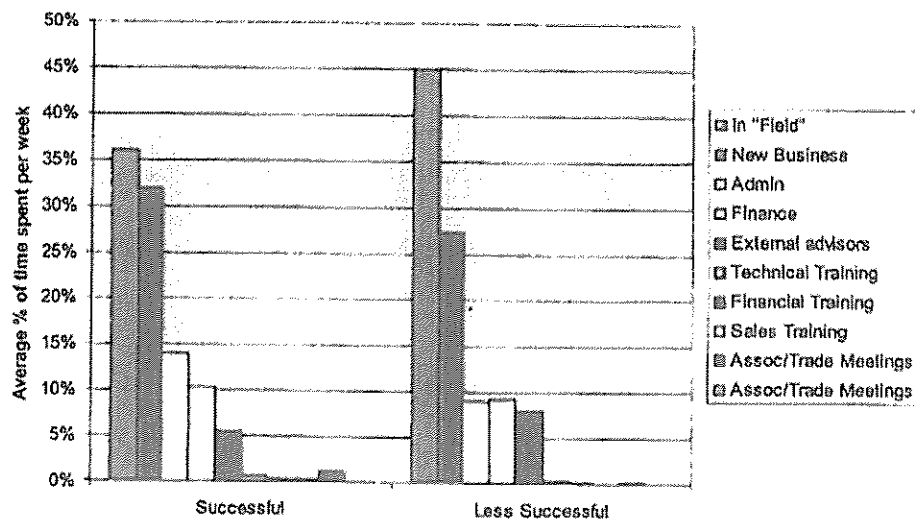
Here again, the survey by the Wharton School of Business shows that one-third of those surveyed agreed that the most significant barrier to growth was finding the right people to help the firm grow.

20. If [firm has not reached its goal] [], what was the primary reason the goal was not reached?

Reason	Count	Percentage
Owners later decided that you wanted the firm to be smaller	2	8%
Competition was stronger than expected	4	17%
Firm had less business opportunities than owners expected	0	0%
Firm had difficulty finding the right people to help the firm grow	10	33%
Firm could not get required financing	4	17%
Firm could not get required bonding	3	12%
Other	3	12%

The ability to find the right people to help the firm grow has a direct impact on the financial success and viability of a construction firm. The survey found that less successful construction firms spent far more time in the field than on performing business development activities.

Less successful firms spend more time in the field and less time seeking new business

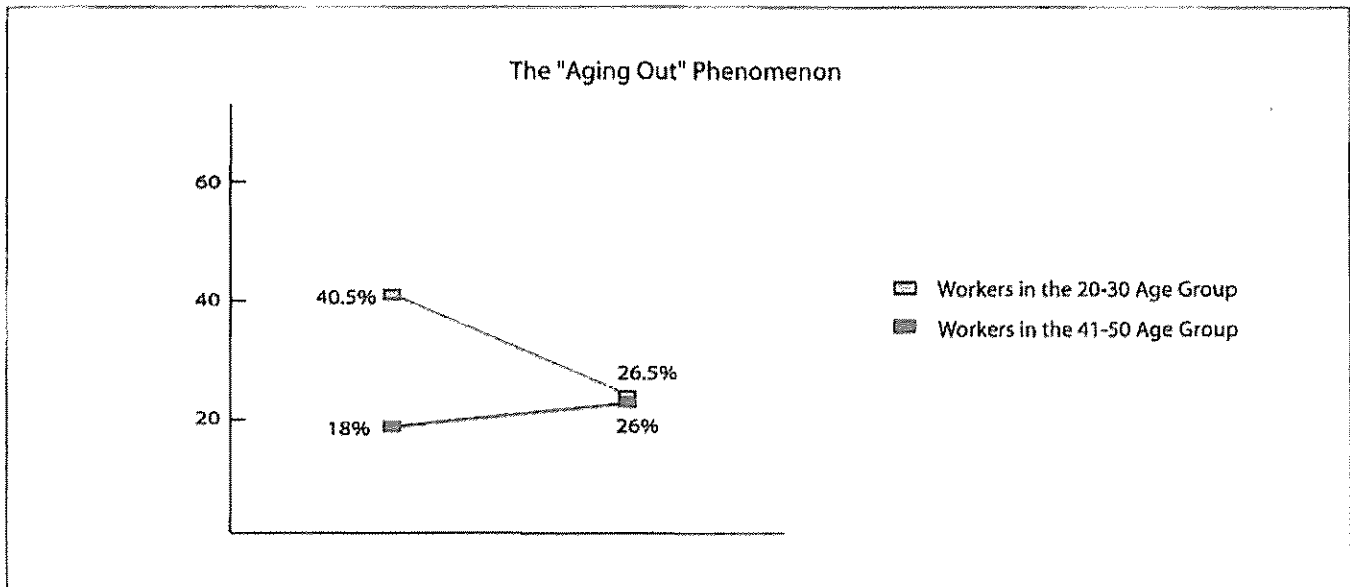


Source: Questions In Survey ("How much time per week does [each owner] spend in the following?")

The need to identify and train the 'right people' is critical to the growth and development of small minority and women owned firms as well as the construction industry in general.

A recent report for the Building Trades Employers' Association done by the Fiscal Policy Institute entitled Building Jobs: A Blueprint for The "New" New York, shows that the New York City construction industry is on the verge of an 'aging out' phenomenon.

- Workers in the 20-30 age group declined from 40.5% to 26.5% of the construction workforce
- Workers in the 41-50 age group increased from 18% to 26% of the total construction workforce



The report further identified the five (5) highest demand occupational categories that companies either planned to hire in the future or would hire when the volume of construction activity increased are:

- Project Manager/Engineer (or assistant)
- Project Superintendent (or assistant)
- Draftsperson
- Cost Estimator
- Administrative Assistant/Secretary

Over the years and for a variety of factors, the recruitment of young people in the management of construction companies has been extremely difficult. The smaller a company is the more difficult and costly this process becomes. Without finding a way to identify, recruit and train management personnel, the growth of small minority and women owned companies will be limited as will that of the industry as a whole.

Skilled Trade Labor

The lack of access to an adequate supply of skilled trade labor was another barrier to growth identified by contractors surveyed in the Wharton Study. It is a simple equation. If a firm cannot hire the qualified skilled trades necessary to build a construction contract it has just been awarded, the firm cannot build the project, or its record of achievement or growth as a business entity.

Although not a purpose of the Wharton Study, another factor that seems to play a part in the success of companies that grow is that the successful construction contractors tend to be union contractors.

This should not be surprising. A 1993 Regional Alliance for Small Contractor Report entitled Creating Growth Opportunities for Minority and Women Owned Construction Firms stated:

"It is universally accepted that in practice, all but the smallest public construction projects in New York are union jobs. Small, non-union firms that hope to grow larger by participating in public construction, therefore, must be prepared to sign collective-bargaining agreements and to establish good working relationships with the relevant building trade union."

Unfortunately, past experience has not necessarily been characterized by one of trust and good will between M/WBE firms and organized labor. Whether those problems are real or perceived they remain barriers that must be overcome if minority and women-owned contractors are to grow and compete for the larger public and private construction projects in New York City because being union contractors will allow firms the access to the skilled labor needed to grow.

The Regional Alliance report went on to state:

"This creates serious uncertainties for small contractors who do not have well-established relationships: How will this change affect my costs? How much control over my work force will I surrender? What happens to non-union workers I have regularly employed on other jobs?"

Today, the process of resolving issues such as these is done on a case by case, project by project basis with solutions that vary job to job. Minority and women-owned contractor organizations must establish a more formal communication and working relationship with major contractor trade organizations. In addition, the unionized construction industry, both contractors and labor, need to create an institutional mechanism which will assist those contractors making the transition to become union contractors.

With respect to the adequate access to labor barrier that prevents contractors from attaining success, the skill and safety training apprentice programs operated by the unionized construction industry provides the best vehicle for overcoming this barrier.

Recommendations for Action

Finding the right people to help firms grow will be dependent on the ability to recruit train and employ a new generation of construction management and trade labor personnel. In order to achieve this, the following recommendations are made:

- Create a NYC Construction Council of Colleges. Forming this linkage with NYC's colleges and universities would provide an opportunity to establish internships and to identify students interested in working for construction companies. There should be an emphasis on engineering colleges and recruiting minority graduates.
- Establish a program at the junior high school and high school level, showing students the vast array of career opportunities that exist in construction.

- Create Professional Certification Programs with CUNY for positions that may not require 4-year degrees in areas identified by the industry for occupations in demand.

7. Professional and Technical Development

A serious hindrance to the development and growth of small, minority and women-owned companies is the need for professional and technical development and training. All too often, such firms start up without the principals and key staff being versed in the wide range of business skills necessary to run a successful firm. The small business owner may not have had adequate exposure to one or more basic business skills such as strategic planning, business planning, financial analysis and planning, capital acquisition, marketing and sales plans, certifications and technical/cost proposal preparation, to name a few. A lack of skills or experience in any of these areas could hinder the growth and development of these firms and in some instances spell the demise of what would otherwise have been viable businesses.

While it seems that there may be several organizations providing this training on an independent basis, it is recommended that this training be coordinated between organizations like the Building Trades Employers' Association and appropriate minority and women contractor organizations. Doing so will accomplish at least two objectives:

1. It will provided an opportunity for the contractor members of each to establish business to business networking opportunities with each other since most of the prime contractors could be recruited to teach.
2. It will provide a learning experience from executives in the business to share with new entrepreneurs.

Potential subject matters could include:

- Construction Claims and Insurance
- Estimating Fundamentals & Applications
- Working Capital
- OSHA Requirement and Job Site Safety
- Project Management Control Systems
- Accounting, financial Controls & Bonding
- Analysis of Drawing and Specifications
- Marketing your business
- Purchasing Practices and Procedures

In addition, it is recommended that all public agencies establish formal mentor programs between large prime contractors and small minority and women-owned firms. Currently two agencies, the NYC School Construction Authority and The Port Authority of New York and New Jersey operate such programs. The NYC School Construction Authority establishes a pool of work under \$1 million for small firms to bid on exclusively. These projects are managed by 1-3 prime construction managers who also provide technical and professional training to the firms they are working with as they complete the construction project.

The Port Authority of New York and New Jersey has a different approach. In their program, minority and women-owned contractors are selected and assigned to mentor prime contractors. However, the minority/women-owned contractor is not allowed to work on a Port Authority project with the mentor firm at the time of the mentorship. Agency officials feel working for a prime at the same time a mentoring relationship is underway could detract from the mentor relationship because of financial reasons or other business issues that may occur on the project.

Recommendations for Action

Professional development and training are vital components to growth for emerging minority and women owned contractors. In order to facilitate this growth the following recommendations are made:

- Establish a consistent curriculum and involve principal prime contractors as instructors.
- Establish mentor programs at public agencies between prime contractors and minority and women owned business.

BTEANYC The Voice of
Construction
Building Trades Employers' Association

Louis J. Coletti, President & CEO
1450 Broadway, 8th Floor, New York, NY 10018
Telephone: 212 704 3746 • Facsimile: 212 704 4367
www.bteany.com

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: 10/4/2012

(PLEASE PRINT)

Name: HON. WALTER McCAFFREY

Address: 41-55 63rd Street WOODSIDE, NY

I represent: myself

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: OCTOBER 4 2012

(PLEASE PRINT)

Name: ERRA POLONKY

Address: _____

I represent: MAYOR'S OFFICE

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 9-11 Res. No. _____

in favor in opposition

Date: 10/4/12

(PLEASE PRINT)

Name: William Farnish

Address: 91 Hudson Ave Manhattan NY 10040

I represent: Noble Strategy NY LLC

Address: 2601 Frederick Douglass Blvd, N.Y. NY

Please complete this card and return to the Sergeant-at-Arms

10630

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: ANNE RASSON

Address: NYC DEPT. SMALL BUSINESS SERVICES

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 411 Res. No. _____

in favor in opposition

Date: 6/10

(PLEASE PRINT)
Name: Deputy Mayor for Housing

Address: City Hall

I represent: City Hall

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: CS/Adm

Address: CS

I represent: CS Administration

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 711 Res. No. _____

in favor in opposition

Date: 1/4/12

(PLEASE PRINT)

Name: Gregory, [unclear]

Address: _____

I represent: [unclear]

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 9 Res. No. _____

in favor in opposition

Date: 1/4/12

(PLEASE PRINT)

Name: Ezra Polonichy

Address: 253 Bay

I represent: PPCS Administration

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. 711

in favor in opposition

Date: 10/4/12

(PLEASE PRINT)

Name: Lou Colletti (can Denise Richardson & he be on same panel)

Address: _____

I represent: BTEA - Bldg Trades Employees Ass'n

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: LOUIS COLETTI

Address: _____

I represent: Building Trades Employers Assoc

Address: (BTEA)

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Cheryl McKissack

Address: 118 Cox Ave, Armonk, NY 10504

I represent: Women Builders Council

Address: 1001 Sixth Ave, NY 10001

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: FRANCA GARCIA

Address: _____

I represent: NY STATE COLITON OF CHAMBERS

Address: OF COMMERCE

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/4/12

(PLEASE PRINT)

Name: BRIAN FIERON

Address: 26 Court St Bk NY

I represent: NACC and AAEC

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: 10/4/12

(PLEASE PRINT)

Name: Kristine DeNapol

Address: 847 Aberdeen Rd Bay Shore NY 11706

I represent: KND Electric

Address: 120 Brook Ave Deer Park NY 11706

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ALYD DOUGLAS

Address: 165 W 127th St #2J

I represent: NY NY 1027

Address: MBL

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Londel Davis (PLEASE PRINT)

Address: 2388 7th AVE.

I represent: American Fire Control.

Address: 2388 7th AVE. NY NY.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. Lucht Res. No. _____

in favor in opposition

Date: _____

Name: Reginald SWINEY (PLEASE PRINT)

Address: 57 HAWCOCK ST

I represent: R. S. Printing

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Len Britton (PLEASE PRINT)

Address: 63 Flushing Ave

I represent: NYS Chapter of National Ass. of Fire Control

Address: 63 Flushing Ave Suite 310 Brooklyn NY 11205

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: with modification

Name: Carol Kennedy (PLEASE PRINT)

Address: 437 W. 16 St. (same parcel as address (Gotham))

I represent: Kentel Electric

Address: same as above

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/4/12

Name: Quenia Abreu (PLEASE PRINT)

Address: _____

I represent: NY Women's Chamber of Commerce

Address: 1524 Amsterdam Ave.
NY NY 10031

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card



I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: _____

Name: STEVE MARGARELLA (PLEASE PRINT)

Address: 2351 RICHMOND TERR

I represent: MARGARELLA INDUSTRIAL CONSTRUCTION

Address: 2351 RICHMOND TERR S I N G 10302

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/4/2012

Name: Sharon Sinaswee (PLEASE PRINT)

Address: 135-55 120th St South Ozone Pk NY 11420

I represent: M/WBE SBS

Address: 110 William St NY NY

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: 10/4/12

Name: TIMOTHY MARSHALL (PLEASE PRINT)

Address: 90-33 160th ST. JAMAICA, NY 11432

I represent: JAMAICA BUSINESS RESOURCE CENTER

Address: QUEENS, NEW YORK

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. Intro 94

in favor in opposition

Date: 10/04/12

Name: Elizabeth Velez (PLEASE PRINT)

Address: 245 Fifth Ave-Suite 605, NY, NY 10016

I represent: LATINO BUILDERS COUNCIL

Address: (SAME)

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: JAMES HEY/LILLEN

Address: 111-45 140 ST. JAMAICA NY

I represent: AMENY / N.Y.C. MINORITY BUS

Address: LEADERSHIP COUNCIL

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: 10-4-2012

(PLEASE PRINT)

Name: LENORE JANIS

Address: 419 E 57th ST NY 10022

I represent: Prof Women in Construction

Address: 315 E 56th ST NY 10022

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

w/ comment Date: 10/4/12

(PLEASE PRINT)

Name: Lina Go Hesmar (SEE GINA ADDED, SAME PANEL)

Address: 732 Smithtown Bypass, Smithtown, NY

I represent: Altus Metal, Marble & Wood

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: 10/4/12

Name: GINA ADDEO (see Gina Gattarone)
(PLEASE PRINT)

Address: 201 Edward Curry Ave same parcel

I represent: GMA ELECTRICAL CONTRACTORS

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: October 4, 2012

Name: Florence Chilton
(PLEASE PRINT)

Address: 23 Applewood Rd St. James NY 11780

I represent: Florence Construction Corporation

Address: 80 Lake Ave S Unit 10 Nesconset NY 11780

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: Donal J. Jell
(PLEASE PRINT)

Address: 37-24th Street + Suite 200, NY NY

I represent: Soo Ver Inc.

Address: 1101

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: Reverend J. DeGraff

Address: 545 8th Ave N.Y. NY 10018

I represent: New Agenda

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: 10/4/2012

(PLEASE PRINT)
Name: SANDRA WILKIN

Address: 545 FIFTH AVENUE

I represent: NEW AGENDA COALITION

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: 10/4/12

(PLEASE PRINT)
Name: Joanna Karageorgiou

Address: 213-08 99th Ave Queens Village NY

I represent: Earth Construction Corp 11429

Address: Same as above

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Marcia R. Fox
Address: 151 EAST 83rd ST. NY NY 10028

I represent: Fox Management Consulting
Address: 151 EAST 83rd ST NY NY 10028

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: Oct. 4, 2013

(PLEASE PRINT)

Name: NAYAN PARIKH
Address: SUITE 309, 350 BROADWAY

I represent: SOCIETY OF INDO AMERICAN ENGINEERS & ARCHITECTS
Address: - SAME -

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 911 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Denise Richardson
Address: General Contractors Assoc. of NY

I represent: 60 East 42nd St
Address: Suite 3510

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: PETER FONTANES (PLEASE PRINT)

Address: 10-93 JACKSON AVE, LIC, NY

I represent: HISPANCS IN REAL ES. AND CONSTRUCTION

Address: SAA

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

Name: DOUGLAS FANZLER (PLEASE PRINT)

Address: Harlem

I represent: Digital Divide Partnership

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10/4/02

Name: REGINA SMITH (PLEASE PRINT)

Address: _____

I represent: HARLEM BUSINESS ALLIANCE

Address: 275 LENOX AVE., NY 10027

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 10-04-12

(PLEASE PRINT)

Name: ALEX AMIYA

Address: 45-42 PEDERSON ST

I represent: POSTAGE INDUSTRY CORP

Address: 45-42 PEDERSON ST LIC NY 11107

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 9-11 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: ALFRED PLACERES

Address: 2710 BROADWAY NY NY 10025

I represent: NEW YORK STATE FED. OF HISPANIC CHAMBERS

Address: 2710 BROADWAY N.Y. N.Y. 10025

Please complete this card and return to the Sergeant-at-Arms