JOINT HEARING BEFORE THE NEW YORK STATE SENATE
STANDING COMMITTEE ON LABOR,
STANDING COMMITTEE ON AGRICULTURE,
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

Senate Hearing Room
250 Broadway, 19th Floor
New York, New York

October 16, 2018, at 11:00 a.m.

PRESIDING:

Senator Patty Ritchie, Chairman
NYS Senate Standing Committee on Agriculture

ALSO PRESENT:

Senator Elizabeth Little

Senator Thomas F. O'Mara

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SENATOR RITCHIE: Good morning, everyone, and thank you for attending this hearing.

It's the sixth and final hearing of the New York State Senate's Task Force on the MWBE program.

I want to acknowledge that Senator Akshar has been working across the state at these hearings.

He's unable to attend today.

But on behalf of Senator Akshar and myself, I want to thank everyone who has been willing to travel across the state to make their comments and recommendations heard.

I would also like to thank Senator Little for joining me here today.

She's been somebody who has been involved in the MWBE program, and someone that we've worked together on a number of the issues.

We have a number of people who are going to testify. I know on the agenda we have them laid out timewise.

We do have at least one person who is supposed to testify who won't be here, so we're just going to roll from one presenter to the next.

I know everybody's schedule is very busy, and we want to get everyone out as soon as possible.

But, once again, thank you for being here today.

We look forward to working with my colleagues on potential legislation once we come back into session in January.

And with that, I'll turn it over to Senator Little.

SENATOR LITTLE: Thank you, Senator Ritchie.

And, you know, I'm really glad to be down here for this particular hearing because, as upstate legislators, we have some, possibly, different issues in accessibility and numbers, and all of that, businesses, and the ability to have enough minority- and women-owned businesses to meet any of the goals.

So, it's going to be really interesting to me to hear your issues, and how we can be of help to you.

And, certainly, you couldn't have two more upstate Senators here today.

Senator Ritchie is a stone's throw from Canada, and I'm about 150 miles from Canada.

So, actually, Montreal -- I'm less than that. Montreal is 150 miles from my house, so it's closer than New York City.

So, thank you for being here, and I look forward to hearing your comments.

SENATOR RITCHIE: Certainly, it will be interesting for me.

I know there are some challenges in my area, but I've heard that things may work a little bit better in the New York City area.

So I'm looking for, potentially, some recommendations, or some issues that we need to work on, to make the program even better than it is now.

So with that, I'd like to start with the first speaker, and that is Jonnel Doris, senior advisor and director of the Mayor's Office.

JONNELL DORIS: Good morning.

Thank you for having us here today.

Good morning, Committee Chairs, and members of this Senate -- State Senate Committee on Labor and Agriculture and Economic Development.

My name is Jonnel Doris, and I'm the senior advisor and director of the Mayor's Office of MWBE.

Today I will provide an overview of the City's program, including the progress made to date, certification utilization goals by this administration.

In the fall of 2016 Mayor Bill de Blasio

announced the creation of the Mayor's Office, and the critical step to the administration's commitment to increasing contract and opportunities for MWBEs.

The mayor pledged ambitious goals, achieving 30 percent of the MWBE utilization by the end of 2021, and having 9,000 certified MWBEs by the end of 2019.

In 2015 the mayor outlined a separate citywide goal of $16 billion to MWBEs by 2025.

The one NYC goal, the 30 percent goal, covers mayoral and non-mayoral agencies.

On the heels of our May 2018 disparity study, the mayor announced that he was -- we were $1.8 billion ahead of schedule, and, therefore, increased our goal from 16 billion to 20 billion by 2025.

We're excited to have the leadership of our Deputy Mayor Thompson. His career-long justice and equity work continues to increase economic development opportunities by calling out the challenge of structural and historical barriers in the marketplace and within government.

Under the supervision of the deputy mayor's small-business services, and the Mayor's Office of

contract services, we play an integral role in implementing the MWBE program.

"SBS," or, the department of small business services, certifies MWBEs, and provides essential capacity-building programs and technical assistance to ensure they can compete for and execute on City contracts.

MOCS tracks and reports on utilization data for all City contracts, subject to Local Law 1.

The purpose of the City's MWBE program is to remedy the impact of discrimination in the market where the City makes its procurements.

This impact is statistically analyzed in the disparity study.

The most recent study demonstrated that MWBEs' firms are underutilized in City procurement.

Local Law 1 of 2013 established citywide contracting goals which match disparity gaps revealed by the 2011 disparity data analysis.

The City will make policy changes to -- in accordance with the key findings and recommendations of the disparity study that was published this past May.

Along with my colleagues, we support the

strategic role in ensuring that the City's (sic) remain focused on achieving the goals of the program.

Since the start of our administration, the number of certified firms have increased by 86 percent.

At the close of fiscal year '18, the number of certified MWBE firms was 6,829.

Additionally, at the end of fiscal year '18, MOCS reported the MWBE utilization at 19 percent, representing 1.069 billion in awards to MWBE contracts under our Local Law 1 program, as compared to 8 percent, or, $465 million in fiscal year '15 at the start of the administration.

We are also very happy to report, our 2015 goal of 20 billion to MWBEs by 2025, that we are, right now, at 10 billion this past October -- this past September.

So we're very excited that we're halfway to our goal.

Since the enactment of Local Law 1, the City has implemented a number of creative initiatives to help WMBEs build capacity and obtain capital, and has also advocated for state legislative initiatives to give the City more tools for its program.

Pursuant to Local Law 1, the goals therein, the percentage of dollars awarded to MWBEs, subject to City's program, has trended upward from 8 percent, to nearly 20 percent, since '15 to now in 2018.

Just to put that into perspective, at the close of '18, we reported, again, we were closer to our 30 percent goal, and we believe that we can achieve that by 2021.

Still, we have more to do.

We are lowering, where we can and wherever possible, removing structural barriers to enter into City's procurement marketplace by providing resources for increased programming at the City agencies, and creating strategic initiatives to increase MWBEs' ability to compete successfully.

In accordance with the four core principles of our office -- accountability, accessibility, capacity, and sustainability -- we have implemented initiatives to address issues of MWBEs faced in the private marketplace; namely, access to capital, which is a common obstacle for many small and mid-sized businesses.

In order to respond to this need, this administration launched a Contract Finance Loan Fund

and a Bond Collateral Assistance Fund, both administered through our small-business services department, and the emerging Developer Loan Fund, which is administered by our Economic Development Corporation.

Together, the initial City investment to these funds was $30 million.

As you may know, the mayor also convened our city banks to begin a discussion about a partnership to create more access to capital for these firms.

Earlier this year, on -- in -- February 21st, we announced that three banks had committed to invest in our MWBE program an additional $40 million to the 30 million that we already had in that program.

In the spring of 2017, we were joined by many MWBEs, advocates, and stakeholders, including other City agencies, in calling for the passage of S6513, A8505.

This bill proposed, one, increasing the City discretionary spending limit for goods and services purchased from MWBEs, and giving the City the authority to provide to the State -- to the State, sorry, to offer MWBEs a price or points preference.

The bill passed overwhelmingly in the Assembly and the State Senate.

And for that, we thank our elected officials, including the Senators here today, for their advocacy and support.

This change provides MWBEs with access to more and larger contracts to help build their capacity and succeed as prime contractors.

The discretionary threshold for goods and purchases was implemented on March 5, 2018.

And by June 30th of 2018, 181 contracts were awarded to MWBEs in the amount of $12.5 million.

We plan to return to Albany this session and advocate for State approval for innovative policy tools that the City has previously requested, but have not yet received.

We understand what a valuable tool a mentor-protege program can be, specifically in the construction industry.

Many state agencies and public authorities have implemented mentorship programs for MWBEs and small businesses.

We hope to be able to do the same, but need State authorization.

Additionally, we will seek the authority to

create prequalified lists exclusively for MWBEs for City agencies.

This would enable the City to reserve certain procurement opportunities to MWBEs.

The housing preservation department, or, "HPD," has been able to do that similarly by creating prequalified lists for MWBE developers for certain projects, pursuant to state legislation enacted in 2014.

HPD's MWBE pre-qual program established, pursuant to that authority, aims to increase in contract and opportunities for certified MWBEs in HPD -- HDC subsidized affordable housing projects.

In January of 2017, the mayor, HPD, and our office announced that 8 MWBEs had been selected to lead construction on 6 new, 100 percent affordable housing developments, or, 440 homes, for seniors and New Yorkers with a variety of income levels, including extremely low-income and formerly homeless households.

Although these projects were developed -- projects were developed, rather, than in the procurement-process contracts, and so they did not count, sorry, towards the City's utilization goals under Local Law 1, they are a valuable demonstration

of how prequalified lists allowed HPD to meet the double bottom line here by employing many of the City's MWBEs to build affordable housing.

We want MWBEs to have the opportunity to join MWBE prequalified lists in the procurement setting as well.

Going forward, we will continue to work closely with all our elected partners to increase opportunities for MWBEs, and work together on MWBE outreach networking and educational events.

Thank you for the opportunity to testify today, and your continued support and advocacy of our program.

I'd be happy to take your questions.

SENATOR RITCHIE: I guess my first question would be:

I've heard from a number of people who spoke about the program in New York City, how they are able to certify substantially faster at the city level than at the state level.

Could you just give me maybe an overview of the certification process?

JONNELL DORIS: Sure.

Our certification process is conducted by our small-business services department.

We take, generally, about 6 to 8 weeks for certifications.

We do require the business to be in business for at least a year.

We also have default areas, which included the five boroughs, but also Nassau, Putnam, Rockland, Suffolk, Westchester counties, and, five counties in New Jersey -- Bergen, Hudson, Passaic counties in New Jersey.

That's within our catchment area, and so we do get firms from just about all over the state too, but also in the direct New York City area.

We do also ask for, where applicable, to the ownership or licensing, and also permit process.

We also go on-site to visit the MWBEs, to ensure that they are who they say they are.

And we do have a robust staff who is out there looking to certify firms.

We have a big goal of 9,000 businesses.

We're about 7,000 businesses now.

And by 2019, we have to -- that's the end of our fiscal year, this coming June, we have to certify another 2,000 businesses.

So we are -- you know, we put a lot of resources into that, and that's why I believe we're

able to, you know, certify businesses at the rate that we have been able to.

SENATOR RITCHIE: I know I've had numerous calls at home from people who are trying to certify and make their way through the paperwork at the state level.

So I'm just wondering, do you have some kind of streamlined application process, or -- other than, it looks like New York City has a lot more staff, which is something that I think we need to address at the state level?

Do you have some kind of streamlined application process that's helping you get businesses certified in 6 to 8 weeks?

JONNELL DORIS: Thank you, Senator.

Yes, I believe I -- you know, I would say yes.

We started off by really taking a look at our certification process, from the beginning to the end, and then we implemented some changes.

One of the things that we did was, really requiring a year of tax returns instead of several years of tax returns. That was helpful.

Also, working with the businesses to reduce the volume of paper, actual paper, associated with

the applications by 30 percent.

Also, looking at some questions that are on that particular application. See, some of them may be redundant or we may not need them.

And so we did -- and so we reduced the number of questions, the number of actual physical paper, and we're also online now with our process.

So we did some -- a few things to streamline it, and I think it is bearing well with our MWBE community.

SENATOR RITCHIE: And as far as outreach, do you have someone, or a number of individuals, who are dedicated to helping businesses make their way through the paperwork process?

JONNELL DORIS: Absolutely.

I think that's a valuable asset that we provide to our MWBEs.

We have a whole department that is dedicated to going out to the businesses and, personally, one-on-one, walking them through the process.

If they come to us, we help them in our business solutions centers. We have them all across the city. And they can, essentially, walk-in, and we are able to walk them through the process of certifying. So, they are given an MWBE analyst who

walks them personally through that process.

And I think that one-on-one interaction has been critical in helping us move our program forward.

SENATOR RITCHIE: And do you have any issues, or many issues, with businesses that are looking to recertify after?

I mean, one of the other things that I've heard is that, after businesses spent so much time getting certified, that the paperwork and the length of time, and sometimes the fact they don't get recertified, you know, it's discouraging other people from applying.

JONNELL DORIS: Yeah, that's a great question, Senator.

I believe that, in the beginning, when we first came in to office, you know, we had to reevaluate the process, and part of that was our recertification process.

And we found that, in the beginning, a lot of businesses were choosing not to recertify, for whatever purposes, reasons, that they had chosen.

Some of them was the paperwork, was the process itself was onerous, et cetera.

So the streamlining also included the

recertification.

So there are things that, for instance, for a sole proprietor, that will never change, you know, and, therefore, we don't need to revisit those -- you know, the paperwork or requirements to say, for instance, "tell us who you are again.:

Because you're a sole proprietor, why do we need to go through that process?

So we've revamped our process and changed that, and also given certification for sole proprietors, which we didn't have before.

So, they now are coming back, and also other businesses. Because the process is generally streamlined, we now have an 80 percent recertification rate, and that's high. Right?

So businesses are really coming back because it's easier, but, also, they know that there's real opportunity here at the City.

SENATOR RITCHIE: And those that don't recertify, is that because there's a cap on the personal wealth?

What's -- do you know what the reason is that some of them aren't recertifying?

JONNELL DORIS: We don't have a cap on the personal net worth here in the City.

SENATOR RITCHIE: (Indiscernible) the City okay?

JONNELL DORIS: Pardon?

SENATOR RITCHIE: So that's not an issue here?

JONNELL DORIS: No.

SENATOR RITCHIE: That is an issue at the state level, though.

JONNELL DORIS: Yes, we are aware.

But for us, we don't have a personal net worth.

I think, you know, being a small-business owner, you make business decisions.

As a former small-business owner, you know, every day you have to make a business decision, what's working, what's not working.

And we try to make the case for these small businesses that our program is viable, our program is working, and you can participate in our marketplace.

But some businesses may choose to not participate, and that's their prerogative. But 80 percent of them are choosing to stay in.

And the others that are choosing not to stay in the program, you know, we do talk to them about

what their issues may be, or what the challenges that they may face.

And the private sector also is a robust private sector and economy at this particular time, and, you know, we're, essentially, competing with the private sector for these firms as well, right, because they can also go to the private sector and do work, and do the work with the City or with government, is an option.

And if they're busy elsewhere, because the market is viable and thriving at this particular time, they may choose not to do business with the City.

So that's one of the reasons that they give as well.

SENATOR RITCHIE: Just my final question:

I would have thought that there -- because of the number of businesses here, there really wouldn't be any kind of issue with finding enough businesses to fill your 30 percent goal.

But I have heard from a few people that it still is a struggle.

There's a lot more businesses that are certified, but there's a lot more construction projects, in particular.

So I'm just wondering, have you heard that there is an issue there here in the city also?

JONNELL DORIS: As when it comes to availability, I mean, we do have firms who are available to do the work, from the small firms who are now engaging in our market, to large firms who have been very successful; MWBEs very successful.

I mean, we've reached $10 billion in our MWBE program, from 2015 till now, and that's a significant number.

90 percent of that is their prime contracts, and 10 percent subcontracts.

And so we're very excited about that number because it speaks to the availability, but the capacity for these firms to actually perform.

Do we have MWBEs that do everything? No.

And I think our process helps us to deal with that.

And we have capacity-building programs at our SBS (small-business services) department that works with some firms who are trying to graduate from the small firms, to the medium, to the larger.

And -- but we're looking at our procurement process to make sure, also, that how we put out our procurements allow for competition on all levels,

right, and so that not just the big firms are winning or the small firms are being left out.

And, also, to speak to about joint-venturing and coming together with large firms, smaller firms.

And that's why our mentorship program that we are seeking, the authority to do, will help us to alleviate some of those concerns that we have.

SENATOR LITTLE: Thank you very much.

JONNELL DORIS: Senator.

SENATOR LITTLE: I'd like to go back to your certification process.

And when -- now that you've simplified it, and we would love to -- I'd love to get my hands on an application and just see.

JONNELL DORIS: Sure.

SENATOR LITTLE: And I suppose we can do that online. Right?

JONNELL DORIS: Sure.

Or we can get one to you.

SENATOR LITTLE: Okay.

Just to really see, because ours is a very difficult process.

Also, if you have an online -- do you have an online tutorial that would tell people how to do the certification; how to apply online, and do that part

of it?

SENATOR RITCHIE: Yes, we do have instructions, and --

SENATOR LITTLE: Oh, that goes with it, or no?

JONNELL DORIS: -- can I get back to you on the video part?

But I do know we have presentations and different things online that you can look, to help you through that process.

SENATOR LITTLE: Look at and do it. Okay.

JONNELL DORIS: Not sure about the video.

SENATOR LITTLE: How long does the certification last?

JONNELL DORIS: You can recertify it for five years.

SENATOR LITTLE: Five years.

See, what we're finding is, before they turn around, I mean, it takes -- I have one that has put in their application for recertification March 8th of 2018, and has not been recertified yet. And they're expired, their certification, in just a few years.

So, that's definitely a problem upstate as well.

And for your contractors, or your agencies, are they required, in the 30 percent goal, to have 15 percent minority-owned business and 15 percent women-owned business?

JONNELL DORIS: The City's program, our goal-setting process, which is outlined in our local law, requires us to assess each contract for goals; and so we do not have that specification.

As we do have disaggregated goals, generally, for the City, that's where you'll be able to find where the disparity was, and, therefore, we are able to address those. But we don't specify it that way.

SENATOR LITTLE: Okay.

Well, we're finding, at the state level, that a lot of that's being done. And it's not even -- the word "goal" is not even being used.

The word "requirement" is being used, which is unfortunate.

So those two things were questions I really wanted to ask.

And the other one is on, you have no cap.

So we have a personal net-worth cap of, like, $3 1/2 million.

So a construction firm that owns cranes, it owns buildings, especially if it's privately owned

and personally owned, can't even apply because they're too wealthy.

And I've been told that the program is really for start-up businesses, to help them gain some ground and grow and be successful.

And, of course, if the woman- or minority-owned business gets too successful, then they're capped. So now they're no longer certified, so many of the contracts they had, they can't get again.

And so it's almost like, well, you can't be too successful here.

You don't have that?

JONNELL DORIS: We do not.

We do not have a personal net-worth cap.

SENATOR LITTLE: Well, do the big companies overwhelm the smaller companies and get more of the projects, or do they just use the subcontracts?

JONNELL DORIS: So, in the City, a few things we've done to address that scalability.

I think it's important that we build businesses.

It's important that we invest in small businesses, mid-sized businesses, and that we allow the larger firms to also engage because, they also

mentor the smaller firms, they also work with them.

And, also, I think they -- they sort of address a myth about success in our program, right, because, you know, here, we can show you.

We have firms with 300 employees who are MWBEs, who are doing very well, and can compete with any large firm.

And then there are smaller firms that need this sort of assistance that we provide, particularly at our small-business services.

So I do -- you know, I do agree that we are structured and very specific on how we make sure that all tiers of businesses are engaging.

The subcontractor model is one, yes, that the smaller businesses can participate in and be like an entryway into the program.

But we don't want to say to a large business, because you're successful, you're not a part of it, because I think they bring valuable lessons learned, you know, how to do business, how to grow.

All these businesses that start large, they started as small businesses on the small end of the small-businesses spectrum, and now they've grown.

And one last thing I'd say is that, the agencies, for instance, our department of design and

construction, we looked at the fact that different MWBEs can compete in different levels.

And so one of the things we did was, we said, well, let's make a micro pre-qual list, a small pre-qual list, a medium, and large.

And so, if you meet the criteria, you can compete in those particular areas that are most suitable for your business.

And so we're thinking strategically at that nature so that there is some equitable share here in the opportunity, and the larger businesses, either MWBE or not an MWBE, are not pushing everyone else out.

But if we can scale the work where they can compete and the requirements are equitable, I think we've seen success there.

For instance, "DBC," our design and construction, did over a half billion dollars in MWBE contracting in last year alone. And part of that is these, sort of, innovative tools we're using.

SENATOR LITTLE: And on your prequalified businesses, how long does that prequalification last?

As long as they're certified?

I mean, do you certify them?

Or, how does that work?

Because I don't think we have that.

And I'd love to know how you got out of the State regulations.

It's just -- you know, the City is exempt from the State, but you're actually certifying businesses outside of New York City to do work in New York City?

JONNELL DORIS: Yes, so -- yes, to -- two questions.

The first question concerning the certification:

So I think how we view it is, the folks that are outside -- I'll go to the second one first.

The folks who are within what we call "our catchment area," our geographic area, which we needed for statistical analysis, that may not be physically in the city, but they have what we call a "nexus to the city," meaning they have an office here, they signed up with our city to do business with us, these firms are engaged in our marketplace.

We want to engage them too.

For instance, on Nassau County, Suffolk County, we did, last year alone, about

$290 million in MWBE spend for those businesses; meaning, out of those counties, which were not the city, with those counties, we've engaged those businesses, MWBEs, out of Nassau County and Suffolk County. And they're participating in our program at a very robust stage, because we know is viable, and they're part of our New York City market area.

SENATOR LITTLE: They have to some relationship with New York City in order --

JONNELL DORIS: Correct.

They have to have an office here, or they have to have a -- you know --

SENATOR LITTLE: History of business here, or something?

JONNELL DORIS: -- history of business, contracts here. Or, signed up with us to actually do business here.

We have something called a "payee information portal" where every business has to go to to sign up if they want to participate in our program.

So once they've done that, they've shown interest that they want to be in our marketplace.

And -- so we don't exclude folks from coming from around the state.

I think I've mentioned we've had some folks from upstate as well, and other places, who have engaged in our marketplace. And we don't exclude them from coming to do business with us, but they just have to set up a nexus to our city.

SENATOR LITTLE: Well, it sounds like you really conquered a lot of the things that we're dealing with in the upstate -- in the regular State program.

But I've been on -- right from the very beginning on the Task Force on the Minority- and Women-Owned Business, which hasn't met in three years. So, I think it's actually disbanded, it must be, after so many years.

But, there's just a lot of issues that we have to deal with upstate, that we have not been able to get through.

But thank you for your testimony.

I have no other questions.

SENATOR RITCHIE: Let me just ask a follow-up question.

Your certification list; your list of businesses that are certified by the City, how do you keep that current?

That's one of the other issues that

I continually hear complaints about at the state level; that people try to contact a business that's been certified, and they find out that the business is no longer there, the contact information is wrong.

How do you keep the list up to date?

JONNELL DORIS: So, we have several intervals in which we engage our businesses.

One is at recertification, so we're able to know, you know, what's happening with them.

Also, in our capacity-building programs, which we have quite a few, once the MWBEs come into that program, we have the ability to ask them about their updated information, make sure that they've done that.

We've also invested, in two thousand, I believe, it's sixteen, we went out to the community and did some engagement with some firms, to actually go out and work with MWBEs, to make sure that their information is correct.

We actually paid firms to go and target MWBE firms to make sure that we update their information.

SENATOR LITTLE: Is that like an audit, you mean? Or --

JONNELL DORIS: Not, an audit.

It's more of a technical assistance and support services.

SENATOR LITTLE: Okay.

JONNELL DORIS: So we're able to do that.

And we spent some money to make sure that happened, and it actually produced great results.

But I think part of the challenge that we face, and that we see, is that businesses do change addresses. They do move to a new building, or, you know, they -- some adjustment in their contact information.

So we're constantly sending out reminders, If you're going to change, please let us know.

SENATOR LITTLE: And that's part of your notification program, that if they do make changes, just like in a liquor license, that you need to notify and change your license, change your certification.

JONNELL DORIS: Correct.

SENATOR LITTLE: Well, I just have one more question.

How do you -- how involved is the mentorship program?

I mean, in today's world, people are so busy, and businesses are busy, busy, busy.

Do they actually really get involved with a smaller company and try to mentor them?

Or, how do you guide them?

How do you check on it?

Or how do you -- how does it work?

JONNELL DORIS: So we do not have a mentorship program, let's say, as the MTA has.

It's a different kind of mentorship. Our mentorship program is more so technical assistance and support. It's more sort of a classroom-type program.

For instance, when I was a contractor, I went to -- Turner Construction had one, and I went. And, you know, it's like mostly a classroom. We -- for six months we learned about how to do business, what to do business, how we sort of engage in the marketplace.

And that's, generally, what we have.

What we're asking for from the Senate and from the State is, and what we've asked before is, to be able to designate specific contracts to link to this mentorship agreement and program, which is different than what we say, our mentorship program is more educational at this particular point.

We want to tie projects to that education.

We want to -- right now we have classroom.

We want to actually have the, you know, contracts and workplace mentorship opportunities where we tie the two, where there's a job opportunity at the end of the classroom.

So right now we have classroom, but there's no jobs associated with that because we're prohibited in having those exclusionary prequalified --

SENATOR LITTLE: You mentioned the word "protege program."

I mean, that sounds like somebody taking a smaller company under their wing.

And do you actually do that?

JONNELL DORIS: Not at this particular juncture.

We're asking for authorization to do a program like that.

SENATOR LITTLE: You need legislation to do that, or you need money to do that?

JONNELL DORIS: We would -- we hadn't -- we did not ask for funds to do it; however -- we're always happy to receive.

[Laughter.]

SENATOR LITTLE: That would be next.

JONNELL DORIS: Yeah.

But we do ask -- but we do ask for -- I mean, so the mayor has made MWBE a priority of his administration; and, therefore, created our office, staffed up our small-businesses services.

I mean, we've invested quite a bit in our program. So we're not -- and we went to the private sector to raise funds also for our program.

And so we're very engaged in making sure that we're self-sustaining.

But, what we need out of the State is the authority to designate contracts, which we cannot do now, for such a program.

And that's what -- where the mentorship arrangement comes in play.

And so we do not have that authority right now to set aside specific contracts and associated prequalified lists for exclusively MWBE mentorship-protege arrangements.

SENATOR LITTLE: Okay. I would be interested in following that.

SENATOR RITCHIE: I just want to say thank you so much.

We've been joined by Senator O'Mara.

JONNELL DORIS: Senator.

SENATOR RITCHIE: Thank you for being here today. It's very enlightening.

You know, I'm hoping that, at some point in the future, you would be willing to share, you know, some of your knowledge and your time to kind of go over exactly what you do in New York City that has worked well, that maybe we could bring back to the state level, because I have heard a number of really positive comments about the certification process, especially being able to get it done in 6 to 8 weeks is so much better than what we're hearing on the state level.

JONNELL DORIS: Thank you, Senator.

SENATOR O'MARA: Two years.

Yeah.

JONNELL DORIS: Wow.

Thank you.

SENATOR O'MARA: Thank you.

JONNELL DORIS: Thank you, Senator.

SENATOR LITTLE: Thank you again.

JONNELL DORIS: Thank you, Senator.

SENATOR LITTLE: Maybe the State can be your protege.

SENATOR RITCHIE: Next we will hear from Lou Coletti, president and CEO of Building Trades

Employers' Association.

LOU COLETTI: Good morning.

Welcome to New York City.

SENATOR O'MARA: Good morning.

LOU COLETTI: I'm going to -- my testimony is going to be a little different, because I think I've been before your panel at some of the hearings in Albany. And so I think much of the material we've submitted to you already.

I just want to -- which included a number of recommendations.

But I also want to ask you to go back and take a look at our capacity report.

That capacity report measured the actual number of MWBE contracts awarded, by dollar volume and by race, in New York City, and came to the conclusion that you can't meet 30 percent goals.

But I suggest to you that that report also applies to New York State contracts in the five boroughs.

Okay. What I'd like to do -- because I have a couple of more recommendations that we didn't talk about.

But what I'd like to do at the beginning, because I think the prime-contracting community is

probably one of the most misunderstood elements in this discussion, so what I'd like to do is take a moment and explain to you who we are. Okay?

The Building Trades Employers' Association is an organization that represents 26 trade contractors, general contractors, construction managers, and every subcontractor who has a union agreement. We have 1300 members.

But our organization has the largest number of MWBE contractors in the entire state of New York.

We have over 85, with almost 52 -- 52 percent of them can perform contracts, $5 million and above;

32 percent can provide, again, are doing work, from between a million and 4.9 million;

And 18 percent can do between 500,000 and nine hundred -- and a million.

The members of the building trade unions that we employ, which seems to be a very hot topic of discussion in this city, of the 8500 active union apprentices in New York City, 65 percent are African-American, 33 percent are Latino, 27 percent are Asian and other nationalities, 10 percent women, and 72 percent New York City residents.

We have programs with the New York City School Construction Authority to recruit people.

We've placed over 900 returning military veterans in the programs, and over 1500 women.

So when you're looking to talk about diversity, and the dialogue that I read, I really suggest that you come talk to us because we've got the numbers that back it up.

Some of the proposed amendments I'd ask you to suggest for 15-A, is to include specific language that eliminates the state agency's ability to impose liquidated damages for failure to hit the goal.

I'm going to try to say this politely.

Liquidated damages violate the Croson versus Richmond U.S. Supreme Court decision, where these goals are aspirational, not mandated.

And I think I can speak for my membership, the tolerance level for getting multimillion-dollar fines for an inability, after going through a process to help try to find companies, is getting very frustrating.

And I think, if we don't do something, somebody's going to do something else that is not in the best interests of anyone.

I was listening to the previous conversation, where we were talking about mentoring programs and things like that.

We can't do them.

You cannot -- the law does not prevent a prime -- and the law prevents a prime contractor from providing any technical assistance to a subcontractor working for them on that job.

SENATOR LITTLE: Really?

LOU COLETTI: Yes.

And to prove it, a couple of years ago, there must have been 8 or 10 -- I'm sure Denise Richardson will talk about it when she gets up here -- of our contractors who were fined, agreed to six-, eight-, ten-million-dollar civil penalties, because they wanted to charge us criminally for violating the commercially useable function.

You can't do it.

It has to be an independent third party that's providing that kind of mentoring.

So all this talk about mentor-protege and ment -- I'm telling you, our contractors are not going to put themselves at risk to do it.

Okay?

We'd also ask you to amend 15-A with language that makes it clear, that when you're establishing a goal, the goal is based on the hard cost of construction; not soft cost, not total project cost,

like it's done now.

You have a $100 million project. The goal becomes 30 percent of $100 million, as opposed to, maybe, either 70 million of that is actual hard construction costs.

So we'd also ask that the State provide funding for capacity-building programs.

There is a way to do it, but they have to put some money on the table.

You know, I heard -- hey, listen, I like Janelle.

I heard a lot of good talk about it, about the mentoring programs, but, I'm not seeing it.

I'm not seeing it in the City.

I'm not seeing it in the State.

You want a model?

Look at the school -- New York City School Construction Authority.

The way they set it up is, they invest their own money, and they hire a series of third-party consultants.

It could be a contractor, it could be a financial expert, it could be a bonding expert.

And one of their -- when one of their prime contractors goes to that agency's staff person and

says, "Listen, this MWBS struggling a bit," then the agency hires the appropriate technical expertise as a third-party contract that can go and help them, because the prime contractor cannot provide any assistance.

And it's a model that works, and it clears everybody in terms of the law.

SENATOR LITTLE: Does the agency pay for that?

LOU COLETTI: Yes.

SENATOR LITTLE: Okay.

LOU COLETTI: The other thing, as an amend -- comes to the State, is I would urge you to put in the language, and establish what the ESD did for the regional economic development councils, and we should have regional MWBE advisory councils --

SENATOR LITTLE: Absolutely.

LOU COLETTI: -- with New York having its own.

It would be nice if the language would include that the membership has to be from prime-contractor organizations as well as MWBEs, because, right now, we have two MWBE councils, one in the city, one in the state, and nobody talks to us.

I can tell you, in New York City, my members are doing about $50 billion worth of work.

They're doing JFK.

They're doing all the big infrastructure projects.

They're doing the airports.

They're doing dormitory authority work.

It's like we don't exist.

Now, I'm not saying there should be some meetings where MWBEs have, and address issues without us, but bring us to the table.

We want this program to be successful, and all we do is get penalized and penalized and penalized and ignored. Doesn't matter whether it's the State of New York or the City of New York.

And the other thing I would urge you to do, is to establish a commission that will address issues that affect not only MWBEs, but all contractors, about agency payment practices.

No damages for delay, change orders that never seem to get done, affect the cash practice, payment processes, they're horrible.

And when the public sector has to compete with a hot private sector, it's one of the reasons people are walking away on the building side,

walking away from public work, because they're never going to get paid.

And, cash, I don't have to tell you, cash is king in our industry.

So I'll conclude my statements, and any questions you may have, by just saying that, I've been saying this for a while, and I'm constantly reminded when you talk about MWBE programs, of a saying Confucius said in 500 BC: When goals can't be reached, don't adjust the goals, adjust the action steps.

And that's what I think we need to do to make New York State's MWBE program: to build upon the success they've had.

I'm not suggesting that they haven't been successful.

But if you want to build upon that success, we're projecting, in New York City, in the next two to three years, there's still going to be $50 billion a year of activity.

If we don't do it now, when are we going to do it?

Make it work for both parties.

We are not the enemy.

So I thank you for your attention.

I'd be glad to answer any questions that you might have.

SENATOR RITCHIE: Just, I appreciate you being here again, and I appreciate you being at the hearing in Albany.

So, thank you --

LOU COLETTI: Thank you for having us.

SENATOR RITCHIE: -- thank you for your time.

Can you just give me, specifically, what you're looking for with regards to the meeting?

You're looking for your organization to meet with the MWBE organization?

Is that --

LOU COLETTI: There is, in the state of New York, I believe the Governor's Office has an MWBE advisory board.

I have no idea who's on it, but I can tell you that none of the prime contractors are.

The City of New York, which is not, I know, your jurisdiction, but it's the same thing, have an MWBE advisory council. There are no prime contractors.

I'm going to be in real trouble for saying this.

When Mike Bloomberg was mayor, we were there,

and we worked together in trying to improve the program.

That's not the case here; we're not at the table.

So why wouldn't you want to be at the table to work on -- because I bet you, on 50 to 60 percent of the things that I think we think can improve the program, we'd be willing to participate.

You want us to mentor, and go in a classroom and provide that?

Well, you know what? Maybe we would do that if we got 10, 15, 20 percent credit toward the goal.

That costs my members money; their staff time, their expertise.

What can we do to make this work for both parties?

SENATOR LITTLE: No, I appreciate all your comments.

And, certainly, I think the regional councils would be, you know, a great help.

And I almost think the task force started out as, but it was mostly agencies, and people from all the different state and city was involved as well.

But this sounds like a good idea.

That, you know, we've got to get -- for

people up where we are, they're dealing with people in New York City and state agencies to try to get information. And the staff at the state level is so small, it's just not workable.

And you want someone to get certified.

And the reason they're getting certified is they realize it would be a benefit to them, and they could hire more people and provide more jobs and improve the economy; but they can't get certified.

And it's just not working.

LOU COLETTI: No, as big a problem as it is for us here in New York City, I can't imagine how difficult it is outside of New York City, and especially upstate.

And the best thing I can say for the certification process -- I'm going to defer to Denise Richardson -- is blow it up and start all over again. It doesn't work anywhere.

Okay?

New York City, for some of the major projects we're talking about, general contractors tell me that they are adding anywhere from 2 to 4 million dollars to their bid just for compliance, to make a case, and hope they don't get fined for liquidated damages because they can't find MWBEs.

SENATOR LITTLE: Well, the worst part about it is that, you're trying to improve the economy in the local area. And by requiring -- and it is only a goal, it's not a requirement -- but by what they're doing, and making them have minority and women-owned businesses as part of the contract, so if you're up north, where do you go to get contractors?

LOU COLETTI: That's right.

SENATOR LITTLE: Syracuse, Albany, New York... anyplace.

But they don't exist in the North Country to the number.

LOU COLETTI: That's right.

SENATOR LITTLE: And even the ones that are trying to get certified, it takes so long to get it.

And then if they own a lot of property, or equipment, they're past the $3 1/2 million threshold.

LOU COLETTI: Yeah.

Yeah, and given the strength of the New York market, those firms that are locally based here are not going to look to do jobs Upstate New York.

So you have a double problem with Upstate

New York.

SENATOR LITTLE: Right.

I've been told that businesses that call around, to try to prove that they need a waiver because they can't get anyone to do the work, the companies down here will say, Stop calling us. We're not going to do the work. We can't come up there.

LOU COLETTI: Yes.

SENATOR RITCHIE: Senator O'Mara?

SENATOR O'MARA: Yeah, I've got a couple.

Thank you for being here, Lou.

LOU COLETTI: Thank you, Senator.

SENATOR O'MARA: Appreciate it.

On the -- to follow-up on Betty's question on the wealth, $3.5 million that knocks an MWBE entity out, how restricting is that in the New York City metropolitan area?

SENATOR LITTLE: They don't have it.

SENATOR O'MARA: You don't --

LOU COLETTI: Oh, I think it becomes more restrictive here.

You know, I think it's restrictive in general.

SENATOR O'MARA: Yeah.

LOU COLETTI: It becomes more restrictive here than it would be upstate.

SENATOR O'MARA: Exactly.

SENATOR LITTLE: The guy said that they don't have it in New York City. They don't have a threshold.

LOU COLETTI: Oh, no, you're right.

You're right; he's right.

We don't have that in New York City.

SENATOR O'MARA: You don't have that in New York?

LOU COLETTI: We do not have that in New York City.

SENATOR LITTLE: Size; micros, mediums and large.

LOU COLETTI: Yeah, I think the most difficult issue that you have to find a reasonable path on with MWBEs, is that, at some point, you have to graduate from the program and get out into the marketplace and compete.

I don't have a clue as to what that point is.

Again, I know the SCA --

SENATOR O'MARA: To have that level in New York City, there is no point that you get out of the program.

LOU COLETTI: No.

But in the school --

SENATOR O'MARA: You always have that benefit.

LOU COLETTI: -- right.

But in the School Construction Authority program, they have contract limits.

So once you -- I think they have two or three different levels.

Once you get -- graduate from that third contract level, you must go in and compete with every other contractor for their work.

SENATOR O'MARA: The membership data that you talked about is not written in your testimony that we have here.

LOU COLETTI: Oh, you know what? Because I brought a new one.

SENATOR O'MARA: Yeah, it says --

LOU COLETTI: You may have an old one.

It's attached to the back.

SENATOR O'MARA: -- (indiscernible) the data.

Yeah, can you -- can you -- is it in the back here?

LOU COLETTI: If it's not there, we brought 25 copies of the new one, because we -- is it in the

back?

SENATOR O'MARA: No.

LOU COLETTI: All right.

SENATOR O'MARA: It's not.

LOU COLETTI: We gave your staff 25 new copies where it is.

SENATOR O'MARA: Those are the buildings trades' members.

LOU COLETTI: On the workforce side, yes.

SENATOR O'MARA: Yes.

LOU COLETTI: Okay. On the contractor side they are our members.

There's two -- you'll see two documents.

One that talks about the number of MWBE contractors.

The second page talks about the number of minority and women workers in the building trade unions who we employ.

SENATOR O'MARA: Okay. Great. That will be helpful to get that.

And then, Senator Little, do you know if this council that was referenced, the MWBE state council or working group, has that ever met?

SENATOR LITTLE: Well, no. There was a task force, and we met the first couple of years.

We haven't met in about three years.

It wasn't really --

SENATOR O'MARA: That's unusual for a Governor's task force or panel, unfortunately.

A lot of these are named. Sometimes members aren't even appointed to them. And they rarely, if ever, meet.

LOU COLETTI: They may not be appointed to a council, but I can tell you there are meetings going on between the Governor's Office and representatives of the MWBE community on some regular basis, without any prime-contractor representation.

Same thing here in New York City.

They may be informal, but they go on.

And all we're asking for is, give us a seat at the table.

SENATOR O'MARA: We'll look into that.

LOU COLETTI: Thank you very much.

Okay. Thank you.

SENATOR RITCHIE: Appreciate you coming.

SENATOR LITTLE: Thank you.

SENATOR RITCHIE: Next we will hear from Sandra Wilkins (sic) and Krista Gobins from the Women's (sic) Builders Council.

SENATOR O'MARA: Gobins (different

pronunciation).

SENATOR RITCHIE: Gobins.

Sorry, Krista.

KRISTA GOBINS: That's okay.

SANDRA WILKIN: Good afternoon.

And I would like to thank Senator Ritchie, Senator Little, and Senator O'Mara, and the senators who comprise the New York State Working Group on the Minority and Women Business Enterprise to have the opportunity to speak today.

My name is Sandra Wilkin.

I am proud to be a New York State-certified woman-owned business owner.

I am here today as a co-founder of the Women Builders Council, and I have served multiple boards and organizations as an advisor at both the state and local level of MWBE issues.

It is with this body of legislators and the Office of the Governor and the mayor of New York who have understood the needs for laws and policies in support of New York State's MWBEs.

That support, in turn, grows our state economy.

Looking back over the 25 to 30 years that I have been in the building industry:

I could point to disparity study after disparity study; I can point to minority contracting utilization; I can point to numerous local cases, state, and U.S. Supreme Court cases, all recognizing the same thing: Disparity is real. Disparity is ongoing.

And it is our duty; MWBEs, legislators, New York business associations, and government entities, to continue to remedy this disparity.

Disparity in the construction industry has been an open secret.

We don't have to look any farther than the statewide MW utilization goals of 30 percent.

On the face of it, it looks high, almost 1 out of 3 to be MWBE businesses. But you have to ask yourself: Why is it just 30 percent, and why can't we meet it?

The open secret of disparity in the construction industry is the reason we can't even meet a goal of 30 percent MWBE utilization, and it is the entire reason that we must continue to use the law to fight the problem of disparity.

It is also a two-way street, where certified minority and women businesses also have a duty and responsibility to participate in wanting to do

business with New York State, and to continue to grow their businesses while knowing and being aware of the risks they face.

99 percent of the businesses in New York State are, in fact, small businesses.

And there is a website that I refer in my testimony.

MWBEs make up 53.5 percent of available prime contractors and 53.48 percent of available subcontractors in New York State.

To me, this represents a great opportunity to increase the access and certification for minority and women small businesses statewide.

If there was ever a time in our nation's history for us to use these programs to encourage businesses, it is now.

These programs must continue, and must be funded, so that we can grow the state of New York.

Several points to raise to help us with this:

First: It shouldn't be a Herculean effort for subcontractors to get paid.

Often you hear about the difficulty in getting paid.

If we can track a Fed-Ex package through every facility on the way to our door, why can't we

do the same with payments, in having a method of tracking them from the initial requisition through the final payment, and see it all online?

MWBEs are commonly subcontractors and are at the mercy of the primes.

They should be able to confidently know that the status of any requisition, request, and payment.

Second: Insurance premiums are disproportionately higher for small minority and women businesses as compared to their large counterparts.

Third: Dispute resolution for construction projects shouldn't be the domain of those with time, money, and lawyers.

Very often, small minority, women, businesses do not have the resources to hire outside council to navigate the time-consuming disputes so often found in large construction projects, and construction without representation just should not stand.

Fourth: We ought to expand mentorship and technical-assistance program to the small businesses and MWBEs statewide who have to navigate the often confusing and complex procurement processes at the state-agency level.

It is how I became a mentor contractor.

I got my start working in public projects, actually, at the School Construction Authority, and now have the honor and the opportunity to assist programs developing mentor and technical-assistance programs.

Fifth: We must remain ever diligent of those who seek to sidestep our laws through using pass-throughs and fronts to get around MWBE requirements.

Too many out there will seek to game the system if enforcement of our MWBE law is not robust and consistent.

Ultimately, how we choose to treat MWBEs creates two visions of the future of the state of New York.

In one, if we choose not to support MWBEs, we are choosing to cripple a critical component of our economy in New York. We are choosing to allow the open secret of disparity to stand.

When there are hurdles for MWBEs to get to the market, we lose out on competition that can decrease prices and increase quality.

But there is another vision, one where MWBEs are continued to be welcomed and included as essential parts of New York's growth.

It is a vision where our laws protect individuals and business owners, and help them flourish.

One that recognizes that the contributions minorities and women have made to our great state and country, and one that allows those contributions to build our economy.

We are stronger together when we all work to build our great state.

Our vision as New Yorkers and legislators is one where MWBEs are included, welcomed, and promoted.

Join me in building the future of our great state.

I look forward to answering any of your questions you may have.

Thank you, Senators.

SENATOR RITCHIE: Krista, did you have something to add before we --

KRISTA GOBINS: Yeah, I just wanted to apologize on behalf of Deborah Bradley.

Her husband has Parkinson's disease.

Actually, and I'm here to say, thank you, because your office helped him when we walked all the way from New York City to Canada. And your

office organized volunteers for him two years ago.

So she apologizes that she can't be here today.

I think that Sandra and I are going to be able to answer any questions that you have, but I know that what Deborah wanted to communicate is that, our members, which represent women builders from all around the state, many of whom live in your districts, support the reauthorization of Article 15-A.

We think that there are some areas for improvement that are listed in Deborah's testimony, which include things that Sandra mentioned, and also Lou from the BTA mentioned, which is, reviewing "CUF," the commercially useful standard, so that there's a clear, definite line of when a prime contractor can work with an MWBE, and they're not unfairly hurt because they are an MWBE.

So, for example, speaking on behalf Deborah, she worked on the Tappan Zee Bridge project as a subconsultant -- MW -- WBE subconsultant.

At one point she needed to use a crane.

And instead of being able to use the GC's crane and rent it from the GC, they said, No, we don't want to get sued for fraud. You have to come

in and bring in your own crane.

So she had to rent the crane. It cost more on the project, more for the taxpayers. It's onerous for the MWBEs on the project. And they're almost treated differently.

So I think we have a list of recommendations that could help further clarify that for GCs working on these projects, so that they're not unfairly treated on a project, and it doesn't cost the State more money, which no one wants.

And we also talk about, again, as you had said, Senator Ritchie, giving New York State and ESD more resources so that they can hire more staff to help with certification.

In New York City, I know that we have people who call WBC. We give them some certification assistance to the much of our abilities.

But especially in areas that are upstate and in Western New York, it would be nice if they could have the bandwidth to reach out and have a direct relationship with their constituent, rather than just being, you know, some person in New York City.

So we would like to see ESD in this year's budget get some more resources so that they can hire some more help and get rid of any backlog they might

have.

The third issue -- and I'm sure, Sandra, you can talk about this -- is the personal net-worth cap.

We worked a lot with you, Senator Ritchie, on this issue.

We're a strong supporter of you and your initiative. And anything that we can do to help further that message of not capping and limiting minority and women business enterprises.

Because even the idea, or the concept, as you said, Senator Little, of saying, you can be successful, but not that successful.

So I think we can all agree on that level.

And then, our final recommendation would be to expand the statewide mentorship programs, which, if you have any questions, Sandra would be a great person to ask.

We are highly supportive of the New York City School Construction Authority program and all they do to build small business.

The MTA also has their small-business program that was put into statute in 2010, also given supporting funds by the budget. So, that gives them the ability to have these programs to get these

small contractors, and then to grow them.

Sandra can also speak on that because she's a large part of the program, its inception, and also the consulting team.

So if you guys have any questions, we'd be happy to answer them.

SENATOR RITCHIE: (Indiscernible) actually was the one question that I did have, if you could kind of explain what the mentorship program consists of, that would be helpful.

SANDRA WILKIN: Ah, yes, thank you, Senator Ritchie.

And thanks to Krista Gibbons (sic), our policy advisor for WBC.

The mentor programs do take on different models, and, perhaps, one size doesn't necessarily fit all agencies.

The ones that we feel that have experienced the greatest growth, for instance, are, as you've heard in the past, school construction, the MTA, and other agencies that are looking at developing those which have a higher budget level, and require the most in terms of construction.

For other agencies, they can have very similar models.

For instance, the EDC, or the ESD, for New York State, for the other agencies, depending on the kind of services that they are rendering, you can put in a mentor program.

The key elements to the mentor program is that it's both learning and providing the service at the same time.

By doing that, the -- most of the capacity, or the capabilities, are met in those cases.

SENATOR LITTLE: One of the things, I guess, I didn't quite understand, but I do from your testimony, is that the large contractor is an MWOB.

But if they hire subcontractors as MWOBs, they can have no relationship with them, like you talked about this renting of the crane.

But if they're not MWOBs, they would be able to use the crane and they could have done everything else.

SANDRA WILKIN: Right.

SENATOR LITTLE: So on this hand, then, why would you want to subcontract to MWOBs if you had already met your goal by being the large contractor?

It doesn't even make sense.

And then you penalize them if they work closely with them.

KRISTA GOBINS: Do you want me to speak to that?

SANDRA WILKIN: Sure.

KRISTA GOBINS: So the situation I was speaking of, the person/the general contractor was not an MWBE.

They hire the MWBEs, and then as a subcontractor, they perform the work.

But there is, in law, called "commercially useful function." And this was really devised for a very good reason; to make sure that there wasn't fraud, and that people weren't creating shell companies saying that they were minority- or women-business-owned.

You know, so, they really wanted to make sure that these companies weren't getting too much help.

But if -- and I can certainly send some information to your office on CUF.

SENATOR LITTLE: That's clear.

But a lot of this stuff needs to be clarified and easier for people to understand getting into the business.

The other thing is, on the personal wealth, it should be according to the type of business, because if you're in a business that requires cranes

and equipment and large buildings, then -- and you're a privately-held company, you're way over; you don't even apply.

I have a great company, totally woman-owned, and she won't even apply.

She says, There's no way I can apply. I'm over it just with my property.

SANDRA WILKIN: Senator Little, you bring up a great question, and, actually, in some way, this is the crux, and a good problem for New York to have.

We're seeing very large growth because of these programs for minority and women businesses; and, yet, some of the guidelines and the laws are so restrictive that it eliminates the opportunity for these firms to grow.

So, they are not big enough in terms of capacity, in terms of bonding --

I'm referring to, obviously, the construction industry at this point.

-- to be able to sustain having to be able to be the largest prime on that project, but the -- they're gearing towards that.

And you find, unfortunately, this -- there is a middle group of firms that should still be able to

have the opportunity of working as minority and women businesses.

And if we're able to navigate that path for them, and eliminate the biases that are out there and the restrictions, they'll be able to grow their businesses.

And their businesses, as the same as any business within those goals or contracts, they also require to have goals on their contracts.

KRISTA GOBINS: And, Senator Little, I think what you're talking about, how different areas require a different amount of capacity construction is extremely expensive.

You take a huge amount of risk.

You're required to have a lot of personal wealth to receive access to capital, bonding, and just to have your own personal savings in case you're doing a public-work job. And things get delayed or things go wrong, you need to have the capital to be able to continue the company.

So you're right, construction is a very expensive industry to start up and to continue in.

SENATOR LITTLE: It seemed like when we first started, they were talking about financial firms and women that were investment bankers, and things like

that, who had -- who may, if they're successful, accumulate a large personal wealth.

But now we're talking about equipment and your buildings, and your buildings and your property, that helps you have the business that you have.

It's not just personal wealth, although you do own it, but you wouldn't have the business without the equipment, and cranes, and all that.

(Indiscernible) --

KRISTA GOBINS: And you want to have small businesses make smart decisions.

If you're leasing a building, and you're a WBE, you want to buy that building because it's the smart thing to do.

We have members who are terrified that they will reach that cap, reach that capacity.

We had someone who had a parent pass away, and they were afraid to take inheritance or building or homes because -- or, equipment, like you said, because they don't want to --

SENATOR LITTLE: No, I had somebody that put things in a trust fund, and establish a charity, and all kinds of things, because she had inherited money and she didn't want to put her business at risk --

KRISTA GOBINS: It's a bad decision to make.

SENATOR LITTLE: -- (indiscernible) employees are purchasing the business, you know, as they begin to retire, and, you know, they're mostly women.

To stay as a women-owned businesses has been beneficial to them, to being certified.

SANDRA WILKIN: Senator Little, just to -- another comment on that.

We understand that these programs are for small businesses, but small businesses do grow, and that the personal net worth is an important factor.

But, in reviewing it, and recommendations that we can make, to just get the personal net worth, in terms of guidelines, and in terms of categories, perhaps, that would be more consistent with the businesses that are there.

SENATOR LITTLE: Thank you.

SENATOR O'MARA: I've just got a couple of questions.

Of your -- the Women Builders Council, how many member companies do you have in that group?

SANDRA WILKIN: (Indiscernible.)

KRISTA GOBINS: You mean companies that comprise our organization?

We have, probably, about 175. And we have

about 33 Board Members.

SENATOR O'MARA: How many of those companies are qualified MWBEs; do you know?

KRISTA GOBINS: I would say about 75 percent of our membership are M -- WBEs.

But, also, we have, like, some of the larger companies. We have female executives that sit on those large. Like the Turners, the Skanskas, we have their participation on our board as well.

So we represent not only WBEs, but we represent the women executives who serve in leadership positions on some of these big prime companies.

So it's a plethora of women.

SENATOR O'MARA: What are your thoughts on this upper level of wealth that we've talked about, 3.5 million for upstate, which is relatively small, and then you get kicked out of the system?

But, what are your thoughts on, at some point, should a company that's reached a certain success level have to then compete head-to-head with non-MWBE companies and the bidding in con -- and the bidding that goes on?

SANDRA WILKIN: I think that we -- I think it needs to take a better look at what is preventing

firms from being able to grow, number one.

Whether or not we -- I think we all understand to -- or, we feel, in terms of business, that a 3.5 net worth in doing business, as in the financial industry, and in most businesses, is quite a low threshold.

So as far as what that number is, I think would really depend on the particular industry that would be doing business, and not have a circumstance as what we're hearing, where those firms are deciding not to do business with New York.

SENATOR O'MARA: Thank you.

SENATOR RITCHIE: Thank you both very much.

Thank you.

Next we will hear from Denise Richardson, the executive director of General Contractors Association.

(Pause in the proceeding.)

(The hearing resumed.)

SENATOR RITCHIE: So we are going to change the order now.

We'll hear from Jolie Milstein, who is the president and CEO of New York State Association for Affordable Housing, and then we will hear from Denise Richardson.

JOLIE MILSTEIN: Thank you, Senator.

Thank you for the opportunity to participate in today's hearing regarding Minority- and Women-Owned Business Enterprise Program.

My name is Jolie Milstein. I'm the president and CEO for New York State's Association for Affordable Housing, known as "NYSAFAH," the trade association for New York's affordable housing industry statewide.

Our 375 members include for-profit and not-for-profit developers, lenders, investors, attorneys, architects, and others active in financing, construction, and operation of affordable housing.

Together, NYSAFAH's members are responsible for most of the housing built in New York State with federal, state, or local subsidies.

NYSAFAH strongly support the efforts to encourage greater participation by MWBEs in public and private contracting.

Greater diversification of the contractor population ensures a more equitable prosperity for New Yorkers, leads to a stronger, more resilient workforce, and to greater innovation.

All of these outcomes contribute to a

prosperous business climate for which New York has historically been recognized and to which we always aspire.

Based on the 2016 disparity study conducted by New York State, we are seeing positive trends in utilization of MWBEs for public projects and procurements.

Similarly, in the affordable-housing industry, MWBEs have become a more active part of the affordable-housing industry, as evidenced by their growing membership within NYSAFAH, which now stands at 12 percent of our total membership, and is an even higher percentage of the construction portion of our membership.

We are especially proud of this growth because our MWBE members provide dynamic contributions in the development and preservation of affordable housing.

They are the architects and engineers who create energy-efficient housing, the developers who bring together many resources necessary to build affordable housing, and the contractors and subcontractors who construct the safe, quality housing that's critical for families to thrive.

State funding and subsidies are essential in

the construction of affordable housing.

In 2017, the Senate, the Assembly, and the Governor appropriated 2.5 billion for a 5-year housing plan that will produce around 100,000 units of affordable housing in our state.

This was a landmark level of support for housing in New York State, and I would be remiss if I didn't thank you for all your support for these funds.

Moreover, use of the subsidies from those funds include MWBE participation utilization requirements, the topic of this hearing and very relevant to NYSAFAH.

While we understand increasing MWBE utilization rates is a complex issue, and one that we all take a stake in improving, we believe the efforts should continue to focus on enhancing the administration of the existing MWBE requirements.

We hear from MWBEs in the affordable-housing industry that the regulatory burdens and inefficiencies in the program create challenges for MWBEs.

Many working in the housing field tend to be small, with 10 or fewer employees, and lack significant capital.

Even more, lack of staff resources to fill key compliance requirements imposed by the State, prompting many to forgo opportunities where the State is a party.

The State should create a system with fewer regulatory burdens for MWBEs, or, at a minimum, greater financial and technical assistance, such as the availability of no-cost or low-cost program software, in order to comply with various State recordkeeping and reporting obligations.

Administration of the MBE (sic) program has improved over the years; however, there remain many impediments.

The certification, recertification, process for an MWBE can take up to three years, significantly more time than the typical three-month certification-approval process in New York City.

One commonsense improvement would be for the State to expedite recertification where the MWBE is already performing services pursuant to an awarded State contract.

MWBEs should also be allowed to update their profiles to include their certification status, their MWBE certification expiration date, and capacity-related information, such as the size

of the largest project worked on, the percentage of work that's self-performed, general and excess liability limits, and references.

Developers and contractors do not want to hire an MWBE, only to then find out its certification is about to expire or it lacks the required bonding capacity to undertake a project.

There's also too much duplication in reporting.

For instance, an MWBE operating in New York City and New York State must include their information through two separate portals and databases.

We appreciate there are two different jurisdictions, but seeking ways to import information from one database to another would be our modest -- would be one modest efficiency to help these small businesses.

This applies to updates in MWBE contractor information as well. Efforts must be made to ensure that the MWBE only has to input updated information once.

Moreover, the list of MWBEs from which developers and contractors can select is in need of improvement.

One common complaint shared with NYSAFAH is that this -- the list of MWBEs lacks companies in key major trades, including excavation, foundation, plumbing, and structural steel, precast concrete, among others, making it difficult to satisfy utilization-plan requirements.

Accordingly, while developers must agree to certain MWBE utilization goals, it makes sense that the State should have goals to increase the number of listed MWBEs, in total, and by category of work, to actively market through outreach events across the state to fulfill those goals.

The State could even go further by helping identify MWBEs with experience in key areas.

The division of homes and community renewal could, for example, provide a list of MWBEs participating in affordable-housing projects to the division of minority and women business development, which could include the information on MWBE profile, and provide an overall list to the affordable-housing industry.

There is significant potential to collate the data held by the State to help increase MWBE participation and visibility and to market upcoming opportunities on public projects if the State is

willing to invest in the systems to do so.

A more immediate reform that the State and Assembly have championed is a proposed change to the MWBE net-worth criteria.

Currently, each minority- or women-owned, or upon whom MWBE certification is based, cannot have a personal net worth in excess of $3.5 million.

This limitation prevents otherwise qualified MWBEs from participating in public contracts.

The criteria encourages MWBEs to underperform in order to remain on the net-worth threshold, and punishes them when they are successful.

It is for this reason that we support legislation sponsored by Senator Ritchie and Assemblywoman Peoples-Stokes, and passed by the Senate and Assembly earlier this year.

The legislation would provide for additional certification classifications for MWBEs that are otherwise ineligible to be certified due to personnel net worth or the small-business criteria.

While we prefer eliminating, or raising, the net-worth threshold, given that the Governor has vetoed such legislation in 2017 based on legal concerns, we believe the current legislation is a reasonable solution to the net-worth issue.

We hope Governor Cuomo will approve the legislation and enact this commonsense reform.

Thank you for your opportunity to testify today, and for your consideration of NYSAFAH's comments regarding the MWBE program.

I'm happy to answer any questions.

SENATOR LITTLE: You know, one question comes to mind, and I don't even know if this is being done, but, in the housing industry, it's pretty close-knit, and all.

Is there any -- ever any best-value attributed to an MWBE-certified business, whether -- or, quality of work, or standards, or --

JOLIE MILSTEIN: You know, it's generally word of mouth. There's no formal network that I know of.

But as you well know, this is a very tight labor market.

And I think that successful developers that have a bench, a deep bench, I don't think they're particularly broadcasting that around just because it's such a tight labor market.

So, I don't know how collegial people are in sharing their best subs and contractors.

SENATOR LITTLE: Nor do I know how the State

would evaluate every one of these businesses.

Then I know one contractor who hired an asbestos-removal company that was an MWBE, that could not do the work. And they had to give up on that one and hire another one.

And the second contractor used a power washer to get rid of the asbestos.

It's not quite the best idea in a renovated building.

And in the end, the result was terrible.

And the current contractor lost a -- the job and, you know, had consequences.

JOLIE MILSTEIN: I'm not aware of, within the program, an evaluation system on past performance.

But it certainly is something that might improve the whole --

SENATOR LITTLE: I would think, at some point, as we go through this, they have to get to a point where you -- you know, you get a 3-star, 4-star, or 5-star rating as an MWBE.

But, I mean, upstate, we don't have enough, so it's, just, if you can get one, you go for it.

So, thank you.

That's something that, I guess, that has to be done in the future, and we have to look at it.

SENATOR RITCHIE: I'd just like add, you know, I've heard a number of stories too.

Another was with an asbestos contractor, that they had heard over and over again, not great reviews, and were really concerned. But that was the only company that would fall under an MWBE, for them to attempt to get to their quota.

And, you know, the program has merit, and we need to find ways to make the program work better.

But, making a contractor hire a business that they know is not going to be able to perform is not the right way to do it.

JOLIE MILSTEIN: That doesn't help anyone, and it certainly isn't a good use of taxpayer dollars.

SENATOR LITTLE: No.

SENATOR RITCHIE: Thank you so much; appreciate the testimony.

JOLIE MILSTEIN: Thank you for your time.

SENATOR LITTLE: Thank you.

SENATOR RITCHIE: Denise.

DENISE RICHARDSON: Good afternoon.

It's nice to see all of you again.

Before I get into my specific remarks, I just want to touch on some things that the prior speakers

have talked about.

First of all, New York City's MWBE program does have a cap; however, it's not about personal net worth. It is about size of contract awards.

So in the New York City MWBE program, if you have received over $50 million worth of contract awards in a 3-year period, you are considered to have graduated.

So that's an important distinction.

But one of the things that I think works about that, is that it's tied to actual amount of work that a company has received and about the size of the company's business, as opposed to the personal net worth of the owner.

So -- and we recommended in prior hearings that the State look at a size-of-business model for graduation as opposed to personal net worth of the owner.

SENATOR O'MARA: Is that an annual calculation?

DENISE RICHARDSON: It's over -- it's a rolling 3-year period.

SENATOR O'MARA: Rolling 3-year period?

Okay.

DENISE RICHARDSON: Which is helpful, because

it also kind of takes into account, particularly for construction, that if you're working on a prime contract, that's also about the average duration of a prime contract, so, it works.

So I just wanted to make that point.

The second thing I wanted to point out is, I know that you have focused a great deal on certification, and I know that you reacted very favorably to New York City's time frame of certification.

And it is -- the certification process itself is much more efficient in New York City than in New York State.

However, in New York City, the MWBE program suffers from a very big disconnect between certification, which is about, is the company a minority- and women-owned business versus the type of work that the business actually performs?

And in New York City, the focus is on certification as to MWBE status.

And it is, basically, up to the MWBE firm to -- in a completely separate system that is not managed by the department of small business services that is doing the certification, the MWBE firm, in a separate system known as the "payee information

portal," self-selects the type of work that it performs, that it wishes to be known as.

That has created enormous problems for the prime-contracting industry in identifying firms to participate in MWBE work.

In 2016 the General Contractors Association spent a million dollars of our own money, paid for by our member dues. We are, in fact, a private-sector trade association.

But we were struggling with so many difficulties in the list, that we felt as though we needed to provide a service to our members, by surveying the city's MWBE firms, to work with them to straighten out their codes, so that we could give our members some current information about the types of work that firms perform.

We found numerous inaccuracies in the list.

We turned over all of that information that we collected to the department of small business services.

They have corrected some of the information.

I believe they're still working with other portions of the information.

But to date, right now, in -- on the New York City-certified MWBE list, there are over

1400 firms with no indications whatsoever of the types of work that they perform.

And we continue to work with SBS on trying to straighten out the coding, similar to what I talked about when I testified in September at your hearing on Long Island, about the State's need to undertake that same kind of effort to work with the MWBE community to straighten out their certification list.

We also took our information and turned that over to ESD as well. And, to date, I am not sure to the extent that they have made the corrections that we noted in our own research.

So I want to point out that, although New York City has a much more efficient certification process, there is still work that needs to be done on matching the certified MWBEs with the type of work that they perform.

Also, I would like to also correct some information about what happened on the Tappan Zee Bridge.

The prime contractors on the Tappan Zee Bridge are General Contractors Association members.

And when Deborah Bradley brought it --

brought to my attention what happened, I asked them, you know, what the circumstances were.

She's completely right when she talks about the issue of commercially useful function.

On a large construction project sometimes there are oversights.

Her contract was silent on the issue of providing a crane.

The prime contractor did not specifically indicate in her subcontract that she would have use of their crane; and so, therefore, when the DBE program manager looked at her situation, a determination was made that, in order to prevent a later violation of a commercially-useful-function standard, she needed to provide her own crane.

However, it's being perceived as though the prime contractor denied her that, and I don't think that that is a fair assessment of the situation.

It does point out the fact, though, however, that when you look at commercially useful function, there are two things that need to take place.

Number one: The firm has to come to the table with the ability to do the work that they are subcontracted to -- that they are contracted to perform.

Certainly, in the case of Deborah Bradley, her firm certainly has the technical capability to perform the work that she was subcontracted to do.

The issue of the crane was an oversight on a very large project.

What needed to happen in that process was a very quick decision on the part of the government agency involved. And that's not what happened in this case.

And because they needed to move the job along, and they couldn't get clear direction, the decision was made to tell her to provide her own crane.

That's a very different scenario than saying that the prime contractor refused to assist their MWBE sub.

It comes back to, on a construction project, time is of the essence, and these kinds of administrative decisions need to be made quickly.

So with those things being said, what I would like to mention today is, you know, in looking at the whole MWBE program at the level of detail that the General Contractors Association certainly has, one of the things that we have noticed is that the documentation for good-faith effort is completely

paper-oriented.

Thousands of pages of spreadsheets and telephone logs and letters are submitted for prime contractors to document their good-faith effort in their efforts to meet what are, in fact, the MWBE requirements.

There has been a lot of discussion about needing to do a better job on the part of the government agencies of identifying firms to participate in capacity-building programs.

The good-faith-effort documentation, if it were automated in a searchable-type database, where, you know, ESD or DOT or any of the agencies could query the documents, they could find out:

Who's bidding?

What types of jobs are they bidding on?

Why is someone who's in a "structural steel" code only bidding on painting work?

That's probably a good indication that they're in the wrong code and they're a painter, and not a structural steel erector.

Right now, with all this paper, there's no way to generate any value out of all of the information that's being collected.

And, in fact, for our members, what we find

repeatedly, is that we will submit boxes of documents, and the agency will say: We're not even going to look at that. Our definition of "good-faith effort" is to meet the goal.

That's a separate issue that we will not get into today.

But I think in terms of your recommendations, going back to how to strengthen the MWBE program, what should be looked at is a partnership with the industry to develop an automated way of submitting good-faith efforts so that we can get some value out of the information that our members are spending millions of dollars to collect.

And that's my recommendation for today.

And I'll answer any questions you have.

SENATOR RITCHIE: First, I want to say, thank you, because I know you've been at several hearings, and you put in a lot of time making sure that we heard your members' concerns.

So, I want to thank you for that.

DENISE RICHARDSON: Thank you.

SENATOR RITCHIE: Just a quick question on the crane scenario.

That was the one thing that popped into my head: Was there no way to get any kind of approval

from an agency before they had to spend that money?

Is that part of the process, it was too slow, or there isn't any?

DENISE RICHARDSON: It was too slow, and an immediate decision had to be made in order to procure the crane in time.

And I think that that was unfortunate.

And I don't want -- I don't want to cast aspersions on the agency because, obviously, with the Tappan Zee, there were hundreds of decisions that had to be made every single day.

But it does kind of show the need for, I think, better coordination on these projects.

And we face it also on other projects, where we will, literally, be waiting for a determination from an agency on an MWBE issue, and it's holding up the rest of the project.

And so that aspect of the project needs to move faster, which is why, in terms of mentor-protege, we can't be expected to build the job and teach how to build at the same time.

What we favor in a mentor-protege program is a model like the school construction authority or like the MTA mentor program, where a separate contractor or consultant is engaged to work with the

firms that are in the program on their own work; not as part of a much larger construction project where the prime contractor, who's trying to meet a schedule and build a scope, and keep -- you know, and manage costs associated with that project, is also trying to teach their MWBE subcontractors how to work at the same time.

That is a recipe for disaster.

But we definitely support a school construction authority-type model program.

SENATOR O'MARA: How much expense does something like that add to a project?

Can you give us some examples?

DENISE RICHARDSON: I can't really talk about the expense of having a -- of managing a mentor-protege program on a particular project because we have not been in that situation.

What I can talk about, though, are the compliance costs that we're facing for our M -- for MWBE efforts, and it is becoming significant; it's millions of dollars.

I have one member who told me recently that he has more people on his staff managing compliance issues than he has actually managing projects.

That's a scary prospect.

But when you look at, in particular, trying to meet a 30 percent goal, when most subcontracts are of a smaller dollar value, and you have more subcontractors on a project than you've ever had before, and so you're slicing the work into ever smaller pieces in order to meet a goal that's based on a total-dollar value of the project, not just on subcontractible work, you're adding additional supervisors, you're adding additional superintendents, you're adding additional safety people.

And so it's starting to increase the overhead cost exponentially, which is not really being reflected in agency estimates.

SENATOR O'MARA: Are you recouping that cost?

DENISE RICHARDSON: I would not be able to say yes in every instance.

SENATOR O'MARA: If you are recouping the cost, that's adding to the overall cost of the project?

DENISE RICHARDSON: It's definitely adding to the overall cost of the project, there's no question about that.

Where it becomes problematic for a prime contractor is, if the project, for whatever reasons,

is delayed; if there are many, many change orders; and the overhead of the project starts to get squeezed by a schedule that has gone beyond what the prime contractor anticipated, that's where the cost becomes significant.

SENATOR LITTLE: Thank you.

Going back to the crane, I hate to do that, but, is what happens here is:

The prime contractor is not an MWOB.

So, the subcontractor is.

But if the subcontractor wanted to rent the crane, the prime contractor is afraid he'd get penalty for helping that subcontractor, and making it look like they -- you were just using that subcontractor to get your MWBE -- help your goal, and it wasn't real?

Is that --

DENISE RICHARDSON: Yes, our members have faced a number of issues in terms of perceived violations of commercially-useful-function standards. And there are many cases associated with that.

The way the auditors, the agencies, the investigators, look at it is that, the subcontract must lay out, in great specificity, exactly what the

responsibilities of the subcontractor versus the prime contractor will be.

Had the subcontract said, You will be entitled to use our crane, there would have been no issue.

It's not that the commercially-useful-function standards prohibit that. It's that it must be documented.

In this instance, the subcontract did not say, "you will be entitled to use our crane"; and, thus, when that oversight was discovered, it became a question of, you know, are we permitted to allow our subcontractor to use the crane, given that her subcontract did not spell that out?

SENATOR LITTLE: Is there a way to put some clarity in this, or clarify those guidelines, or make it easier and clearer for the prime contractor to understand and the subcontractors to understand?

DENISE RICHARDSON: I think that what has happened, certainly to our members, and other contractors around the country, now that this issue is being looked at, is that the whole issue of commercially useful function becomes an audit issue several years after the project has been completed.

And so I think, certainly for the

General Contractors Association members, which is whom I'm speaking on behalf of today, we would be extraordinarily concerned about any program language that left it vague in one way or another.

And we have been told, you know, by the various prosecutors at different times, that what they look for is the deep pocket to make, you know, this a revenue case.

So we would be extraordinarily reluctant, and concerned, about any standard that allowed a judgment call based on the need.

We would support, you know, engagement by the agency, affirmative determinations by an agency, yes, you can do this; no, you can't do that.

However, I wish to point out that, in instances where we have brought issues to an agency concerning the viability of an MWBE firm, because we felt as though they could not provide the function that they represented they provided, we have been told by the agency, Well, you need to meet the requirement. Go ahead and use the subcontractor.

And our members have repeatedly taken firms off their utilization plan because they raised questions themselves, and they could not get assistance from the agency.

So we're not in a position where we are willing to take liability for something where, later on, our company's reputation will suffer.

And that's why we support -- the General Contractors Association supports the commercially-useful-function standards as they are written.

And in the event that an MWBE or group of MWBEs need assistance, to manage that separately through a mentor program under a separate contract by the agency.

It's just too much liability and risk for us.

SENATOR LITTLE: Do you have instances where, when they go to do the final audits for the payments, that they deduct or they disqualify some of your MWB -- -OB contracts?

DENISE RICHARDSON: Yes.

SENATOR LITTLE: And then they won't pay?

DENISE RICHARDSON: Yes.

SENATOR LITTLE: And that's happened often?

DENISE RICHARDSON: Yes.

SENATOR LITTLE: Well, there's got to be a way to avoid that, somehow, if they have accepted this.

I had one, where it was a State grant;

therefore, it had to be MWB -- -OB goals. And it was for a city civic center, they bought a big jumbotron.

And it was listed on the list of MWOB contractors that they could buy from, and they bought it.

But they said, after it's up, then used for six months, great thing.

Then they said, Well, that contractor didn't really build the screen and the unit. It was a Panasonic.

So suddenly, now, they took away a huge percentage of their things.

In the end, we had to work to get a waiver, and everything else, because there was no way to correct that. And that they shouldn't have been on their list.

But, you know, it's just almost impossible at times.

There's got to be more flexibility, and there has to be more clarity, in this whole program.

DENISE RICHARDSON: Well, I think to your point, that scenario that you described has happened to us frequently.

And we have found, at the end of a project,

where the agency, you know, is coming through and making those exact determinations.

And I agree that there needs to be flexibility to reflect, certainly in the case of construction, how the construction industry works, or in the case of providing goods and services, that not every person who is a legitimate supplier may stock every single item.

And I do think that, in many instances, the rules were written in a very rigid, black-and-white scenario without accounting for how business really works, how things will happen on a project.

At the same time, because of what, certainly, the GCA members have encountered, I am very concerned about guidelines that would be too loose, that would lead to, later on, second-guessing.

I think it's better to spell out up front exactly what the expectations are that everybody abides by.

But to your point about what happened with one of your constituents, we face that all the time.

SENATOR RITCHIE: It still is confusing to me how this is only a goal, and that so many companies face penalties, and money is held back, when it's not a requirement. It's an aspirational goal.

So...

DENISE RICHARDSON: I think that our next speaker, who represents a company who is a GCM member, will speak to that in detail.

There is a perception that the prime-contracting industry just does not want to make the program work.

And nothing could be further from the truth.

As prime contractors, the way that we are successful is by bringing the best team of subcontractors who are available to the table at all times.

Prime contractors and their subcontractors make money when they finish a job ahead of schedule; not late.

So it's in our interest to bring on any project that we're bidding, the best subcontractors that we can find, that can help us deliver that job ahead of schedule.

So I think that there is a myth that we don't want the MWBE program to be successful.

I also want to point out that most of the prime contractors today started out as small subcontractors, and grew their businesses to become primes.

So, if there's any group of people that wants to see a robust subcontracting industry, it's us, because that's how we all started as well.

SENATOR O'MARA: Do you -- as I have asked the other individuals testifying, what the numbers of your organization are, MWBEs, and are actually certified?

DENISE RICHARDSON: We have about 20 percent of our membership who are MWBEs.

We have two companies, in particular, that started out as MWBE subcontractors purely, have graduated from the program.

And, now, while they demographically would be considered minority-owned businesses, they are no longer participants in the program and bid in the prime-contractor open market.

SENATOR O'MARA: How many members do you have altogether?

DENISE RICHARDSON: 300.

SENATOR O'MARA: You know, there's a lot of concern, the need for this program. And I understand contractors do want to see this work and be successful.

And it's important for us on this panel, and the Senate, to make sure we have a working thing.

But some of these, what I call "quotas," and not goals, are causing problems within the program.

But there's also, to look at it from the need for it, that this is to help these MWBEs break through what's commonly referred to as "the old-boys' network."

Can you comment on that kind of feeling?

I mean, it's, like, you got the big 'ole boys that always play with themselves, share contracts with themselves, and kind of block out these smaller up-and-coming entities.

DENISE RICHARDSON: You know, before I came to the GCA, I worked for over 20 years at various public agencies as -- in procurement.

And I appreciate the perception that it's an old-boys' network.

But in a competitive-bidding situation, the bidding is available to the open market. And whomever bids, and whoever is the lowest responsive and responsible bidder, gets the job.

The issue, in terms of what we would call, you know, "the club of contractors," is driven by other forces.

If you look at public-agency contracts, they're extraordinarily adversarial, extraordinarily

complicated.

And so for a firm who has never bid on a DOT contract, and let's say they're a very successful MTA contractor, and now it's the first time that they're coming to bid a DOT contract, it's a whole new process of bidding and contract requirements and specifications.

And so what tends to happen over time -- and the construction industry is, you know, fairly specialized -- if you are a contractor that, you know, builds wastewater treatment plants, you've developed an expertise. You know the technology. You know the requirements. You have a workforce that you have trained in that specialty. Same way if you're a bridge builder or a paving contractor.

So the perception of the old-boys' network is really driven by the type of work the firm performs, the specialties that they have; the agencies where they know the specifications, they know the requirements, they know the expectations.

And just like in medicine, you know, construction also has become much more specialized over the years.

So you see a group of contractors that consistently bid for state DOT, or maybe for city

DOT, or whatever, which is more driven by the contract terms, the type of work; also, the portfolio of projects that are in any given capital program.

And one of the biggest barriers to entry for new contract -- new prime contractors in particular, and we've really seen this with State DOT, where you have seen gaps in years when the agency did not have an approved program.

Contractors look on a 12- to 18-month schedule of what's coming out to bid in a certain agency.

When we've gone for, you know, a year or two with the MTA capital program, for example, being rolled over, or, the DOT capital program, you know, being uncertain as to what projects are going to be in the portfolio, that takes that group of contractors saying: I don't know what to do. Should I bid in another state? Should I move to another market? Should I, you know, lay off some of my key people? What should I do?

And the best way to assure that you have a robust pool of new firms is to have an ongoing portfolio of work that's being bid, because, particularly for infrastructure work, if you're an

infrastructure contractor, your market is, typically, the public sector.

On the building side, they will switch back and forth between public and private work with much more flexibility.

But if you're an infrastructure contractor, the public sector is your market.

SENATOR O'MARA: Thank you very much.

SENATOR RITCHIE: Thank you.

DENISE RICHARDSON: Thank you.

SENATOR LITTLE: Thanks, Denise.

SENATOR RITCHIE: And our last speaker for today is J. Naomi Glean, EEO officer, WDF, Incorporated.

J. NAOMI GLEAN: Good afternoon.

Thanks so much for having me, allowing me to speak.

Thanks so much for showing so much interest in this topic.

I am, I think, the only person representing the prime contractor today, and the only MWBE officer to speak to you, so, I'm hoping you guys have questions about the day-to-day as well.

First of all, I work for WDF, Inc., which is a specialty construction company that works mainly

throughout New York City, but we are a New York State company.

I was a little reluctant to submit my testimony because I'm busy at work, trying to put together all the good-faith efforts that we're doing on our several, several city and state agency projects.

But I said to myself, that this is much more important than just getting the next letter out to our agencies, in order to speak to how -- the efficiency that's of the program.

First and foremost, we wholeheartedly support the MWBE program.

We have a robust program in-house for ourselves, but, we as a group, and myself personally, truly believes that small businesses need a helping hand.

Every single large prime contractor, if you've spoken to any of the CEOs, they'll all tell you the long list of people that helped them get to where they are.

So, to try to tell ourselves that minority-owned businesses, women-owned businesses, don't need a helping hand just doesn't make any sense.

The program is great to show that there is a disparity in opportunities.

But I am here as someone who's worked as an MWBE officer for seven years, to let you know that I've seen some changes in the program, and how prime contractors are viewing the program.

The good things, that's more small businesses are getting jobs.

All contractors -- all prime contractors that I know are trying to meet the goal.

And it is no secret that the agencies are not letting you get away with not meeting the goal.

When I started seven years ago, you could put together a one-page letter and say, "I tried my best and I couldn't find anyone," and that would be accepted, and you can go on and -- with your 1 percent participation.

That is no longer acceptable; that's not the standard.

The amount of efforts that we as -- at WDF put forth to provide a good-faith effort takes a department.

It takes me training the rest of the company, so that everybody helps me to get to our goals.

It starts with our solicitation of MWBEs,

and we rely heavily on the certification on directories that you've been talking about all day.

And I'll speak to how we can work on those directories.

But it starts with a solicitation, through several means of solicitation, to negotiations for subcontracts and purchasing, to vetting the firms.

Which is something that I don't know if you guys are familiar, that the primes spend a lot of time, cost on manpower, on vetting the firms, even though they're on the certified directory.

Because one of the biggest issues we have is that there's prosecutors, and then there's the agencies that you work for, and those two entities are not on the same path; they do not think the same way.

So the directory, I would suggest -- and I did suggest in my written testimony, that the certification process is more robust.

I know we've spoken about how long it takes people to get certified, but I'm -- quite frankly, I don't think enough is being asked during that certification process.

When we vet a firm, we're looking to see that the 51 percent owner is the minority, is the woman,

but that they have their own staff to do the work that we're going hire them to do, that they have their own equipment to do the work, and that they have a facility that is capable of doing what they're supposed to be doing.

We spoke -- someone else spoke about self-certification.

There are some firms that check off the boxes of what they do.

And I am not convinced that the agencies are looking at exactly what those firms do.

In order for me to take credit for an MWBE, they have to be certified with the agency, but certified for a particular work.

And so if the work that they're certified for is not the work that they're bidding on, then I can't take the credit for it.

If I find out that they are certified to do one thing, and then they've offered to do these whole other five things, I can't take credit for that either.

A lot of times the agencies can tell that we're paying a minority- or woman-owned business, and so they say, Why aren't you taking the credit?

Well, I know they're not certified to do this

particular work, and so I'm not going take the credit.

Or, I vetted and I found some other issues with this firm, and I don't think that a prosecutor is going to look well at what they're doing on this portion, so I'm not going to take that credit.

All of these things are major issues in the certification process.

You may be certified to do one thing, but then you do another in your contract.

And that has to be scrutinized a little more in the certification process, in my opinion.

When I go to the different events, sort of -- networking events, firms come up to me and they say, Oh, I don't -- I haven't gotten an e-mail. How do I give a bid to your company?

I say, Well, what do you do?

They tell me what they do.

And I say, Well, I go to the directory and I pull down every single MWBE that does that scope of work, and I have sent them a fax, an e-mail, and we've called them. You haven't gotten any of those things?

No.

Well, what are you certified?

Well, actually my certification's for a different thing, but I'm going to change it.

There has to be more scrutiny on the certification list.

In terms of the goals, some people are talking about how the goals are assessed.

It is my understanding of the regulations, that a goal is supposed to be assessed to the actual project.

Right now there is just a general number that is given, and it is assessed to every single project, which does not take into account when there is specialty work.

WDF is a specialty contractor. We do plumbing and we do heating work and we do sprinkler work. Half of the work we do has to be done under a license.

So the sprinkler work we do and the plumbing work we do has to be done with the licensed holder, and so we cannot subcontract out the work that's under our license. So there's that whole chunk of work that we can't sub out unless we totally give away our -- we win the bid and then give away the whole project.

And then, on top of that, the -- we're a

union shop. And so any company that works with us has to be a part of the union or sign up with an agreement.

And there's no conversation -- there's not much conversation about the fact that the certification list is dwindled by a lot when you look to see who is unionized, and who is willing to sign up on one -- for one agreement with the union per project.

That takes a lot of people out of the running in working with your -- working on our projects in particular.

The goals right now are a general number.

And then, if we cannot meet the goal, then we have to present good-faith efforts.

Now, my good-faith efforts are binders, sometimes boxes worth, of documentation of who we've e-mailed, who we've faxed, who we've called, who we've negotiated with, and the e-mails back and forth.

And 99 percent of the time no one looks at all of that documentation. Everybody just wants you to meet the number, and that is all. Do not talk to me until that number is met, and that's it.

So we're at a place, it's kind of backwards.

I feel that the agency -- that the government should look at the contracts, see what is actually available to subcontract out, what's actually available to purchase, and then set the goal on that.

Now, the SCA uses that goal. They -- their goals are centered around what is subcontracted out.

So they ask the prime contractor, What are you actually subbing out? What is the value of that? Who are all the firms you're using.

And out of that value, that's where your goal is; and that to me makes the most sense because you know exactly what everybody is doing.

Everybody is actually -- I'm going to sub out some of my work. I'm not going to do it all.

But that portion -- a portion of that should go out to minority- and women-owned businesses.

And where we can go above and beyond, we definitely do.

In terms of, back to certification, not only is there a cost to extra vetting by the prime contractors, we're looking to see if the firms can provide a commercially useful function.

And right now, we do not -- I do not believe that there's enough guidelines across the board of

what a "commercially useful function" actually is.

Because we're very -- at WDF, we scrutinize the rules, the regulations. We're very cautious on what we take credit for.

And I do not believe that every prime contractor feels the same way, I do not feel that every agency feels the same way, or all the prosecutors feel the same way.

I have had many agency reps tell me, Just take the credit because they're on the certified list.

And the very same firm, I've had a prosecutor tell me, You should have known you can't take credit for that firm because they're not legitimate MWBE.

There has to be guidelines so, across the board, all the primes know we're all on the same playing field, because, the higher the goal gets, it leaves room so people to do things illegally and try to get around the system in order to meet those numbers.

So we spoke about -- other people spoke about the mentor-protege programs; giving assistance to minority- and women-owned businesses.

I would like to see more paths to give small companies a helping hand, but our industry right now

is based in perception.

There is a lot of gray area, that you don't know exactly how it's going to shake out if you do a certain thing.

And so, if we can figure out actual guidelines for what "help" means, and how you can do it and still take credit.

I will tell you that I have two letters out right now to agencies, asking if I can do a certain thing and still take credit for MWBEs.

And it's been months, and I haven't gotten a response.

And so if I've been doing it for seven years, the company's been doing it for longer, we don't know the answer, and the agency is not responding, then I can only assume that other companies are dealing with the same thing.

If there's some sort of guideline book that all firms can have, it would be helpful.

And dealing with MWBEs directly on a day-to-day basis, I would tell you that they need the guidelines more than anybody else.

If you're a small business, what I've seen is, that you hear: That if you become MWBE-certified, you would probably get more

contracts. Your company will seem more interesting to larger companies and you'll get more opportunities.

But that's about it.

They don't read the rules and the regs the way that we do, they don't have a staff to go over and look over the news and what's going on, because they're building.

They're usually, 10, less than 50, people, and they're building, and they're trying to get their -- get their projects done.

And so they don't know the rules.

And when a company comes to them with some scheme, that they say everybody else is doing, then they join up.

And so, if we all had a -- guidelines, that would help, especially with the MWBEs, because I get a lot of calls from MWBEs asking me to do things that I deem illegal or wrong.

But they say, Well, this other company did it and it's fine, nobody said anything.

But, we get audited later, and we don't want to have -- be answering the questions after the fact.

We would like to know up front, this is

exactly what you can do, this is following the rules; and we're glad -- we're happy to follow them.

The certification lists, they seem very long.

But when you look at the kinds of work, the specialty work, you're bringing down numbers a lot.

When you're looking for union workers, the numbers are going down even further.

And so there has to be some more work by the government to actually do training or recruitment for companies that do this specialty work on projects.

I am much more concerned in your questions.

I've written a lot more, so you can take your time and read it.

But I'm much more interested in your questions about day-to-day MWBE utilization.

SENATOR LITTLE: Yeah, one of the things you talked about was greater vetting of the companies.

I will tell you that that's -- up north, in our area, because we don't have as many, maybe that's it.

But, they are vetting them to the point where they don't understand a family-inherited business.

And they find that the women-owned business, managers, are making more money than somebody that

has been with the company, you know, when it was owned previously for many, many years.

They get denied; absolutely denied based upon that.

Which -- so they are vetting, and I understand, they need more staff.

And I think that's the only way to get to that.

The other thing that I would ask you:

I had a company that manufactured, something, and I don't remember what it was. And then they were having trouble with the implementation, getting it put in. So they decided they would put it in.

They had to start a whole certification over again because that was a new function of their MWOB.

There should be a way that you can grow your business by expanding what you do.

And, yes, letting them know that, and qualify under another category, but not starting over.

J. NAOMI GLEAN: Yeah, I'm not sure how that process works.

I know I've worked with a company that manufactures windows, and, they want to install them, but they're not certified to install.

And they have the staff --

SENATOR LITTLE: Very similar.

J. NAOMI GLEAN: -- and they're capable to do it.

And, you know, it's really -- as far as I know, I've been told that they just have to put in more paperwork that says that they can do that.

And they haven't -- they haven't had the interest in doing that. And I don't know why that would be a hard thing to do.

SENATOR LITTLE: Maybe it's not a total startover, but this company got penalized because they were, you know, including that, and then that couldn't be part of their --

J. NAOMI GLEAN: To your point on the WBE standards, and certification, there's no black line that says exactly what a woman is supposed to do, what a minority is supposed to do, as the owner -- the 51 percent owner of the company.

So that also adds to some confusion.

Sometimes, when we go out to meet company owners, you're kind of making a guess on, you know, how much do they know about the company, and is doing the payroll enough work to be the 51 percent owner, or is that a sham?

And another -- you know, that's another nod

to guidelines across the board, because the woman could be there every single day, and then someone else comes in and says, Well, she doesn't know enough. She doesn't do enough on a daily basis.

SENATOR LITTLE: Right.

And, I had a brother and sister inherited a company, so the sister had the 51 percent.

But since she was the office manager, the bookkeeper, the organizer, the hiring, the human resources, but he was in sales, and so they got denied, because he was doing more.

But they don't give the same credit to what the woman is doing, yeah.

Thank you.

J. NAOMI GLEAN: You're welcome.

SENATOR O'MARA: How much time do you spend on a typical project in tracking down all of these eligible MWBEs to meet your quotas?

J. NAOMI GLEAN: To meet -- to start the plan, you're asking?

SENATOR O'MARA: Yeah.

J. NAOMI GLEAN: Well, our bid list is at least ten projects long at any given moment, and we spend a lot of time reaching out to the MWBEs.

I have a dedicated person in my office who

sold -- well, her major role is to solicit firms. So she's e-mailing, faxing, calling, all these firms, and then following up with the e-mails.

And then the estimators are also following up with the specific questions that the contractors have.

So it's a little hard to figure out exactly how much time it is, but it's definitely enough to have a full-time person, plus other people, in the company, monitoring that.

And then we have to gather all of that information to get it back to the agencies.

SENATOR O'MARA: You're doing the work because, I guess, kind of what I'm getting at, is how many workers, how many employees, are doing this work?

You're overseeing it.

You do other work as well, in addition to the monitoring these MWBE projects? Or --

J. NAOMI GLEAN: No.

So, my sole responsibility is to work on minority- and women-owned businesses.

Well, also, EEO issues.

And so I'm working from the beginning of the project with the solicitation, all the way through

to the end.

So, monitoring how we're using those firms, and making sure that they're still providing a commercially useful function throughout the project. And then reporting how we're spending funds with them. And answering any questions from the agencies and the owners.

So it's myself, one other person with me.

And then the -- I meet with the project managers on a monthly basis, to ask them to follow up:

How are they -- minority-owned business working?

Are they -- do they still use their own staff?

Do they still have their own equipment?

Have they asked you for anything?

Do they need help fielding any issues they have?

And then the estimators are, and purchasing department is, also working to, you know, make sure that we seal the deals with these minority- and women-owned businesses.

So it's a lot of people working to make sure that we meet these goals.

SENATOR O'MARA: Now, as it comes to the state program, which we're here primarily dealing with, have you received any waivers?

J. NAOMI GLEAN: Far and few in between.

Let's see, just on state.

I don't remember the last time I got a waiver on a State project.

And that does not mean, I try; I try all the time.

But, I can't remember the last time I got a waiver on a State project.

SENATOR O'MARA: And you submit all the good-faith effort work you go through, and your staff goes through, and everybody in the company that's working on this, and you document it all, and send your binders or boxes full of documentation, it's not being looked at?

You're just being told, No, you got to get to 30 percent?

J. NAOMI GLEAN: Yeah, and, I mean, I'm not going to tell you every single time they don't look at it.

But, if I send you several binders worth of information, and -- at 5 p.m., and then, at 10 a.m. the next day, you say that my waiver is denied,

I assume you didn't get to look through all of that.

And, to be honest, I've never asked for a complete waiver. It's only partial waivers, because we believe in the program, and we do subcontract out to minority- and women-owned businesses, and purchase materials.

So, it's never an entire waiver.

And I think, because it's not a full waiver, and they see that we've gotten so close, they say: Well, we'll just give you a little more time, you'll figure it out. The project's not over yet, keep going, something will pop up.

And so it's very hard to get a waiver, especially at the beginning of the project.

At the beginning of the project, I don't remember the last time I got a waiver.

SENATOR O'MARA: What's your company's market territory?

J. NAOMI GLEAN: We're -- all of our projects are in New York City.

SENATOR O'MARA: New York City?

J. NAOMI GLEAN: Uh-huh.

SENATOR O'MARA: Okay. You don't do anything outside of City here?

J. NAOMI GLEAN: We're about to start one in

New Jersey.

And we've had -- we've done some "Hurricane Sandy" work and emergency work on Long Island and Queens.

But, it's mainly in New York City.

SENATOR O'MARA: We get a lot of complaints about the directory, as you talked about, and others have, with not being properly categorized in what functions they do, and difficulty of those firms being able to change that designation.

And oftentimes, the designation, we've heard, just seems to get picked by the State, and says, "this is what you're certified in," when it's not specifically what they do, or all that they do, for sure.

And they have trouble changing that.

And, you mentioned you hear that as a problem as well.

But, I guess one of the questions I have in regard to that categorization, if you're a certified minority- or woman-owned business, what difference does it make what category you're certified in?

If you're a woman- or minority-owned, then you're eligible to do work.

And then it's up to you, as the prime

contractor, or the general contractor, to determine whether that's an entity that is capable of doing that work.

J. NAOMI GLEAN: Well, no.

The agency will not -- that you're working with will not give you credit if the firm is not certified for what you're using them for.

SENATOR O'MARA: No, I understand that.

But do you think that's necessary, to have each individual MWBE certified in every particular category?

Once they've established the ownership, and that it is an MWBE, why do they need to be categorized and approved at each function or type of work they might do?

J. NAOMI GLEAN: Well, it goes to vetting their capability of doing the work.

So, if you don't -- if you don't know what they're doing, you don't know how they get it done.

So if they're certified to -- let's say, if they're a certified supplier, and they don't have any labor, they have no staff -- they have no workers, and then they say that they can actually install things for me, where are they getting that staff from?

That's an easy way for me to ask that question, so at least --

SENATOR O'MARA: Well, I see that can help you.

But, there's no category listings for male White contractors.

J. NAOMI GLEAN: Uh-huh?

SENATOR O'MARA: So if you're going to a majority-owned firm, let me say, rather than a minority-owned firm, there's no directory of what their qualifications are, or whether they do business or not.

So why do the minority ones need to be categorized if other contractors aren't?

Because you can contract with others as well. Right?

J. NAOMI GLEAN: Uh-huh.

SENATOR O'MARA: You don't contract just with minority businesses.

J. NAOMI GLEAN: Well, there's like ten things that I can put in that category of, why do minority-owned businesses have to go to that standard when White-owned businesses don't?

SENATOR O'MARA: Well, yeah, so why do we make them do that?

J. NAOMI GLEAN: Yeah.

I -- I wish somebody would tell me.

I don't know.

I mean, it's the same thing with the cranes.

When I train my staff, I tell everybody that you can't give a minority-owned business a crane if that's not part of their subcontract.

And that's not something I would ever say about a non-minority-owned business.

And that's -- I think that's something that the regulations have to look at: the practicality of how work is actually done.

I think there are definitely other portions of the program that we can scrutinize and say, are we actually helping the minority- and women-owned businesses, or are we really penalizing them for being -- for being a minority- and women-owned business?

At some point, it is to their detriment to be part of --

SENATOR O'MARA: If you weren't looking to utilize that subcontractor to meet the quota, then you wouldn't need to -- you couldn't care what category they were in, because you would just -- you would just contract with them to do the work.

J. NAOMI GLEAN: Uh-huh. Yes.

And there's a lot of times --

SENATOR O'MARA: It would be up to you, as the prime, to determine what their actual capability is.

J. NAOMI GLEAN: There's a lot of times we use and work with minority-owned companies, and don't take credit for them.

They're going to do the job the best way, and they're going to get it done on time and at a good price.

But we think some agency might not like this portion of how we're going to do the business, but we're just going to work with you, because you know -- have know-how and you're going to get it done. But I'm not going the fight with an agency about this minutia here. I'm not going to take credit for it.

So we -- as a firm, we definitely use minority-owned businesses at times that we don't look for credit.

And sometimes we get in trouble for that because every agency wants to take every penny of the credit.

SENATOR O'MARA: Yep.

J. NAOMI GLEAN: But there's a lot with the program that I question, are we penalizing minority- and women-owned business by scrutinizing them to this extent?

And it's because some people try to get over on the system.

And because a few people try to get over on the system, and did the wrong thing, now everybody is assumed to be in cahoots. And everybody is assumed to -- you know, every woman-owned business, it's really her husband that does it. Every, you know, minority in business, where did you get that money from?

And I think it's a backwards way.

I think we're at a point now, we've turned the table of:

Everybody understands that we need these programs and they are actually good;

And everybody knows that they need to participate in it;

And there's no easy way out of just not meeting your goals and not showing good-faith efforts.

And so I think now we can reevaluate the program and say, you know, what is actually going to

benefit the minority-owned businesses?

Us not giving a joint check for a lender, and a minority-owned supplier who's saying, "I need money from this lender; otherwise I can't get the supplies from the manufacturer," that's not helpful to them.

You know?

There's just like a blanket rule with agencies that said, No joint checks for minority-owned businesses.

And it just doesn't make sense.

I think it's a point where we understand enough of the basics that we can delve into the nuances of the program.

SENATOR LITTLE: And when a business is just starting out, two young women, and their -- both of their fathers owned the business, were renting office space, got denied. And they had already started the business, and they were doing work.

And, it just doesn't work.

You know, I just want to say, as we -- you know, your idea of "penalize them," that's true, because they are being held to a totally different standard, even though we're trying to help.

And I voted for this, because I did believe

that this was a good thing.

But the 30 percent is a goal. It is not a quota. It is not a restriction.

Is that, the whole state, an overall 30 percent of the contracts are minority-owned businesses.

And they're putting it on 30 percent on each and every project, each and every place, even though we don't have access in our area to a number of -- a large number of businesses to get that 30 percent goal; and, therefore, the business goes elsewhere, and it's not helping the economy of our districts.

So, there's a lot of work that needs be done on it.

I think the motivation for the program is a good idea, but, I really appreciate the comments that we've heard today.

J. NAOMI GLEAN: Great.

Yeah, I mean, this is an anecdote.

Within our company we have a general-contracting division. And then we have the specialty divisions.

It's a lot easier to meet our goals on the general-contracting side. We have a lot more scopes of work. There's a lot more places where we can

make smaller contracts, as opposed to on our specialty work.

And so, if the goals were assessed to what's actually there, and not insurance and bonding and overhead, if it was actually assessed to the scopes of work, I think we would -- we would definitely meet the goals a lot easier and help a lot more companies that way.

SENATOR RITCHIE: I would like to say, thank you for your comments. They were very helpful.

Appreciate it.

J. NAOMI GLEAN: Thank you.

Thanks for your time.

SENATOR RITCHIE: And I would just like to say, this will conclude our final hearing.

We have, I think, a number of themes that we heard over and over again throughout the six hearings, the issues like:

Regional staff that's needed.

We need help building capacity.

The program needs to reassess the 30 percent goal, but, is being implemented as a requirement.

We need to take another look at the personal net worth.

You know, I appreciate Senator Little and

Senator O'Mara for being here.

Certainly, Senator Akshar, who took a lot of time going across this state.

We'll all be working together to put recommendations in place as we go back to Albany in January.

I want to thank our Senate staff that's here.

And, also, I want to thank Lisa Harris, who has spent a lot of time helping us. Our counsel has really put a lot of work, and traveled to the hearings too.

With that, once again, to all of our speakers, thank you for taking the time.

We certainly will take what you said back to our meetings, when we're putting forward recommendations.

And, Senator Little, did you have anything to say, to close?

SENATOR LITTLE: No, I think that we've gotten some really good ideas, and concrete ideas.

And as we've gone through all of these, we're finding that a lot of the comments are the same around the state from different groups.

But, it's become a struggle, and that's not what it was meant to be.

So I think that we really need to relook at the program and see how we can clean it up, and fix it.

And if New York City can do it, I'm sure that New York State should be able to, too.

Thank you for being here.

SENATOR O'MARA: Just, thanks, everybody, for being here.

It's a pleasure to listen to you and get your input on this issue.

I want to thank Senator Ritchie for your leadership on this with Senator Akshar;

And, Betty, you being here as well.

I think I've attended four of these across the state, and it's been very helpful in us determining which direction to try to move forward to improve this program.

SENATOR RITCHIE: Thank you.

With that, we will adjourn the hearing.

(Whereupon, at approximately 1:31 p.m., the public hearing concluded, and adjourned.)

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