JOINT HEARING BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON LABOR
AND
STANDING COMMITTEE ON ECONOMIC DEVELOPMENT

PUBLIC HEARING:

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

Binghamton University
Symposium Hall
Center of Excellence Building
85 Murray Hill Road
Vestal, New York

August 13, 2018, at 1:00 p.m.

PRESIDING:

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

CO-SPONSORS PRESENT:

Senator Susan J. Serino

ALSO PRESENT:

Senator Thomas F. O'Mara
(at the dias)

Assemblyman Clifford W. Crouch
(in the audience)

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SENATOR ASHKAR: Thank you very much for joining us.

There's a lot of people in the room. This is very good to see; it's a very important program.

Allow me to begin by thanking Majority Leader John Flanagan for keeping this particular issue and program at the forefront of our priorities.

I think it's safe to say that everyone in the Republican Majority Conference in the State Senate seeks to create a better business climate in this state.

And despite what our governor would have you believe, New York is not open for business, because of programs like this that are fledgling and are not as effective and as efficient as it should be.

I think it's incredibly important to note, though, when speaking about the MWBE program, it is not the intention of the Republican Majority Conference to end this program.

It is our intention to amend the program and make the program the best it can possibly be.

We -- when the Governor sought to extend and expand the program, we knew that -- and I'll say this in my humble opinion -- that the program wasn't functioning the way that it should be functioning.

So, we continue to hear stories about how our tax dollars are being wasted.

We continue to hear stories about the prices of projects going up 10 and 15 percent sometimes because of this particular program.

We continue to hear stories about certification taking upwards of 18 to 24 months.

We continue to hear stories about the horrors of recertification, and people not being recertified, and there being no excuse about why a particular company is not being recertified.

We continue to invite state agencies to join us and be part of this particular conversation, and we continue to get empty chairs, which I think is discouraging and I think is disheartening, because if the Governor truly seeks to make this the best program it can truly be, I would respectfully offer that those people administering those agencies that oversee this program should, in fact, be at the table.

And that is not happening.

So, I do want to thank the executive director of the Thruway Authority, Matt Driscoll. He, in fact, sent me a letter and said that he had a scheduling issue and that he couldn't be here.

But I did not hear from any of the other state agencies that we invited.

So, you know, I would offer that, if the Governor, again, truly wants to change this program and make it the best it can possibly be, why he should be at the table, and/or he and his people should be at the table, to make this a better program.

I'm blessed to be joined by Senator Sue Serino from the Hudson Valley, who is a fierce advocate for the people of her Senate district. She travels around the state doing a plethora of things, this being one of them.

So with that, I'll introduce Senator Sue Serino.

SENATOR SERINO: Thank you, Senator Ashkar.

And I'd like to thank you for holding this forum today.

And thank you to all the small-business owners that are here as well.

I'm a small-business owner myself.

So, when we go to Albany, we fight each and every day to protect our small businesses.

And we all know that the MWBE program began as a way to empower incentivized diversity in

businesses.

But, however, since taking office, I've heard from so many business owners, the obstacles that they are faced with.

And I know, even for the recertification, I was told that you -- it's every three years. That have you to start when you are a year and a half in.

So, right there, that's a problem.

So there's so many things that we need to be working on.

And so I look forward to hearing the comments today.

And, you know, we get our ideas from all of you. So, thank you for participating, it's so important.

Thank you.

SENATOR ASHKAR: I think Senator Serino brings up a really good point, that, in addressing the MWBE issue, we don't seek to address this issue from the 30,000-foot level. We don't seek to suggest for a moment that the bureaucrats in Albany should be determining how this program is administered and how it's rolled out.

As a matter of fact, that's why we're in the situation we're in today, because people in Albany

aren't listening.

So we've decided to take a different tact.

And as I said, we're holding between six and eight of these public hearings throughout the state, and we're taking a bottom-up approach.

We're listening to the people who are dealing with this particular issue every single day, and trying to -- trying to make it a better program.

So with that, I'm going to ask Mary Murphy Harrison, Christina Pierce, and Katie Whitmore to come down and provide their testimony.

We're trying to keep everybody's testimony to around 10 minutes, if we can.

We have a lot of people in the room that are going to provide testimony.

If you don't take up the whole 10 minutes, that's okay.

And, if you have written testimony and you haven't provided it to us yet, please do that and we'll use it.

Mary, why don't you start.

MARY MURPHY HARRISON: Okay.

SENATOR ASHKAR: Just give us a little bit of a background.

We have a pamphlet here about where you're from, and what you're bringing to the table.

But if you could, just a little bit of background, for all of you, and then just go into your testimony.

MARY MURPHY HARRISON: Okay.

I'm Mary Murphy Harrison. I'm owner of Barney & Dickenson and Bob Murphy, Inc., two local companies in Vestal here.

Bob Murphy's been in business since 1951, and is a steel-fabrication shop, structural steel sales, material building dealer.

Barney & Dickenson has been in business since 1936, and supplies ready-mixed concrete, sand, gravel, and landscaping materials.

We are a family-owned company that has served the Southern Tier of New York with quality service and products for the commercial, industrial, municipal, and residential markets.

Barney & Dickenson was first certified in 2009 as a WBE. The renewal application was submitted February 2015, and after 2 1/2 years of waiting for the application to be processed, the certification was renewed in October of 2017.

Bob Murphy's, however, was first certified as

a WBE in 2006. I submitted the renewal application in July of 2014, and waited again 2 1/2 years for it to be reviewed.

When I was finally contacted for more information in October of 2016, I sent the information they requested through their fax system.

I have confirmation that everything went through okay; however, on their end, they said they only received bits and pieces.

So I offered to FedEx, overnight, all the information copied.

They said, Don't worry, we've got enough. You know, you're set.

However, in January of 2017, I received a letter that I was denied for the renewal. And as of today, I'm still fighting to get my certification back; it is in appeal.

Over a year ago I hired an attorney in Albany to assist me in submitting the written appeal, and that alone has cost my company over $3,000 in legal fees.

The appeal was submitted on August 8, 2017, and we are still waiting for that appeal to be heard.

For a period of 15 months, we were dropped

from the New York State Directory. The reason that was given to me were that, quote, We were so far beyond our certification expiration date.

Which, and I remind you, I filed a timely application.

During that time, I had contractors who had to look for other suppliers to meet their WBE requirements, which resulted in lost business for my company.

And then, out of the blue, about a month ago, for some unknown reason, my name was added back to the directory.

To describe the recertification process for Bob Murphy, Inc., as a nightmare and costly process is putting it lightly.

I had distributed, for your information, a timeline of events that the process has incurred.

I feel the renewal process has unjustly cost my company time, money, sales, and the trust of my customers.

When I heard that you were holding hearings around the state concerning the Minority- and Women-Owned Business Enterprises program, I thought, It's about time.

I am happy to see that the issues of the MWBE

program, whether on the contractors' side or my side, are being addressed.

Thank you.

SENATOR ASHKAR: Thank you, Mary.

Christina.

CHRISTINA PIERCE: Thank you for hosting this event, and for the opportunity to share my -- our experience with the MWBE program.

LCP Group is a Vestal-based contractor. The bulk of our sales come from demolition, asbestos abatement, and ironwork.

I work full-time at LCP and own 52 percent of the company, and we've been working for over 2 1/2 years to become certified.

We face challenges with this program on two fronts.

As a contractor, the requirements present a difficult roadblock, and as a woman-owned business, the certification process has been slow, biased, and frustrating.

I'll discuss the certification process first.

I submitted an application on February 1, 2016. I was advised that we could get a fast-track because we had ongoing contracts with MWBE requirements.

13 months after applying I received a denial letter.

There was no site visit, no interview, no phone call; just a denial.

The denial stated two reasons for the decision, that both seemed biased against a business owned by a husband and wife.

In talking about this with other businesses, I've heard several other similar stories.

First, it stated that I had not demonstrated an investment that would justify my ownership percentage.

I'm not sure why I need to justify my ownership percentage. I should just need to demonstrate it, which I did.

I dug into my archive files to provide documentation that my outside salary funded our startup.

They responded that my personal salary did not qualify because it was deposited into a joint account.

I then dug up documentation that my family's farm was used as collateral to back our first bond.

This was two months ago, and I have not received feedback on whether that will be accepted.

The second point of their denial was that my husband's salary exceeded mine, meaning that I do not share in the profit in proportion with my ownership.

Salary, to me, is a meaningless measure of an owner's contribution.

Facebook and many other companies pay their CEO salaries of a dollar per year.

The real net worth comes from the success or failure of the company.

This reason for denial is unfair because it was not identified as a criteria for certification.

When we know the rules, we can play by them.

I've overcome this objection, and gave myself a raise, but this roadblock has caused a significant delay in the application process.

One week after receiving the denial, I submitted an appeal to overturn the decision. I waited nine months to receive any feedback on the appeal.

After the first month, I started calling about once every two weeks and almost never reached a live person.

I called this often because I had entered a number of contracts and let them know that my

application was pending. A lot of people were counting on us becoming certified.

Once my hearing for appeal was scheduled in New York City on January 16, 2018, I had the opportunity to speak with the opposing attorney and judge.

I was advised that if I appealed and lost, I could not reapply again until January of 2020.

If I rescinded my appeal, I could reapply in March of 2019 and request a waiver of the two-year bar on my application.

I was also advised of other cases where the salary issue had upheld the denial.

I elected to withdraw, reapply with my new salary documented on tax returns, and request the waiver of the two-year bar.

I submitted that request five months ago.

Have called persistently.

Attended a one-on-one meeting here, to try to get a face-to-face response, and was advised in that meeting that I just needed to wait my turn.

As all of the businesses in the room know, we don't get to wait 13 months, 9 months, 5 months, and counting, to respond to people and still stay in business.

Senator Akshar asked whether I'd be afraid to share my experience for fear of hindering my application.

I said: Absolutely not. It can't be hindered much more than it already has been.

And I don't blame the representatives of the program. They work very hard, and they're generally helpful when reachable. It just sounds like they're dramatically understaffed.

I appreciate that they're trying to protect the integrity of the program.

I know certified businesses where the woman and minorities do not play any role in the business.

It's very frustrating, though, for a legitimate woman-owner-operator, who is being bound by the regulations, but is not being given an appropriate opportunity to work within the system.

This program was put in place to help disadvantaged businesses.

LCP Group is much more disadvantaged, though, by this program than we are by being woman-owned.

This program has consumed a considerable amount of my time and energy, both trying to become certified and trying to reach the goals.

The goals are unattainable in this region, at

least in the areas LCP specializes in.

As a woman in business, I am all for creating an equal playing field.

Unfortunately, in this region, it's an equally bad playing field. It hinders local businesses, and causes us to search outside the area for qualified businesses that can perform the specialized work required on our contracts.

Because of these MWBE goals, we have had to park our trucks and hire other trucks from a WBE at an inflated rate, only to have non-MWBE trucks arrive on our site.

It worked because we met our goals, but it didn't seem right.

Because of these goals, I've had pre-bid proposals from MWBEs that could not be honored due to the capacity of the business, and I've had to not meet my goals because no other MWBEs with the appropriate equipment or required skill set exist in the area.

As a woman in business who stands to benefit from this program, if I could ever get certified, I would still like to express my opposition to the program as it's currently operated.

It is true that there are challenges being a

woman in business, and I'm sure a minority as well.

I think every municipality in the region knows my children because I'm a working mom and often have them in tow.

I have missed bids because I've had to pick up sick kids from school in the middle of my work day.

Some people won't leave messages with me for the business because they think I'm a secretary.

I've watched equipment dealers and auto dealers give my husband much better deals than me, not because of any lack of negotiating skills.

I've had people try to strong-arm me in real-estate deals, and then be reasonable when they speak with my husband.

I've seen e-mails where I'm called the "LCP wife," and it's offensive.

Even our former bank requested that we carry life insurance on my husband, but not on me.

And probably the most frustrating hurdle I've faced as a woman in business has been from New York State, discrediting my involvement in the business.

A few things I'd recommend that would improve this program in non-metropolitan areas:

Number one: Allow for exemptions from the

requirement for specialized work. In some cases, there are zero MWBE firms available that can perform certain types of work.

Number two: If a contractor is self-performing work, don't force them to subcontract.

Make the goal a percentage of the subcontracted portion of the work, not a percentage of the entire job.

On some contracts, we perform most or all of our work in-house.

Being forced to sub work puts a compromised position -- puts us in a compromised position and forces us to take on risks from other companies that may not be fully skilled or qualified to perform the work.

Provide MWBEs with free access to sites, like ABC, where they can download plans.

When I do engage in MWBE, they almost never have plans or specs.

Clean up the Empire Development website. About 50 percent of the numbers I call from there are out of service.

Improve the good-faith-effort system.

I personally make tremendous good-faith

efforts, but I don't hear back from New York State on whether they're good enough until my projects are completed.

This could be automated and systematized so there will be less guesswork for contractors, less burden for the State, and improved opportunities for MWBEs.

Stop allowing MWBE firms to subcontract their work. It seems to defeat the purpose of the program.

Either hire more people to help the program or automate it.

The current response rate for applications, goal-reduction requests, good-faith-effort reviews does not demonstrate that New York is open for business. It demonstrates quite the opposite.

Create a system where subcontract-work opportunities are advertised directly to MWBEs. Let the MWBEs pursue real leads instead of making contractors go on a wild goose chase.

Require contractors to submit their opportunities on the system and give MWBEs a fair shot at the work.

Let the contractors keep -- and MWBEs keep it up to date and take some of the workload off the

State.

Give MWBEs a credit on their tax returns, reduce workman's comp, low-interest loans, lower health -- lower-cost health insurance; find other ways to help them, without doing it at the expense of other New York State businesses.

I hope my feedback has provided some insights and may help.

I appreciate your time and interest in improving the system.

SENATOR ASHKAR: Thank you, Christina.

Katie.

KATIE WHITTEMORE: Hi, I'm Kate Whittemore. I am the newly-appointed president and CEO of Home Central, which is a retail hardware, lumber, building-materials company in three locations in Broome and Tioga counties; Owego, Candor, and Vestal.

Our company was started in 1973. It's a third-generation business. And, we have a customer split of about 50 percent residential customers, 50 percent contractors.

A very small portion of our business is municipal or commercial.

And as I took ownership -- majority ownership

in January, one of my goals is to diversify my customer base, and part of that is more commercial and municipal sales, which have degraded over the years.

And I attribute that decline to some of the third-party purchasers, and some of the take-away of local purchasing for the State that is now higher up the ladder.

So, that diversity of my customer base, I believe, will lead to the stability of my company, and help me continue to grow and foster growth for my company.

So that lends me to discuss why I'm seeking MWBE status.

A lot of my customers are talking about traveling across the state to source materials. They can't source materials locally. So that automatically is increasing the cost to their customers, whether those are grant recipients or the State themselves, and probably reducing the profitability of those contractors.

And as I said before, I think some of our prior sales to municipal -- municipalities and commercial business has eroded over the years. And I think that status will help my company.

So I took majority ownership in January.

In April I set up an account with the New York contract system, and I submitted my application June 14th.

June 15th I attended an expo here, and had a face-to-face interaction with someone from the department. Was told to call back the following week and discuss the status of my file and provide additional information.

They knew there was a need in my area that had been made abundantly clear to them, so he seemed like he was ready to handle my file and expedite it.

But, my communications with them have been unresponsive.

I've talked to one human being, and he told me he would call me back later that afternoon. And I have not had any contact.

So I'm still waiting to hear back on my file.

My expectations are low, despite the fact that I have a lot of customers that are hoping that we get this approval quickly.

My perspective on the application process, because I can't speak beyond that, is that, for a company of my size and 45 years in business, there's a lot of data there, and the application process is

fairly in-depth.

And if I were a startup, it would probably be easier to supply that information.

But, with 6 people over 45 years with ownership interest, and several different people serving as the secretary-treasurer for our company, the records are -- the recordkeeping was handled a little bit differently by each person.

And, so, we've had to hire a lawyer to help us compile that information.

Secondly, one of the pitfalls of the application process is that the time that we've had to invest in this is immense, and it takes your focus away from operating your day-to-day business.

I spent a month, at least, compiling information to submit with my application.

If I tallied the hours that myself and my staff and my lawyer put into the process, I think we could have spent 3 weeks of 10-hour days, just providing information.

I think that's probably an understatement.

Some of the information they're asking for, at least in my case, was not information that I had.

Resumes for all of the owners and primary staff.

I went right to work from college in my company's business. I never had a resume.

My dad never had a resume. He's the retiring -- or, he's now our secretary-treasurer. He had served as a president before.

So now we all have resumes.

You know, what good does that do me?

Contracts; they're asking for contracts with my customers.

We just don't operate on a contract basis.

We estimate for our customers to help them develop bids, but we aren't creating a contract.

And that's part of the application process.

They also ask for sales for completed accounts, which is like a project.

If LCP has a project, and, from start to finish, how much are we providing for that project? I don't necessarily know, because we don't operate on contracts.

I have a charge account for LCP.

I hope I keep that charge account open year after year. I'm not closing it out and saying, this is how much we supplied to them.

A shareholder agreement was something that I had to upload to the site several times; fairly

repetitive.

Luckily, I had a shareholder agreement.

But I think a lot of companies of my size, and smaller, wouldn't spend the money with a lawyer to create a shareholder agreement.

I just happened to decide in 2014 that, as we did a generational transfer, it made sense to have a shareholder agreement. But, it's a big expense.

And one of the areas that they talk about on the application is: Who's overseeing every aspect of the business; payroll, marketing, bidding, purchasing?

And from what my lawyer had told me, what they're looking for is for me to have my hands on every aspect of my business.

And if I'm going to grow my business, I can't have my hands in every decision to buy radio advertising and to hire a sales clerk. It's just not feasible, and it's not sustainable for growth for my company.

I do oversee the health and well-being of my business. I have metrics that I'm watching.

But -- and I'm going to delve in when I see a metric that's not right.

But I am not going to nitpick every little

decision that's made in my company, and that that could, potentially, be a red flag for my file.

As I said, there was a repetitive nature in the application. I won't go into that.

So, since submitting the application, as I said, I have not heard anything.

I have called. I have e-mailed.

No response to e-mails whatsoever.

Despite the fact that I do have a hard time understanding and hearing the person that is handling my file, just have a very hard time understanding him, so e-mail would be preferable.

And now I have a bill from a lawyer for $4,000, and I'm only in the application process. I could be going through years of appeals.

Additionally, I would love to pursue more of those commercial sales, and I would love to create a position for that in my company. But I can't put the cart before the horse when I don't know what's going to happen with my file.

So just some follow-up insights that I had:

The expo was helpful, just to understand the opportunity that's there, whether it's good opportunity or bad.

But I saw opportunity for my company that

I didn't previously know existed through the program.

But some of what was said in the expo really pointed at, start up a business and you can do business with the State, versus, a longstanding business; how can we do business with you? whether it's me as a woman running it or someone else running it.

And I think it's important, when we do have these expos, that every authority in our area that has deals with grants, or deals with business development, attend those expos, because the potential, as it stands right now for us to get more business from the State as a small local business, is large. But, the process is in-depth, and I don't think a lot of people understand how in-depth it really is.

And, you know, there's been a longstanding sentiment that this process is a farce.

And it's gone the other way, and now we're all scared to do it, because it's a huge time investment, and we're, probably, likely to get denied.

I know of other customers of mine that have been denied because it's a husband and wife.

They own different businesses that do business with each other. But, you can ask everyone in our community, that the wife owns this business and she operates this way.

And she's denied and told that, if she got a divorce, she would get approved.

And that's -- you know, that's insulting.

And I fear the same thing for my company.

We have a sister company that is the real-estate holding company.

My parents own majority share of that, and I lease those facilities from them.

I'm told that that's a red flag to the State; that because I lease from those -- from people outside my own company, that they could have control over my company in the eyes of the State.

So I'm concerned about that; I'm very concerned about that.

And to just get back to why we're here:

It seems apparent that the State is spending money to purchase items through third-party entities that are set up as MWBEs, versus doing business with longstanding local companies.

So that's, I think, a really -- I commend you for doing this.

So, thank you.

SENATOR ASHKAR: No, to your last point, I have long said that this governor has completely abandoned Main Street New York.

Right?

The people who have been gutting it out for decades, trying to make payroll, pay their taxes, feed their families, we have paid no attention to them, right, despite what he says in a well-produced commercial.

Right?

And I think this MWBE program is like a shiny onion. And, the moment you start to peel back the layers of the onion, and which is what we're doing, and listening to all of you who are, you know, embarking on this journey into this MWBE program, you see just what a rotten onion it truly is, and that it truly needs to be fixed.

We've been joined by Senator O'Mara, my neighbor to the west, of course, out in Chemung County.

Senator, thank you.

Do you want to offer a few remarks before we ask questions?

SENATOR O'MARA: No, I'm good.

Just go right to the questions.

Thank you.

SENATOR ASHKAR: Okay.

Do you have any questions?

SENATOR SERINO: No, I don't have any questions.

SENATOR ASHKAR: So I just want to make sure I understand this.

Mary, you're waiting some 2 1/2 years.

Christina, you're waiting some 2 1/2 years.

You, Kate, are only a few months in; however, it seems like a recurring theme.

Right?

One thing that we talk a lot about is this "30 percent."

And I think everybody in the room understands that nowhere in the original statute does this goal of "30 percent" exist.

Do all of you, all three of you, think that that is an unattainable goal, this 30 percent?

OFF-CAMERA WITNESS: Absolutely.

MARY MURPHY HARRISON: I've had calls from New York City, trying to entice me, bringing down a ready-mix plant, and delivering concrete, which is out of the question.

I know contractors, I get e-mails every day from contractors throughout the state, wanting a bid, and I just can't do it.

I can't mobilize that amount of equipment to do that job. It's not worth it.

SENATOR ASHKAR: Here's the other amazing piece, is that, this goal of 30 percent, this arbitrary number that the Governor's picked, really is too low if you listen to this disparity study that he's conducted.

He would have you believe that the number should be 52 percent, 51 percent, something like that.

We know that, clearly, can't be the case.

Right?

And I think we'll hear some testimony later from others that will talk specifically about the waiver process and, really, just how terrible this disparity study was.

Christina, would you just talk a little bit about the bias that you had mentioned, and why you think biases exists in the current program?

CHRISTINA PIERCE: So I -- being a husband-and-wife-owned business -- I -- my husband owns the other 48 percent of the company -- that's

just created a red flag for them.

That the two reasons for the denial are really ludicrous to me.

The fact that my payroll is lower than his.

We both make less than everyone else in our company because they all make prevailing wage rate.

And most of our payroll kind of goes back in to fund the business when it needs help, and then we pull it back out when we're -- you know, when it's -- the bills are caught up.

So it's such an irrelevant piece of information. And it's not cited in the application process.

So had I known that the woman-owned -- you know, the woman in the business needs to have X amount of payroll, I could have done that.

But it just seemed like a card that they were holding back to use, as needed, in the denial.

In my conversation with the attorney who was going to be opposing me in the appeal, it was very -- I don't want to say derogatory, but it was pretty close.

And I don't remember if someone directly told me to get a divorce and then apply, or implied that.

But that was certainly -- when she mentioned

that, that was certainly a suggestion how I could attain this certification.

And that doesn't seem right.

SENATOR ASHKAR: You know, I think what is sad as well, is that, you know, we've heard from many others in other hearings, but we've heard it from you guys today too, that we're sending our work elsewhere, right, throughout the state, which I think is highly problematic because, clearly, we have people here --

I'm going to talk specifically about the Southern Tier because that's who I represent and in where we are today.

-- but have had to go to Western New York or the North Country, or, Mary, in the description you just gave, send a ready-mix plant to New York City to fulfill these goals, which is, in my humble opinion, very problematic.

We have people here that want to work.

There are people in the North Country that want to work, that are capable of working, and in Western New York, capable of working.

We're not doing that, because they're -- we created these loopholes. And, you know, having to send people to other parts of the state to fulfill

this obligation, which I think is incredibly sad.

And you told the story about, you had to park your trucks and hire somebody else to do the work that you were perfectly capable of doing.

So --

CHRISTINA PIERCE: I'm still not understanding, they were not MWBE trucks.

They were -- it was just another --

SENATOR ASHKAR: Okay.

CHRISTINA PIERCE: -- I mean --

SENATOR ASHKAR: Anything else, guys?

SENATOR SERINO: Yeah, I just -- I want to thank all of you for coming here and being brave and telling your stories.

You know, as a small-business owner, and also as a woman, I liked what you had to say, Christina, because I can relate.

You know, I own my real-estate company.

I can't tell you the countless times that people have gone up to my husband and say, Oh, you own a real-estate company too.

So, uhm, it's just an image that we need to work on.

Even in the Conference, right, I think we have seven women now. I was the fifth out of

thirty-two.

So, it's just pretty interesting, but we keep on plugging along.

And I have to tell you, the stories that you've told are so similar to stories that I've had, where -- and when people have been told to appeal, I had a particular case, it was relatives also, that were told to appeal.

And then when I spoke to somebody at MWBE, they said that they win 98 percent of their appeals.

So -- and here you're giving out that information.

It's absolutely horrific.

God forbid we ran our businesses the way the MWBE program is run.

So, thank you very much for all of your comments, and good luck, and we'll keep on fighting.

SENATOR O'MARA: Well -- well, Sue, if they never make a decisions on those appeals, it's not counted as a loss.

So that's part of the problem, is the length of time that this process takes.

You know, we want to encourage, as a Legislature, women- and minority-owned business.

And I don't think anyone disagrees with the

stated motivation of our governor and his administration to move forward on this.

The goals that are set are unrealistic to me, particularly for our region here in the Southern Tier, and regions like the North Country, where we had a hearing a month ago up in Watertown for that.

But, you know, we want to encourage you to continue in this process, but it's very frustrating, and we hear the stories over and over again.

We heard them in Watertown.

I hear them in my office in Elmira and in Bath on these.

And it's almost like they look at you and say, Well, you're a woman. You couldn't possibly own this business.

So it's just completely the opposite of what we're trying to encourage here, and to foster the growth of these businesses.

And I also agree with the sentiments, and I know we'll get into this more, of our regional economic-development dollars having to be sent out of the region to find qualifying entities, when our qualified, competent, and ready-to-work businesses in the region are being bypassed for that reason.

So, I really appreciate your testimony here today.

SENATOR ASHKAR: Thank you very much.

MARY MURPHY HARRISON: You're welcome.

CHRISTINA PIERCE: Thank you.

KATIE WHITTEMORE: Thank you.

SENATOR ASHKAR: Thank you.

Next we'll call LeeAnn Tinney, Jane Jack, and Bruce Nelson, please, to provide testimony.

Before you start, I just want to make one other point about -- I think it's important for me to stress this, because I think there's a belief by some in Albany that we seek to end this program, and we seek not to make it better or do what's right.

When we were asked, Senator Ritchie and I, to co-chair this Task Force and travel around the state, and we put this task force of people together, I thought it important to bring a New York City perspective to the table.

And Senator Jim Sanders from New York City was one of the original authors of the MWBE program in the city of New York.

He happens to be a Democrat.

And I was insistent that Jim Sanders sit with us and be part of this Task Force and be part of the

solution.

So this really is, while Senator Sanders is not with us today, he was with us in the North Country and spent a couple days there.

He's committed to trying to amend the program and not end the program.

So while some may try to bill this as the Republicans trying to shut this program down, you know, to the contrary, it's the farthest thing from that.

Senator Sanders is, you know, blessing us with his presence, while not today, throughout this discussion as we travel around the state.

So just another point, I think that's important.

So with that, Miss Jack, if you wish to begin your testimony.

JANE PETERS JACK: Okay.

SENATOR ASHKAR: Thank you.

JANE PETERS JACK: I want to thank you for inviting me today.

We are a full-service janitorial supply house based in Elmira, New York.

We have been in business for a total of 101 years, and have owned the business for 8 years

now, my husband and I.

It was a family-owned business.

My father owned the company. And I ended up purchasing it in 2010, and we've been plugging away at it.

When we were first issued our MWBE status, we were very excited about the potential we had to become a larger and stronger company, as we were told that the Governor has mandated that SUNYs and other agencies spend at least 30 percent of their budgets with MWBEs.

We were told by many people from New York State that this will open, mainly, many doors for you and, basically, guarantee you more business, which being in the Southern Tier, business is very hard to come by.

Well, to this date we have not been very much in line of business drive our way due to our WBE status; rather, we have heard of companies much larger than ours who are not WBE-certified, using other WBEs to go through and gain or keep the business they had because they can offer better pricing or they are larger companies.

And I'd like to kind of queue in on that.

There's several companies that are probably

$50 million-plus, that are going into areas where we could be getting business, and they're telling them that they're a woman-owned business.

What they're doing is, they're using another woman-owned business and doing a pass-through, and this is the way they're getting their merchandise shipped from our competition.

I have also heard that the WBE invoices out the bill, and she actually charges 5 percent to --

Excuse me, I'm nervous.

-- she actually -- they charge 5 percent to our competitors, to let them drive all the business out, which intends -- kills us, being a small-owned business, and we got our certification. And yet these big $50 million-plus companies are coming in and taking away, you know, what we tried to get.

I could name names if you wanted them.

SENATOR ASHKAR: Love to hear them.

JANE PETERS JACK: Granger.

Hill and Marks out of Albany. Right in Cuomo's area.

SENATOR ASHKAR: Who, Ms. Jack, I'm sorry?

JANE PETERS JACK: Hill and Marks.

SENATOR ASHKAR: Senator, I'm sorry, what?

SENATOR O'MARA: Do they bid these jobs

and -- those names you mentioned? Or --

JANE PETERS JACK: This is my husband, Jeff, who --

SENATOR O'MARA: Yeah.

-- do they bid them in their company name or in the name of the WBEs there?

JEFF JACK: (No microphone.)

The way it happens in our world, we call on the end user.

We sell janitorial supplies. There's, very seldom, any bids that go out for this stuff.

This SUNY is one of those places.

We'll go in, we'll make the rapport with the customer. We'll say, Okay -- they'll ask us for a price. Can you price this, can you price that?

We'll price it out for them.

And then we'll come back and say, Well, you were being (indiscernible) because of, price. They said they were a WBE.

I even sat with the person that was in charge of minority spending for this campus, and, basically, he told me, it's up to the person sitting behind the desk, what they want to do. That he can't make them do anything they want.

And then I looked him in the eye and I said,

Then why do you have a job if you can't make somebody do something that you're told to do?

And he said, Mr. Jack, I'm sorry, but that's just the way it is.

JANE PETERS JACK: Yeah, I --

JEFF JACK: And we get that answer quite a bit.

Our world is different than a lot of the people I've heard here so far.

We're not in contracting business.

We sell towels and toilet paper.

We get more bids come across my desk to do contracting than we do for towels, toilet paper, whatnot.

I don't want to take her thunder.

JANE PETERS JACK: You are.

JEFF JACK: We're -- I'm signed up with many of the agencies that will post bids, is the school districts, whoever does.

And even though I go in and pick what I want, the majority of the stuff that comes through is for services, not for supplies.

So our MWBE, to me, means nothing, because the customers tell us, and look at us right in the face: That doesn't mean anything to me. I don't

have to.

You know, so it was, like, why did we go through, back then it wasn't electronic, we had to do it all by mail. You know, I had to send an 8-pound package to Albany with my -- our application.

And, you know --

JANE PETERS JACK: Months and months.

JEFF JACK: Yeah.

-- to this day, it's really not given us anything back for what we've put into it.

JANE PETERS JACK: The thing that's frustrating is, our sales reps will go to many SUNY campuses, which we think should be buying from a WBE, but they're, basically, tell the sales rep, Nope, we don't have to buy from a WBE.

And it's told -- told that to our reps constantly, to the point where they don't even make that stop there anymore.

But I don't want to give up any business I can, but, it's just a slap in the face to us.

It wasn't easy.

So I do understand -- I'll continue now.

I do understand that the mandates by the Governor are -- for the department to spend WBEs are

not directed toward specific MWBEs. But the majority of the spend that we see happening is in the construction area, like Jeff said, and as far as that, the bid process.

It is nice that the Governor has mandated that more is done with MWBEs, but I feel it needs to have more direction, such as a portion spent on construction, services, and supplies.

My main concern for being here today is the fraud that is happening with WBEs, because you go -- I can sympathize with these women that talked earlier on what a long process it is.

It took, probably, a year and a half, two years, by the time I finally got certified.

And then my recertification, they told me I was certified, but I never even got notified I was certified.

And then I started seeing all of this fraud going on with my competition that don't even qualify in a WBE status. And they just go out and do all this stuff, as far as trying -- you know, trying to undermine the real WBE that works so hard. And then they allow these other people to do it fraud.

And I turned them into the fraud department, and they would do nothing about it.

They sent me one e-mail.

And then I actually called the woman at the fraud department, and she said, Oh, we're working on it, we're working on it.

And months later go by, Yep, still working on it.

So, obviously, they don't care if some certified WBEs do this.

I think it's horrible.

If I was -- if my company did it, we'd get in trouble.

That's the way I feel.

JEFF JACK: I was approached by one of our competitors to do it for them.

JANE PETERS JACK: Oh, yeah, we've been asked to partner to do this, and we've bowed out every time.

And I know specifically of a WBE in Tulley, New York, that does this. She's doing it with Granger and with Hill and Marks in Albany.

And that's the basic reason I'm here, is I, of course, would love to do more business.

And any entities I've -- I've asked for help, where we could go with our janitorial, you know, to drive more business into the company, because the

Southern Tier, the small businesses are getting hurt so bad.

And nobody wants to help you.

I -- who could I go to?

Who will buy from a WBE?

It's, like, who am I supposed to ask now?

I don't know.

It is frustrating. Nobody has an answer.

I was told once, "Well" -- and it was out of Utica -- "you just have to get your niche. You just have to go -- excuse me -- you have to go out and find it."

But, apparently, I haven't found it?

I don't know.

SENATOR ASHKAR: Well, that's why we're here; we're here listening.

JANE PETERS JACK: So, that's --

SENATOR ASHKAR: So we appreciate your testimony.

JANE PETERS JACK: -- thank you very much.

SENATOR ASHKAR: Miss Tinney.

LEEANN TINNEY: Good afternoon.

SENATOR ASHKAR: Thank you.

LEEANN TINNEY: I'm LeeAnn Tinney. I'm director of economic development and planning for

Tioga County.

And thank you for affording me the opportunity to address you today.

Clearly, you've heard our concerns, and I thank you for gathering this Committee to review this important issue facing our communities.

First, I will be clear that I support the need, and even the requirement, for the use of MWBE-certified businesses for State-funded projects.

I applaud making this requirement a top concern and priority; however, the required percentages that may easily be attainable in urban areas, in fact, act as a detriment for development in rural areas.

The State-mandated percentages requirement represents a great challenge to rural communities.

To gain an understanding of the impact of this requirement, one must first understand the demographic of the area.

The total population in Tioga County is 48,578.

Of our 48,000 residents, 96.6 percent are not African-American, American-Indian, Asian, Latino, or Hispanic.

96.6 percent, this is who we are.

So when you ask the question, Is there discrimination against minority-owned businesses? I have to say, in the definition of the word "discrimination," are we actively choosing not to use a minority- or woman-owned business?

When you understand the opportunity to do so, I think you can realize the answer to that question.

I put a map in your folder.

The map is of a visual representation of this demographic.

The map is based on construction-related businesses only. Couldn't map all certified businesses, but, construction-related, and I chose to show this field because it is the one that we are the most impacted by.

As you can clearly see, there are exactly zero minority-owned construction-related businesses located in Tioga County.

I suspect it might be because of our 96.6 percent.

Now, I know that not 96.6 percent of our population is male, but we've talked about the WBE situation already.

The map shows the radius and available MBE businesses located within 30-, 60-, and 120-mile

buffer.

We are looking for either purple or yellow dots on the map. And as you can see, they are limited, with a few more options as you get farther out from Tioga County.

The second map I put in is to show that, due to Tioga County bordering PA, there are even greater limitations for opportunities to employ New York State-certified minority businesses than other areas the state might experience.

So what does this limited pool of certified MBEs mean to Tioga County?

The requirement not only calls for our projects to be farmed out to businesses not located locally, but it also drives the cost of a project up by unnecessary and unwarranted amounts.

This is due to the fact that the certified companies must add on charges for the cost of travel, and they are also aware of the supply and demand of limited pool of certified businesses.

Thus, in order for Tioga County projects to access State funding, we must take our business away from our local contractors, we must pay more to complete a project that is actually needed.

WBE, again, the availability of certified

women-owned businesses, are limited. Still zero in Tioga County, although we're working on it.

We have been actively seeking women-owned businesses to become certified, but as you've already heard, many have opted not to do this because of -- the process is too difficult, costly, and time-consuming.

We have experienced that the expedited review does not necessarily meet the definition of "to accelerate the process," as you've heard from Kate and others already today.

Finally, I will comment on the rumored and pending additional disabled-veteran-certified-owned business requirement to be included along with these MWBE requirements.

Although these percentages are currently noted as a suggested threshold, please remember that this is how the current MWBE mandates began.

I do not anticipate there will be a high probability of an ample number of certified disabled-veteran-owned businesses within our 30-, 60-, and 120-mile radius, and rural communities will again be challenged to meet the additional suggested and/or required amounts.

Ultimately, the unrealistic and unattainable

requirements placed on rural communities acts as a deterrent and prohibits rural communities from accessing State funding that would otherwise allow a project to move forward.

These requirements place us at a disadvantage for potential development.

Although I understand the intent and importance of supporting our minorities-, women-, and veteran-owned businesses, I respectfully request that our state leaders address these unforeseen impacts the mandates place on rural communities.

Please find a way to provide for an equitable method to allow for the employ of certified businesses in a user-friendly, timely manner to obtain a certification.

Thank you.

SENATOR ASHKAR: Let me just ask you a quick question about that equitable piece.

So there's been some discussion in Albany about regionalization.

And I advanced a piece of legislation this year, that my colleague supported, that would look at the established regional economic development councils.

And, you know, you've provided a great map.

Right?

So, say, in the Southern Tier REDC region, that the number of certified MWBEs in the construction arena was 11 percent.

Right?

Why, then, that would be -- that would be the goal to try to obtain.

I'm just curious as to your thoughts on that particular piece.

LEEANN TINNEY: Yeah, I certainly would be agreeable and support something like that, that seemed to be more realistic according to what's existing in our region. I mean, that seems to make sense to me.

If you -- again, if you look at the map, and if you look at the cluster of certified MWBEs around the more urban and metropolitan areas, you know, clearly, I can see why you might look to a larger percentage.

But, when you see the disparity in the more rural areas, it just makes it -- it's unattainable.

SENATOR ASHKAR: Great.

Mr. Nelson.

BRUCE NELSON: Hello. My name is Bruce Nelson. I'm the owner of Nelson Development

Group. I'm a group of one.

So my business is, we do historic preservation. We kind of specialize in that.

And we purchase buildings; design, renovate, and obtain the historic preservation benchmarks and guidelines, and so on. And then we own and manage the buildings thereafter.

I only have a few employees, but we subcontract the majority of the work.

Right now we're doing a project in Tioga County that has some of these requirements.

And I found it very difficult, if not impossible, to meet the requirements that are put upon these projects.

In rural Upstate New York, there are few, if any, certified construction companies.

Tioga County, like LeeAnn says, has zero.

And reaching out across the state to try to and find contractors that are certified or qualified to do the work has been time-consuming and difficult, and with little success.

The larger metropolitan areas, you know, to bring people in, is kind of counterproductive to what economic -- local economic development. I mean, it seems kind of backwards.

One example I'll give is, we've had a real problem trying to come up with a drywall contractor.

And we did have a guy in from The Bronx come in and actually quote the job, which I commend him on that. But, he was $100,000 higher than what I had in my budget.

And I don't have $100,000 just to hire someone because their skin color is different.

We did find a guy out of Binghamton, and -- but his experience was poor, at best, I guess.

And I need to be careful what I say here, maybe.

So we've been struggling along with this contractor. And we've had to remove part of his contract because he has a hard time keeping up with the work and the quality is falling behind. And, it's kind of a long story.

The WBEs, you know, I found -- I mean, we normally use some women-owned businesses in our work. And -- but it's a reoccurring story, how, well, it's too much of a hassle to apply for the small, you know, startup businesses. They don't have time or people or resources to get lawyers and go through this whole thing.

And, you know, my one painting contractor, we

would help her do it.

And, you know, it's just like beating your head against the wall.

And so we have three women-owned contractors that we're working with, but none of them have "the certification" (indicating).

We did have one certified contractor that -- Dan Lynch (ph.), that would be an excellent choice for the work that we had, a portion of it. But, I needed to have a minority.

And I guess you have to have the minority percentage and the woman percentage, and they can't balance each other off.

So -- anyway, you kind of get caught between a rock and a hard place on some of this stuff.

You know, when I'm planning a project, and, you know, I'm a lifelong construction guy, a lot of this stuff we're talking about doesn't help us get the job done.

I mean, we're trying to build buildings, make quality, value. You know, so when we're planning, we're looking for skill, capacity to perform, to bring in quality, to do timely work, a good reputation, you know, a good value.

And, you know, this is how maybe we get the

work, because we're looked at on these same issues; we're evaluated on how we perform.

If we aren't performing, there's not another job for me.

But when we look at these WMBE (sic) requirements, you know, those considerations are out the window. I mean, that's not filling the quota.

So, yeah, I mean, my opinion, it's a broken system, and it's just -- it's hindering progress here, at least on my side of the fence.

LEEANN TINNEY: Can I just --

SENATOR ASHKAR: Are you done, Mr. Nelson?

BRUCE NELSON: Yeah.

SENATOR ASHKAR: Okay. Great.

Yeah.

LEEANN TINNEY: -- could I just say, regarding Mr. Nelson's project, there's been a -- on River Row in -- on Front Street in Owego, there has been a missing building on River Row for over a decade.

And as you might imagine, to build something like that really takes -- it takes a lot. I mean, money and expertise and consideration of the historic value of it, and all of that, which Mr. Nelson does take into consideration.

But the cost, too, to put a project like that together.

Even, when you're looking at it, and as he said, when he was putting his numbers together, what he's able to -- his return on investment; what he's able to charge for rent for the apartments and the commercial space, versus what he would have to -- if he didn't have assistance, what he would have to spend to put that building up, didn't make sense.

We weren't going to get somebody to build, fill that hole, on River Row in the village -- hadn't happened for over a decade -- without some sort of assistance.

And, thankfully, there are programs out there, through the State, that we can access to be able to make a project like that happen.

But to hear him come to me in a weekly meeting and say, "I'm not going to do this again. I can't. We can't -- I can't operate my business like this," so I know that we're going to be losing opportunities for somebody like Mr. Nelson to come in and make a difference in our community, because he just can't meet, and take the time and the effort, and everything, that it takes to put this together, is frightening for me, because that means

that the people, like Mr. Nelson, who you would look to to bring development to your community, is just going to say, you know, I'm not going to do it anymore.

SENATOR ASHKAR: So all the more reason why we're doing this.

And why I wish those from the state agencies were here, to listen, because this, in fact, is reality.

Albany is not reality, the things that go on there and the conversations that are being had about this particular program.

This is reality, and that's why I wish the Governor and his people were listening.

For all I know, they are, from Albany in a private room.

Senator, do you have any questions?

SENATOR O'MARA: I have a few comments based on what you just said.

But, first, I want to thank the three of you -- four of you for being here today.

Bruce, I'm familiar with some of your projects throughout Tioga County and Skylar County, and you do excellent work. And I appreciate the investments that you've made in our rural

communities with the quality that you do.

You know, I agree with Fred, that it's disappointing that the Governor and the Governor's agencies have not participated in this hearing.

They did not participate in the hearing we had in Watertown, despite being invited.

And they've been invited to this one here.

And, frankly, I'm a little more -- as I said, in Watertown, I'm a little more than disappointed. I'm insulted by the fact that they don't participate in this process.

Each and every one of you here should be insulted that the Governor and his administrators won't take the time to be here to listen to your concerns directly.

There's a participatory process in this government; separation of powers equal, but separate branches of government.

We do what we can with the Legislature, but it's up to the Governor to administer these programs; to be the executive and direct these programs.

And, frankly, these quotas, or mandates, of percentages that are involved are pulled out of thin air. And they may work along a thruway corridor in

Long Island and the New York City metropolitan area.

We are not on the thruway corridor, and we have struggled in the Southern Tier for many decades, as the North Country has as well.

And to have one size fits all is a constant struggle that we deal with in our work in Albany, particularly those of us that represent more rural areas of the state on these broad-brush approaches that require us to meet the same standards and live up to the same rules and regulations that metropolitan areas do.

It's not fair. It doesn't foster competitiveness or economic growth in the regions that we represent.

So it's very important that we get to hear from you directly.

Your information will be taken back with us, certainly to our leadership in the Legislature.

And, hopefully, while not being present, that at least the information is -- this is being followed by somebody in the Governor's administration, and taking a serious look at making changes to these programs, because, frankly, we've found a deaf ear and a brick wall in the Governor's Office on our approaches to make changes that make

sense to this program.

So, thank you.

SENATOR ASHKAR: You know, and here's the interesting thing:

During last year's budget process, we agreed with the Governor to extend this program by only one year in its current form, because I'm sure many of you know what the Governor wanted to do to the program, the existing program.

So, to Senator O'Mara's point, I would think the Governor would want to be engaged with the members of the Legislature, because I know I've heard enough from the three hearings that we've had to date, to not extend this program again even in its current form.

So if the Governor wants to make this program better and wants to see it go down the road, I would suggest that he become involved in the conversation about the program and how it exists.

Senator.

SENATOR SERINO: And I just have some comments.

I just want to say, thank you all for coming here today.

And, Bruce, thank you for the historic work

you do.

I live in an old 1800s house. In fact, when I think about it, my real-estate building is an old 1800s building too.

And that's how I got involved in politics, was all government getting involved in me restoring my building.

But, you know, when you think about it, like our chamber has a saying, "Think local first," because you know the people that you're working with and the quality of work that they do.

So, there's so many issues that everyone's been discussing today, but we're taking it back to Albany with us.

And I just want to say, thank you again for coming here and telling us your stories.

SENATOR O'MARA: And a specific question for you, Bruce, have you pursued the waiver process at all in the contracting that you've done?

BRUCE NELSON: Uhm, yeah.

Uhm, yes, we have. It's through the agencies.

And, you know, through one of the organizations there, we were told that -- you know, because we've been doing this good-faith effort.

I mean, this whole process takes, you know, we're into two years now, but, you know, only a year of construction.

You know, the first year is trying to get it all put together.

Right?

And during that time, we're reaching out, we're doing our good faith, and on and on.

And, you know, we're just not finding it.

Well, you'll get that waiver. You'll get that waiver, don't worry about it. Just keep doing your good faith, and -- you know.

But, I mean, you can't get blood out of a stone. If it's not there, I mean, how you gonna draw them in?

I mean, the example of the guy from New York City, I mean, he spends us -- he comes up from New York City to bid a job and, you know, it's 100 grand over budget?

I mean, the numbers, I mean, the budget, is done.

I mean, I don't have that -- I mean, just to say, well, here, I don't know where it's coming from, but --

SENATOR O'MARA: Have you had any waivers

approved?

BRUCE NELSON: Uh, no.

KATIE WHITTEMORE: (No microphone.)

(Indiscernible) waivers, (indiscernible). We had to apply (inaudible). And we were working on a demolition project on a condemned building over safety issues.

And we were faced with the challenge of, either, stop the project and wait, we would still be waiting, or, proceed and -- with their funding the risk.

So we elected to proceed (indiscernible) and we still don't know (indiscernible).

SENATOR ASHKAR: Miss Jack, did you provide written testimony?

JANE PETERS JACK: I do.

SENATOR ASHKAR: Did you provide it to us?

JANE PETERS JACK: Yeah, I sent to it Jessica --

SENATOR ASHKAR: Yeah, great.

JANE PETERS JACK: -- through e-mail.

SENATOR ASHKAR: Thank you.

I just haven't seen it yet.

JANE PETERS JACK: Okay.

SENATOR ASHKAR: I'm just curious, did you

highlight the areas of fraud, or perceived fraud, that you speak about, in your written testimony?

JANE PETERS JACK: I can redo it.

SENATOR ASHKAR: Yeah, if you didn't address that in your written testimony --

JANE PETERS JACK: Okay.

SENATOR ASHKAR: -- I was intrigued by what you said here today --

JANE PETERS JACK: Okay.

SENATOR ASHKAR: -- specifically, in terms of the fraud that you think are apparent in the system, I just wondered if you would go back and send us a follow-up e-mail about that specifically.

JANE PETERS JACK: Sure.

And I also have, probably, e-mails that I sent to the fraud department.

SENATOR ASHKAR: Good, send them. Send them to us.

JANE PETERS JACK: And I can send you their replies.

SENATOR ASHKAR: Yeah, that would be very helpful.

JANE PETERS JACK: Just to kind of frustrate you.

SENATOR ASHKAR: Great.

Okay. Thank you very much.

JANE PETERS JACK: Thank you.

SENATOR ASHKAR: Can we have Ernie Hartman and Kelly Cook next, please.

Thank you.

On deck, George Slavik, Nick DeVincentis, and Jim O'Brien.

So, we have six more testifiers after the two that are testifying now.

Kelly, go ahead.

KELLY COOK: Okay.

My name is Kelly Cook, and I'm here to speak on behalf of WBE Painting, a paint contracting company based out of Elmira, New York.

We have been in the process of applying for our New York State WBE certification for a little over a year, which I've been hearing a lot of similar stories, and that doesn't seem like so long.

I would like to thank you for providing us with this platform to share our experience.

My partners and I decided to branch out and start our own company in September 2015 as it was not a feasible option to join our existing family business.

Over the years, having spouses in the

industry, we continued to see a lack of female representation in the field and saw an opportunity to go into business for ourselves.

For us it seemed like a natural progression. We had knowledge of the business, we had community connections; we thought it would be a pretty easy process.

To date, I have found the application process to be very frustrating, repetitive, and paperwork-heavy.

We started our application process on May 16, 2017. Submitted all required electronic documents on May 18th, and the required paper documents were sent out via certified mail on the same day.

Using package tracking, I was able to see that they were delivered to the address on May 23, 2017.

There was no visible activity on our application on the New York State contract website until the application was marked "received" on August 18, 2017.

On September 21st, and October 13th, I received requests for more information via the website, and responded to both requests within five days.

In these requests, I was asked to provide information I had already provided with our initial application.

On October 20, 2017, I received an e-mail, asking for the best day and time to conduct a phone interview.

I promptly responded with that information.

After not receiving a call or being contacted, I made several e-mail and phone attempts on October 26th, November 1st, and November 21st to reach someone on set up the interview.

On December 1, 2017, I received an e-mail, apologizing for the delay and late response, citing they needed to delay the phone interview until further notice.

I never received that phone interview, and we received our denial on December 5th.

To date, I have still never had a verbal conversation with anyone from New York State in regards to our application, even though I have made several attempts to reach individuals at phone numbers listed on correspondence.

A few of the reasons we were given for our denial, all of which we were either upfront about from the beginning of our application process, or

that I felt would have been better answered or discussed with a phone or in-person conversation rather than on paper.

What the construction industry looks like in the Southern Tier is not necessarily what it looks like in Albany or New York City, which is where all of the offices are located that I have received correspondence from.

After receiving our certification denial, we consulted with legal counsel and decided to pursue an appeal, and are currently in that process.

This has obviously been a financial burden for a new company, but we felt it was our best option.

Our appeal paperwork was submitted on May 31st, and we are awaiting a response from New York State.

Our personal frustration with this process, is we feel we have done everything in a timely manner and by the books, yet we keep hitting roadblocks.

Again, as I stated above, I feel that many of the questions and concerns our reviewer had would have been better discussed with a conversation as opposed to all communication being conducted via

paperwork.

Thank you.

SENATOR ASHKAR: Thank you, Kelly.

Ernie.

ERNIE HARTMAN: Thank you, Senator.

My name is Ernie Hartman. I'm currently an international representative for the International Brotherhood of Electrical Workers, with a jurisdiction of New York State representing 36,000 men, women, minorities, and veterans that chose construction electric -- to be a construction electrician in New York State.

I took this role about a year ago.

Before that I was a business manager of IBEW Local 139 in Elmira.

I've also been honored by Governor Cuomo to be appointed to the New York State Apprenticeship Council, and the Southern Tier Economic Development Council, so I have a firsthand experience on what the MWBE initiative is doing to the rural counties, and, specifically, the Southern Tier.

Allow me to preface my comments with this:

I am completely supportive of the Governor's initiative to assist small businesses to thrive.

That being said, I do need to express to the

panel, the statewide goal of 20 to 30 percent is problematic, not only to established employers in the rural counties, but to the existing workforces in those counties and to the apprenticeship programs that are in place to provide men and women of these communities with lifelong careers.

I feel that the rural counties in New York State should be better -- would be better served by the implementation of regional goals instead of a broad-brush approach.

In the Southern Tier and in the North Country, these MWBE employers just aren't there.

Speaking specifically of the electrical industry in the Southern Tier, there was only one electrical contractor listed on the MWBE list.

That contractor was later found to be a fraudulent WBE, and later removed from the list, but this only happened after that employer took a large project from our local contractors just because they were on the list.

Now general contractors are being asked to reach out as far as New York City and Buffalo to meet these prescribed goals.

What does that do for the local employers

and, in effect, the local workforce?

In terms of the promotion of apprenticeship programs, the Governor has been at the forefront in the country in being supportive of apprenticeship as a career-driver.

The problem is, in the rural counties, recruitment in the building-trades apprenticeship programs is difficult, at best.

The only way to keep these men and women continuing in their apprenticeship is to have employment available while they learn their craft.

But if their jobs are being outsourced to out-of-area contractors that bring in their own workforce, there is no incentive to continue their learning because their work opportunities aren't there.

What makes matters worse is that many contractors simply won't bid projects with MWBE goals because it's futile for them to spend resources on projects where they have no chance of being awarded the bid.

My suggestion is this:

The Governor has broken the state up into 10 specific regions through the Regional Economic Development Council.

Let's check the demographics of these 10 regions and set MWBE goals accordingly.

That way, there will be an obtainable goal put in place and the need to outsource local jobs would cease.

We can cultivate local MWBE businesses and preserve the work for our apprentices at the same time.

Thank you.

SENATOR ASHKAR: Tom.

SENATOR O'MARA: Yep, thank you.

Thank you both for your testimony.

Kelly, at what point did you appeal, roughly?

KELLY COOK: We started our -- we submitted all of our appeal paperwork on May 31st.

SENATOR O'MARA: May 31st.

And what have you heard since then?

KELLY COOK: Nothing.

SENATOR O'MARA: Ernie, you know, let me just say, I appreciate your work, both, on the regional council, and the other areas that you mentioned, your leadership for IBEW in the state, and your former work as the business manager in Elmira.

It's been a pleasure to work with you through the Chemung County IDA over all these years, and

I appreciate your input on that.

Based on your experience with the Southern Tier region, and not the state as a whole at this point, what is the demographics of your membership in IBEW, roughly, as it comes to women and minorities?

ERNIE HARTMAN: Diversity?

SENATOR O'MARA: In the Southern Tier region.

ERNIE HARTMAN: I can only speak for the electrical industry, Tom, because --

SENATOR O'MARA: Yeah, that's all I want to know.

ERNIE HARTMAN: -- yeah.

It's low.

I mean, probably, the -- at Local 139, which is a small local in the state, with 220 members, there -- we usually have 10 to 15 women, and probably the same minority interest, in the apprenticeship program.

But, as a New York State-certified apprenticeship program, we have to meet affirmative-action goals set by the State for diversity.

So we're doing everything we can to bring -- to diversify the workforce.

But, you start bringing out-of-town contractors in because they're on this list, what good does it do to diversify our apprenticeship if we can't put them to work?

SENATOR O'MARA: Yeah, so they come in from out of the area with their own workforce?

ERNIE HARTMAN: Oh, absolutely.

SENATOR O'MARA: Yeah.

ERNIE HARTMAN: Absolutely.

SENATOR O'MARA: Have you had any success from the Elmira local in sending your workers elsewhere?

ERNIE HARTMAN: Only if there's a call for workers. You know, if an area is having trouble manning their work, they'll reach out to the other areas.

But, listen, our people want to work where they live and where they spend their money. They don't want to have to go up and travel three hours one way to work, when there's work here.

Just let us do it.

SENATOR O'MARA: Yep.

ERNIE HARTMAN: You know?

SENATOR O'MARA: Thank you.

SENATOR ASHKAR: Ernie, are you familiar with

any of the work going to out-of-state contractors?

ERNIE HARTMAN: Not so much out of state yet, Senator.

I don't know if I'm familiar with any out-of-state contractor being awarded a project because they were MWBE.

SENATOR ASHKAR: Just out of the region?

ERNIE HARTMAN: Out of the -- yeah, yeah.

I mean, we have employers that have tried to get waivers, and they're being told that "you're just not trying hard enough to find somebody that's on the list."

SENATOR ASHKAR: And, Kelly, just help me understand, why -- why were you -- why were you denied?

KELLY COOK: They gave us a bunch of different reasons.

And one was being, that we don't own our own equipment, which I think in the construction industry, we provided all of our rental contracts with United Rentals.

I think, as a small business, that's only, you know, less than three years in existence, not many construction companies would own their own materials; that we have close proximity

relationships with, you know, a competitor, which we were very forthcoming with on our initial application.

And then the third reason was, that we share employees with other companies.

But, again, we have a very small labor pool to draw from in Elmira, New York. It's not uncommon for someone who works for one company one week to go work for another company the next.

You know, they go where the work is.

SENATOR ASHKAR: So all you wanted was an opportunity to explain yourself.

KELLY COOK: Uh-huh.

SENATOR ASHKAR: And the very government, the very government that is supposed to be helping minority- and women-owned businesses, wasn't there to listen?

KELLY COOK: I have not had a conversation with a human yet.

SENATOR ASHKAR: So those in this current MWBE program failed you?

KELLY COOK: Uh-huh.

SENATOR ASHKAR: Is that accurate?

KELLY COOK: Yes.

SENATOR ASHKAR: Thank you.

Senator.

SENATOR SERINO: Thank you, Kelly, for sharing your story and your frustration; I really appreciate it.

And, Ernie, you know, you brought up a good point about the apprenticeship programs, which I absolutely love.

There's so many kids today that aren't meant to, or maybe don't want to, go to college, and apprenticeship programs are so vital.

And when you have to -- when the jobs are being outsourced, that makes total sense that, you know, why are you going to have the apprenticeship program?

So thank you for bringing that point up; I really appreciate it.

SENATOR ASHKAR: Thank you both very much.

I also want to acknowledge the presence of Assemblyman Cliff Crouch, who's joined us a little while ago.

The Assemblyman is fighting --

Assemblyman, would you stand up please, just to be acknowledged?

-- he's fighting very hard in the Assembly as well on this issue.

So, Assemblyman, thank you very much for joining us.

Okay. Mr. Slavik, Mr. DeVincentis, and Mr. O'Brien, thank you.

Mr. O'Brien, age before beauty.

[Laughter.]

SENATOR ASHKAR: Go ahead.

JIM O'BRIEN: Perfect.

First, I'd like to thank all of you for allowing me to give my opinion and share my experiences with you.

30 percent goal -- well, first, Bothar Construction is a family-owned business, third generation, doing work, pretty much, all over the state; employ about 100 employees, and we work for, mainly, DOT, OGS, DEC, and various other municipalities, as well as the Thruway.

The 30 percent goal that has been arbitrarily thrown at our contracts, especially with DOT, it's nearly impossible to meet. In many in cases it is impossible to meet.

We have asked for waivers on just about every project, depending on what that project is.

There's no rhyme or reason. We don't look at -- we would look at the projects, and it doesn't

appear that they have taken into consideration where the project is, what type of work it is, how much is subcontracted.

There are times when there is one main item, which is why we're bidding the project, and there's goals on that.

It makes no sense.

We run into -- we also perform subcontract work.

We run into the fact that here, locally, the project at Prospect Mountain, a very large project, we put in a bid on the electric portion, the lighting.

We were told we were $200,000 low on that project; however, it went to a minority firm out of Albany.

I believe that the project is worth keeping going. I'm not here to say that we need to get rid of the goals. A lot of people here depend on it.

I do think that 30 percent is way out of the realm.

When we put together these projects, we go through the directory, we start making phone calls.

Half of them don't answer.

Half of them are out of state -- I'm sorry,

out of the area.

Some of them are no longer in business.

Some of them ask why we're calling them.

There's a doughnut-maker in Albany that is approved.

I can't believe that these people can't get approved if a doughnut-maker out of Albany can.

The other problem we have is the municipalities don't understand the law.

They're being told, through these State-funded projects, that they have to meet the goal.

In some of our preconstruction meetings we're being told, You have to meet the goal.

So we ask, Is it mandatory?

You have to meet the goal. The goal will be met.

That's not -- that's not any chance to have a good-faith effort accepted.

When you talk about a "good-faith effort," let's talk about the definition.

Define it.

Is a stack of phone calls an inch thick, an inch-and-a-half thick, is that a good-faith effort?

Is calling everybody within your area or

everybody outside of the area, is that a good-faith effort?

They can't tell you. They just tell you, Keep trying, keep going.

The only way you get them to stop is if you ask them. They give you people to call.

We have to look and see if these people are viable.

A lot of them are houses.

And I understand that people are trying to get started.

But when you call and you can't get the owner of the company, that you get pushed off, and you don't get a phone call back, you have to wonder if that firm actually performs a commercially useful function.

We need to update the directory, as I just stated.

Get rid of the firms that -- that aren't -- that don't want to go from Albany to Buffalo, that don't want to go from Buffalo to Binghamton, New York City to Binghamton.

We've -- I've been in the business about 30 years now.

We have been doing business with the same

minority firms for almost that entire year -- or, the entire career.

That's -- that -- what are we doing?

Did we raise the goal because we thought that more companies would come in?

If that's the case, I haven't seen it.

Or did we just throw the goal out there for a political reason?

I think that we need to take a hard look, as others have said, at the area that we're in, the area that the job is in, such as your bill, Senator Akshar, and take a good, hard look at where we go from here and how we can maintain this program.

SENATOR ASHKAR: Thank you, Jim.

Nick.

NICK DeVINCENTIS: Good afternoon.

My name is Nick DeVincentis. I'm the vice president of Vacari, and R. DeVincentis Construction. We're a local contractor that specialize in heavy highway.

R. DeVincentis was started in 1969, and Vacri was started in 1977.

We bid predominantly public projects, just like Jim.

I'm here to discuss our experiences with the MWBE program, and how tough, and almost impossible, it is to reach the current unreasonable goals set forth by New York State.

As a company we've always strived to promote diversity in construction.

We were once a very small business too, founded by my grandfather who immigrated from Italy in the 1950s.

We relied upon the help of fellow contractors to make it in this industry, and now we have a three-generation company.

Since 1991, Vacri, understanding the need for diversity in construction, has provided a cash scholarship at Binghamton High School to a female and/or minority graduating senior who's planning to pursue a career in construction.

Moreover, it should be known that our last two -- the last two compliance officers for New York State DOT, Region 9, have been our former employees.

So you can say we're the breeding ground in promoting diversity.

With all that being said, though, we're finding it more and more difficult, if almost

unattainable, to reach the ever-increasing MWBE goals.

The current goals for New York, which set at 30 percent, as stated, are over 3 times the federal goals and about 10 times Pennsylvania's goals.

On federal projects, which have a typical 8 to 9 percent goal, they're called "DBEs," although challenging, we are able to reach these goals most of the time without a waiver.

The last few years we've seen our waivers skyrocket; whereas, in the '80s and '90s, when the goal was more obtainable, around 10 percent, we were able to reach it.

I wanted to talk about a few specific projects where we had a hard time.

We had a bridge project at Robert Treman State Park, a sanitary sewer project in South Port, and a collection system in Watkins Glen.

The bridge at Robert Treman mostly had specialty work, including wooden piles, specialty wooden handrail. It was actually wooden leg and walls. No concrete on the job at all. Structural steel.

It was a special project. This did not leave much for us to sub out to MWBE firms.

We were able to have the beams, pipe, and bearing supplied, but since bona fide suppliers only count as 60 percent of the contract value, it was impossible to obtain the goals. A waiver needed to be granted.

For the sewer project in South Port and the collections system in Watkins Glen, the majority of the work was excavating, installing a new sanitary sewer, which we do with our own forces.

The only major subcontract item for South Port was paving. And the MWBEs we solicited were 20 to 30 percent higher in price than the lowest figure that we received.

At Watkins Glen, the major non-sewer work involved specialty pump-station work, where that's mostly supplying equipment, and the installation was also done by our own forces.

Again, the only option, for both projects, to try to reach the goals was through supplying. And as stated before, we only get 60 percent credit towards the total proposal value.

As shown in both instances, supplying material was the only option.

And with the current 60 percent allowance set, basically, the State's saying, you need

50 percent of the total contract value to be supplied by MWBEs in order to reach the goals.

In order to be granted an increasing number of waivers, we are mandated to show our good-faith efforts.

And as Jim touched upon, it's not really defined at all from agency to agency.

The number of MWBEs you contact, the number of times you contact them, the distance away, all are variable from agency to agency.

Goeser (ph.) asked us, when he contacted MWBEs up to 120 miles away, to go even further, go 150 to 200 miles away, to try to find someone who can do the project.

How can they possibly compete with local contractors that are within 10, 15 miles from the project?

One effort of good faith that most of us contractors use is to advertise in local newspapers.

And the owner, my father, said that, in 25 years, not once have we received a response from this method.

As far as the e-mail solicitations, you know, as you said, you may get a doughnut-shop owner. You may get, you know, someone who provides surveillance

equipment.

We probably only receive a 5 percent response rate.

And, again, this leads me to the fact that the same 5 to 10 MWBE firms who quote us, mostly unsolicited, are the ones we predominantly use on awarded contracts.

We've come across minimal MWBEs who are actively looking for work in Upstate New York.

It's the same ones over and over again, who are established, and actually bid it and receive the contracts.

There is zero chance these few MWBEs can perform the robust dollar amount of set-aside work.

With the goal set so high, shouldn't there be numerous MWBEs that are available and wanting to perform the work?

There's a significant disconnect between contracting in Downstate New York, the New York City area, and Upstate New York, pretty much, the remainder of the state.

Like the local prevailing wage-rate schedules, the mandated percentages all should be based regionally.

There are currently many mandates that

differentiate between Downstate and Upstate New York, such as New York State minimum wage, and the EEO goals which go by county.

An effective and proactive MWBE program would recognize the available pool of subs and suppliers who can perform the requisite level work in that specific region, and then issue the resulting goals accordingly.

For Upstate New York, MWBE firms are few and far between.

The collective capacity of work that the MWBEs can perform is probably a factor of 10 less than the dollar amount set aside for them.

In conclusion:

The program is something that our firm believes is necessary and very helpful for up and coming companies that are trying to get into the construction business.

Without the help of fellow contractors, my grandfather probably would not have succeeded in starting his company.

Unfortunately, the implementation of the program is simply all wrong.

The program needs to be restructured from the ground up;

A new disparity study across state should be performed with realistic results;

Different goals for different regions should be established;

Bona fide suppliers should receive 100 percent credit for material;

A standard good-faith effort should be established;

And, lastly, the standards for obtaining status -- MWBE status need to be tweaked, since the numbers of capable firms are just not there in our area.

Thank you for listening to my testimony.

SENATOR ASHKAR: Thank you, Nick.

Mr. Slavik.

GEORGE SLAVIK III: Hi, my name is George Slavik, and thank you for having me.

I'm with Piccirilli-Slavik and Vincent Plumbing and Heating. I am the second generation in the business, and we've been in business since 1985 here in Binghamton. We specialize in commercial, industrial, plumbing and HVAC.

It's very interesting to hear some of these other ladies talk about their struggles with the program, because I never imagined for someone like,

as cut and dry as it should be for them, that it's that difficult for them to get their certification.

Our story is a little bit different.

We, more or less, try to stay away from these projects that have these goals because it's so difficult in our industry to meet these goals.

In the plumbing and HVAC industry, and how it's structured around here, we have a lot of subcontracted work.

And those subcontracts carry up -- or, you know, take up a lot of our contracts in the south.

For example, here at Binghamton University, they have one HVAC controls contractor, which is Siemens, which is a worldwide company.

We have to use them on any project here at Binghamton University because that's their -- that's their company that they use.

Their contract could be 20 to 30 percent of our contract alone.

So right off the bat, you take a large HVAC project that could be multimillions of dollars, and right off the bat, you've got 30 percent or more just gone right out the window that have you no chance to find any participation on.

So when you break down the layers and peel

back that, then the HVAC equipment is another huge thing.

A lot of these are worldwide companies and they only have one certified sales representative in each area.

And I have not seen one of those be a certified W- or MBE.

So when you start taking and peeling back what our contract is made of, and look at the percentages they're asking for, and then what we're supposed to go and find and get, it's really almost impossible on these jobs, other than giving up your own work, as these gentlemen talked about, or, trying to find someone from out of the area.

We've done that as well.

If you type in the "Southern Tier" in there, I think even if you do "Southern Tier, Central New York, and Western New York," and you go "plumbing and HVAC," you'll find only, like, seven companies.

Two of them are competitors of ours, so take them right out of there.

And you go "Southern Tier" alone, there's, really, hardly any.

I only know one, and that's one of our

competitors.

So, in our specialized field, there's really no one we can turn to.

We've tried, we look.

So, at this point, a lot of times we shy away from jobs.

We've lost jobs that we were the low bidder on because someone else was certified.

So our employees in this area are getting hurt by this, because there's really no opportunity for us. So we've kind of, you know, shied away from that type of work whenever possible.

Another example we had was:

We had a company that we hired as an MBE.

And as you know, in New York State, with all of the regulations, it's -- there's a lot to be on top of.

And this company got in trouble for not classifying "employee" as the right thing.

They didn't understand that they were doing something wrong; they got in trouble.

But since we were the prime contractor, we had to pay the fine.

So we paid the fine for that.

Set up a long-term loan, where they were

paying us back a few hundred dollars.

It was over $50,000 we paid for them.

Had to get a long-term loan set up. They were paying us back, and now they're out of business.

So now, you know, they might have paid us back four or five thousand of that over fifty-thousand fine we paid, and we just are on the hook for the rest of it.

So we've -- you know, we've had trouble finding them; we've tried.

I've sent e-mails, phone calls, and you get no response back, like these other people are saying.

I think the program is a great thing. I think it needs to be developed. But I just don't think, in this area, it's there yet.

And, you know, just like they're saying, if it takes years to get approved, how do they just think that, automatically, overnight, there's going to be enough that 30 percent of your construction contracts can all be fulfilled by these entities?

So, that's really what we've been up against -- one other thing. Sorry.

I think it was last year I saw advertised, at

Binghamton University here, for, it was, like, an operator with a machine. A T&M contract.

And I think the goals were, like, 37 percent.

I mean, they're talking about an hourly contract for a piece of equipment and an operator. And these people were supposed to bid, and find 37 percent of that total cost based upon that.

So I think that it's been blanketed, and it hasn't really been looked at regionally, or, actually, what are we talking about?

What are they -- what do these people have to go do for that amount, and can they get these percentages?

Or, is it 3 percent? Or is it 1 percent?

So, overall, it's just been difficult. And I think, especially, once you get into the specialty stuff, it becomes very hard to meet these goals, and I think it just needs a lot of work.

SENATOR ASHKAR: Senator.

SENATOR O'MARA: Thank you all.

Those of you who have discussed a little bit about your involvement in the requirements for making this good-faith effort, can you put -- or -- into words, or quantify, somehow, the time and expense that you go through during this contracting

process, or the bidding process, to devote pursuing an MWBE for that, and how much that would ultimately add to the overall cost of the job?

JIM O'BRIEN: We put in hours, on top of hours, on top of hours.

Days.

NICK DeVINCENTIS: It takes a few weeks, I would say.

JIM O'BRIEN: We put in e-mails.

I mean, to be honest with you, my mother is responsible for that in our office. And the time that she puts into it is astronomical. The detail that she has to -- the notes that have to be taken on every little conversation she has.

The fact that, when we send these things up, and I heard that, we send our good-faith effort up, and I've heard this before today, that you got to call this guy and this guy.

Well, we did. It's in the packet we just sent you.

Oh, well, call them again.

NICK DeVINCENTIS: Call them again.

JIM O'BRIEN: And we do.

And, why can't you work it out with this?

Or, they'll make the phone call themselves.

We've actually had this happen, where the compliance officer will make -- will call the same people that we called. And then call us back and say, Well, they say -- they never received any contact from you.

I don't know why we would lie about it, it makes no sense.

You know, George brought up a good point.

We're responsible for all of these people's payrolls on a prevailing-wage project. And we can't help them.

I believe it's by law, we cannot, so to speak, mentor them.

Now, AGC has started a program, and I think that Mike brought that up in Albany to you guys.

But that makes it difficult for us, for a smaller contractor to come on a larger project.

There are times when you need something.

I mean, to be honest with you, we subcontract to Nick.

Nick subcontracts to us.

We couldn't do it alone.

If he's got a piece of equipment there that can help me, I use it.

Right back at him.

We have to be able help these smaller companies grow, and the only way they can do that is with our help.

It's just too hard, and, especially, with the amount of paperwork, and the regulations that we're all held to in this state.

SENATOR O'MARA: What have you found in the circumstances where you have been able to find an MWBE, particularly from outside of the region, a company that perhaps you're not familiar with, coming in, with the quality of their work, and how much extra work that requires you to fulfill your contract?

NICK DeVINCENTIS: Well, as Jim kind of stated, and I did too, with DOT and projects like that, we frequently use the same 5 to 10 MWBE firms because they're reliable and capable.

And we did take a chance recently on a paver, who we could have used him, but, we had to reach the goals locally on 201. We grabbed someone from Syracuse, and a lot more time and effort was required to get him there, file paperwork, follow up with them.

I don't believe paperwork that was needed from them to finalize the project was even ever

submitted, just because I placed 10 to 20 calls near the end of the project, and no one ever responded.

So, it's tough on us to try to take the risk on someone we haven't used before.

But, on the flip side, you want to be able to help these smaller contractors to get projects and to be able to work and get into the business.

So it's kind of a Catch-22 for us, that, you know, do you want to be safe and use the same 5 to 10 that you use all the time? Or, do you want to try and help someone out, then you hold the risk?

As he's saying, you know, we're responsible for their certified payroll as well on prevailing-wage projects.

JIM O'BRIEN: Senator, I just -- a little success story. Actually, my mother and I were talking about it just last week.

There's a striper out of Albany that we use all the time, and they are a W -- I think they're an M- and a WBE, actually.

One of the first projects they did was for us was on Route 434 many years ago.

And the engineer and I looked at the stripe, and it was (indicating). And he says, What are you going to do about that?

I said, (indiscernible) the contractor you told me to use. You tell me what we're going to do about it.

They accepted the job.

Currently, they do probably 90 percent of our striping. They're very good. They show up on time. They get the job done.

It's a great success story.

Now, there was a guard rail company, again, a long time ago, that came into problems.

Their piece of equipment went down. It was a specialty piece of equipment to pound posts. And they had to wait for that truck to get fixed.

During that time period, there was an accident, and a girl drowned in the river.

Now that rail would have been up had they had more equipment.

That firm is no longer in business.

SENATOR ASHKAR: Senator.

SENATOR SERINO: I just wanted to say, thank you.

You know, when we talk about the regional differences, the three of us were involved with the minimum wage. Remember the Governor wanted it to be $15 now across the state.

I know I met with my small businesses and they said, If we got to $12 in a longer period of time, we could do that.

It was still a struggle.

But we were able to set the table, really, when you think about it, New York City and Upstate New York.

So I think that's something that we have to concentrate on now as well.

So, thank you for all of your information, and your frustration, but we appreciate all the comments.

So, thank you.

SENATOR ASHKAR: Jim, let me bring you back to the light contract.

You said that Bothar was $200,000 less.

You were the low bid, right, $200,000?

JIM O'BRIEN: That's what I'm told.

SENATOR ASHKAR: Okay.

JIM O'BRIEN: I don't have anything to back that up.

SENATOR ASHKAR: So you don't know -- do you know what the final price was for the M or the W who won that particular contract?

JIM O'BRIEN: When I called back to see how

our number looked after the bid, to low bidder, I was told that our number was $200,000 lower, but they had to go with the WB.

SENATOR ASHKAR: Okay.

Nick, you talked specifically about some projects being 20 and 30 percent higher, right, the cost of the project, simply because you have to go to -- through an MWBE.

Did you use that number?

NICK DeVINCENTIS: We did not use that number because it did kind of blow it out of the park.

But, many times, 5 to 10 percent higher means you use them.

SENATOR ASHKAR: But in some instances you've seen as high as 20 or 30 percent --

NICK DeVINCENTIS: Yes.

SENATOR ASHKAR: -- right?

NICK DeVINCENTIS: Yeah --

SENATOR ASHKAR: But, generally speaking, 5 or 10 percent?

NICK DeVINCENTIS: Yeah, you weren't going to get another waiver granted unless you used them. It artificially inflated the project cost.

SENATOR ASHKAR: And, George, let me come back to you.

You said that you lost the job. You were, in fact, the low bidder. You lost the job.

Do you know what the difference was between your bid and the winning bid?

GEORGE SLAVIK III: I do not.

But it was like he said, where we called -- this was through a general contractor. We called and said, Hey, you know, how did we do?

They said, Well, actually, you were the low bidder, but, we have to go with someone else because we have to meet the goals.

So, same thing.

But what's interesting about what they say, is it shows you a little bit -- I'm trying to highlight the difference between industries too -- it sounds like these, in their industry, they're actually getting tons and tons of quotes for specific work, or you have some that are consistently quoting.

Our industry, you know, on our bid days, there is little to no quoting from MWBEs because of the lack of that. So it's even harder for plumbing and HVAC.

And I'm not sure about electric.

But it's just interesting, in different, even

sectors of construction, everyone's a little different.

SENATOR ASHKAR: Well, we thank you all.

I think that that last point that I raised is important for all of us to note because we're talking about tax dollars.

We're talking about the hard-working taxpayers of the state that are paying more and more for projects simply because of a program that isn't functioning the way it's supposed to be.

So --

SENATOR O'MARA: Do you see, in the half a dozen or so companies that you are familiar with, comfortable with, utilize, I assume other contractors that are competitors of yours are looking to them as well?

Does that stretch them even more thin and cause an inflation of their bids because of it?

NICK DeVINCENTIS: Late in season year, you know, they raise their prices tremendously, or they just can't physically do the work.

And, then, what do you do?

JIM O'BRIEN: Guard rail, I think there's two contractors.

NICK DeVINCENTIS: Yeah.

JIM O'BRIEN: They're pretty busy.

NICK DeVINCENTIS: Rebar installation.

JIM O'BRIEN: Well, rebar installation as well.

You know, we won't use a trucking firm, because we don't get a waiver, but we get a partial waiver, I guess. And then it gets awarded, which takes time.

We had a job in -- right out in front of Horseheads on 17 last year. We were a million dollars low on the contract.

It went past the 45 days when they have to -- the State has to award it.

And we couldn't get through what I'm assuming was the MWBE process because we kept getting phone calls. And it pushed our paving deadline farther and farther out, to the point where I said it's not worth the risk.

We had to mill, pave, tack, clean it, everything, in just a few hours at night.

Well, the risk didn't mean anything to the award, so we gave that contract back.

It was a million dollars that it cost the State.

SENATOR ASHKAR: You good?

SENATOR O'MARA: Yeah.

SENATOR ASHKAR: Okay.

Thank you, gentlemen.

JIM O'BRIEN: Thank you.

NICK DeVINCENTIS: Thank you.

GEORGE SLAVIK III: Thank you.

SENATOR ASHKAR: Mr. Mancini, Mr. Ashman, and Mr. Cerretani.

(Inaudible) last three testifiers, let me just make a quick note, if I may.

I see there are other folks in the audience that are in the contracting business, so on and so forth.

If you didn't have an opportunity to testify today and you want to send us some stuff, please go to my website, Akshar.nysenate.gov, and leave us some notes there.

Mr. (indiscernible), thanks for being with us.

Mr. Mancini, I'll let you start.

JOSEPH MANCINI: Okay.

I didn't get a chance to put together a prepared statement, but the question I always ask -- I've been asking for years is: If the program relies on contractors to make it successful, how

come they never call on us to say, how do we make it better?

It's -- I've been doing this at Mancini for 20 to 25 years, and have been working with the changes that they made.

At Mancini, we've been in business for 51 years, and I've been a project manager and estimator for 32. And in that whole time, I mean, it's -- it's a program that doesn't work very well.

Everybody always says, yeah, you know, it has its -- it has its good, in theory; but in practice, it doesn't work.

And it seems like, if the law was just followed on its merits, you know, it might work.

But the 30 percent is extremely high for the region.

And -- well, that's all have I to say about it.

I have some -- I always keep -- I think I sent you an e-mail about ways to make it better, and you can look at it on your own time.

But it -- it -- from my point of view, it's a struggle to make it work, and it's not enough to be low bidder anymore.

You have to be low bidder and you have to

have the best utilization plan.

And when you are low bidder and you submit a utilization plan, they use the second or third bidders against you.

And because -- and they'll ask you, Well, if you can't meet the goals, how come second bidder can and third bidder can?

I don't get that at all.

They're not even in -- they shouldn't even be in the discussion, but they do it all the time.

But that's all I'd add.

SENATOR ASHKAR: Okay.

Mr. Ashman.

DEVIN ASHMAN: Good afternoon.

Thank you for taking the time to meet with us.

Again, I'm with Matco Electric. We've been serving Upstate New York for over 50 years. We're a full-service electrical contracting firm, performing work of all sizes in many sectors of our business.

Over the course of the 50 years, Matco's completed numerous state projects for multiple entities. In the recent years, it's become more and more difficult to meet the MWBE goals set forth in the State contracts.

Some of those difficulties facing us are as follows:

Most notably is the fact that Matco Electric is a specialty contractor; a specialty contractor, electrical. We are required -- we require personnel who are trained outside of the company to perform all our work within our program.

This industry that we're in requires very few, if any, subcontractors to complete the scope of work, making it very difficult for us to meet the MWBE goals set.

Adding to that difficulty is the fact that we are a union contractor. We are required to be signatory to the IBEW.

Currently, we are signatory with a number of electrical unions in both New York and Pennsylvania.

The IBEW sources all of our field labor, as they are trained through the IBEW program.

The use of these local skilled union craftsmen allows us to leverage local manpower in the area experiencing the construction.

Under our collective bargaining agreement with the union, we cannot subcontract any of our labor to a non-union contractor that we can perform ourselves.

Again, this limits the available MWBE listed contractors that we can work with.

Another problem we face is limiting the MBE-WBE supplier percentage that can be applied towards our goals. This creates a further challenge for us.

There seems to have been no data to support why the recent limit of 60 percent of the amount being credited towards the goal to certified MWBE suppliers has been enacted.

We have more suppliers than subcontractors who would be able to assist us in achieving these goals if 100 percent was still allowed.

The quantity of certified MWBEs available in our region or regions that we are working in is also problematic; it is limited.

Being a qualified MWBE contractor not only requires having a New York State certification, but also the financial stability, experience, and expertise to perform the work.

Often, State specifications of ours include requirements of 5 to 10 years of experience to perform a specific task or area of work within our trade scope.

These tasks or work qualification

requirements are often difficult for any contractor to meet; and, thus, this only adds to the difficulty in meeting this goal.

We also perform construction within customer -- with customers' proprietary equipment.

Much of our installations include proprietary equipment, such as fire-alarm equipment, access control equipment, generators, et cetera.

Often, there are no MWBE manufacturers of said equipment or MWBEs having territory distribution rights.

This raises the need for a partial waiver.

In the past, the issue was recognized by the State compliance officers, and partial waivers were granted when all the proper documentation was submitted.

Today these proprietary-equipment waivers get rejected.

In the end, I think compliance with the current MWBE program is difficult, at best, with the goals being set at 20 to 30 percent. They're often downright impossible.

This causes us to lean away from bidding State-funded projects because of these constraints.

The risk and perception of failure to comply

with the MWBE program could subject you to disbarment, potential prosecution, fines; it's just not worth the benefit of bidding the project.

In the end, also, we agree that the program is not going to go away, but it must be amended.

The intent is good, but the goals have become unattainable.

Thank you.

SENATOR ASHKAR: Thank you, Devin.

Mr. Cerretani.

NICK CERRETANI: Hi, my name is Nick Cerretani. I'm owner of C & C Ready-Mix Corporation. We're a concrete supplier in Broome and Tioga county.

I'd like to talk a little about how this program, the 30 percent goal, has negatively affected my business.

Unfortunately, the -- most of the work in this area is either here at Binghamton University, municipality work, or DOT work. And, in most cases, it's 30 percent mandate.

And I say "mandate" because it's not a goal. It's a mandate, is on these projects.

Unfortunate for me, my competitor is a WBE.

So it's -- it really is hard for me to get

work here at SUNY Binghamton or any of the municipalities, in some respects.

There's been times where -- many times, actually, where I've been told by the contractor, We can't use you. We have to meet our 30 percent goal. We have to use your competition.

This happened frequently.

It's happened just the other day with a gentleman whose company who I'm sitting here at the table with.

And it's negatively affected my business.

This goal of 30 percent is very high. And the items on some of these jobs that I could participate in are limited.

So you have a job where there might be 10 items in the whole project, and concrete is one of them, and 30 percent has to go to a WBE, I'm out of the ballpark. I'm not even considered.

And this happens on many projects, where my bid to the general contractor is not considered because I'm not a WBE.

And I'd like to thank you for having us here.

And, unfortunately, I'm -- no one from the Governor's Office or administration is here, so it almost feels like we're talking on deaf ears.

SENATOR ASHKAR: Well, I would like to think that you don't truly believe that, because we've taken three hours out of our day to listen to all of you, because we care.

NICK CERRETANI: I'm meant deaf ears to the government --

SENATOR ASHKAR: Oh, I --

NICK CERRETANI: -- to the Governor's Office, not to you people.

SENATOR ASHKAR: -- I agree with you wholeheartedly.

And to Mr. Mancini's point, why don't -- I think you raised a question, and, Devin, I think you made it in a roundabout way, why hasn't anybody listened to the people who are actually working in this arena?

Right?

It's because there are bureaucrats in Albany who are divorced from reality.

That's the truth.

Right?

The fact that -- and I said this earlier, the fact that the Governor's folks aren't participating in this has left me bewildered, and to Senator O'Mara's point, insulted, quite frankly.

You should all feel insulted as well.

Right?

And I don't know, maybe the Governor too is divorced from reality, because the only way that this program goes on, is with the help of the Legislature.

And my suggestion again, respectfully, is that he participate in this process, because we're hearing recurring themes, we're hearing recurring stories, from -- not just from the folks that were here today testifying. The same stories in the North Country and the capital region.

And I know that we'll hear the same stories when we go to Western New York and New York City.

So I share in your frustration, and I think my colleagues do as well.

NICK CERRETANI: And I do apologize.

I didn't -- I didn't --

SENATOR ASHKAR: No, no.

NICK CERRETANI: -- direct that at you personally.

SENATOR ASHKAR: We understand.

NICK CERRETANI: I direct that to the Governor's Office.

SENATOR ASHKAR: We understand completely.

We understand completely.

Senator, go ahead.

SENATOR O'MARA: I'm good, I'm good.

Thank you all for your testimony.

SENATOR ASHKAR: Senator.

SENATOR SERINO: And I don't want you to think that your efforts are going unheeded, because I think about, when we did the workers' comp reform, we did a lot of these hearings and roundtables, and it was really very helpful.

You know, I went to Albany, there's 140,000 pages of rules and regulations; how ridiculous.

And I tell them all the time, they live in a bubble. They need to go back to their districts and listen to what their people are saying.

And, hopefully, the Governor's Office will be watching this today and they're hearing your voices loud and clear.

So, and just -- you'll know that we are keeping up the fight for all of you, and we appreciate everything that you do.

NICK CERRETANI: I appreciate your efforts.

SENATOR SERINO: Thank you.

SENATOR ASHKAR: Sir, go ahead.

OFF-CAMERA SPEAKER: No, I think -- can we just have one more --

SENATOR ASHKAR: What, testifier?

OFF-CAMERA SPEAKER: -- on the docket?

And I don't know how we missed him.

SENATOR ASHKAR: That's okay.

SENATOR O'MARA: Oh, he's supposed to be on, Jeff Streeter.

SENATOR ASHKAR: Please, come down.

Are you guys all set?

JOSEPH MANCINI: Yeah.

SENATOR ASHKAR: Our questions are done.

Thank you.

SENATOR ASHKAR: My apologies for missing you.

JEFF STREETER: Thank you.

SENATOR ASHKAR: Yes, of course.

Thank you.

If you're upset with anyone, make sure it's O'Mara, not Serino or Akshar.

[Laughter.]

JEFF STREETER: (Indiscernible.)

SENATOR ASHKAR: Thank you for being with us.

JEFF STREETER: I will try to be brief.

And, really, what I -- I probably don't have

anything much more than what anybody else has already said, but, I'll just introduce myself.

Jeff Streeter, owner of Streeter Associates, a general contractor based in Elmira, New York. We have a smaller office nearby in Vestal.

And we've been in business for a long time, since before I was born.

And that's -- you know, that's a common story in New York State. And I know this program is looking to try to change some things.

Some people might wonder whether something like this is discrimination or not.

And I think, if you're C & C, and you look to supply concrete, you know, you probably do feel that way.

As a general contractor, we subcontract out work.

We self-perform a fair amount of work.

On some jobs, we might self-perform 30 percent of that work.

On other jobs, it might be 50 percent or 80 percent, but we always at least have that combination.

We have an opportunity to try to find Ms and Ws to help fill out a contract.

And when I look at something like this, I say, well, this is a hurdle for us sometimes, for lots of the reasons that others have mentioned that have already been up here, which is, trying to find Ms and Ws, and going through all of this process.

I won't get into all of those details of how difficult it might be.

But I'll tell you, our mindset, usually, when there is a hurdle that's out there, or a challenge, for our business, I look at it, and I tell my employees the same thing; I say: Well, you know, this is the same hurdle that all of our competitors have to deal with too.

Whether it's, you know, prevailing wages or OSHA requirements or the weather here in New York, or maybe it's Labor Laws 240 and 241 that give us astronomical liability insurance costs, whatever it is, I usually can look at it and say, you know what? At least that's the same way it is for all of our competition.

In this case, there are so many companies, including general contractors, that can't look at -- that can't address this issue that particular way.

Even we can look at this and say, there are general contractors out there that have the benefit

of a wife, a sister, a mother, fits into business, and may, you know, legitimately be working hard, but they could be as big, or bigger, than we are. They certainly don't seem to be disadvantaged at all.

And, yet, going into a bid, they don't have to search for Ws, they don't have to pay the premiums that we have to pay, to try to find a way to get this bid.

And there really -- there are premiums.

You've been hearing that theme today: They're out there, we definitely are paying more money.

Sometimes it's a choice, on bid day, how much more do we want to put into our bid at the risk of not being a low bidder?

And those are tough decisions to have to try to make, and they're not always even there. Sometimes our opportunities just aren't even there, period.

So it's -- you know, it sounds great, but, the premiums are there. We have internal costs for premiums.

We have -- while we don't have a dedicated person in charge of all this, we probably have one to one and a half more full-time employees on our

overhead.

If we had a 1,000 employees, it doesn't sound like a lot; but we don't.

Furthermore, the management time that it takes to manage these contractors means more overhead for us too.

And, very often, our performance on the jobs might suffer a little bit.

You know, maybe the line stripping ends (indicating).

And that's okay, if you actually see something good out of the minority or the woman contractor that's new and a startup. If you can help them, we do, but it costs us money to help them.

And that has to understand -- you have to understand that.

There's also reduced competition.

In some cases, C & C might say, I'm not even gonna bother bidding on this job anymore. How many concrete prices did we get?

Well, we got one, thankfully, which is great.

But that reduced competition, there's an intrinsic value there. It absolutely costs more money.

We have a small job locally going on here right now, where our contracts probably 10 percent higher than it otherwise would have been. And we were fortunate to be able to find, for certain line items of work in there, Ms and Ws to be able to do that work, but we're 10 percent higher.

Maybe some would be okay with everybody's taxes being raised 10 percent to cover all of that too. But I think the majority of people here would probably say: Well, no, no, wait a minute. The program sounds great, but I don't want you to raise my taxes 10 percent, or 15 percent, or 20 percent, to do all of this.

But it absolutely costs more money.

Another thing, that I don't know if it's been touched on a lot, subcontracting work.

If you're a general contractor, you self-perform a certain amount of work, and you subcontract out work.

Ernie Hartman sat here, he talked about the electricians.

You know, we have some agreements with certain unions ourselves, and within those agreements are subcontracting clauses.

And as far as I know, New York State has

been, I think, in good business with unions for -- since long before I was born, I'm sure.

I don't think it's an anti-union state. In fact, I think it's probably a pro-union state.

But if we have subcontracting clauses that say, you can only subcontract to a contractor that has an agreement with our union to do the work that we do, then you have to look to the unions and say, well, how many Ms and Ws are actually affiliated with the unions?

And that's a very small number.

So we don't have those options.

Furthermore, I don't really want to subcontract out work that we do. I don't want to have to lay people off and tell our employees, well, I'm sorry, but you're going to have to go home because, instead of us performing this concrete work here, we're gonna -- we're gonna subcontract out this work.

So, you know, that's -- that's real tough.

And so, usually, I mean, that's part of -- if we request a waiver, that's going to be part of our process, which is, we do this work.

Don't give us a name from somebody from The Bronx that might do concrete work.

That's what we do.

Even had a conversation last year with a roofing contractor. Bid on a project at one of our local prisons in Elmira, and that's what he does, roofing; it was a roofing job.

And he basically said, he was telling me after the fact: I went to the job. I'm not planning on subcontracting out my work.

He's affiliated with the union and said, The union won't even let me do that.

And he said, Right now, I don't know whether I'm going get the job or not, because the people in Albany are telling me, I better go buy my materials from this minority supplier in Albany instead of the one that's about a half a mile from the prison. And, I will also have to subcontract out 30 percent of the work that I self-perform with my own forces. And in doing so, I would be in violation of my union agreement.

So there was a stalemate, and he was determined. And, eventually, I think he got a waiver, eventually, after much heartache. And I think kind of this cloud of uncertainty.

Will that come? Won't it come?

I don't know.

I'd like to know beforehand because, if you're telling me I'm not going to get a waiver, then I don't want to take the job.

If you're gonna tell me, maybe at the end of the job you might consider giving me a waiver?

Who wants to be put in that position, where, you don't know whether you're getting a waiver, you proceed with the work, and then, maybe, at the end of the job, or midway through, maybe they give you one?

Something is broken there that needs to be fixed, definitely.

Also, we talked about capacity.

The woman who was talking about Tioga -- and I'm sorry, I can't remember her name -- I think she, you know, used a -- different figures. And let's say, 11 percent of contractors in an area are Ms or Ws.

That doesn't mean they can even handle 11 percent of the work. They're, typically, smaller companies. They might be able to actually handle 2 percent of the volume of the work.

If you take -- if there's $100 million being spent, and 11 percent, 11 out of 100 contractors, are Ms or Ws, that's great.

It would better still if it was 30 percent.

But it doesn't mean they can handle 30 percent of the work.

They tend to be smaller contractors, and they're very specific scopes of work.

That doesn't get looked at.

We've been told -- and I've sat in on the Building Board of Governors for the AGC of New York State. We've sat in meetings.

I've participated in a couple of them over the years, where we've sat with representatives from New York State OGS, SUCF, DASNY, DOT, and we've discussed these goals.

And some of the feedback we've gotten is almost as if it was a pre-scripted line.

Well, we're told from up high, that if you don't meet the "goals" (indicating), then you are not working hard enough.

And then we bring up a different scenario, wondering, how -- you know, how about in Alfred, New York?

You know, we're sitting in SUNY Binghamton.

This is somewhat metropolitan here compared to, say, where Alfred is.

Can we find Ms and Ws?

Occasionally you get lucky and you can, but usually you can't.

So we bring up different scenarios, and we're told pretty much the same thing: Well, we're told from up high, that if you can't meet the "goals" (indicating), then you aren't working hard enough.

That's all they seem to want to tell us, that we, as a general contractor, aren't working hard enough.

And, personally, I don't think they're working hard enough in doing the project-specific studies that we're told are supposed to happen.

And if you do, let's say, there's a project on campus here to rehabilitate a dozen elevators.

That's a very specific scope of work.

I don't know how we're going to find 30 percent. And there's only going to be, maybe, two or three elevator companies that should be approved to do that work.

Probably never going to get to 30 percent.

Occasionally, we might get lucky and hit a home run, so to speak, where we get a mechanical contractor, and PS&V mentioned it here, that, you know, there's maybe a couple of his competitors that are WBEs.

So if we get -- that's -- that could be a big chunk of a project for us, and we say, great, we just got it here.

Well, you know what? That contractor's now busy and not available for the next one.

But somebody in Albany thinks, well, Streeter Associates, you did it before, you proved to us you could get 34.2 percent of this job. Why can't you do it every time?

Because we can't.

You know, we get that one WBE mechanical contractor, and one job, and that was about 30 percent of the work. That was great.

It happened that one time.

They're busy now. They can't go do the next one, or the next one. Or they aren't even interested.

So, that's what happens.

Another circumstance we've had, we actually have a job that's public money being used on a private job, but the requirements with that public money, came the same requirements, the 30 percent goals.

We ended up spending more money than we needed to, to hire a specialty contractor from the

state of Ohio, who happened to be certified as a New York State MBE. And they're now working on the job.

They also have their own requirements, where, because they're traveling, they're working 8 days on, 8 days off, working Saturdays and Sundays.

So we have to pay people there, our safety coordinator and our superintendent, to be on the job on Saturday and Sunday, when we otherwise wouldn't have needed to be there.

But we got a big chunk. That was, essentially, hitting a home run, all in -- you know, we didn't quite get the full 30 percent. But we got so much of it there, that we had to do that, and present it to the owner, and they said, yeah, I guess we better pay those premiums. I don't want to get in trouble with anybody.

So, it's working out okay.

Of course, all of those profits will head back to Ohio, and they aren't even going to stay here.

And we had to bypass or pass over two or three qualified New York State businesses in order to go do that.

That can't possibly be anybody's intent for

this system.

It really shouldn't be.

If we can keep dollars within the state, I do think that's what everybody would want to do.

I think that's what the Governor would expect is happening.

So --

SENATOR ASHKAR: What's the name of that Ohio company?

JEFF STREETER: I can give that you detail later.

But --

SENATOR ASHKAR: I'm curious to know if they've ever made campaign contributions to the Governor.

JEFF STREETER: Well...

[Laughter.]

JEFF STREETER: I will send that you to.

Yeah.

SENATOR ASHKAR: I'm serious. It's laughable, but I'm serious.

JEFF STREETER: No, it's -- it's a -- it's a fair question.

And, you know, something else, just in concept, when you have systems like this, there's

always a chance -- ours is an extremely competitive industry. And we don't deal on margins that are nearly as large as what people think.

You know, we deal in margins, as general contractors, in the single-digit percentages.

And we really are looking to always find new subcontractors that can make us more competitive.

So, we're not averse to the program at all, or to finding new and different companies that, all of a sudden, hey, great.

Ideally, we'd like to find them before our competition does, and start using them and give ourselves a competitive advantage.

So, there's no problem there.

But once you put all of these rules, and all of the red tape that goes with it, into place, it increases the chances for contractors to want to cheat.

We go by the book, we play by the rules, live within the law.

But not everybody does that.

And when you have things like this, people will look to find creative ways to help set up a W or an M that really isn't meant to be.

Certainly heard of a story of someone that

did -- a contractor that did that with a service-disabled-veteran-owned business, and eventually got caught.

But what I worry about is that, while other contractors, they might eventually get caught, but they're going to get work along the way that we should have been getting.

We might have been second bidder on a job to somebody that's cheating.

And then, next month, maybe we're second bidder again to somebody else that's cheating.

Eventually those will get caught, and there's efforts, but probably not a staff -- enough staff in the state to catch all of those.

But it's just an environment that seems to -- the competitive nature of our industry, combined with all of this extra red tape, is just a recipe for contractors trying to find ways around it.

And you'll never be able to catch up with it.

It's like, you know, trying to catch those that are using performance-enhancing drugs in professional sports, there's always somebody, somewhere, that's looking to do it.

And, eventually, they may get caught, but they might hit a lot of home runs before they ever

get caught.

Just, I guess, a couple of, sort of, final thoughts:

You know, things seem very unclear with regards to the waivers or where the goals are.

We see project goals that are 30 percent, but, they're 15 and 15, or they're 20 and they're 10, or they're 22 and 8.

There seems, very often, no rhyme nor reason to us why it is that way.

And sometimes we're told, Oh, if you get -- the goal might have been 15 and 15, but we might be at 28 and 2. And we're told, Okay, that's good.

And then other times we're told that we aren't.

So there just -- there's still a lot of confusion as to how this is all supposed to be administered, and when you do get a waiver and when you don't get a waiver.

And maybe we're being intentionally kept in the dark so we keep working harder.

And I think we're working harder anyway.

But, I can tell you, the system just isn't working.

It -- and if you can take all of the advice

that everybody's given here today, and somehow or other, bundle it up and incorporate it and have it, hopefully, not fall on deaf ears, so you can make some changes, set realistic goals, call them "goals."

And I'll tell you, years ago, "a goal" really was a goal.

We've done a fair amount of work at our local prisons over the years, and that can be a very limited scope of work.

There could be detention equipment, paint, and some masonry concrete work, and that's about it.

Well, we're gonna self-perform half that work. And there's probably a -- two or three approved detention-equipment specialists that will go do that work.

And we can tell New York State OGS, Well, look it. Here's the specific scope of work. Here's everybody that we asked for bids.

And they would say, Okay, great. Okay, you clearly made your effort, and we understand there's a limited scope of work.

Then, all of a sudden, things changed quite a bit, and, now, doing that same type of effort, and reaching out to as many as you can on a limited

scope of work, that waiver isn't necessarily coming right up front.

But, nothing has changed. There aren't detention-equipment contractors that are, all of a sudden, you know, Ms or Ws.

So those challenges are still there.

But how the goals are being addressed, and how the waiver process, it's just -- it's very, very different, and it's just -- it's very unsettling to an awful lot of us companies that have been in good business for a long time, and have paid an awful lot of tax dollars to the State, and followed the rules.

And at times you just feel like, does nobody care about us? Is it -- it's a concern everywhere else?

You know, we're trying to do things right.

And I don't know if you have any other questions of me, or not, but...

SENATOR O'MARA: Well, Jeff, thank you for being here.

I apologize for the oversight of you not being on the list.

But I'm glad Scott spoke up in the back row.

JEFF STREETER: Well, I think when Kelly and Ernie were sitting here, I was probably supposed to

be the third person sitting here.

SENATOR O'MARA: You were supposed to be on that? Okay.

Well, good thing Scott's so shy.

[Laughter.]

SENATOR O'MARA: But, we do -- I'm glad that we got you in here.

And for all of those of you that came from the west, the Elmira area, more in my district, thank you for making the trek through that rain today, which was heavy at times.

I see we also -- is that Suzie Alexander back there? A Horseheads contractor, woman business enterprise.

One thing that didn't come up at this hearing today is, you have to be a minority- or woman-owned enterprise; just don't be too successful, because you get thrown off the list after being too successful.

So that's a real problem.

It's something we're also trying to address.

So, Suzie, I appreciate you being here today.

And that was a real viable contractor I'm sure for you, Jeff, in some of your work, and many others, that, then, bang, you got a sub that you're

used to working with, and they're no longer qualified to do it.

JEFF STREETER: That's a great point. Yes.

SENATOR O'MARA: But, thank you.

SENATOR ASHKAR: Senator.

SENATOR SERINO: I just want to say, thank you to everybody today.

This was great, and we'll be moving forward.

SENATOR ASHKAR: Okay, I'm set.

Thank you very much.

JEFF STREETER: Thank you.

SENATOR ASHKAR: Thank you, everybody, for joining us.

Again, if you didn't have an opportunity to give oral testimony today, please visit our website, Akshar.nysenate.gov, and you can provide additional written testimony, or just your initial written testimony there.

Thanks for coming out, everyone.

(Whereupon, at approximately 3:23 p.m., the joint-committee public hearing held before the New York State Senate Standing Committee on Labor and the Senate Standing Committee on Economic Development concluded, and adjourned.)

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