

1 JOINT HEARING BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON LABOR
3 AND
4 STANDING COMMITTEE ON COMMERCE, ECONOMIC DEVELOPMENT,
5 AND SMALL BUSINESS

6 PUBLIC HEARING:

7 TO EXAMINE THE MINORITY AND WOMEN-OWNED BUSINESS
8 ENTERPRISES PROGRAM, AND CONSIDER POTENTIAL
9 LEGISLATIVE SOLUTIONS TO CREATE A MORE
10 EFFECTIVE AND EFFICIENT PROGRAM TO ENHANCE
11 NEW YORK'S BUSINESS CLIMATE

12 Village of Mineola Community Room
13 155 Washington Avenue
14 Mineola, New York

15 September 6, 2018, at 10:00 a.m.

16 PRESIDING:

17 Senator Frederick J. Akshar II (Sponsor)
18 Chairman
19 NYS Senate Standing Committee on Labor

20 Senator Phil Boyle (Sponsor)
21 Chairman
22 NYS Senate Standing Committee on Commerce,
23 Economic Development, and Small Business

24 CO-SPONSORS PRESENT:

25 Senator Elaine Phillips

ALSO PRESENT:

Senator John Brooks

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1 SENATOR PHILLIPS: We'll begin.

2 So, my name is Senator Elaine Phillips.

3 You are sitting in my Senate District, which
4 is the 7th Senate District here in the northwest
5 quadrant of Nassau County.

6 So, welcome everyone.

7 Thank you for taking the time out today for
8 this important issue.

9 We are having a hearing today on the MWBE
10 program.

11 This is a working group that
12 Senator Fred Akshar, which I'll introduce in a
13 second, but Senator Fred Akshar and
14 Senator Patty Ritchie are chairing, and I am one of
15 the members of the working group.

16 And let me start out by saying, the intention
17 of this working group is to take this valuable
18 program, "valuable program," and make it a better
19 program.

20 There is no intention by this working group
21 to eliminate it.

22 There is no intention by this working group
23 to only point out what's not working.

24 The idea is to have a balanced discussion,
25 and make this a better program for everyone in

1 New York State.

2 Senator Akshar informed me that this is the
3 fourth statewide hearing that they have had already.

4 I'll let him tell you where else they've had
5 them.

6 And the intention is to have more.

7 So, I encourage everyone to speak out, tell
8 us.

9 The only way, as legislators, we can make
10 something better is by understanding what is working
11 and what is not working.

12 So, thank you.

13 Please.

14 To my right, about to sit down, is
15 Senator Phil Boyle. He represents --

16 I'm sorry, Phil, I don't know.

17 SENATOR BOYLE: The 4th Senate District.

18 SENATOR PHILLIPS: -- the 4th Senate
19 District.

20 And then to his right is Senator Fred Akshar.

21 So, Senator Boyle, do you want to say a few
22 words?

23 SENATOR BOYLE: Sure. Thank you very much.

24 I'd just would like to associate myself with
25 Senator Phillips' remarks, and also thank my friend

1 and colleague Senator Akshar for traveling all the
2 way here -- he's been traveling around the state --
3 and for his leadership on this issue.

4 It's a vitally important program, but we need
5 to make it better, without a doubt.

6 I can tell you that I'm the chairperson of
7 the Senate Committee on Commerce, Economic
8 Development, and Small Business.

9 So when people call the Senate, sometimes
10 they end up in my office when their small-business
11 person -- business or their medium-sized business is
12 having trouble, many with the MWBE program.

13 It's a headache, in large part, but we've had
14 efforts to make it better, and that's what this is
15 all about.

16 When the Governor and other administrations
17 are trying to increase the requirements on MWBEs at
18 the same time they're making it more difficult to
19 enter the program and to remain in the program --
20 and we'll hear from the testimony today on this --
21 that's a no-win situation.

22 We want to make this program better, as
23 Senator Phillips said, and we look forward to the
24 testimony.

25 SENATOR PHILLIPS: Thank you.

1 And Senator Fred Akshar from the Binghamton
2 area.

3 And what Senate District is that?

4 SENATOR AKSHAR: 52.

5 SENATOR PHILLIPS: 52.

6 There are 63 Senate Districts in
7 New York State, if you didn't know that.

8 Senator Akshar.

9 SENATOR AKSHAR: Thank you.

10 It's just a short 3 1/2-hour drive from
11 Binghamton, here, but it's this beautiful country.

12 Senator, thank you for hosting this hearing.

13 And as you said, this is, in fact, our fourth
14 hearing.

15 I want to first thank Majority Leader
16 Flanagan for allowing this issue to remain at the
17 forefront of the Senate Majority's priorities.

18 The Majority Leader speaks often about
19 allowing affordability and opportunity to drive our
20 legislative agenda, and we are looking inward at
21 existing programs on how we can make them better.

22 And I think, as Senator Phillips said, but it
23 certainly bears repeating, that -- and I should be
24 on the record, that we're not looking to end this
25 program, because this program is, in fact, a

1 enough for your leadership on this issue.

2 When we first spoke about having these
3 statewide hearings, Senator Phillips was the first
4 to say: Come to my Senate District. We have people
5 who are struggling with this program. And I want
6 you and Senator Ritchie to hear their struggle, and
7 let them be part of the solution.

8 So, Senator Phillips, thank you very much.

9 SENATOR PHILLIPS: Thank you.

10 And to Senator Akshar's right, we have
11 Senator John Brooks --

12 And I'm sorry, Senator Brooks, what Senate
13 District?

14 SENATOR BROOKS: 8th District.

15 SENATOR PHILLIPS: 8th.

16 -- from the 8th District here on
17 Long Island.

18 Senator Brooks, would you like to say --

19 SENATOR BROOKS: Okay. So Senator Akshar
20 said he had a, what, 3 1/2-hour ride down here?

21 I have a 15-minute ride here.

22 But as we all know, in Long Island, people
23 don't know how to drive.

24 So we got a major car accident out here on
25 Old Country Road that backed us up.

1 So I apologize for being late.

2 I think the -- this is such a critical
3 program to this state, and to this community.

4 I think we have to take a good, serious, hard
5 look at some of the problems we had in this program
6 in terms of getting people qualified for the
7 program.

8 I think as Fred has said, sometimes in the
9 session, some areas of our state have great
10 difficulty meeting some of the requirements for
11 these programs, and we need to address that.

12 But I think it is a critical opportunity to
13 people that fall in the "minority-owned business"
14 category to let them grow in this economy.

15 So, I'm very pleased to be here today.

16 I thank my associates for coming down, and to
17 discuss this important issue.

18 And, after that, we'll figure out how to
19 change transportation on Long Island so it doesn't
20 take a light year and a day to go from Seaford to
21 here.

22 Thank you.

23 SENATOR PHILLIPS: Thank you, Senator brooks.

24 So, I'm just going to say up front, I don't
25 mean to be rude, but I really am going to try to

1 keep us on time. And I have already gone over
2 one minute of our time.

3 So, please, if I cut you off, it's because
4 I really would like to give everybody the
5 opportunity.

6 So we're going to start today with
7 Denise Richardson, the executive director of the
8 General Contractors Association of New York, and,
9 Marc Herbst, a local gentleman, executive director
10 of the Long Island Contractors' Association.

11 Please.

12 MARC HERBST: We flipped a coin, and I won,
13 so I go first.

14 Senators Phillips, Boyle, Akshar, and Brooks,
15 thank you for holding this important hearing to
16 examine the Minority- and Women-Owned Business
17 Enterprises Program, and consider potential
18 legislative solutions to create a more effective and
19 efficient program to enhance New York's business
20 climate.

21 My name is Marc Herbst, and I serve as the
22 executive director of the Long Island Contractors'
23 Association.

24 I appreciate the opportunity to offer this
25 esteemed panel my testimony.

1 The Long Island Contractors' Association
2 represents the interests of Long Island's premier
3 heavy-construction general contractors,
4 subcontractors, suppliers, and industry
5 professionals.

6 Our industry is focused primarily on the
7 building and maintaining of our region's vital
8 infrastructure, which is its highways, bridges,
9 transit, electric, cable, gas, clean and wastewater
10 systems, and all other public works.

11 We carry a sense of pride that many pf LICA's
12 170-member firms are multigenerational family-owned
13 businesses that are located on Long Island, who
14 continue to work and employ neighbors in our
15 community.

16 Many of our successful firms were started by
17 immigrants who decided to make our region their
18 home.

19 Allow me to highlight one such firm.

20 The name Scalamandre is synonomous with
21 quality public-works construction in our region.

22 For many years the family business was led by
23 Joe Scalamandre.

24 I ask you to keep Joe in your prayers.

25 At the end of last year he faced a

1 life-threatening situation that required very
2 complicated surgery of which he's still recovering.

3 He continues to fight for his health, but his
4 greatest frustration is not being able to be at the
5 construction sites that he loves so much.

6 The Scalamandre family business was started
7 in 1923 by Joe's dad, Peter Scalamandre, who
8 immigrated to America from Scolati (sic)(ph.),
9 Italy, with nothing but his hands and a strong work
10 ethic.

11 When he arrived, he began building brick
12 homes on Long Island, but soon fell ill.

13 Joe, with only minor experience in
14 construction, estimating, had no choice but to take
15 over the family business at the age of 16.

16 Over the years Joe and -- Joe worked
17 alongside his brother and partner Fred, and built up
18 the company.

19 In 1967 the Scalamandre family business began
20 pouring concrete curbs and sidewalks for many of
21 Long Island's local municipalities, and soon became
22 one of the largest concrete providers in the area.

23 During the sewer-construction program in the
24 1970s the firm installed more than one million
25 linear feet of slip-form paving in the

1 Nassau-Suffolk region.

2 Other notable Scalamandre signature projects
3 include the \$187 million Caithness Power Plant that
4 currently supplies Long Island with 10 percent of
5 its power.

6 The firm also is a responsible participant in
7 the current rebuilding of both of our major
8 airports, LaGuardia and JFK.

9 While Joe's son Peter, aptly named after his
10 immigrant grandfather and the family-business
11 founder, he now leads the business, it was Joe, in
12 his place of glory, at a construction job site,
13 marshaling his devoted workforce recently.

14 He was proud to build the first Long Island
15 Welcome Center, which was recently opened off the
16 Long Island Expressway near Exit 51.

17 The firm continues to employ -- to consider
18 its employees its greatest assets, and they consider
19 Joe the ultimate boss.

20 The Scalamandre legacy is like those of many
21 family-owned businesses in the heavy-construction
22 industry.

23 Many companies were started by immigrants
24 with limited resources, and, quite frankly, many
25 instances, with little respect or support from their

1 new neighbors.

2 That experience and understanding remains an
3 underpinning in our industry's fabric.

4 The heavy-construction industry was, and
5 continues to be, a leader in supporting those facing
6 obstacles in reaching their individual potential.

7 That is why we continue to support programs
8 that assist minorities, women, and the
9 disadvantaged.

10 The founders of many of our companies were
11 immigrants of Irish, Italian, and Portuguese
12 descent.

13 Today's immigrants come primarily from
14 Central and South American countries, and they are a
15 large portion of our minority community here on
16 Long Island.

17 We as an industry strive to be welcoming to
18 these newcomers as were to those of our forefathers.

19 A national study of apprenticeship
20 opportunities for women and minority in road
21 construction was conducted by the Transportation
22 Equity Network.

23 It concluded that some states haven't done
24 enough in hiring those groups.

25 With New York ranking in the middle of the

1 pack, the Long Island region, however, when singled
2 out, ranked much more favorably.

3 Long Island's heavy-equipment operators,
4 headed by the Operating Engineers, Local 138, boasts
5 90 percent of it's apprenticeship program consists
6 of minorities and women.

7 The industry's largest local union on
8 Long Island, the Laborer's Local 1298, reports that
9 60 to 65 percent of its members, as well as its
10 apprentices, are minorities.

11 The other locals share similar percentages.

12 This is the reason, in our region, why very
13 few public-works projects have any difficulty in
14 meeting our region's EBO (which the Equitable
15 Business Opportunities) goal of 5.8 percent of
16 minority males and 6.9 percent women on job sites.

17 Since our industry employs over 60 percent of
18 the workforce from the minority communities, we are
19 pleased to be a welcoming place to provide
20 opportunities for new residents and those who are
21 disadvantaged.

22 Our region's demographics are changing and we
23 are proud to be ahead of the curve.

24 The United States Census data reflects that
25 the Hispanic community, our largest minority group,

1 has grown by more than 18 percent since 2010.

2 Today, 17.15 percent of Nassau's population
3 is Hispanic. 19.54 percent of Suffolk is Hispanic.

4 While we are proud to employ many workers
5 from this and other minority communities, it's
6 important to point out that the most significant
7 impact we provide, our industry does not offer
8 minorities and other workers menial low-paying jobs.

9 According to the New York State Department of
10 Labor, the 2017 annual average salary in the
11 Nassau-Suffolk statistical region for the
12 5,682 workers in the heavy- and civil-engineering
13 construction field was one hundred and nine thousand
14 dollars and ninety-eight dollars (sic); six figures
15 for the workers of this industry.

16 But the greatest difficulty today is to move
17 from a worker to an owner of a construction company.

18 Peter Scalamandre, the father of Joe and
19 Fred, could start his business with physical
20 strength and a strong work ethic, but today's
21 entrepreneuralship (sic) needs are much more.

22 Today's entrepreneurs, especially the
23 minorities' community and women, face a whole host
24 of legal and regulatory requirements that did not
25 exist in the past.

1 This is precisely why the State needs to
2 review the MWBE program as you are now responsibly
3 doing.

4 I implore you not to look for a quick fix.

5 Time and time again an arbitrary increase in
6 goal percentage is suggested as an expedient
7 political process, as a political success.

8 But this will not achieve the program's real
9 intent, which is to provide more opportunities for
10 minority- and women-owned businesses to work
11 successfully on contracts that enable their firms to
12 grow and graduate from the program.

13 To achieve its true mission, the program must
14 be managed with meaningful State support for MWBE
15 firms to acquire the necessary financial capacity
16 for bonding, insurance, and other requirements to
17 compete in the construction business.

18 Program administrators must also be
19 responsible in analyzing the actual inventory of
20 firms who are available and can perform the typical
21 work required.

22 Our partnering association, the General
23 Contractors Association of New York City (sic), has
24 championed several actions that will help the
25 program achieve its intended goals.

1 LICA wholeheartedly supports these
2 recommendations.

3 LICA, however, would like to echo
4 two specific suggestions this morning. These are
5 issues that consistently hinder the contractor
6 delivery program in the Long Island market, plus we
7 believe they are successful models that can be
8 easily implemented, practices now employed by other
9 agencies.

10 There is no reason to reinvent the wheel.

11 First: The unavailable inventory of outdated
12 listing of certified MWBE firms creates a tremendous
13 hardship for contractors seeking to satisfy contract
14 awards.

15 We strongly suggest all state agencies
16 prequalify subcontractors, not just MWBE firms, so
17 that their credibility and availability of these
18 firms are known to all bidders in advance.

19 This is the practice of the School
20 Construction Authority, one that should be emulated
21 by all state agencies.

22 Second, rather than arbitrarily increase
23 percentage goals, it would be more beneficial to
24 follow the practice of the Army Corps of Engineers.

25 This practice makes sense.

1 The Army Corps sets goals based on the work
2 to be subcontracted rather than the entire project
3 value.

4 The Army Corps' goal must be 50 percent, but
5 it's 50 percent of the subcontract work, not
6 50 percent of the total project.

7 If you follow these recommendations, you can
8 be assured that future generations will be boasting
9 about the success and sustainability of firms that
10 began through the MWBE program.

11 Today we lift up multigenerational
12 family-owned businesses, just like the Scalamandres,
13 that began with the sweat and hard work of its
14 founder.

15 Tomorrow, we will do the same, as the current
16 MWBEs will be honored alongside the venerable
17 business success stories of Long Island today.

18 Again, thank you for your attention, and
19 I appreciate the opportunity to testify this
20 morning.

21 SENATOR PHILLIPS: Thank you.

22 DENISE RICHARDSON: Good morning.

23 Thank you, Senators, for having this hearing.

24 In the interest of time, I will summarize my
25 written testimony.

1 I'm Denise Richardson, the executive director
2 of the General Contractors Association of New York.

3 When I spoke at the hearing in Albany in May,
4 we talked about issues with certification.

5 Today my focus is the ESD MWBE directory.

6 Only firms that are listed in the ESD
7 directory can be counted toward meeting MWBE goals.

8 The directory is also the basis for
9 determining the availability and capacity of firms
10 that can perform work on any given project, and it
11 must be the foundation on which the agencies
12 establish a project's MWBE goals; therefore, the
13 directory must be accurate.

14 Unfortunately, the directory is woefully
15 inaccurate and must be fixed.

16 I will give you two examples to illustrate
17 its multitude of problems.

18 Of the 86 firms listed in the category for
19 "structural steel erection," only 8 actually do this
20 work.

21 The other firms provide services that have
22 nothing to do with erecting structural steel.

23 A copy of our research is attached to my
24 testimony for your reference.

25 Similarly, a review of the NAICS Code for

1 bridge painters results in a list of seven firms,
2 two of which are actual bridge painters.

3 An additional three firms that are known to
4 have the requisite certifications to paint bridges
5 are not included under the NAICS Code for bridge
6 painters, but are included under other codes, and
7 one is listed in a code that is designated as
8 inactive.

9 ESD uses a hodgepodge of industrial
10 classifications, including NAICS, NIGP, CSI, ESD,
11 and NYSDOT work codes, but there is no consistency
12 as to how firms are classified within each coding
13 system.

14 A search of all painting codes results in a
15 list of 312 firms, but there is a total of 6 firms
16 across all lists that are actual bridge painters.

17 So when looking to find a bridge painter, the
18 expectation from agency personnel is that the prime
19 contractor will solicit all 312 firms in all
20 painting codes.

21 This is a waste of time and money, and it
22 does not help the MWBEs, as they then become
23 overwhelmed with irrelevant solicitations.

24 Again, I have attached a copy of our research
25 to my testimony.

1 Rather than devoting resources to fix these
2 easily fixable problems, ESD has hired a consultant
3 who is tasked with calling MWBE firms to verify if
4 the prime contractor has, in fact, called them to
5 advise them of work opportunities.

6 If the MWBE firm tells the consultant that it
7 has not been called, the prime contractor must
8 provide an explanation, even though the prime's MWBE
9 outreach documentation already includes a date,
10 time, name of person spoken to, and the outcome of
11 the call.

12 This consultant is being paid by our tax
13 dollars to perform this, obviously, make-work
14 function.

15 The GCA recommends that ESD retain an
16 information-technology and data-analytics consultant
17 to clean up the directory, and create a program that
18 will ensure consistent cross-tabulation across the
19 various industrial classification codes.

20 This will streamline the search for firms and
21 will cut down on the number of irrelevant
22 solicitations that MWBEs receive.

23 We also recommend that the directory include
24 a more detailed narrative about firms' actual
25 business experience.

1 This will make it easier to target
2 solicitations to the firms that do the specific work
3 that is needed; meaning, that MWBEs will then
4 receive the right solicitations for the work they
5 actually perform.

6 To meet project goals, agencies are telling
7 prime contractors that they must subcontract work
8 that they would otherwise perform with their own
9 forces.

10 We now have situations where paving
11 contractors are told to subcontract paving work, and
12 water and sewer main contractors are told to
13 subcontract the installation of the water and sewer
14 mains.

15 This forces the prime contractor to
16 artificially subdivide the project in ways that add
17 costs and schedule risk.

18 This translates to higher costs to the
19 taxpayers and a longer time for them to receive the
20 benefit of the new project.

21 It is time to set the goals based on the
22 project scope of work and not on arbitrary numbers.

23 There is an existing body of law governing
24 MWBE programs that is being ignored.

25 Project goals are to be narrowly tailored and

1 must reflect the availability and capacity of firms.

2 Instead, project requirements are being set
3 with little to no regard for the project's scope,
4 schedule, or the availability and capacity of firms
5 to perform the work.

6 This is illegal.

7 Public owners, as part of the
8 bid-solicitation process, should publish their
9 goal-setting analysis with the bids facts.

10 They should also identify the certified MWBE
11 firms that actually perform the project's scope of
12 work, and include that information with the bid
13 documents as well.

14 It is also time to set the goals based on the
15 work that is available to be subcontracted on a
16 project, as Marc Herbst talked about earlier.

17 If a project has a value of \$10 million, that
18 does not mean that \$10 million is available to be
19 subcontracted.

20 The goals should be applied -- to not be
21 applied to the contractor's cost for bonding,
22 insurance, corporate management, office space,
23 utilities, and other overhead or specialty equipment
24 that is not available to MWBEs.

25 The goals, as Marc earlier stated, should be

1 applied to the work that can actually be
2 subcontracted for which there is availability of
3 MWBEs to perform.

4 The impact of 30 percent and higher goals on
5 projects has meant that nearly all of the available
6 subcontract work is being assigned to MWBE firms,
7 often at a higher cost than the bids received from
8 non-MWBE firms.

9 When every tax dollar has multiple claims
10 against it to meet a number of needs, we should be
11 looking at ways to minimize the cost of projects,
12 not increase them.

13 It is time to make the MWBE program fit the
14 reality of construction, and not the other way
15 around.

16 The priority must be the most efficient way
17 to build the project within the established schedule
18 and budget at the most advantageous cost, and not an
19 arbitrary subdivision of work that bears little
20 resemblance to how the project would be built in the
21 absence of MWBE requirements.

22 However, this does not mean that the GCA
23 supports, in any way, shape or form, scuttling the
24 MWBE program.

25 What we are advocating for is the

1 establishment of project-specific goals based on the
2 availability of MWBEs to perform the work, with
3 greater help from ESD and the contracting agencies
4 in making sure that the information about the work
5 that is performed by certified MWBEs is accurate.

6 Thank you.

7 SENATOR PHILLIPS: Thank you very much.

8 Questions?

9 SENATOR AKSHAR: I'll just ask one quick
10 question, if I may.

11 You often hear about this program being
12 different, regardless -- or, depending on where you
13 are in the state of New York. Right?

14 So today we're on Long Island.

15 There's definitely a capacity issue where
16 I come from in the Southern Tier, you know, meeting
17 that 30 percent.

18 I just want to understand that, here on
19 Long Island, you're faced with the same struggles,
20 right, meeting that 30 percent goal, because you
21 just can't?

22 MARC HERBST: It certainly is, because, as we
23 mentioned earlier, a lot of the lists are outdated;
24 they're not realistic.

25 Denise just spoke about trying to find a

1 steel contractor.

2 You've got a list of all kinds of names of
3 firms that are out there. You're spending all your
4 effort and preparation trying to reach out to the
5 firms, and they're not even in that business.

6 So, when you finally get down to the people
7 who are doing it, usually they may not even be
8 available.

9 So now you're at the last minute of the
10 contract, trying to prepare work.

11 And, now, if you get a waiver, now you've got
12 to go try to find another source, which you wouldn't
13 have gone through that entire process, wasted the
14 time, and now escalated the cost, because now the
15 materials probably are going to be higher than what
16 you estimated on to begin with.

17 SENATOR AKSHAR: Denise, you talked a little
18 bit about increase in cost.

19 Any idea, generally speaking, what the --
20 fulfilling these obligations is increasing the cost
21 of construction?

22 DENISE RICHARDSON: We're working on a study
23 of that right now, to see what it's doing both to
24 our contractors' overhead costs, because, obviously,
25 everyone has had to add a number of staff members

1 whose job solely is to call through the MWBE list,
2 and do their own vetting and own research so they
3 have their own databases of what services firms
4 actually provide.

5 This is an enormously costly and duplicative
6 effort.

7 We're also looking at what it has meant in
8 terms of needing to add additional supervision onto
9 projects.

10 Because one of the issues, you know, that
11 we're finding is, that as the goals increase, and
12 particularly on some projects, it means that we have
13 many more subcontractors than we otherwise would
14 have had, which, on some projects, makes perfect
15 sense if the business model would have been that
16 there are many elements of work to subcontract.

17 On other projects, when you look at what the
18 scope of work is, particularly if it's a
19 road-repaving project, there is not a lot of
20 subcontracting opportunity.

21 So the goals have to be tailored to match the
22 needs of the project.

23 And what we're finding is, that we are
24 subdividing projects in ways that we would not have
25 otherwise subdivided them, leading us to have to add

1 additional supervision and additional time in the
2 schedule to coordinate multiple subcontractors.

3 SENATOR AKSHAR: So it's incredibly alarming
4 to me, right, because the only people that should be
5 hiring folks to administer a program is the people
6 in the state of New York. Right?

7 People in the MWBE program should be hiring
8 more people to administer this program.

9 I would like to see you folks hiring more
10 people to set steel and pour concrete, but you're
11 not doing that. You're having to hire more people
12 just to get through all the bureaucracy associated
13 with this program.

14 Thank you.

15 DENISE RICHARDSON: Thank you.

16 SENATOR BOYLE: And I would like to thank
17 both of you for testifying.

18 My long-time friend Marc Herbst, for those of
19 you who don't know, Marc and I were elected to the
20 State Assembly on the same night in 1994.

21 He was smart and went into the private
22 sector.

23 But, Denise, you did talk about
24 misclassification. I'm interested in that.

25 300-some-odd bridge painting

1 subcontractors --

2 DENISE RICHARDSON: Painters.

3 SENATOR BOYLE: -- but only 6 or so that
4 actually do it.

5 How do those other companies get on the list,
6 and what are they doing to have gotten there?

7 DENISE RICHARDSON: The process for
8 companies, the companies select their own codes.

9 We have spoken to ESD at length, and this is
10 also an issue in New York City as well, about
11 devoting staff to work with the firms to help them
12 select the proper codes.

13 Part of the problem is, when you look at the
14 NAICS classifications, they're very broad. And
15 there's a number of subclassifications that need to
16 become part of the list so that you can refine it.

17 The similar problem exists with NIGP.

18 And one of the things that ESD did, in a way
19 to try and help firms, was to incorporate these
20 multiple lists that I referenced.

21 However, what has happened is that, because
22 there is no cross-check, someone who lists
23 themselves as, say, an interior painter, will show
24 up on all lists unless they are specifically
25 excluding other types of painting.

1 And in the reverse situation, someone who may
2 be a bridge painter, and doesn't go through to find
3 the relevant subclassification, will be listed in
4 the "general painting" code.

5 So there really needs to be a concerted
6 effort to work with the firms to resolve the issues.

7 And I mentioned in my testimony in Albany, we
8 did a survey about a year ago of firms -- of the
9 MWBE firms, and asked them to identify to us what
10 information in the directory was correct for them
11 and what was not.

12 And half of the information was incorrect.

13 SENATOR BOYLE: Wow.

14 Thank you.

15 SENATOR PHILLIPS: Senator Brooks.

16 SENATOR BROOKS: I think both of you made
17 some excellent points, and I think, particularly
18 when we're dealing with the list, and have an
19 outdated list, and the confusion that brings and the
20 expense.

21 And, Marc, you know, I think your
22 association, what it's been doing from a training
23 standpoint and bringing everybody in, is excellent.

24 I think -- I think what's important that
25 you're giving to us, is the practical side of what's

1 really going on, and that's what we have to look at:

2 How we honestly implement these programs in a
3 realistic, as to what resources are and are not
4 available in certain regions.

5 And most importantly, any list that we have
6 people should be correct and honest. Not, at the
7 last minute, you're searching for somebody to fill a
8 slot.

9 So, you know, I appreciate both
10 presentations.

11 For Marc and I, we're in a role reversal.

12 When he was the Assemblyman, I used to scream
13 at him as a school board member.

14 Now we reverse ourselves.

15 But --

16 MARC HERBST: I didn't scream at you,
17 Senator.

18 I was nicer than you were to me.

19 [Laughter.]

20 SENATOR BROOKS: We can go back to one night,
21 Marc, but we'll leave that.

22 But I do thank you both for some excellent
23 comments and solid suggestions of what has to be
24 done.

25 Thank you.

1 DENISE RICHARDSON: Thank you.

2 SENATOR PHILLIPS: I have one quick question.

3 So you have given your feedback to ESD, both
4 of you?

5 DENISE RICHARDSON: Yes.

6 SENATOR PHILLIPS: How many times?

7 DENISE RICHARDSON: Several.

8 SENATOR PHILLIPS: Thank you.

9 MARC HERBST: It's an ongoing conversation.

10 SENATOR PHILLIPS: Thank you.

11 DENISE RICHARDSON: We're also in the process
12 of -- I just cited those two specific codes.

13 But we're also in the process of doing a
14 similar analysis with all the relevant heavy civil
15 construction codes to see what exactly is in there.

16 And we will provide them with all the
17 information, because we -- you know, we would like
18 to work with them and help them resolve this, to the
19 extent that they're interested in helping us.

20 SENATOR PHILLIPS: Okay. Thank you.

21 Thank you, both of you.

22 I'm going to ask Mr. Larry Sitbon to come up,
23 from Citnalta Construction Company.

24 Mr. Sitbon has taught courses to MWBEs on how
25 to become an MWBE, so I felt that he has a unique

1 ability to give us, and I apologize, in three
2 minutes or less, what works from his standpoint, and
3 what doesn't work.

4 LARRY SITBON: Okay.

5 So unlike Marc and Denise, I did not come
6 prepared to speak.

7 I came prepared to listen. And I introduced
8 myself at the podium when I first came in.

9 I spoke with Senator Phillips briefly about
10 some of the frustration that I'm experiencing right
11 now, and she asked me to speak.

12 I'm part of Senator Boyle's district. I'm in
13 Bohemia, Long Island.

14 Just briefly, only because of the Scalamandre
15 story, you know, my parents emigrated here in 1940,
16 during World War II, from North Africa. And I felt
17 different, myself, than others growing up.

18 And I -- my best friend was a little
19 Afro-American boy -- one of my best friends. He was
20 the grandson of the superintendent in my building.
21 And when he hurt, I hurt. When people made fun of
22 him, it hurt me.

23 And I said to Senator Phillips that I do
24 believe in the program.

25 I believe there were injustices that

1 occurred. I believe opportunities were not provided
2 for minorities and women throughout my generation
3 particularly.

4 We've come a long way.

5 I'm here today to listen because I was
6 extremely frustrated by something that happened with
7 my company last month.

8 I explained to Senator Phillips that we are,
9 to some degree, regarded as the poster boy at the
10 MTA for doing the right thing with M and Ws.

11 Mike Garner who runs the program openly
12 demonstrates that whenever he gets the opportunity.

13 And so because we know our way around the MTA
14 and we know our way around the SCA, we've managed to
15 effectively work with the program, succeed with the
16 program, and, although it provides extra difficult
17 situations for us, we manage it.

18 So, just briefly, what happens, so you'll
19 understand my motivation, we were low bidder on the
20 biggest job we've ever been low bidder on, a
21 \$106 million bid. It was not a program subject to
22 15-A. It was Local Law 1.

23 But it was taken away from us because our
24 paperwork that we submitted was remiss, no question.

25 The documents gave us the opportunity for a

1 four-day cure, which the owner didn't provide us
2 with.

3 And they just went to the next bidder and
4 deemed us to be non-responsive primarily because our
5 minority paperwork was not proper, which was
6 extremely frustrating to me, especially after having
7 done the right thing, if you will, for so many
8 years.

9 So to get back to your particular cause, it
10 is getting more and more difficult every day to do
11 business.

12 We focus ourselves; I think 33 percent of the
13 effort in my company right now is devoted towards
14 minority.

15 My partner said to me, Everything we talk
16 about now is minority.

17 That's a little bit of an exaggeration.

18 But, when we bid a job in our bid room, we
19 have two big television sets.

20 One has the cost of the bid, and the other
21 television set on a projection screen has, how are
22 we going to meet the minority goals?

23 And that goes part and parcel with our bids.

24 In meeting the goals, we're taking a far
25 greater risk.

1 I have a belief in my company, whenever my
2 estimator would bring in a contractor to us to
3 perform work, my first two questions would be:

4 Is he union, and -- he or she; and is he or
5 she bonded?

6 Nowadays, bonding is out the window with
7 minorities, to a large -- actually, I would say
8 70 percent of the minorities are not bonded.

9 I've got a \$5 million unbonded contract, a
10 \$3 million unbonded contract. And, generally,
11 I don't like to go higher than two hundred and fifty
12 or five hundred thousand dollars, unbonded.

13 So there's a far greater risk on our part.

14 And we have to -- I know we have to make sure
15 that the minorities meet commercially useful
16 purposes, but we have to keep an extra management
17 eye on the daily activities of the contractors, the
18 minority contractors, because many minority
19 contractors are financially suffering, and don't
20 have the same experience that another contractor who
21 might be doing a \$5 million job has, and this is a
22 first for many of them.

23 So it just creates a difficult situation for
24 us in working.

25 And that's, basically, our situation.

1 SENATOR PHILLIPS: Thank you, Mr. Sitbon.

2 So this is definitely an issue that is
3 costing your firm. It's making the overhead for a
4 project increase because of the amount of
5 administrative time you're putting towards making
6 sure. And the amount of risk. I mean, you are
7 employing unbonded subs.

8 LARRY SITBON: My biggest thing in life, as a
9 business owner, and I started the business 44 years
10 ago, as a business owner, the first thing I look at
11 is risk. That's the first thing I like to evaluate.

12 Whether it's sending someone to the deli for
13 a sandwich or bidding a job, I worry about risk.

14 And, also, we do take higher prices from
15 minorities in order to meet the goals. It's a fact.

16 SENATOR PHILLIPS: Right. Great.

17 Thank you very much.

18 Thank you for your testimony.

19 LARRY SITBON: Thank you.

20 SENATOR PHILLIPS: I'm going to ask
21 John Cavallaro and Denise (sic) Capolino.

22 Capolino? Capolino (different
23 pronunciation).

24 DENNIS CAPOLINO: Capolino.

25 SENATOR PHILLIPS: Capolino.

1 Thank you.

2 Oh, Dennis.

3 You're Denise.

4 Sorry, Dennis. My apologies there.

5 DENNIS CAPOLINO: That's okay, but I will say
6 that's probably a first for me.

7 [Laughter.]

8 SENATOR PHILLIPS: Okay.

9 So, John is with Skanska USA Construction,
10 and Dennis is with Halmar International. Both are
11 members of the GCA.

12 JOHN CAVALLARO: Good morning, Honorable
13 Senators.

14 As Senator Phillips mentioned, my name is
15 John Cavallaro. I am corporate counsel for
16 Skanska USA civil.

17 Skanska is actually a global developer and
18 construction company. I believe we're the seventh
19 largest contractor in the world.

20 My role at Skanska is actually to oversee the
21 national DBE compliance program, which includes M/W
22 compliance here in the New York area.

23 I oversee about 60 projects, and they range
24 from hundreds of millions, to as high as \$4 billion.

25 So I definitely offer a national perspective.

1 My range of projects go from Seattle to
2 Boston, to Orlando, to Southern California. But the
3 New York metro area has the -- I would say the
4 highest number of projects that I see M/W challenges
5 on or DBE challenges.

6 I think, Senator Brooks, you hit the nail on
7 the head.

8 How do you get a piece of legislation, put it
9 into practice, with day in and day out folks that
10 are running the program, actually can do this in an
11 efficient way, where the ideals of the program are
12 actually met, which is, really, provide the
13 opportunities that the program speaks to, and level
14 the playing field that DBE regulations kind of speak
15 to, that the M/W regulations pull from?

16 I think you're going to hear in these
17 workshops, if you haven't heard already, that in the
18 New York area, particularly downstate, capacity is a
19 tremendous issue.

20 We at Skanska, to address that issue on our
21 Laguardia project, a \$3.9 billion project, and our
22 Farley project, which is a \$1.26 billion project,
23 actually built in an exclusion in our project labor
24 agreement which said that MWBEs can actually work
25 non-union on a union project.

1 The unions were very resistant at first, but
2 ultimately agreed to it. And it was an effort to
3 address the issue, that you have a lot of MWBE
4 companies out there, that they hear the word
5 "unions" and they're reluctant to get involved in
6 the project.

7 We've also participated in USDOT bonding
8 workshops.

9 We do -- we run a building-blocks program for
10 MWBEs.

11 We spend a lot of effort in trying to train
12 the community, particularly the MWBE community, how
13 to work on a mega project which is unionized.

14 But the one thing that we're finding time and
15 time again, and I think you've heard this from
16 Denise and Marc, is that the goals are not
17 consistent with what's happening day to days.

18 I participated personally in some of the
19 disparity-study workshops that ultimately supported
20 New York State's 30 percent goal.

21 But the one thing that I find that the
22 disparity studies did not take into account is, what
23 do you do with a prime contractor who has
24 unreasonable pricing?

25 Just last week we bought out a scope of work.

1 When I say "buy out," it's a process of
2 hiring a subcontractor.

3 My non-MW was at \$8 million. My M/W was at
4 \$28 million.

5 So I have an M/W, he's available to do the
6 work, but he's available to do it at more than
7 300 percent the cost.

8 So, if you look at the disparity study,
9 I have availability, I have certification, but where
10 does the unreasonable pricing?

11 And, ultimately, the taxpayers bear that
12 burden.

13 So I ask that any improvement in the
14 legislation take into account the issue of
15 unreasonable pricing.

16 And the primes, in my opinion, should be
17 relieved of that pressure to meet the goal when the
18 pricing rises to the level of unreasonableness.

19 Also, we talk about that, in New York State,
20 we have umpteen thousands of firms certified in our
21 database, which is true.

22 I'd like legislation, when revisited, to take
23 a look at those areas of work on a kind of
24 scope-by-scope basis.

25 One thing that most of us in the room

1 probably use every day is elevators and escalators.

2 There's not a single M/W firm certified to do
3 the escalator work and the elevator work that we do.

4 Perhaps there should be exclusions for
5 certain areas of work based upon the
6 non-availability of M/Ws when they just don't exist
7 in those particular areas of work.

8 Another issue, and I'm going to give you
9 very, kind of, specific examples of what we deal
10 with day to day, when we're talking about improving
11 the legislation.

12 We have many, many prime contracts where we,
13 as the prime contractor, contractually must perform
14 a certain percentage of the work; 50 and 60 percent.

15 So if I have a 50 percent self-perform
16 guarantee to the owner, and I have a 30 percent
17 goal, that only leaves me 20 percent work for the
18 non-MW subcontractors.

19 The non-MW subcontractors are very critical
20 to the M/W community because they're the very ones
21 hiring them at the second tier.

22 So we find that they're diminishing, and
23 their numbers are reducing. That will ultimately
24 have a negative effect on us getting M/W because,
25 many times, M/W firms, they're small by definition,

1 they don't have the capacity.

2 So I will subcontract a very large scope of
3 work to a first-tier non-MW, who, in turn, will
4 break it down and get that M/W participation at the
5 second tier.

6 So we need that first level of non-M/Ws to
7 be active, efficient, successful, and financially
8 stable.

9 Another area where I think we can improve the
10 legislation -- and I think, Marc, you touched on
11 this -- I've had the benefit of being the compliance
12 officer on three large projects where the Department
13 of Defense was the owner.

14 The federal government operates under
15 something called the "Federal Acquisition
16 Regulation," much different than the DBE or the M/W
17 regulations.

18 On those projects, they actually take the
19 prime contract amount, break it down into two
20 components: What will the prime self-perform, and
21 what is the amount to be subcontracted?

22 And then goals are measured against the
23 amount to be subcontracted.

24 That's a very efficient way of identifying
25 the goal, and I think, practically speaking, a

1 realistic way of getting to the goals, because when
2 we speak of bonding, insurance, general conditions,
3 supervisory salaries, executive salaries, those are
4 not areas where there will be any participation, but
5 yet the goal in New York State is measured against
6 that.

7 So by breaking out the subcontractor,
8 (indiscernible), as Marc mentioned, it's a more
9 efficient and, I think, realistic way of achieving
10 the goals.

11 On the certification side, I think a little
12 bit of a misnomer exists in New York State.

13 We hear many subcontractors, even some
14 primes, talk about a firm being "certified."

15 But certified does not equal qualified, and
16 qualified doesn't equal compliant.

17 So, New York State spends an awful lot of
18 money hiring integrity monitors who work on the
19 owner's behalf, making sure that us, like primes and
20 subs, are being compliant.

21 I would suggest that the efforts of those
22 integrity monitors be redirected, that, in that
23 certification process, they're vetting out those
24 firms for compliance efforts, commercial-useful
25 function standards.

1 And that, this way, I believe, as Marc
2 mentioned, through the pre-qual process, when a firm
3 is presented as being "certified," it's more than
4 just a financial review. It's that the firm is
5 viable, qualified, and compliant.

6 I think it gives us all in this state a sense
7 of reassurance that we have the State's stamp of
8 approval.

9 We understand we're going to have our
10 compliance efforts to undergo, nonetheless. But at
11 least we have that extra level of reassurance,
12 particularly when non-compliance comes into
13 existence.

14 The other thing that we would ask you to take
15 a look at is that, MWBE firms are small by
16 definition.

17 And on the mega projects that we work on, we
18 are giving them subcontracts in the tens of millions
19 of dollars, when they've never handled work of this
20 nature, this scope, and, really speaking, this
21 scale.

22 Recently had a subcontractor who failed on a
23 project, an M/W. Had a \$38 million subcontract.

24 His next largest subcontract prior to that
25 was 6 million.

1 And, surprise, surprise, he failed within a
2 few months because the work and the scale of the
3 work was just too much.

4 But, we're under a lot of pressure to give
5 them this work because there's pressure to meet the
6 numbers.

7 So we ask that, there's an inherent tension
8 between hiring the firms, but then saying, "Hands
9 off. I can't give you assistance as a prime
10 contractor, in fear that I might violate the
11 standards for commercial-useful function."

12 If I want to properly take credit for that
13 \$38 million subcontract, I, literally, have to stand
14 on the sideline as the prime contractor and let that
15 small business with a \$38 million subcontract, work
16 on its own, and manage its own work.

17 And if I give too much assistance, I can then
18 have a prosecutor knocking on my door saying: You
19 violated CFF as a prime contractor. Now you're
20 under investigation.

21 There needs to be more balance in the CFF
22 standards, in my opinion.

23 These are firms that need assistance.

24 I believe most of us in the room, when we
25 think about our careers, there's someone who gave us

1 assistance, there's someone who was our mentor,
2 there's someone who helped us along the way.

3 If the essence of the program is to truly
4 have the M/Ws succeed, the primes should be able
5 to coordinate with them, give them more assistance,
6 for that successful rate.

7 But, that has to take into consideration that
8 the prime should not be in the position of being in
9 fear of being prosecuted for making sure that
10 coordination, schedule, guarantees, quality control,
11 are all met.

12 There's so much more to a project than M/W
13 compliance, so we have to be careful that the tail
14 is not wagging the dog.

15 SENATOR PHILLIPS: Mr. Capolino -- oh, excuse
16 me.

17 JOHN CAVALLARO: Yeah, just two other
18 comments.

19 The other thing that I would suggest, too, is
20 that, when you look at the federal DBE regulations,
21 and you put on all of the materials that they add,
22 there's, literally, hundreds of pages of guidance.

23 The New York statute is a few paragraphs, and
24 there's no guidance behind it.

25 Take a look at your New York State Committee

1 on Open Government.

2 FOIL, we'll deal with it every day,
3 especially as public officers.

4 If I want to look up an issue for FOIL, I go
5 to your database, the New York State Committee on
6 Open Government, and there's a library of guidance
7 opinions, so that you know, as a public official,
8 how to operate, and how to disclose documents, and
9 how to withhold documents.

10 I would suggest that there are's so many gray
11 areas in the New York statute, that adopt something
12 similar to what you do with the Committee on Open
13 Government, and start publishing guidance opinions
14 for the contracting community, so that we encounter
15 these gray areas, we have some level of guidance.

16 By leaving the contracting community with so
17 many questions, even unintentionally, we can find
18 ourselves in the area of noncompliance.

19 That's not good for the project, that's not
20 good for the public owner, and that's certainly not
21 good for the contracting community.

22 And then, lastly, to Denise's point, we have
23 six different commodity codes in New York that we
24 use.

25 Let's standardize the codes to one code, one

1 basis. And let's standardize the forms.

2 New York State uses various forms of payment
3 verifications, waiver requests, utilization plans,
4 and participation plans.

5 Let's standardize one set of forms so that
6 we're all speaking the same language, and the public
7 employees and the contracting community are kind of
8 using the same verbiage when they're operating under
9 a project.

10 I think that there's such a shotgun approach
11 to the forms, the codes, the certification, that it
12 just raises the risk for a lot of miscommunication
13 when you're operating day to day.

14 So thank you for your time.

15 And, again, I applaud you for having us here
16 today.

17 SENATOR PHILLIPS: Thank you.

18 Thank you.

19 Mr. Capolino.

20 DENNIS CAPOLINO: Hi, I'm Dennis Capolino.
21 I'm a vice president of Halmar International.

22 For Halmar International, I serve as the
23 chief procurement officer, chief diversity officer,
24 and corporate EEO officer.

25 I'm current -- Halmar is one of the four

1 partners on third -- of Third-Track constructors.

2 And we're currently working on the
3 Long Island railroad project right here at home.

4 SENATOR PHILLIPS: (Inaudible.)

5 DENNIS CAPOLINO: And it's going to be --
6 it's going to inconvenience people for the next four
7 or five years, but it's going to be a great project.

8 So, for Third-Track constructors, I am
9 currently managing the procurement, and I'm the
10 MWBE, SDVOB, program manager.

11 So I am managing the MWBE program for a huge
12 project also.

13 The people that went before me today have
14 talked in a lot of generalities.

15 I want -- I thought maybe I would spend a
16 little time giving you some real statistics of
17 things that we have experienced over the last few
18 years.

19 We find that invitation to bids to MWBE
20 firms, and on every single project we send out
21 hundreds. Sometimes on a project like Third Track,
22 it will be thousands.

23 We find we get about a 7 percent response
24 rate --

25 SENATOR PHILLIPS: Seven?

1 DENNIS CAPOLINO: Seven.

2 SENATOR PHILLIPS: Seventy?

3 DENNIS CAPOLINO: Seven. Seven

4 (indiscernible).

5 -- of firms that we invite to bid, that
6 actually submit a bid.

7 We also have job-specific outreach events.

8 We've had three already out here on the
9 island for this project.

10 We find that on the job-specific outreach
11 events we average about a 3 percent turnout.

12 There was one here the MTA sponsored on
13 June 2, I believe. 23 firms showed up.

14 We find that most MWBE firms do not -- they
15 don't want to spend the time to put a quote together
16 and give us a price before we actually bid the
17 project.

18 But yet the -- our public owners require us
19 to submit a utilization plan, telling us (sic) what
20 firms we plan to use, how much and what work they're
21 going to do, either with our bid or within seven
22 days of our bid.

23 We also find that a lot of MWBE firms just
24 plain do not want to work for certain state
25 agencies.

1 New York City DOT is famous.

2 MTA. MTA has some pretty rigorous
3 requirements for qualification, as does,
4 New York City agencies, they have their VENDEX.

5 I found that the agencies are not willing to
6 bend their qualification requirements for MWBEs.

7 I've been in many battles where I proposed
8 someone who had two years' experience, and not
9 three, and they've just plain said, no, you can't
10 use them.

11 We also find that the agencies tend not to
12 adhere to Executive Order 15-A themselves.

13 As was discussed earlier, they don't set
14 project-specific goals.

15 Right now, it's a straight 30 percent on
16 everything that's State-funded.

17 I've seen one job in probably the last three
18 years that the goal was less than, then. And before
19 it was 20. Now it's 30.

20 I've seen one that -- where I think it
21 was 10. Just one.

22 They don't give waivers.

23 Waivers are not a thing. No matter what you
24 do, you do not get a waiver.

25 And, again, as everyone has said here, the

1 goals are not really realistic relative to the
2 projects that we're doing.

3 We've also found that just the certification
4 in the New York State database is really
5 meaningless.

6 Now, we talked about, the certifications
7 aren't -- don't really show what work the firm does.

8 But the agencies themselves come to us and
9 they say: Well, okay, they're in our database, but
10 that doesn't mean anything. You have to verify that
11 they're certified. You have to verify that they're
12 real. You have to verify that they perform a
13 commercially useful function.

14 And I'll say that, while we -- when we do
15 that, we find -- I find a lot of firms that
16 I wouldn't consider to be real, and we tend to shy
17 away from them, and, obviously, we don't use them.

18 I think there truly is a lack of capacity.

19 I've seen a lot of -- I've seen a lot of
20 statements made that there's over 10,000 firms that
21 are certified now.

22 I would submit to you that probably less -- a
23 third or less are actually shovel-in-the-ground
24 construction firms.

25 Most of them are construction managers,

1 engineers, and they don't actually build things.

2 A lot of them are non-union, we talked about
3 that.

4 Government agencies, such as MTA, where
5 projects now, or even the New York State DOT, their
6 projects, they do project labor agreements.

7 These firms don't want to -- they just don't
8 want to get involved.

9 And I found, even on jobs, you know, where
10 I've told them, "It's a project-labor agreement.
11 Even though you're non-union, you can still work on
12 the project," they want nothing to do with the
13 unions.

14 And a lot of them are very small and they
15 have their crew, and that's how they make their
16 living.

17 Which, there's another point: A lot of the
18 firms that are certified, they don't even do
19 commercial work.

20 There's residential builders, there's people
21 that do storefronts on shopping centers. They don't
22 even perform our type of work.

23 A lot of them are from out of state. They're
24 not even New York State businesses.

25 When we talked about the painting, the bridge

1 painters, one of the things Denise didn't mention is
2 that, of the six, seven, that are certified, only
3 one or two are actually New York State companies,
4 and only one in Long Island.

5 I find that I -- on a regular basis,
6 yesterday, three times, I've had to tell
7 non-minority small businesses that, I'm sorry,
8 I can't accept a bid from you on my job because
9 everything that I'm giving out now is only going to
10 minority businesses.

11 There were three yesterday, and people that
12 I've worked with for over 20 years, and I just told
13 them, Don't waste your time. You cannot get this
14 job.

15 SENATOR AKSHAR: The cost on this job,
16 (inaudible/no working microphone).

17 DENNIS CAPOLINO: The cost of?

18 Well, we're talking about \$200,000 contracts,
19 million-dollar contracts. I'm not talking about
20 major companies.

21 We're talking about, you know, just "people
22 trying to earn a living" kind of companies.
23 Absolutely.

24 So with that in mind, I want to go over a
25 couple numbers.

1 On the Long Island Railroad Third Track
2 project, before we bid the job, we sent out
3 3,282 invitations to minority- and women-owned
4 businesses.

5 Part of the rules of good-faith effort, you
6 have to make what we call -- you have to do what we
7 call at least three "touches."

8 "Touch" could be an e-mail -- well,
9 typically, it's two e-mails and a phone call.

10 So, 3,282 people we contacted 3 times.

11 We received 962 responses.

12 163 of the 962 said they will bid the job,
13 and of those 163 "will bids," we actually received
14 70 bids, on a \$2 billion project.

15 Now -- so, outreach events.

16 Three or four months before we actually bid
17 the Third-Track project, we had an outreach event.

18 We invited 3,588 firms. About 75 attended.

19 In March of '18, Halmar did an outreach for
20 another project a little further up the line in
21 Westchester County, for the enhancement of five
22 train stations.

23 We invited 3,267 firms. 41 showed up.

24 I talked about the MTA's outreach, where they
25 only got 23 firms.

1 So we decided to try something different, and
2 we decided to do what we call "targeted outreaches."

3 And one of the -- one of the -- and with us,
4 our approach to try to meet the goal on Third-Track
5 is, we're breaking the project up into very small
6 parts.

7 We have 13 bridges we have to build.

8 We're breaking the bid packages up into one-
9 or two-bridge bid packages.

10 So we did that, and we did an invitation just
11 for the steel fabrication and the steel erection.

12 We invited 62 firms that were certified for
13 steel fabrication or steel erection. Two attended.

14 On August 16, we did another big outreach
15 event for Third Track.

16 We invited 3,018 firms. 67 showed up.

17 Now, I sat down --

18 I'm sorry?

19 SENATOR PHILLIPS: (Inaudible/no working
20 microphone.)

21 DENNIS CAPOLINO: Yeah, okay.

22 One more quick point.

23 So I sat down and worked out the numbers
24 for -- because we touched on this also, with
25 exclusions from the contract, when you're setting

1 goals.

2 So the base contract for Third Track is
3 1,457,100 -- \$1,457,117,009.

4 We have a 20 percent self-perform
5 requirement.

6 So if we deduct that, if we deduct our
7 mobilization and demobilization costs, our overhead
8 and profit, our bonds and insurance, direct-hire
9 project management, and there's also items that
10 cannot be -- that are what we call "sole source."
11 We can only use one firm.

12 For example, the positive train control
13 system, we can only use Bombardier.

14 For the signal system we can only use
15 Insolvile (ph.).

16 So you get to the bottom of this, and there
17 are's 468 million available to subcontract, at all,
18 to every firm.

19 Our 36 percent goal is 524,562,000.

20 So, sitting here today, if I subcontract
21 everything out to an M/W or SDVOB firm, I'm still
22 going to be \$56 million short of the goal.

23 And the other thing that we didn't talk about
24 today, that we didn't bring up, because this is the
25 MWBE program, but now we've -- the State has now

1 instituted an SDVOB program (service-disabled
2 veteran-owned businesses).

3 Our goal on Third Track for that is
4 6 percent, which equates to \$87 million.

5 There's only 231 certified SDVOB firms in the
6 entire state that perform construction work.

7 So, from -- meeting those goals, I think, are
8 going to be even harder.

9 SENATOR PHILLIPS: It's a project that is,
10 needless to say, very relevant to here in the
11 7th Senate District, since the entire -- with the
12 exception of a small portion going through
13 Senator Hannon's district, but, it is a project that
14 is right here in the 7th Senate District.

15 So, thank you.

16 DENNIS CAPOLINO: Uh-huh.

17 SENATOR PHILLIPS: Thank you, and good luck.

18 SENATOR AKSHAR: I think you highlighted a
19 couple of important points that's often discussed
20 when we're having these hearings, that -- I would
21 qualify both of you as, this is my words,
22 heavy-hitters. Right?

23 You're very, very heavy-hitters. Very, very
24 big multi-billion-dollar-jobs companies.

25 But you both hit on the importance of, you

1 know, even though you're very large companies,
2 right, you're taking care of a lot of smaller
3 people. Right?

4 DENNIS CAPOLINO: Uh-huh. Absolutely.

5 SENATOR AKSHAR: Somebody -- that \$200,000 to
6 somebody could change their company.

7 A million dollars to somebody could change
8 their company.

9 So, I appreciate you highlighting that,
10 that -- you know, that line through all the
11 projects, and how you are -- while you may be a very
12 big -- both of you, respectively, very big
13 companies, you, in fact, are taking care of people
14 down the line.

15 DENNIS CAPOLINO: Well, and I think that
16 you'll find that a lot of our -- a lot of the states
17 are -- and I almost don't want to say this, but
18 they're kind of going away from the MWBE programs,
19 and they're going to either diverse business
20 programs or they're going to small-business
21 programs.

22 New Jersey, California, there's a -- you
23 know, there are's a lot of them now, Connecticut,
24 they do small-business. And small businesses are
25 minority, veterans, woman-owned, and also, you know,

1 groups of non-minorities.

2 SENATOR AKSHAR: Let me ask one last
3 question, I know we're tight on time.

4 How often are you hiring MWBEs from out of
5 state to fulfill the requirement?

6 Can you speak -- can either of you speak on
7 that.

8 JOHN CAVALLARO: I can't assign a percentage
9 to it, but you do have MWBEs from the tristate
10 area outside of New York, even as far as
11 Pennsylvania, that are certified in New York.

12 And with the tension and the goals, for
13 example, I have two projects in New York City alone
14 where the goals are one -- where the goals,
15 collectively, are \$1.1 billion.

16 SENATOR AKSHAR: "Billion"?

17 JOHN CAVALLARO: "Billion."

18 1.1 billion in participation.

19 But, M/W firms are small by definition.

20 They have to be small or they graduate out of
21 the program.

22 So what does that mean?

23 That means I need volumes and volumes and
24 volumes of them to meet that 1.1 billion.

25 So oftentimes we do find, when you're looking

1 at the pricing and going through the (indiscernible)
2 process, you will be hiring firms from out of state.

3 And if I could just add one other point to
4 what Dennis said, I think there's a lot of good
5 things about -- and we don't talk about it enough,
6 about mentor-protege programs, if we truly want to
7 help small businesses.

8 We were the first company in the
9 United States to enter into the USDOT mentor-protege
10 program.

11 It's not an area of taking credit.

12 It's not an area where we're counting
13 numbers.

14 It's about truly mentoring small businesses
15 to grow, succeed, and become, hopefully,
16 medium-sized and large businesses, and become large
17 employers, in the United States.

18 I think that there should be more focus in
19 that area as well.

20 And I don't know that we speak about that
21 enough in New York State.

22 SENATOR AKSHAR: All right. Thank you.

23 JOHN CAVALLARO: Thank you.

24 SENATOR PHILLIPS: I'm going to keep things
25 rolling, unless we -- thank you.

1 Thank you, both of you, very, very much.

2 As we get our next panel up here, I just want
3 to take a minute to thank all the staffs, that this
4 wouldn't have happened without my staff, without
5 Senator Boyle's staff, Senator Brooks', and
6 Senator Akshar's.

7 So, thank you very much.

8 We also have Lisa Harris who is from our
9 Senate Legal Department up in Albany. She is here.

10 Lisa wave, please.

11 Lisa has been instrumental in coordinating,
12 and -- our efforts as a Committee working group on
13 this MWBE issue.

14 So thank you, Lisa, for being here.

15 So if I could have my next panel come on up.

16 I'm doing a really bad job of keeping us on
17 track, I just want you to know.

18 I also am going to say, at 12:15, I am going
19 to hand this event over to my colleague,
20 Senator Akshar, because, believe it or not, I have
21 to go.

22 So I apologize up front.

23 So I'm going to let you introduce yourselves
24 because I'm doing a bad job, as Dennis, or,
25 "Denise," knows.

1 So, thank you.

2 So, please, Mr. Haugland.

3 WILLIAM HAUGLAND: I am Bill Haugland, with
4 Grace Industries.

5 We are an infrastructure construction company
6 here, based out of Long Island, New York, primarily
7 working in the Long Island, New York City, and
8 Westchester-southern New York region.

9 The New York State Department of
10 Transportation is among our largest customers.

11 And the 30 percent MWBE goal with the program
12 is certainly affecting our daily -- you know, the
13 way we're progressing projects in the past.

14 It's not a -- you just -- the concept of
15 subcontracting to a minority group of companies is a
16 great one. And I haven't heard anybody today, and
17 I don't think there's anybody here, that is opposed
18 to that.

19 And, you know, Denise and Marc have been
20 doing a great job in the AGC advocating that around
21 the -- around the state.

22 But, to -- you know, to mandate -- and
23 "mandate" is the wrong word -- require that this
24 goal was set forth, and 30 percent as a blanket
25 throughout the entire value of the project, which,

1 as Rich I believe touched on, is not just on our
2 work that we would be subcontracting out.

3 There could be forced items that are in there
4 from the DOT; there's our overhead; our profit, and
5 God willing; all associated with that.

6 So, I mean, effectively, if you take a job
7 that's \$10 million, sell price to the State, and it
8 has a 30 percent goal, in reality, it's more than
9 30 percent that we're subcontracting out at that
10 point.

11 So, I mean, I don't -- you know, advancement
12 of the program doesn't have to just be in increasing
13 the number, from 30 to wherever it would go, but
14 making it more sustainable.

15 And I think that there's been some great
16 ideas.

17 We've independently, sounds like we're all
18 coming up to the same conclusion here, and I've
19 heard it a couple of times, where if we were to take
20 a step back and look at what we're trying to achieve
21 in further helping some companies that may have a
22 disadvantage associated with them, to help advance
23 them, and look at the work that we would be
24 subcontracting out, and allocate a percentage, and
25 maybe that percentage of our subcontractor work is

1 more than 30 percent at that point.

2 But, by all means, there's examples, as I've
3 learned today, and I've seen with other agencies
4 around the country, and it sounds like even within
5 the state, where they'll do that at the time of bid.

6 You write in your subcontractor value, you
7 write in the percentages of whether it's an M/W, a
8 small-business company, and -- and -- you know, you
9 set that at the time of bid, so that way it's up
10 front and everybody understands what's going on.

11 But, right now, meeting a 30 percent goal on
12 a fast-award job, which we all know in the
13 infrastructure business, schedule; the schedule at
14 the time of the bid, and then the schedule of when
15 the actual -- the job is going to get brought in, is
16 usually accelerated along the way, as we've seen
17 with the landmark Third-Track project, as well as
18 LaGuardia, I'm sure, and some of these other
19 projects, even on a smaller scale that we deal with.

20 And, okay, as a general contractor, we have
21 the ability to -- you know, that's what we do: We
22 solve a problem; we provide a solution to a
23 challenge.

24 And when we have a subcontractor that may not
25 be able to do that, and we can't do anything to help

1 them, we have to take this hands-off approach, you
2 know, we're asking for the system to fail.

3 And there's been countless examples, so
4 I know, in the spirit of time, we don't need to keep
5 going into that.

6 But, thank you.

7 SENATOR PHILLIPS: Very helpful, but to hear
8 it reiterated time and again.

9 Mr. Lipsky.

10 JOEL LIPSKY: All right.

11 Thank you very much, Senators, for having me
12 here.

13 Senator Akshar, thank you very much for
14 taking leadership and being open to this.

15 It's a very, very important issue for my
16 company.

17 And, for Senators Phillips and Boyle and
18 Brooks, I do a lot of public works in your
19 districts, both publicly -- public-funded work from
20 the State, and also I do a lot of private work that
21 is not State-funded.

22 So I do a little bit of both, okay, public
23 and private.

24 I am co-owner and chief operations manager
25 for Lipsky Construction.

1 I graduated with a bachelor's degree in
2 construction management, and have been working
3 specifically in New York State for the last
4 10 years.

5 After I graduated, I did go and work for
6 Turner Construction in the city. They are a large,
7 we recognized, as one of the top construction firms
8 in the state.

9 And after working with them for about
10 five years, I then moved back to Long Island and
11 joined the family business.

12 Myself and my brother are third-generation
13 owners of the construction company.

14 My grandfather and my father started this,
15 and we have been providing construction services to
16 Long Islanders for over 50 years now.

17 We were raised on Long Island, we were
18 brought up on Long Island. Our business is on
19 Long Island. Our homes, and our roots, for the next
20 30, 40 years, will be on Long Island.

21 So, we are not going anywhere anytime soon,
22 much to the dismay of some of the competitors I have
23 in this room.

24 I just want to thank Dennis for providing
25 very, very good statistics on some of the stuff.

1 Now, I'm sure that you have these numbers
2 available because of all the outreach that you're
3 required to do and to prove to the State, and the
4 extent of which your company needs to put the
5 resources in, not just human resources, but the
6 financial resources as well, just to be in
7 compliance of the outreach program.

8 So the position of my company, being a
9 family-owned-and-operated company on Long Island,
10 where all my proceeds and profits stay within the
11 community, is the following:

12 Any program that the State can provide to us,
13 that can bring about new, qualified, responsible
14 contractors, we are 100 percent open to.

15 I am eager to discover who they are.

16 I am more eager to even work with them.

17 My family and my company both understand that
18 the MWBE program was put in place to create a
19 healthy, a vibrant, and reliable work pool in which
20 MWBE contractors have a fair shot at winning some
21 State contracts.

22 The program, based on its merits, is a very,
23 very good program.

24 It's a necessary program to provide equal
25 opportunity for women and minority businesses that,

1 historically, have been underrepresented and
2 underutilized in the past.

3 So, overall, I think that the merit and the
4 theory behind the program is a very, very good one.

5 Myself, being a product of New York State,
6 meaning, I went to public school within the state,
7 in Bay Port, by Senator Boyle's district, where the
8 State put extreme emphasis on inequality in the
9 school system, has taught me and educated me that
10 inequality is an issue, and it has been,
11 historically, an issue, and still presents itself to
12 be an issue today, not to the degree that it once
13 was. We are always making improvements on the
14 issue.

15 But the issue is not going away, and
16 responsible procedures need to be put in place in
17 order to close this gap.

18 And I think that the disparity study that the
19 State has released shows that there is a gap, to
20 some degree.

21 Now, to what extent of that gap is?

22 I know that Mike Elmdorf from the AGC, who
23 has spoken to your panel before, can kind of go over
24 that more in detail.

25 But, in summary, my company is very much open

1 to having a responsible program be put in place so
2 that we can meet some new contractors.

3 The challenges that my small
4 family-owned-and-operated company face is that:

5 When did this goal become a requirement?

6 How did it become a requirement?

7 The good-faith effort is absurd.

8 It's open-ended, and there's -- it just takes
9 up tremendous resources, as Dennis pointed out
10 earlier, not only in big companies, but, as a small
11 company who mostly has family working for it, I've
12 had to retain at least one or two individuals for
13 the sole purpose of being in compliance with the
14 outreach program, and trying to get the bids, prior
15 to submitting it, in line with the bid solicitations
16 with the MWBE programs.

17 The other challenges, I'm not going to beat a
18 dead horse here:

19 The certification process is extremely bad.

20 The recertification process is bad.

21 I also have very, very well-qualified
22 contractors that get decertified, in some cases,
23 halfway through the project, that put the risk and
24 responsibility back on me to figure it out.

25 I also have issues in the way that the bids

1 are solicited.

2 In some cases, only very specific contractors
3 can do this very special work, yet they still have
4 to conform to the MWBE requirements regardless if
5 they're an MWBE contractor or not.

6 I have to use this guy. He's the only guy
7 that's available and qualified, as per the
8 architect, to do this work.

9 I don't have a choice, but somehow have I to
10 make it work.

11 The backlash that we're getting, and how it's
12 affecting my company, is I'm, for sure, spending
13 more time on my overhead -- more money on overhead,
14 tremendous time vetting out and doing due diligence
15 to make good-faith efforts.

16 I've been told that I will receive financial
17 penalties, in the sense that they'll deduct money
18 from my contract if I don't meet these goals.

19 I'm not sure if you Senators are aware, but
20 every State project that happens to be -- every
21 single contractor here has a report card, of sorts,
22 that we're not allowed to see. And if we don't hit
23 the goals, it will be reflected negatively on the
24 report card, and that will be viewed in a negative
25 fashion for any future work that we try and do,

1 regardless of any good-faith effort that we tried to
2 do.

3 If we don't meet the goal, it will be
4 reported, and, in some cases, will prevent us from
5 doing work with the State again.

6 I've also been closed-door -- behind closed
7 doors, black-balled by some of the consultants that
8 you hired.

9 And a specific quote by someone -- by one of
10 the consultants of your agencies was that, he will
11 ensure that I will never receive a State contract
12 ever again unless I meet the requirement.

13 That's a direct quote from a consultant from
14 the State.

15 And, overall, when you go to the Empire State
16 Development and try and reason with them:

17 (Motioning) I don't want anything to do with it.

18 "Meet your goals," is the response that we
19 get. "Figure it out. As a contractor, you guys
20 will figure it out."

21 It's a hard line from the Governor's
22 Administration to meet the 30 percent goals. And
23 the responsibility and the effort that needs to get
24 done is put on small businesses, and big businesses,
25 and costing our overhead to be higher.

1 And that just gets translated down to the
2 bid.

3 When I put my bid in, my prices,
4 unfortunately, are going slowly up, not because of
5 higher wages on Long Island, but because of all the
6 additional overhead that's required in order to
7 conform to this program.

8 We find that the State generally doesn't want
9 to compromise to any degree.

10 And, again, like what Dennis was saying, they
11 have a waiver program. But, the joke of all these
12 networking functions that we go to is, "They don't
13 waive for anything."

14 You know, I know that there's a number on
15 there that they do grant waivers, but it's very,
16 very rare.

17 Now, Senator Phillips, I understand that you
18 sit on the Insurance Committee, or at one point did.

19 And I understand that, Senator Brooks, you
20 have insurance background.

21 I just want to let you guys know, from my
22 understanding, the qualification process to get on
23 this list, which I'm going to talk about the list in
24 one minute, in no way vets out people's insurance.

25 Besides providing a very simple document that

1 says, you have something, they don't do any type of
2 due diligence to vet out the people with bad
3 insurances.

4 And I'll give you an example of what that
5 means.

6 I've had roofers come to me, and have found
7 out that they exclude personal liability for any
8 injury over one story.

9 So any roofer over -- if that worker is on a
10 two-story, three-story, four-story, roof that falls,
11 that subcontractor's insurance will not take that
12 claim. It goes back onto me, or the owner.

13 I've had cabinet installers whose insurance
14 doesn't cover them outside of their workshop, and
15 they're trying to install cabinets on my job sites.

16 And I think your father was a steelworker at
17 one point.

18 I had steelworkers -- a steel contractor that
19 didn't even know that any worker on a hoist or
20 ladder that fell, his insurance would not cover that
21 claim.

22 They also have exclusions on Labor Law 220.
23 There's exclusions on "action over" and "primary
24 non-contributory."

25 And I'm not going to bore you with what those

1 terms mean, but they're very, very important terms,
2 and it's actually a black-and-white: Either you
3 have -- you're in compliance with these insurance
4 requirements that the State is imposing for their
5 State contracts, or they're not.

6 And what we're largely finding is that there
7 is a large population of contractors on this list,
8 8,600, but, largely, unqualified.

9 And in the sense that, what we're finding is,
10 the biggest disqualification is their insurance
11 alone.

12 A very, very small portion of them actually
13 possess the right insurance to do the work.

14 And, again, what Dennis was saying is that,
15 to get a -- any type of subcontractor, and even a
16 smaller pool of subcontractors, to be bonded is like
17 almost impossible.

18 So the risk then comes back to my firm, and
19 my family.

20 And when I say "my firm," I'm talking about
21 my family.

22 So all that risk, if they don't perform,
23 they're not bonded, I have the bond, but I have to
24 use them because I need to meet the State
25 requirements, is then passed down to me as a general

1 contractor.

2 I always like to end on a good note, so
3 I will end on a good note.

4 I think that the theory of the program is
5 very, very important, and it works, and I'll tell
6 you why.

7 I have met some very, very good competitive,
8 qualified, and responsible contractors through this
9 program.

10 And I believe that was the intent originally,
11 was to gain more exposure and even the playing field
12 of minority- and women-based contractors.

13 I can affirmly say that I have met some of
14 these contractors that I may not have -- normally
15 have met without this type of program, and, in some
16 cases, have used them on private work. Because they
17 do such a good job for me publicly, and they stay
18 competitive, that I will take them into the private
19 sector with me as well.

20 Charlie Hull at Hull Enterprises is a great
21 contractor. He's a landscape contractor. I very
22 much enjoy working with him. I met him on a State
23 project for Office of General Services. He's a very
24 good friend of mine.

25 Mary Cassone -- is Mary here?

1 I believe she's going to talk.

2 Mary Cassone is another woman-owned
3 contractor on Long Island. My family has worked
4 with her family for many, many years, and she's a
5 very, very good contractor.

6 So, the theory of the program works, but
7 there's definitely a lot of things that could get
8 improved on.

9 The biggest one that I have is the list.

10 The list that's on the website,
11 8,600 contractors, is a misrepresentation in any
12 capacity.

13 They are not qualified.

14 They are out-of-state contractors to find.

15 I'm not going to, again, beat the dead horse,
16 but, the painting of the bridge is a perfect
17 example, when the State will say: How can you not
18 find -- out of the 8,000 people, how is that you
19 cannot find one minority contractor that can do the
20 work for this specialty thing?

21 And they don't have the right insurance.

22 They can't work on the job site. The State does not
23 allow them.

24 It puts the risk on my family, and on my bond
25 and everything.

1 So the list needs a lot of improvements.

2 And I'm not sure why the Governor's
3 Administration is more concerned with showing that
4 number go up.

5 For whatever reason, I kind of feel like it's
6 a quota-driven type of statistic as opposed to a
7 quality-type-of-contractor statistic.

8 And I would actually like to see the number
9 go down from 8,000, because I would like to see that
10 the contractors are more qualified.

11 It puts the burden on contractors like myself
12 and my colleagues to do the vetting process for the
13 State.

14 This -- this -- there's no way -- so the
15 State is saying, this person --

16 SENATOR PHILLIPS: Mr. Lipsky, we're going to
17 give -- I apologize. I think we got your point.

18 JOEL LIPSKY: Okay. Yeah.

19 SENATOR PHILLIPS: And I hate to cut you
20 off --

21 JOEL LIPSKY: Okay.

22 SENATOR PHILLIPS: -- but I am going to cut
23 you off because we also have one more person.

24 But, we got it. We got it.

25 Thank you.

1 I apologize.

2 NICHOLAS ALDORISIO: I can be very brief.

3 I can just say ditto, and move on, if you
4 want.

5 [Laughter.]

6 SENATOR PHILLIPS: Yeah, I was going to say,
7 he did a great job.

8 NICHOLAS ALDORISIO: Yeah. Excellent.

9 My name is Nick Aldorizio. I'm the chief
10 financial officer of Aurora Contractors.

11 We're a general construction company,
12 construction-management firm, in Ronkonkoma,
13 New York.

14 Thank you very much for allowing me to speak
15 today; we really appreciate it.

16 We are also, as everyone mentioned,
17 definitely an advocate of the goals of the program.

18 But, I just put a list together, and I'll go
19 through it quickly, it's very repetitive. We seem
20 to be all be struggling with the same issues.

21 Some of the challenges in the current
22 marketplace:

23 Again, the MWBE-certified contractors lack
24 bonding capacity.

25 They lack union affiliation.

1 Their insurance requirements are -- to say
2 "they lack" is an understatement, as Joel stated
3 very eloquently.

4 Their overall responsiveness is a challenge
5 as well, I think we touched upon it earlier, not
6 only, though, in the bid phase, but throughout the
7 course of the project.

8 They're -- they're -- they seem to be spread
9 thin. They're smaller companies, but then there's,
10 also, they're in high demand.

11 So, sometimes, even if you have a qualified
12 company, you know, their labor force may be a little
13 limited. They don't have a union hall to pull from
14 necessarily in some cases.

15 So, during the course of construction, they
16 could be not as responsive as some other companies
17 as well.

18 Very often, project specifications
19 established by the design professionals require
20 specific contractors and/or specific materials,
21 which limit your ability to hire MWBE trades. That
22 was mentioned previously as well.

23 The final contract value is what the goals
24 are based on.

25 Quite often, there are costs associated with

1 that that you can't achieve the goals with, again,
2 as has been spoken to previously.

3 The search criteria and the website are
4 lacking.

5 We do a lot of work with New York City.

6 New York City has a similar-type program for
7 the private sector.

8 ICAP program:

9 Private sector is allowed.

10 Real-estate tax relief if they comply with
11 certain hiring practices of MWBE contractors and
12 employees, and so forth and so on.

13 Their database is similar in content;
14 however, their search criteria is much more refined.
15 It allows you to search for union contractors.

16 We do a tremendous amount of union work.

17 A lot of the New York State contracts now
18 have PLAs.

19 So, having that simple search criteria of
20 union and non-union is important. It saves a
21 tremendous amount of time during the bid phase,
22 soliciting phase, so forth and so on.

23 And then, again, we are getting some mixed
24 messages in speaking with individuals from the
25 agencies about good-faith effort versus goals versus

1 requirements.

2 It's a very competitive process, the bid
3 process.

4 I think New York State does a great job, and
5 they get good numbers. They have a lot of qualified
6 GCs bidding on your work.

7 But when we have to struggle with, do we hire
8 someone that's most qualified with the best price to
9 get the best bid, versus, just simply trying to
10 obtain a goal?

11 If we take the approach that we're going to
12 take -- try to obtain the goal, how -- we're not
13 guaranteed that the other competitors are taking
14 that same approach. So, our number could be less
15 competitive for that reason.

16 So, again, very repetitive.

17 But, we really do appreciate the program, and
18 appreciate allowing us to voice our concerns about
19 it.

20 SENATOR PHILLIPS: Thank you.

21 SENATOR BOYLE: Just a quick question.

22 Joel, you mentioned about the report card.

23 Can you describe that, and if you get
24 feedback on it? Or --

25 JOEL LIPSKY: Yeah. As an example, when you

1 go work for the Office of General Services for
2 New York State, which is an extension of the
3 Governor's program, they know how well you did on
4 your submittal process, how well you did on your
5 work performance, how well you did on your minority-
6 and women-based quotas, on your past projects with
7 them.

8 They keep track of this information.

9 It's actually a good program because it helps
10 qualify good contractors within the state.

11 But when you make the requirements so
12 difficult, and you draw such a hard line in the
13 sand, like the Governor has done, it makes it very,
14 very difficult, for all the reasons that everyone is
15 talking about, to get a good report card, you know,
16 of sorts.

17 And this is how they -- this is -- that's
18 future work for us (indiscernible).

19 WILLIAM HAUGLAND: If it's also -- it's also
20 utilized, Senator, on design-build and best value.

21 JOEL LIPSKY: Yeah.

22 WILLIAM HAUGLAND: There's a whole category
23 for minority utilization.

24 And if you had a minority plan you submitted
25 on a past project, that for -- could be very valid

1 reasons, did not achieve, you could end up getting
2 points deducted on your next project at that point,
3 as a result of it.

4 And with competitive bidding amongst the
5 GCs, every point, or tenth of a point, really does
6 matter here.

7 SENATOR BOYLE: Thanks, Bill.

8 SENATOR PHILLIPS: Thank you.

9 All three of you, thank you very much for
10 your time.

11 The next panel are going to be members of the
12 Women's (sic) Builders Council, which is,
13 Nanci-Jean DeNapoli from KND Electric;
14 Christine Donaldson --

15 Christine, help me out.

16 CHRISTINE DONALDSON-BOCCIA: -Boccia.

17 SENATOR PHILLIPS: -- -Boccia.

18 Thank you very much.

19 Who is -- they're going to go first?

20 Nanci-Jean.

21 NANCI-JEAN DeNAPOLI: This is not fun, coming
22 up here to publicly speak, but --

23 SENATOR PHILLIPS: That's okay.

24 You're in friendly territory here, so...

25 NANCI-JEAN DeNAPOLI: Good morning.

1 On behalf of KND Electric and the
2 Women's (sic) Builders Council, I want to thank all
3 the Senators who comprise the New York State Senate
4 working group on the Minority WBE -- MWBE program
5 for hosting and having us here today.

6 My name is Nanci-Jean DeNapoli. I'm
7 vice president of KND Electric, and a board member
8 of the Women Builders Council.

9 For 20 years I have worked in partnership
10 with my sister-in-law, Christine DeNapoli, and our
11 family, to own and operate and expand KND Electric
12 to a full-service union electrical contracting firm,
13 providing a broad range of services on public and
14 private projects throughout New York.

15 We're in our 21st year of business and
16 I have over 60 employees.

17 I am also, on a positive side of the WBE
18 program, a successful WBE electrical contractor.

19 As you can see, we're in our 21st year.

20 And I've been given the opportunity to work
21 on historical projects that I probably never would
22 have been able to do if I wasn't a WBE.

23 One is the Third Track. I am speaking with
24 somebody on working with Third Track.

25 And I'm also proud to be a sub on the

1 Moynihan Station.

2 I believe he left.

3 But, again, the program, because of Senators
4 and everybody beyond advocating for us, it has given
5 me and my family opportunity to go into the
6 electrical business.

7 I will turn it over to Christine.

8 CHRISTINE DONALDSON-BOCCIA: Good morning,
9 and thank you for having this wonderful event and
10 letting us speak.

11 I'm Christine Donaldson-Boccia.

12 My father was Jim Donaldson, who was partners
13 with his brother in the big Donaldson organization,
14 which is a Long Island acoustical and drywall
15 company.

16 I am the executive manager and owner of, now,
17 J.D. Traditional Interiors. We split away from the
18 name. And I'm a 100 percent union interiors
19 contractor.

20 I perform both public and private.

21 And I'm also a very successful proponent and,
22 hopefully, not graduate, but, of the MWBE program
23 for New York City and New York State.

24 I'm fourth generation.

25 I got into this business when my father

1 passed away in 2007 and left the company.

2 I originally went in to either run it out or sell
3 it.

4 And, within a year, I was bit by the bug, and
5 I decided, I'm going to do this.

6 2008, I became WBE-certified, and I decided
7 to continue my father's legacy.

8 I now have 11 people in my office, and I run
9 a field of 85 to 100 men and women doing mostly
10 New York City public work, New York City School
11 Construction Authority, and MTA work.

12 We are here to provide testimony as WBEs, and
13 represent Women Builders Council which was
14 established in 2004.

15 WBC is the leading association representing
16 women in the construction industry on several
17 important fronts:

18 Organizing legislation of -- advocacy.

19 Providing professional development and
20 inspiring the next generation of women builders.

21 WBC's mission is to increase diversity and
22 the role of women in the construction industry by
23 providing a dynamic forum to remove the barriers
24 that prevent women from succeeding in industry that
25 is traditionally dominated by men.

1 WBC was founded by several women business
2 owners who organized -- recognized the challenges of
3 doing business as a traditionally male-dominated
4 industry.

5 Now in our 14th year, we have grown to be
6 one of the leading voices of women businesses and
7 women professionals in construction.

8 Our board includes many of the leading women
9 in construction, from certified minority- and
10 women-owned businesses, to women in the country's
11 top construction firms.

12 WBC advocates on behalf of women and
13 minorities, and encourages the construction industry
14 to consider varied issues and initiatives that
15 affect small-business growth throughout the state.

16 NANCI-JEAN DeNAPOLI: Thanks, Chris.

17 Today we're here on behalf of KND Electric
18 and the hundreds of members of the WBC, to
19 communicate to you the importance of the
20 New York State Minority- and Women-Owned Enterprise
21 Program.

22 And the ways in which it has provided our
23 firms and thousands of WBEs across the state with
24 the ability to compete and win State contracts that,
25 historically, would never have been accessible to

1 us.

2 Like many small businesses across the state,
3 Christine and I, my sister-in-law, started our
4 business in the back of her house.

5 As a firm, carrying the legacy of three
6 generations of electrical contractors, we have
7 committed ourselves to doing our best, working hard,
8 and providing our clients with the best work
9 possible.

10 But in an industry that has always been
11 dominated by men, where deals, historically, were
12 closed over scotch or on the golf course, the best
13 product and lowest bid sometimes weren't enough.

14 And that's where the New York State WBE
15 program began to open doors and start conversations,
16 and changed the face of the construction industry.

17 Article 15-A was signed into law on July 19,
18 1988, and authorized the creation of an Office of
19 Minority and Women Business Development to promote
20 employment and business opportunities on State
21 contracts for minorities and women.

22 Under this statute, the state agencies were
23 also charged with establishing employment- and
24 business-participation goals for minorities and
25 women.

1 The program has gone a long way, especially
2 with the leadership shown by Andrew --
3 Governor Andrew Cuomo, who set a goal of 30 percent
4 on all state contracts in 2015.

5 Our board members have attended conferences,
6 hearings, and meetings throughout New York State,
7 and heard complaints about the program and its
8 goals.

9 Diversity isn't easy.

10 Gender equality takes effort and intention,
11 but that doesn't mean we can just throw in the towel
12 and walk away from a program that continues to
13 accomplish its mission, and that is, to increase
14 diversity and the role of women in the construction
15 industry.

16 Women represent over half of the population
17 in New York State and on Long Island, and we are
18 asking that you continue to support a program and
19 the initiatives that provide economic opportunities
20 to groups who have, historically, been discriminated
21 against and shut out of the State procurement
22 process.

23 CHRISTINE DONALDSON-BOCCIA: I would like to
24 add that, traditionally, women and minorities have
25 to work harder in order to get the same

1 opportunities in this construction industry, which
2 has been, traditionally, a man-dominated industry.

3 I sit on several boards.

4 I was the first woman in 97 years to get on a
5 board of all men in the walls-and-ceilings industry.

6 Nanci sits on lots of board, and so do many
7 of the other women that sit in the Women Builders
8 Council board of directors.

9 We put in a lot of time, a lot of effort, and
10 it's hard to get that recognition.

11 You get your foot in the door, but you have
12 to do the right job to get asked back.

13 It's no different than anybody else, but
14 having the ability to get the invites for our MWBE
15 projects.

16 And, you know, Joel was up here talking, and
17 I'm going, I've never gotten an invite from Lipsky.

18 "Here's my card," you know?

19 But, without a forum like this, I wouldn't
20 have known about his company, and he wouldn't know
21 about me.

22 You know, the program has provided our firms
23 and other certified firms who comprise WBC with the
24 ability to compete with other national competitors,
25 and through the program, win contracts.

1 I have a \$2 million contract at LaGuardia
2 to put up ceilings.

3 I have other smaller contracts.

4 I have several contracts with the MTA.

5 I had a legacy of getting a company,
6 unfortunately, when my father passed away.

7 And I had a cold group of contractors, but a
8 lot of business I lost, and I had to go out there
9 and find my own way.

10 And getting my W certification certainly did
11 help that.

12 NANJI-JEAN DeNAPOLI: Thanks, Chris.

13 Our second recommendation on how to improve
14 the New York State MWBE program is to provide
15 clarity for commercial useful function, also known
16 as "CUF."

17 Construction is a team-oriented process, and
18 there's a disconnect between the definition of
19 "CUFs" as it is applied in the construction
20 industry.

21 To provide a brief explanation:

22 To discourage MWBE fraud throughout the
23 construction industry, prime contractors can face
24 serious financial and legal consequences when
25 certain support is provided to an MWBE contractor on

1 a project.

2 However, the prime contractor can provide
3 equal or comparable support to a non-WBE contractor,
4 setting an unlevel playing field for the MWBEs on a
5 project.

6 Providing any usual support services, for
7 example, sharing a piece of equipment or joint
8 checks, may be considered noncompliance with the
9 requirement of commercially useful function.

10 Since every state agency has their own set of
11 unwritten rules and regulations, prime contractors
12 are terrified of being financially penalized for
13 treating an MWBE firm like any other sub on a
14 project.

15 WBC recommends the establishment of definite
16 guidelines to inform contractors that MWBEs and
17 government agencies regarding what is permissible
18 and what is prohibited.

19 The industry practices should align with the
20 definition of "commercially useful function."

21 WBC also recommends the creation of an
22 ombudsman, or a representative, who could deliver
23 quicks opinions for prime contractors and MWBEs on
24 what type of cooperation is legal.

25 At this point, CUF is supposed to prevent

1 shell under -- MWBEs from being created, and we
2 understand it is a very serious issue, but, it's
3 hurting legitimate firms, and it's making it
4 difficult for prime contractors to partner with us
5 on a project.

6 CHRISTINE DONALDSON-BOCCIA: We'd also like
7 to talk about the certification process.

8 WBC would like to see Empire State and
9 New York State agencies and authorities provide with
10 the -- resources they need to accurately handle the
11 influx of applications, inquiries, and technical
12 assistance.

13 It took me almost two years to get my
14 recertification through New York State, and that was
15 with many phone calls, me being proactive, and,
16 finally, getting a one-on-one with somebody through
17 Women Builders Council, who indeed found out my
18 application had been sitting there.

19 There's -- New York State and New York City
20 both have resources.

21 It makes sense to cull your resources and get
22 a program that works for everybody.

23 NANCI-JEAN DeNAPOLI: I have also witnessed,
24 my certification was up, and I believe it's three
25 years for New York State.

1 By the time I went to recertify, the one that
2 was not certified for three years, they kept saying,
3 You're still certified until we get to your paper
4 which is at the bottom of the pile.

5 By the second round of me being certified,
6 I was still not certified for the first round.

7 So it really needs a lot of help in the
8 office.

9 CHRISTINE DONALDSON-BOCCIA: And in
10 relation -- whoops, I'm off-key here.

11 But, one other thing that we'd like to bring
12 up is the personal net worth for New York State.

13 In my case, I inherited some money when my
14 mother passed away. Thankfully, not enough to put
15 me over the threshold.

16 But, I have a friend who actually lost her
17 WBE certification when her husband passed away and
18 she inherited his estate.

19 That had nothing to do with her company.

20 You know, you lose your spouse, and you're
21 given substantial funds, and then you get kicked
22 out.

23 She eventually closed shop. She could not
24 continue because all her relationships were through
25 her certification.

1 I know of another circumstance where the
2 owner scrimped and saved and bought her building
3 many, many years ago down in Dumbo.

4 Well, when the real-estate market went crazy,
5 Dumbo's prices shot up, she got kicked out of the
6 program.

7 How is that anything to do with her company?

8 So that really needs to be looked at.

9 And, also, as an owner, you need to have
10 substantial finances to back your bonding and your
11 banking.

12 You know, credit lines, and what happened in
13 the banking industry, they look at everything.

14 It's very, very difficult to get a decent
15 credit line. More and more banks are being pulled
16 out of construction industry.

17 You need to have your finances to do that.

18 SENATOR PHILLIPS: I know I (inaudible) so
19 I'm going to go first.

20 So you -- what do you believe are the
21 barriers to get men and -- women and minorities to
22 own their own businesses?

23 We heard some testimony earlier that
24 17 percent of the population, roughly, here on
25 Long Island are of Hispanic descent.

1 We know that 50 percent, if not more, of the
2 population here on Long Island are women.

3 I'm working with one of the local unions.
4 They're actually under -- under government mandate
5 to increase their apprenticeship programs for women.

6 And so I'm introducing them to high schools,
7 but, it's not easy.

8 So, what do you see as the barriers?

9 Because we say, look, let's -- we want women,
10 it's -- and minorities, but there's something that's
11 preventing it from happening.

12 CHRISTINE DONALDSON-BOCCIA: Part of it is
13 the insurance costs, and, you know, the elephant in
14 the room of the scaffold law.

15 NANCI-JEAN DeNAPOLI: It's a huge problem.

16 CHRISTINE DONALDSON-BOCCIA: The insurance
17 costs are absolutely insane.

18 I just had a workers' comp audit. My
19 workers' comp is over \$400,000.

20 It's a crazy number. It's scary.

21 And if I wasn't thrown into this business,
22 I don't know if I would have done it.

23 Nanci's got a lot more guts than I do.

24 But, part of it's insurance.

25 Part of it -- I've spoken at the MTA, at

1 their mentor program; I've helped over at the SCA,
2 I spoke on a panel; to get people to consider coming
3 in and starting their companies for MWBEs.

4 The mentor programs are so important, and to
5 put women, like myself and Nanci and many others for
6 WBC, and show it's a success.

7 One of the things I do, I work with the
8 Girl Scouts. You know, it's not -- you don't have
9 to stand behind a register and take somebody's
10 money. You can sit in a C-Suite and do that.

11 You know, you can go for your own company.

12 You can go into industries that are typically
13 man-dominated.

14 We need to get more women out there to
15 show -- and minorities, to show that it is possible.

16 NANCI-JEAN DeNAPOLI: I think at the school
17 level, we're thinking of WBCs trying to go into the
18 school to show women and girls.

19 I mean, I have two daughters myself, and
20 their friends. And when people hear that I'm a
21 woman-owned business owner in the electric industry,
22 they turn their heads.

23 They're, like, wow. How many years you doing
24 this?

25 Over -- I'm in 21 years.

1 Like, wow. Like, they just can't believe
2 that a woman could actually own, especially a
3 Local Union Number 3 and Local 25 shop.

4 But I've been doing this 20 years, and I do
5 have to say, the scaffolding law is way out of
6 control.

7 It's almost criminal, the amount of money
8 that -- I had to pay 70 percent more in insurance
9 this year, so my bottom line could just get wiped
10 away.

11 SENATOR AKSHAR: I'm sorry, just repeat that
12 number.

13 NANCI-JEAN DeNAPOLI: 75 percent --
14 70 percent more in insurance that I had to pay
15 because of the scaffolding law, because there's no
16 players that want to insure anybody in New York
17 State, especially if you're "Local 3" electrical
18 contractors.

19 They say it.

20 We also -- we're not allowed to participate
21 in a lot of OCIPs on major projects if you're
22 Local 3.

23 "We don't want you to participate."

24 So it's -- really, there's a lot of bad
25 language going on out there.

1 And, you should all know that we could build
2 our schools a lot cheaper if the scaffolding law
3 wasn't there because the insurance costs would go
4 way down.

5 CHRISTINE DONALDSON-BOCCIA: (Inaudible)
6 outrageous --

7 NANCI-JEAN DeNAPOLI: Anything that we have.

8 CHRISTINE DONALDSON-BOCCIA: -- our
9 railroads, (indiscernible) everything.

10 NANCI-JEAN DeNAPOLI: I mean, across the
11 pond, like we all know, they're paying a lot less
12 money than we are.

13 I mean -- I mean, again, as a WBE, when we
14 have our primes that we have to bid -- they have to
15 give their work to us, and I am a \$10 million
16 contractor, and you have someone who does a hundred
17 to two hundred million, my costs, yes, are going to
18 pay the same amount for your journeymen, but my
19 insurance costs and my overhead, of course, they're
20 a lot more money.

21 So now they have to give me a piece of the
22 contract for more money than what they have bid the
23 project on, for a premium.

24 So, it's either they're going to have to lose
25 on the portion that they're giving, or the money is

1 going to have -- there's going to have to be more
2 money to build.

3 CHRISTINE DONALDSON-BOCCIA: I don't carry
4 insurance to do exterior work.

5 I will only do interiors, because exterior
6 will cost me a heck of a lot more, because the
7 liability.

8 Even though I'm on the same lists, the
9 same -- there's a premium cost for exterior work,
10 and I won't do that.

11 So when the bids come out to me from anybody
12 that would be doing -- unless it's an OCIP or CCIP,
13 I have to decline.

14 That's hurting the MWBE program directly.

15 SENATOR AKSHAR: So we'll probably call on
16 you again to describe your troubles with scaffold.

17 I am partnering with Assemblyman
18 John McDonald to remove a provision in the
19 existing scaffold law that speaks about absolute
20 liability.

21 Clearly, it's driving costs.

22 NANCI-JEAN DeNAPOLI: That's what it is.

23 I mean, we should put the onus on the person
24 who's at fault.

25 SENATOR AKSHAR: Sure.

1 NANCI-JEAN DeNAPOLI: We're not telling you
2 to get rid of it, you should protect the worker.
3 But put it on whoever's at fault.

4 SENATOR AKSHAR: All right. So there is an
5 effort in Albany, not only to amend this program,
6 but also to take on big public-policy issues, like
7 the antiquated scaffold law, right, and amend and
8 change that to make New York more affordable.

9 So that's an issue we'll be picking up in
10 January when we return.

11 NANCI-JEAN DeNAPOLI: Good.

12 Yes, we'd be very interested.

13 SENATOR AKSHAR: Thank you.

14 SENATOR BROOKS: I just think it's important
15 to recognize, for both of you, that the MBE programs
16 themselves open up doors. That's the primary
17 objective.

18 I think what we're hearing today is a number
19 of issues that have to be addressed.

20 The insurance for one.

21 The qualifications of companies.

22 Obviously, you folks are exceptionally
23 well-qualified and are successful.

24 And I've dealt with minority-owned businesses
25 that have been successful because they are

1 well-qualified.

2 So there's a lot of work to be done here.

3 But I think the fact that both of you are
4 acknowledging it was a door-opener for you is an
5 important factor, and one that tells us we've got to
6 continue this program, but we have to reform it and
7 improve it.

8 CHRISTINE DONALDSON-BOCCIA: And if the lists
9 were cleaned up, I wouldn't be getting so many
10 concrete-bid requests.

11 [Laughter.]

12 CHRISTINE DONALDSON-BOCCIA: All the time.
13 Concrete and Upstate New York.

14 SENATOR AKSHAR: Well, let me follow up on
15 that, because that's where I'm from.

16 So, do you receive a lot of calls from
17 people, you know, in Western New York and Central
18 New York, northern New York, to come and provide
19 services?

20 CHRISTINE DONALDSON-BOCCIA: I do -- well,
21 not phone calls. I receive requests to bid;
22 e-mails.

23 SENATOR AKSHAR: So let me ask you to quote:
24 Would you go to Binghamton --

25 CHRISTINE DONALDSON-BOCCIA: No.

1 SENATOR AKSHAR: -- would you go to Watertown
2 or Rochester, to do work?

3 CHRISTINE DONALDSON-BOCCIA: I'm specifically
4 Long Island and the five boroughs.

5 SENATOR AKSHAR: And one last thing:

6 I want to congratulate you and applaud you on
7 both of your successes. It seems to me you're doing
8 very well in the program.

9 Before you -- though, you heard a lot of
10 testimony from other people.

11 I just want to be clear that -- that the
12 hurdles that were discussed, in your mind, do they
13 exist?

14 NANCI-JEAN DeNAPOLI: I'm doing this about
15 20 years, and I would say the first 5 to 8 years,
16 until people really started taking it serious, it
17 was a dog-and-pony show.

18 So their best-faith efforts really were not
19 best-faith efforts.

20 But I do see today that the onus, people are
21 responsible for making sure that they make the
22 effort to try to meet their goal requirement, and
23 there is a little bit more protection on us.

24 We do have people advocating for us, and
25 people aren't just saying, yeah, yeah. No, your

1 price is too high.

2 So it is better for us, but I do understand
3 both sides of the fence from where they're coming
4 from.

5 CHRISTINE DONALDSON-BOCCIA: And it's not --
6 I've, you know, heard from some of the GCs.

7 It's not just them that have to hire more
8 people.

9 It's us also.

10 I mean, the amount of paperwork for any of
11 the public-works jobs is ridiculous.

12 I've got a small Nassau County
13 water-treatment plant. Took four hours to do the
14 first certified payroll. And my assistant has been
15 doing certified payrolls for 32 years.

16 SENATOR AKSHAR: Huh.

17 CHRISTINE DONALDSON-BOCCIA: She's not a
18 newbie at this.

19 She came to me and she said, "For \$140,000
20 contract, are you kidding me?"

21 SENATOR PHILLIPS: And do you support having
22 to have to bid competitively, versus --

23 CHRISTINE DONALDSON-BOCCIA: Absolutely.

24 SENATOR PHILLIPS: -- thank you.

25 CHRISTINE DONALDSON-BOCCIA: It -- you don't

1 get hired because you're an MWBE.

2 You get hired because you can do the work,
3 and you've got a proven track record.

4 NANJI-JEAN DeNAPOLI: Right. That's what we
5 stand on now. I am a woman-based enterprise, but
6 I am an electrical contractor. Successful
7 electrical contractor.

8 CHRISTINE DONALDSON-BOCCIA: And I have to
9 tell you, even though I do some projects better than
10 some of my competitors, there's a lot of GCs, you
11 still have to spread the wealth around.

12 You cannot just hire the same companies time
13 and time again.

14 That gives opportunity to MWBEs as well as
15 non-MWBEs.

16 It's a fair playing field out there as long
17 as you're willing to put in the time and effort to
18 play the game.

19 SENATOR PHILLIPS: Thank you.

20 Thank you very much.

21 SENATOR BOYLE: I'd like to thank both of you
22 for sharing your stories.

23 And, I see it firsthand. My wife is a
24 small-business owner.

25 She's probably started the certification

1 process four or five times, and just says -- I mean,
2 it takes a week. And she's got to run the business,
3 so she's trying to do the application.

4 Finally, I think she's hiring someone to help
5 with the application.

6 You shouldn't have to hire someone for an
7 application to help your business.

8 I mean, if it's that complex, then there's
9 something wrong with it.

10 And then, obviously, she has paperwork, if
11 she does it.

12 So -- but thing -- nice thing is that, if
13 I should pass away, I leave her the money, it's
14 definitely not going to put her over the threshold,
15 my public-employee's policy.

16 [Laughter.]

17 SENATOR PHILLIPS: Yeah, but she loses your
18 one-half deduction, so you're (indiscernible).

19 [Laughter.]

20 SENATOR PHILLIPS: Thank you.

21 Thank you very much.

22 CHRISTINE DONALDSON-BOCCIA: Thank you.

23 NANCI-JEAN DeNAPOLI: Thank you.

24 SENATOR PHILLIPS: Our next panel is
25 Nancy Colella and Ilene Herz.

1 We need a seventh-inning stretch here.

2 Who's going to start here?

3 NANCY COLELLA: Good afternoon.

4 So thank you, everyone, for actually
5 attending this very, very important communal here
6 with the Senators.

7 Elaine, thank you for your invitation.

8 Matthew is very -- speaks very highly of you.

9 I love Matthew.

10 So, my name is Nancy Colella. I am the
11 principal at New York State Sustainable Corporation.

12 And, what my company and firm does is,
13 actually, we advocate for renewable energy
14 conservation measures for the commercial market.

15 Basically what I do is, I walk into an owner
16 and discuss what their portfolio is doing. And I,
17 basically, monitor and study their behavior of their
18 properties, portfolio (indiscernible), and
19 I actually develop a conservation measure from --
20 anything from fuel cells, to solar, or collaboration
21 of investments, that make sense for the business.

22 And so thank you again for having me.

23 Some of the -- some of what has been
24 discussed here today I feel is imperative.

25 I see the two women that have been very

1 successful, and I will have to say it takes a lot to
2 get there.

3 A lot.

4 And it's not just sweat equity, and it's --
5 it's equity.

6 And this is what I believe to be the
7 hinderance of actually going past your second year:

8 You can't make money unless you have capital.

9 How can we get capital if the banks wouldn't
10 even touch me?

11 They won't touch me.

12 And I can't even get working capital.

13 It has to be off of my personal bankroll.

14 So I'm now at a point where I'm in the
15 business two years, and I'm, finally, because
16 construction takes a long time to procure,
17 hopefully, getting a check soon.

18 But in the interim, I've been working
19 part-time and doing side work just to get capital to
20 build back into my business.

21 So my thought process is, if there are
22 credits and incentives for banks to fund small
23 capital, you know, equity lines of credit to
24 women-owned businesses, it would be terrific.

25 I mean, you know what I can do with \$10,000?

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It can run me two years, \$10,000 working capital.

I mean, a lot of what's being done today is virtual.

A lot of the work that's being done today is virtual.

So, I don't have to have a storefront.
I don't have to have a foundation.

All of my work is interactive, it's done on Google.

I have engineers that work virtually. I call them in when I need them. I pay them great money, but they're superior at what they do, because my quality of my work stands for itself.

So, I work with folks that make sense, that, to me, as a woman that is actually building on the business and building on the relationships that I've developed over the previous 20 years of construction, and my relationships in commercial, in commercial real estate.

So some of the items that I wanted to bring to your attention is that's really the hindrance.

The first thing is capital.

How can we get banks, small incremental incentives, to be able to contribute to capital

1 loans for businesses that want to flourish?

2 The first points of -- or, the three prongs
3 that I believe are the most important are: The
4 sweat equity, the capital; the relationships of the
5 business; and, of course, you know, the ramp-up,
6 which is the marketing.

7 Marketing, if you don't have that, how are
8 you getting out there?

9 How are you making those relationships?

10 How are you branding the company?

11 I mean, you know, it goes on and on and on.

12 I'm sorry, I think this thing keeps shutting
13 out.

14 Another -- another element that I feel is
15 really important is, I'm very fortunate. I have a
16 very strong backbone with family support, but, now
17 there's child care.

18 If you have a child that is going -- is
19 underneath four years old, how is a woman taking
20 care of her child, so she can be out there in the
21 field, build her business. Right?

22 Are we having any kind of support in that
23 realm, where we -- as a woman, I have a
24 four-year-old I have to drop off in the morning at
25 daycare. Make sure she's going -- you know, getting

1 picked up. But if I didn't have my husband or my
2 family support, how are we doing that?

3 Right?

4 Those are challenges.

5 These are -- you know, if I was a single mom,
6 that would be almost impossible.

7 Impossible.

8 So, again, so I'll go through these.

9 Economic capital considerations.

10 The initial ramp-up stages of a new business
11 required for components, strategic planning,
12 operations planning, marketing outreach, sweat and
13 capital equity.

14 From a capital equity standpoint, it is
15 critical to integrate programs to private-sector
16 funding mechanism's banks, to not only offer mutual
17 benefits to the bank, but allow immediate access to
18 capital as a small funding -- small funding work
19 capital for women-owned business enterprises.

20 Currently, most women-owned enterprises use
21 high-finance credit cards and overtax themselves in
22 the hopes of new future business revenue.

23 I have more stories than I have time to share
24 in terms of these situations, but I believe with
25 collaborative efforts, there can be a devised better

1 method of working capital to be funded prior to
2 women-owned businesses folding under the pressure
3 and never reaching their corporate goals of
4 progression, scaling, and growth.

5 Another circumstance is credit to private
6 sector for utilizing women-owned business
7 enterprises, minority businesses.

8 I believe, with additional exposure to
9 incentivized programs supporting private-sector
10 businesses, that promote hiring newly-developed
11 women-owned businesses, will be promoted by
12 additional new businesses to utilize women-owned
13 businesses while preventing the dissolving of
14 struggling enterprises.

15 Currently, I believe there are direct tax and
16 corporate credit initiatives, more so for municipal,
17 state, and city work.

18 The private sector is completely underserved,
19 and would support the progression of staying in
20 business.

21 So, are there any credits that can be given
22 to the private sector in addition to anything that
23 we have now, to expose their -- you know, their
24 usage of our services, basically?

25 So that's something that I would consider to

1 be, you know, a beacon, to allow a one-year business
2 or a start-up business to continue going forward in
3 the private sector.

4 As you know, private sector tends to pay
5 quicker than does a State or a contract job.

6 So, those are my statements.

7 So, thank you.

8 SENATOR PHILLIPS: Ilene.

9 ILENE HERZ: Good morning.

10 I wish to thank the Senators for having the
11 interest and taking the time to hear about my and
12 other women's situation with the New York State
13 Division of Minority Affairs.

14 Your concern and leadership are greatly
15 appreciated.

16 My husband started this business, a flooring
17 business, with a partner in 1979.

18 He funded the business with our money that we
19 had saved over 11 years of marriage.

20 In 1998 his partner was diagnosed with a
21 terminal illness. The illness rapidly rendered him
22 incapable of working.

23 I began to work with my husband every evening
24 after my workday and every weekend.

25 When my husband's partner requested he be

1 bought out, Jerry asked me if I would give up
2 practicing law and become his partner.

3 I agreed.

4 We bought out his partner's interest in 1999.

5 The buyout was funded my inheritance, our
6 savings, and insurance.

7 I have always been active and involved in
8 this business; therefore, working in and owning this
9 business was a logical, natural transition for me.

10 My (indiscernible) experience through my
11 practice of law, and my service on local and
12 regional boards of education and charities,
13 qualified me in areas critical to the further growth
14 of the business.

15 We decided I would be the person with the
16 primary responsibility for running the company.

17 The results of my contributions are evidenced
18 by the fact that not only has the company remained
19 viable, it has grown significantly since 1999 when
20 I left my job as county attorney.

21 My company is independently-owned and
22 operated by me.

23 We are a family-owned business, and I own
24 60 percent of the company.

25 As the president and majority stockholder,

1 I have the final decision on all issues.

2 In 2001 I joined the Suffolk County Women's
3 Minority Business Enterprise Coalition. They
4 sponsor meetings to help women-owned businesses.

5 Through them I became aware of the benefits
6 of, and was encouraged to obtain, a certified
7 woman-owned business status through New York State.

8 In preparation for my application, I attended
9 a special workshop that was sponsored and conducted
10 by New York State Development Corporation.

11 I subsequently met with Mr. Farqua, who is
12 their person, to review my completed application.

13 Additionally, he conducted a site inspection
14 of my facilities and operations.

15 My company was certified as a WMBE (sic) in
16 2001.

17 My certification was regularly renewed until
18 2014.

19 With each subsequent renewal, I updated all
20 information -- new information, contracts, and
21 financial, and submitted that information along with
22 my basic information.

23 My reapplication was never questioned and was
24 always promptly approved.

25 In 2014, recertification was submitted on

1 October 30th.

2 I had not heard back by December, which was
3 unusual.

4 Therefore, I called to check my status, and
5 was informed, due to high volume, my certification
6 was awaiting analyst assignment.

7 As of May 27, 2016, I still had not heard,
8 and again called to determine my status. I was
9 informed it was still pending.

10 On January 12th of 2017 I received a request
11 for additional information, and I responded the next
12 day.

13 On January 16th, I was shocked to receive a
14 letter denying my renewal.

15 I reached out to my analyst, Miss Yee (ph.).

16 She explained my renewal was denied because
17 on, some documents, Jerry is listed as president;
18 therefore, according to the corporate bylaws, he as
19 president controls the company.

20 I questioned that, since I was listed as
21 president on most documents, why shouldn't I have
22 been considered in control?

23 Miss Yee reiterated, Jerry was listed;
24 therefore, he is considered in control.

25 I stressed this smallest mislabeling was

1 clearly an oversight.

2 I explained, I'm a majority stockholder, I am
3 in full control, and I explained the bylaws, or the
4 original boilerplate bylaws from the 1980 corporate
5 kit at the time when I was not even a partner.

6 I explained to Miss Yee my original, basic
7 WMBE (sic) application was prepared by the Division
8 of Minority Affairs, under their guidance, and has
9 been unchanged since approved 16 years earlier.

10 Significantly, my original application was
11 proved based on my proof of actual real ownership
12 and control of my company.

13 Miss Yee responded, her agency had recently
14 been cited for being lax in previous years;
15 therefore, she had strict direction to scrutinize
16 each renewal.

17 Miss Yee also shared her division was very
18 severely backlogged.

19 She informed me I had two possible solutions
20 to attempt to correct this denial, noting neither
21 solution was guaranteed to be successful or at all
22 timely.

23 The first was to file an appeal.

24 She stated this was a very lengthy process,
25 especially considering there was a very substantial

1 backlog.

2 Or, I could cure my defect -- effect and
3 control by hiring an attorney to rewrite the
4 corporate bylaws, take control from the president.

5 I questioned how this cure would be
6 effective, because, since Jerry was only listed by
7 accident in one or two places, I am the president,
8 and I am primarily listed as president.

9 Additionally to that, though, if I went with
10 Cure Number 2, I would have to find a vendor on the
11 New York State contract whose product I use, ask
12 them to write a letter to the State, who's using --
13 a state agency using the product, requesting they
14 write a letter to New York State, asking my cure be
15 expedited.

16 She noted, although this process may be
17 shorter than an appeal, clearly, it is not short,
18 and there's no assurance my company status as a
19 WMBE (sic) would be restored.

20 Miss Yee acknowledged she was swamped, and
21 kindly gave me her e-mail to expedite our
22 communications.

23 I called, and sent her the following e-mail:

24 I reviewed all my recent documents.

25 The error is not in the bylaws.

1 The error is that, only in some places, Jerry
2 is erroneously listed as the president.

3 He is not, I am, president, and own the
4 controlling shares of the stock.

5 How can this error be cured?

6 Significantly, I own 60 percent of the
7 company and in control.

8 On February 17th, Miss Yee specifically
9 requested additional information.

10 She said she did not require all my minutes,
11 but, instead, requested the first minutes of 1979 --
12 a time I was not involved in the business -- and the
13 minutes memorializing the ownership of my 60 percent
14 acquisition, and of the shares I had given to my
15 now-current partners, my sons.

16 I supplied the information the next day.

17 On February 13th, via voicemail, Ms. Yee
18 said she spoke with legal and wanted to talk with
19 me.

20 She said legal said, Because the records you
21 have for the minutes of the meeting do not
22 specifically appoint you as president, I can now
23 either appeal, or, hold a board meeting, appointing
24 me as president, and she will ask for a waiver of
25 the two-year waiting period, and she will try to

1 process my new application quickly.

2 I questioned the legal decision, as the
3 documents requested were only about ownership
4 change, not presidency.

5 The actual minutes appointing me to president
6 were not requested; and, thereby, were not reviewed.

7 I immediately sent Ms. Yee all the corporate
8 minutes for the past 17 years which annually
9 appoints me as president.

10 I honestly expected at that point I had
11 established my position with my company.

12 Additionally, per her request, I held a
13 meeting that very day to again reaffirm my
14 presidency, and sent that along with my corporate
15 minutes.

16 The next day I received, via voicemail, a
17 waiver of the two-year application waiting time.

18 I was beyond surprised and disappointed to
19 receive this.

20 I wondered if my 17 years of annual meeting
21 minutes had even been looked at.

22 On February 17th of 2017, Ms. Yee informed
23 me she would do the initial review of my new
24 application.

25 I submitted it three days later.

1 On February 21st, Ms. Yee reviewed and
2 approved my new application as "complete."

3 She signed it and marked it "expedited."

4 On March 9th, Ms. Yee informed me she had
5 been reassigned to a different division.

6 I would now be taken care of by a
7 Raymond Emmanuel (ph.), and (indiscernible) Butler
8 was to be my new analyst.

9 I then received extensive lists of questions
10 from Mr. Butler, which I responded to on
11 March 17th.

12 On May 26th I received another set of
13 questions, which I promptly responded to.

14 On June 1st my new application was denied.

15 No one called. No site visit was conducted.

16 The reasons for denial were not related to
17 the basic issue: the control and running of my
18 company.

19 My leadership, control, and final
20 decision-making was ignored.

21 The issues raised in denial are specifically
22 addressed in the appeal which was filed July of
23 2017.

24 In November of '17 my attorney requested
25 guidance on a proposed hearing date.

1 He had heard nothing then.

2 We actually, finally, did hear from them
3 August of 2018, and I believe we may have a date in
4 October.

5 From 2001 until 2017, the New York State
6 Division of Minority Affairs represented
7 (indiscernible) support.

8 My application and recertification went
9 smoothly and promptly for 13 years.

10 Suddenly, the process and attitude of the
11 agency changed. It appears the division is no
12 longer an advocacy and support agency for women.

13 For example, my male minority partner
14 (indiscernible) is listed "president" on just a few
15 documents.

16 I was listed as president on most documents,
17 and all supporting documents established my control.

18 Nevertheless, it was my male partner who
19 New York State determined was president, even though
20 I sent definitive evidence to the contrary.

21 In their WMBE (sic) information, a basic
22 qualification, New York State asks for the business
23 to be able to successfully demonstrate that
24 ownership be real, substantial, and continuing, and
25 the majority -- minority members and/or woman must

1 exercise the authority to independently control the
2 day-to-day business decisions.

3 I have repeatedly and conclusively
4 demonstrated that.

5 I have worked tirelessly 45 to 80 hours a
6 week for 20 years.

7 It is frustrating and insulting to me as a
8 woman to know, when there's a choice in deciding who
9 is in control, New York State automatically assumes
10 it is the male who controls, and proceeds to only
11 seek evidence to support their prejudiced
12 assumption.

13 Throughout every step, from application, to
14 denial, to reapplication, and then re-denial,
15 New York State only requested information to support
16 their biased assumptions.

17 They never requested, even when supplied,
18 they never reviewed, any information to determine
19 how the company actually is run and who is in
20 control.

21 Their analysis was repeatedly flawed by their
22 faulty logic.

23 For example, a reason -- the most recent
24 denial was because my vice president of sales signs
25 most sales contracts. He is considered to be in

1 control.

2 Furthermore, because my vice president of
3 operations manages inventory and supervises
4 installations, I am considered not to be in control.

5 Had they investigated the complete, actual
6 process in each division, it would have been evident
7 I am in control.

8 The agency did not even bother to come for
9 the promised site visit.

10 Leadership of the company requires
11 delegation.

12 Because I am a female, I am successfully
13 delegating responsibilities within my company.

14 Where I, as a female, I am considered to not
15 be in control because I can delegate.

16 Would they think the same if I were a male?

17 The questions they asked, and the conclusions
18 they drew, leads me to believe they were just
19 looking for a reason to deny my application.

20 New York State should come to terms with what
21 the purpose of this agency is.

22 I don't want, nor did I expect, them to be a
23 rubber stamp because I am a female.

24 I do expect them to support and embrace the
25 truth of how a business is run.

1 Rather than being punished for being a
2 qualified, successful business, businesses such as
3 mine should be able to grow and mentor other
4 minority businesses throughout state.

5 Once again, thank you for your time.

6 SENATOR PHILLIPS: Thank you.

7 SENATOR BOYLE: Quickly, Ilene, thank you so
8 much for your testimony; and thank you, Nancy.

9 I mean, since you have been decertified, can
10 you estimate, approximately, how much business you
11 may have lost as a result of not --

12 ILENE HERZ: No.

13 I know I can point to specific contracts;
14 but, no, I couldn't.

15 It's been significant, and we've really had
16 to scrounge to look in other areas.

17 And, it's hard.

18 SENATOR BOYLE: Thank you.

19 SENATOR PHILLIPS: Anyone else?

20 So, again, I'd like to -- thank you, ladies;
21 thank you very much for sharing your testimony.

22 I want to thank everyone.

23 Before I thank my fellow Senators, I want to
24 point out that our Town of North Hempsted
25 councilwoman, Dina DiGiorgio, who is a

1 small-business owner, had some meetings before, but
2 was kindly -- kind enough to join us.

3 So, thank you.

4 As a business owner, both from a family
5 standpoint in your own business, we have some
6 amazing testimony today.

7 So, thank you, everyone, for taking the time.

8 I think we have a lot to think about here.

9 Obviously, there were some reoccurring
10 themes, which is -- actually, makes it a little
11 easier on us when there are reoccurring themes,
12 because it just highlights areas that can be
13 corrected to make this program be a better program
14 for all of New York State.

15 I'd like to thank Senator John Brooks for
16 taking the time to come out here, Senator Phil Boyle
17 for taking the time, and one of the Co-Chairs of
18 this working group, Senator Fred Akshar, for coming
19 down from Binghamton.

20 So on behalf of the 7th Senate District,
21 Senator Akshar, thank you very much.

22 And, please, does anyone else --

23 SENATOR BOYLE: Yes.

24 I want to thank Senator Phillips for her
25 leadership in hosting today; and my colleagues

1 Senator Brooks and Senator Akshar; for all the
2 people who testified and that came to learn.

3 We have a lot to think about. And,
4 obviously, we're not in legislative session at this
5 point in time.

6 We'll go through the silly season of
7 elections, and get over that, and then get back to
8 the important work being done.

9 I do believe we can make this program better,
10 make it more efficient, and really reach the goals
11 that it was intended to do, promoting minority and
12 women-owned businesses, and do it the right way.

13 So, thank you again, for everyone.

14 SENATOR PHILLIPS: Senator Brooks.

15 SENATOR BROOKS: Again, I would also like to
16 thank Senator Phillips for hosting this program.

17 I think it's important.

18 I think this is a critical tool to allow
19 people that have generally not had an opportunity to
20 get into business, to get into business.

21 I think we've identified a number of concerns
22 that have to be addressed.

23 I'm also glad to learn of some of the success
24 stories we heard about today too.

25 It's a program that can work, does work; can

1 be made stronger.

2 And I think all of us, as we return to
3 session, need to work on improving what we have in
4 building on something that has worked.

5 And I think some of the concerns that were
6 expressed today, we certainly have to look up
7 insurance, certainly, as a big issue, for number
8 one.

9 The list, and the imperfection, to be polite,
10 in that list has to be addressed.

11 But I think this was a good door-opening day
12 for us.

13 Thank you.

14 SENATOR AKSHAR: Well, Senator Phillips,
15 thank you very much for having me.

16 It's been a pleasure to be in your Senate
17 District.

18 I don't come to Long Island very often, but
19 I'm glad to be here.

20 And we did hear -- we are hearing recurring
21 themes and recurring issues, and I think that's
22 important for us on this working group, because if
23 you hear them in northern New York or
24 Western New York or Long Island and New York City,
25 something's wrong. Everybody's talking about the

1 same thing.

2 So it allows us to focus our energy and our
3 efforts in those specific spaces to improve the
4 program.

5 And I agree with Senator Brooks, it was good
6 to hear some success stories of the program, and how
7 it is functioning, and how people have been
8 successful in the program.

9 So, I look forward to, you know, having a
10 couple more hearings throughout the state, listening
11 to people's issues, and then returning to Albany and
12 collectively working on this issue.

13 I think it's important to note that this
14 effort is a bipartisan effort, and not often does
15 that happen in Albany.

16 It certainly doesn't happen in Washington.

17 And the fact that you see a bipartisan panel
18 listening to your testimony, I do want to praise
19 Senator Sanders from Queens, who has been very
20 instrumental with this Task Force and working group.

21 He brings an interesting perspective because,
22 as a member of city council, he was the architect of
23 the City's MWBE program.

24 So, Senator Ritchie and I are very pleased to
25 be partnering with Senator Sanders and everything

1 that he brings to the table.

2 So, we're looking forward to going New York
3 City.

4 The next hearing is going to be
5 October 16th.

6 And if anybody is looking for details on that
7 particular hearing, please visit the Senate's
8 website, NYsenate.gov, for additional details.

9 And just thank you, everybody, again for
10 taking time out of your busy day.

11 Thanks.

12 SENATOR PHILLIPS: Once again, I'd like to
13 thank the staff that worked so hard, both from
14 Albany and here on Long Island, for all your
15 efforts.

16 So thank you, everyone.

17 Have a wonderful day.

18 (Whereupon, at approximately 12:28 p.m.,
19 the joint-committee public hearing held before the
20 New York State Senate Standing Committee on Labor
21 and the Senate Standing Committee on Commerce,
22 Economic Development, and Small Business
23 concluded, and adjourned.)

24 ---oOo---

25